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August 29, 2022

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FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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

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

THOMAS J. LITWILER

(312) 252-1508

tlitwiler@fletcher-sippel.com

August 29, 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 36639**
Wheeling & Lake Erie Railway Company – Sublease
Renewal Exemption – Pittsburgh & West Virginia Railroad

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Verified Notice of Exemption of Wheeling & Lake Erie Railway Company Pursuant to 49 C.F.R. § 1180.2(d)(4)**, dated August 29, 2022. The sum of \$1,600, representing the appropriate fee for this filing, 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. Kind regards.

Respectfully submitted,

/s/ Thomas J. Litwiler

FILED
August 29, 2022
SURFACE
TRANSPORTATION BOARD

Thomas J. Litwiler
Attorney for Wheeling & Lake Erie
Railway Company

TJL:tl

Attachment

cc: Alexander C. Jarvis, Esq., W&LE

FEE RECEIVED
August 29, 2022
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36639

WHEELING & LAKE ERIE RAILWAY COMPANY
-- SUBLEASE RENEWAL EXEMPTION --
PITTSBURGH & WEST VIRGINIA RAILROAD

**VERIFIED NOTICE OF EXEMPTION
OF
WHEELING & LAKE ERIE RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(4)**

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

Alexander C. Jarvis
Executive Vice President & Chief Legal Officer
Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, Ohio 44613-1202
(330) 767-7250

**ATTORNEYS FOR WHEELING & LAKE ERIE
RAILWAY COMPANY**

Dated: August 29, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36639

WHEELING & LAKE ERIE RAILWAY COMPANY
-- SUBLEASE RENEWAL EXEMPTION --
PITTSBURGH & WEST VIRGINIA RAILROAD

**VERIFIED NOTICE OF EXEMPTION
OF
WHEELING & LAKE ERIE RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(4)**

Wheeling & Lake Erie Railway Company (“W&LE”) hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(4) for the renewal of its sublease of the rail properties of the Pittsburgh & West Virginia Railroad (“PWV”) in Pennsylvania, West Virginia and Ohio for a period of ninety-nine (99) years, from October 16, 2062 to October 16, 2161. The transaction involves solely an extension in time in arrangements that were previously authorized by the Board’s predecessor agency in *Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger*, 324 I.C.C. 1, 13, 52, 107-123 (1964) and *Wheeling Acquisition Corporation – Acquisition and Operation Exemption – Lines of Norfolk & Western Railway Company*, Docket No. FD 31591 (ICC served Feb. 6, 1990, May 7, 1990 and Dec. 28, 1990) (“W&LE Acquisition”). No other modifications are being made to the agreements governing W&LE’s sublease of PWV. The subject sublease renewal is accordingly exempt under 49 C.F.R. § 1180.2(d)(4).

In accordance with the requirements of 49 C.F.R. § 1180.4(g), W&LE submits the following information:

Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

W&LE is a Class II common carrier by rail which owns, subleases or operates approximately 840 miles of rail line in the states of Ohio, West Virginia, Pennsylvania, and Maryland. W&LE's principal route extends from Bellevue, Ohio through Brewster, Ohio and Pittsburgh, Pennsylvania to Connellsville, Pennsylvania. As described further below, the eastern portion of this route, from Pittsburgh Junction, Ohio to Connellsville, Pennsylvania is owned by PWV and subleased by W&LE. Among its other routes, W&LE operates pursuant to trackage rights over CSX Transportation, Inc. between Connellsville and Hagerstown, Maryland, and over Norfolk Southern Railway Company ("NS") between Bellevue and Toledo, Ohio.

W&LE began operations in May, 1990 after acquiring its core rail lines from Norfolk and Western Railway Company ("N&W"), a predecessor of NS.¹ *See Wheeling Acquisition Corporation – Acquisition and Operation Exemption – Lines of Norfolk & Western Railway Company*, Docket No. FD 31591 (ICC served Feb. 6, 1990). W&LE is a subsidiary of The Wheeling Corporation, and is affiliated with the Akron Barberton Cluster Railway Company. *See Wheeling Corporation -- Continuance in Control Exemption -- Akron Barberton Cluster Railway Company*, Docket No. FD 32538 (ICC served Oct. 27, 1994 and Jan. 12, 1996).

