

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

THOMAS J. HEALEY
(312) 252-1505
thealey@fletcher-sippel.com

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ENTERED
Office of Proceedings
July 19, 2022
Part of
Public Record

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

July 19, 2022

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **Docket No. FD 36610**
Burns Harbor Shortline Railroad Company –
Operation Exemption – In Porter County, Indiana

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Verified Notice of Exemption of Burns Harbor Shortline Railroad Company Pursuant to 49 C.F.R. § 1150.31**, dated July 19, 2022. The appropriate filing fee has been tendered electronically via Pay.gov.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

Respectfully submitted,

/s/ *Thomas J. Healey*

Thomas J. Healey
Attorney for Burns Harbor Shortline
Railroad Company

TJH:th

Attachment

FEE RECEIVED
July 19, 2022
SURFACE
TRANSPORTATION BOARD

FILED
July 19, 2022
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36610

BURNS HARBOR SHORTLINE RAILROAD COMPANY
-- OPERATION EXEMPTION --
IN PORTER COUNTY, INDIANA

**VERIFIED NOTICE OF EXEMPTION
OF
BURNS HARBOR SHORTLINE RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1150.31**

Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEY FOR BURNS HARBOR
SHORTLINE RAILROAD COMPANY**

Dated: July 19, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36610

BURNS HARBOR SHORTLINE RAILROAD COMPANY
-- OPERATION EXEMPTION --
IN PORTER COUNTY, INDIANA

**VERIFIED NOTICE OF EXEMPTION
OF
BURNS HARBOR SHORTLINE RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1150.31**

Burns Harbor Shortline Railroad Company (“BHS”), a non-carrier, hereby files this notice of exemption under 49 C.F.R. § 1150.31, et seq. to operate existing rail trackage owned by the State of Indiana and controlled and managed under statute by BHS’s indirect parent, Ports of Indiana (“Ports”) (formerly known as “Indiana Ports Commission”), extending approximately 4.15 miles and forming a loop from two separate connections with Norfolk Southern Railway Company (“NS”) within the Port of Indiana-Burns Harbor in Portage, Porter County, Indiana ("the Line"), as shown on Exhibit A.

Based on projected revenues for the Line, BHS expects to be a Class III switching and terminal rail carrier.

This Notice is related to FD 36611, *Ports of Indiana and Indiana Ports Railroad Holding Corporation – Continuance in Control Exemption – Burns Harbor Shortline Railroad Company*, in which Ports and Indiana Ports Railroad Holding Corporation (“IPR”), a subsidiary of Ports and BHS’s direct parent, are concurrently filing a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of BHS once BHS commences common carrier operations on the Line and becomes a rail carrier. Ports and IPR are non-carriers, and IPR controls

two other Class III rail carriers which operate at Ports-managed facilities in Jeffersonville and Mt. Vernon, Indiana.¹

In accordance with the requirements of 49 C.F.R. § 1150.33, BHS submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

The full name and address of the applicant herein is as follows:

Burns Harbor Shortline Railroad Company
6625 S. Boundary Rd.
Portage, Indiana 46368

Applicant's Representative: 49 C.F.R. § 1150.33(b)

The BHS representative to whom correspondence regarding this transaction should be sent is as follows:

Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

BHS and Ports will enter into an Operating Agreement to be dated October 1, 2022 providing for BHS's operation (either by BHS directly or through a contract operator for BHS) of the trackage controlled and managed by Ports at the Port of Indiana-Burns Harbor.

¹ See *Indiana Ports Railroad Holding Corporation – Continuance in Control Exemption – Clark Shortline Railroad Company and Southwind Shortline Railroad Company*, FD 32114 (STB served May 14, 1998).

Operation of the Property: 49 C.F.R. § 1150.33(d)

BHS will be the operator of the Line along with related ancillary trackage controlled and managed by Ports. BHS will provide switching and terminal services to tenant industries located within the Port of Indiana-Burns Harbor, and will interchange with NS and Indiana Harbor Belt Railroad Company.