PWV is an unincorporated Pennsylvania business trust and a non-operating Class III rail carrier which owns approximately 120 miles of rail line principally extending from a connection with W&LE-owned trackage at Pittsburgh Junction, Ohio eastward to Connellsville, Pennsylvania. Short branch lines extend to Clairton and Mifflin Junction, Pennsylvania, near

¹ N&W was merged into NS on September 1, 1998. *See Norfolk Southern Railway Company – Merger Exemption – Norfolk and Western Railway Company*, Docket No. FD 33648 (STB served Aug. 31, 1998).

Pittsburgh.² PWV was formed and acquired the rail assets of The Pittsburgh & West Virginia Railway Company (“Old PWV”) in 1967. *Pittsburgh & W. Va. R. – Pur. – Pittsburgh & W. Va. Ry. Co.*, 330 I.C.C. 593 (1967) (“*PWV Purchase*”).

Pursuant to a Lease dated July 12, 1962 and authorized by the ICC in *Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger*, 324 I.C.C. 1, 13, 52, 107-123 (1964) (the “1962 Lease”), Old PWV leased the entirety of its rail lines to N&W in 1964 for an initial term of ninety-nine years, to October 15, 2063, renewable at N&W’s discretion for successive ninety-nine year terms in perpetuity. PWV succeeded to Old PWV’s interests in the 1962 Lease in 1967. *See PWV Purchase*, 330 I.C.C. at 594 (noting substitution of PWV for Old PWV as lessor under the 1962 Lease).

Pursuant to a Sublease Agreement dated May 17, 1990 and authorized by the ICC in *W&LE Acquisition* (the “1990 Sublease”), N&W subleased its interest in the PWV lines to W&LE for a term extending through October 16, 2062, extendable at W&LE’s option. That sublease was undertaken in conjunction with N&W’s concurrent sale of other rail lines in Ohio and West Virginia to W&LE. The ICC confirmed at the time that the sublease of PWV’s lines to W&LE necessarily resulted in the termination of N&W’s common carrier status on the lines. *W&LE Acquisition*, Decision served May 7, 1990, slip op. at 2; Decision served Dec. 28, 1990, slip op. at 7-8. W&LE has conducted all rail operations on the PWV lines since 1990.

² PWV abandoned its short West End Branch near Pittsburgh in 2011. *Pittsburgh & West Virginia Railroad – Abandonment Exemption – In Allegheny County, Pa.*, Docket No. AB-1086X (STB served Sep. 7, 2011). W&LE concurrently discontinued its sublease rights on the West End Branch. *Wheeling & Lake Erie Railway Company – Discontinuance of Service Exemption – In Allegheny County, Pa.*, Docket No. AB-227 (Sub-No. 12X) (STB served Sep. 7, 2011).

Pursuant to notice dated May 24, 2022, W&LE has exercised its right to extend the 1990 Sublease for an additional ninety-nine period, to October 16, 2161. In turn, NS has accordingly renewed the underlying 1962 Lease for an additional ninety-nine period, to October 15, 2162, pursuant to notice dated August 9, 2022. No other provisions of the 1962 Lease or the 1990 Sublease have been amended or modified, and there will be no changes in W&LE's current operations on the PWV lines.

The extension of W&LE's current sublease of the PWV lines is a renewal of a matter where the agency has previously authorized the relevant transactions and only an extension in time is involved. The sublease renewal thus qualifies as exempt under the Board's class exemption procedures at 49 C.F.R. § 1180.2(d)(4).³

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

Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, Ohio 44613
(330) 767-3401

Any questions concerning this Notice should be sent to W&LE's representative at the following address:

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

³ While NS remains the lessee under the 1962 Lease and the sublessor under the 1990 Sublease, as indicated above it is not a rail carrier on the PWV lines and does not require or seek authority for the transaction proposed herein. W&LE's operation of the PWV lines will continue to be governed by the provisions of the 1962 Lease and the 1990 Sublease, both as extended.

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

W&LE intends to consummate the proposed renewal upon the effective date of the exemption in this proceeding. As a result of that renewal, W&LE's existing sublease of the PWV pursuant to the 1962 Lease and the 1990 Sublease will be extended from October 16, 2062 to October 16, 2161.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

Renewal of the current lease and sublease arrangements for the PWV lines provides stability and certainty for W&LE's operations and accommodates long-term planning and investment for those lines.