Summary of the Transaction: 49 C.F.R. § 1150.33(e)

BHS is an existing, wholly-owned inactive subsidiary of IPR and an indirect subsidiary of Ports. BHS previously filed a notice of exemption with the Board's predecessor to operate trackage at the Burns Harbor port facility in 1992, and a related petition for exemption to extend operations over adjacent tracks then owned by Consolidated Rail Corporation. Both of those filings were subsequently withdrawn at BHS's request,² and BHS has never operated as a rail carrier. Ports and BHS have now determined that BHS's operation of the Line and related ancillary trackage will benefit tenants of the Port of Indiana-Burns Harbor and promote the continued development and success of the Burns Harbor port facility.

Pursuant to the Operating Agreement between BHS and Ports, BHS will provide common carrier rail service on the Line, beginning at a connection with NS near the intersection of South Boundary Drive and Sun Drive and extending in a loop configuration northerly, easterly and then southerly to a second connection with NS near the intersection of East Boundary Drive and Joe Emig Drive, a distance of approximately 4.15 miles in Portage, Porter County, Indiana.

² See *Burns Harbor Shortline Railroad Company – Acquisition and Operation Exemption – Indiana Port Commission*, FD 32104 (STB served June 25, 1993) and *Burns Harbor Shortline Railroad Company – Extension and Operations Exemption – In Porter County, Indiana*, FD 32105 (STB served June 25, 1993).

The Line does not have mileposts, but is currently designated as Main Runner Track #230 and #232.

The full name and address of the owner of the Line is:

State of Indiana
200 W. Washington Street
Indianapolis, IN 46204

And the state entity authorized to control and manage the port and its trackage is:

Ports of Indiana
150 W. Market St., Suite 100
Indianapolis, Indiana 46204

In accordance with the Board's directive in *Anthony Macrie – Continuance in Control Exemption – New Jersey Seashore Lines, Inc.*, FD 35296 (STB served Aug. 16, 2010) ("*Macrie*"), at 3, a confidential copy of the Operating Agreement between Ports (as the State's authorized manager of the underlying rail trackage of the Line) and BHS is filed under seal as Exhibit D to this notice. That agreement does not allow Ports to interfere with BHS's freight operations or BHS's ability to meet its common carrier obligation to its shippers. *Macrie* at 3-4; *Wisconsin Cent. Ltd. v. STB*, 112 F.3d 881 (7th Cir. 1997).

BHS intends to consummate the proposed transaction and commence operations as a rail common carrier on the Line on or after October 1, 2022, upon the expiration of an agreement with NS pursuant to which NS provides rail services within the port.

Map: 49 C.F.R. § 1150.33(f)

A map showing the Line and indicating the area served by the Line is attached as Exhibit A to this notice.

Certificate of Compliance: 49 C.F.R. § 1150.33(g)

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.33(g) is attached as Exhibit B to this notice.

Interchange Commitments: 49 C.F.R. § 1150.33(h)

The Operating Agreement between BHS and Ports contains no restriction on BHS interchanging traffic with any rail carriers.

Advance Notice: 49 C.F.R. § 1150.32(e)

The projected annual revenue of BHS is not expected to exceed \$5 million, and accordingly the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable to this transaction. *See* Exhibit B hereto.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(2), the proposed operation of the Line by BHS is exempt from environmental reporting requirements. BHS's operation of the Line will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), the proposed operation of the Line by BHS also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Further Surface Transportation Board approval is required to discontinue or abandon service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.34

A caption summary in appropriate form is attached as Exhibit C to this notice.