States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

W&LE owns or operates over rail property in the states of Ohio, West Virginia, Pennsylvania, and Maryland.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map showing the lines of PWV subleased by W&LE under the agreements being renewed or extended is attached as Exhibit 1.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

Copies of the May 24, 2022 notice from W&LE to NS extending the 1990 Sublease and the August 9, 2022 notice from NS to PWV extending the 1962 Lease are attached as Exhibit 2.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

The appropriate level of labor protection for the proposed sublease extension is that set forth in *Mendocino Coast Ry. Inc. – Lease and Operate*, 354 I.C.C. 732 (1978), *modified*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n v. U.S.*, 675 F.2d 1248 (D.C. Cir. 1982). No employees will be affected by the extension.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(1), the proposed sublease extension is exempt from environmental reporting requirements. W&LE's continued sublease of the PWV lines for an additional ninety-nine year period 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 sublease extension also is exempt from historic preservation reporting requirements. W&LE's renewal of the sublease arrangements for the PWV lines is for the purpose of continued rail operations. Further Surface Transportation Board approval is required to discontinue or abandon any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Interchange Commitments: 49 C.F.R. § 1180.4(g)(4)

The proposed extension of W&LE's sublease of the PWV lines does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

Respectfully submitted,

/s/ *Thomas J. Litwiler*

By: _____

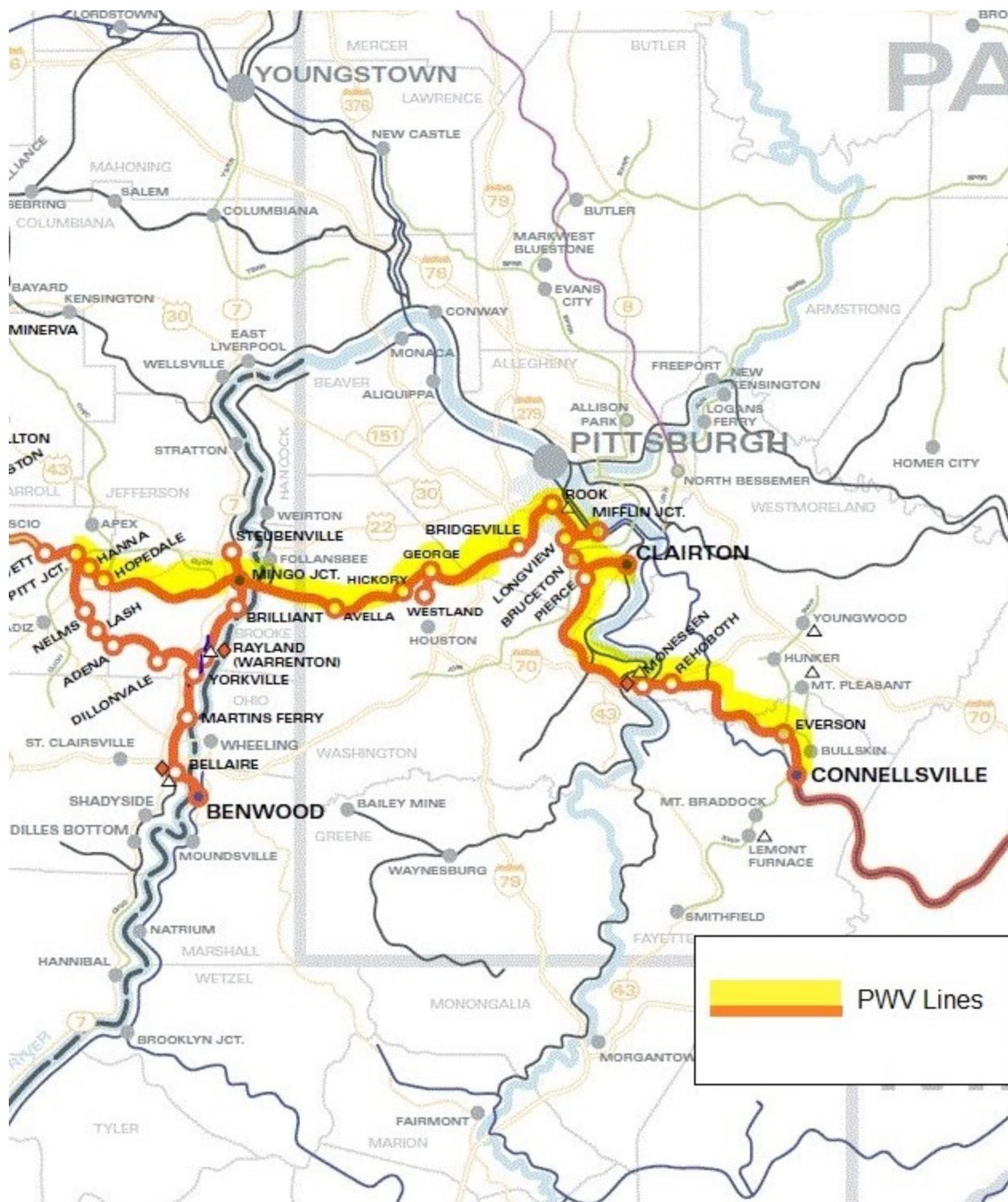
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Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

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Wheeling & Lake Erie Railway Company
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(330) 767-7250

**ATTORNEYS FOR WHEELING & LAKE ERIE
RAILWAY COMPANY**

Dated: August 29, 2022

EXHIBIT 1



Wheeling & Lake Erie Railway

EXHIBIT 2

Jonathan Chastek
President
Phone (330) 767-7289

100 E. First Street
Brewster, OH 44613
jchastek@wlerwy.com

Norfolk Southern
c/o Michael McClellan,
Chief Strategy Officer
650 West Peachtree St. NW
Atlanta, GA 30308

May 24, 2022

RE: PWV Sublease Term Extension

Mr. McClellan:

I write with reference to the Sublease Agreement entered into between Wheeling & Lake Erie Railway Company ("W&LE") and Norfolk and Western Railway Company ("NW"), predecessor in interest to Norfolk Southern ("NS"), dated May 17, 1990, concerning the sublease of certain interests, rights, assets, railroad lines and properties of the former Pittsburgh & West Virginia Railway Company (the "Demised Property") to W&LE (the "Sublease"). The Sublease originates from a lease dated as of July 12, 1962 between The Pittsburgh & West Virginia Railway Company ("PWV") and NW, whereby PWV leased the Demised Property to NW for an initial term of 99 years commencing October 16, 1964, renewable for additional terms of 99 years each, in perpetuity (the "Lease").

The current term of the Sublease is set to expire on October 16, 2062. Pursuant to Section 13 of the Sublease, W&LE has the right to extend the Sublease for an additional 99 year term upon the same terms and provisions as provided for in the Sublease by providing NS with written notice of W&LE's desired extension of the Sublease not less than one year prior to the expiration of the initial term of the Sublease. **Please be advised that W&LE is hereby providing its notice to NS that W&LE desires to, and hereby is, exercising its right to so extend the Sublease for an additional 99 year term.** Accordingly, the expiration of the Sublease shall now be on October 16, 2161. Please take all action necessary under Section 3 of the Lease to extend the current term of the Lease in order to accommodate the extension of the Sublease, and provide us with the appropriate confirmatory documentation.

Sincerely,



Jonathan Chastek

cc:

Alan H. Shaw, President and Chief Executive Officer

Nabanita Chatterjee Nag, Senior Vice President and Chief Legal Officer

F. B. Meador, Director Strategic Planning

David Shelton, Senior Assistant Deputy General Counsel

Randy Noe, Assistant Vice President Regulatory Affairs

Michael Cox, Vice President Taxation



Norfolk Southern Corporation
650 W Peachtree St, NW
Atlanta, GA 30308

Michael R. McClellan
Sr. VP & Chief Strategy Officer
Michael.McClellan@nscorp.com

NORFOLK SOUTHERN RAILWAY COMPANY
650 West Peachtree Street NW
Atlanta, Georgia 30308

August 9, 2022

Via Certified Mail

Pittsburgh & West Virginia Railroad
c/o Power REIT
301 Winding Road
Old Bethpage, NY 11804
Attention: Chief Executive Officer

Re: Lease Renewal

Dear Mr. Lesser:

This letter is in regard to that certain Lease dated as of July 12, 1962, by and between Pittsburgh & West Virginia Railroad, as successor to The Pittsburgh & West Virginia Railway Company, and Norfolk Southern Railway Company ("NSR"), as successor to Norfolk and Western Railway Company, with an effective date of October 16, 1964 (as supplemented, the "Lease").

Pursuant