Respectfully submitted,

/s/ *Thomas J. Healey*

By: _____

Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

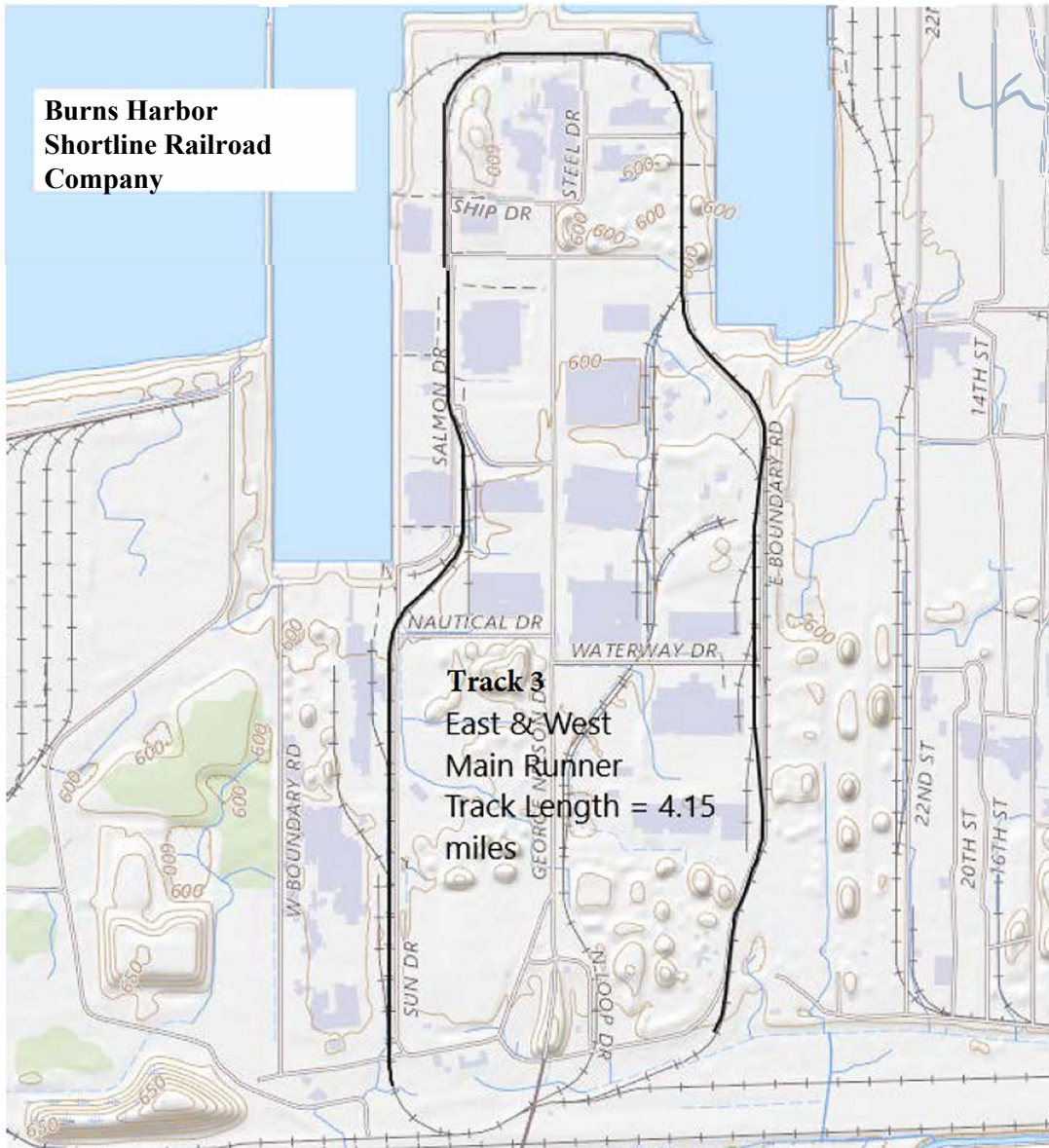
**ATTORNEY FOR BURNS HARBOR
SHORTLINE RAILROAD COMPANY**

Dated: July 19, 2022

[Map Exhibit]

**Burns Harbor
Shortline Railroad
Company**

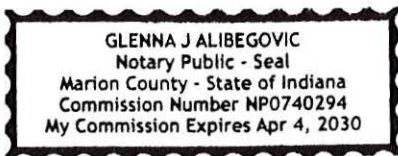
Track 3
East & West
Main Runner
Track Length = 4.15
miles

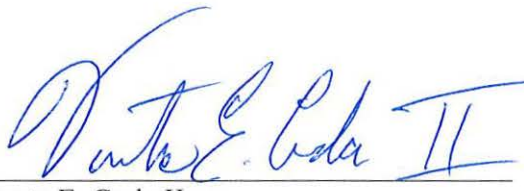


CERTIFICATION

State of Indiana)
) ss:
County of Marion)

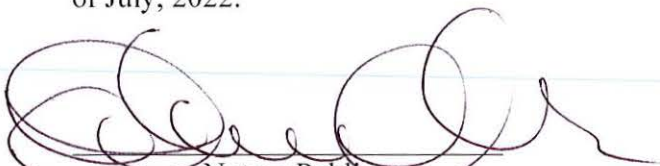
Vanta E. Coda II, being duly sworn, hereby certifies that the projected annual rail revenue of Burns Harbor Shortline Railroad Company does not exceed \$5 million and will not result in the creation of a Class II or Class I rail carrier under the provisions of 49 C.F.R. § 1201 (1-1).





Vanta E. Coda II
Chief Executive Officer

SUBSCRIBED AND SWORN TO
before me this 18th day
of July, 2022.



Notary Public

My Commission expires:

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36610

**BURNS HARBOR SHORTLINE RAILROAD COMPANY
-- OPERATION EXEMPTION --
IN PORTER COUNTY, INDIANA**

Burns Harbor Shortline Railroad Company (“BHS”), a non-carrier, has filed a Verified Notice of Exemption under 49 C.F.R. § 1150.31, *et seq.* to operate rail trackage owned by the State of Indiana and controlled and managed by Ports of Indiana (“Ports”), a non-carrier, within the Port of Indiana-Burns Harbor beginning at a connection with Norfolk Southern Railway Company (“NS”) near the intersection of South Boundary Drive and Sun Drive and extending in a loop configuration northerly, easterly and then southerly to a second connection with NS near the intersection of East Boundary Drive and Joe Emig Drive, a distance of approximately 4.15 miles in Portage, Porter County, Indiana (the “Line”). The Line does not have mileposts, but is currently designated as Main Runner Track #230 and #232.

BHS expects to consummate its operation on the Line and commence operations on or after October 1, 2022.

Comments must be filed with the Board and served on:

Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

This proceeding is related to FD 36611, *Ports of Indiana and Indiana Ports Railroad Holding Corporation – Continuance in Control Exemption – Burns Harbor Shortline Railroad Company*, in which Ports and Indiana Ports Railroad Holding Corporation have concurrently filed a notice of exemption pursuant to 49 U.S.C. §§ 11323, *et seq.* and 49 C.F.R. § 1180.2(d)(2) to continue in control of BHS once BHS commences common carrier operations on the Line and becomes a rail carrier.

This Notice is filed under 49 C.F.R. § 1150.31. If this Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: August __, 2022

By the Board

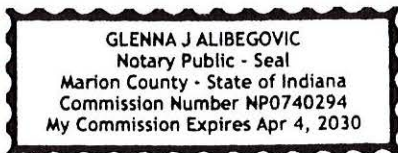
HIGHLY CONFIDENTIAL

[OPERATING AGREEMENT]

VERIFICATION

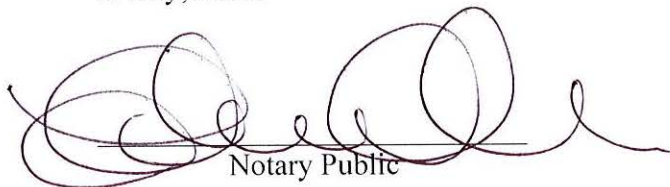
State of Indiana)
) ss:
County of Marion)

Vanta E. Coda II, being duly sworn, deposes and says that he is Chief Executive Officer of Burns Harbor Shortline Railroad Company, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.




Vanta E. Coda II

SUBSCRIBED AND SWORN TO
before me this 18th day
of July, 2022.


Notary Public

My Commission expires: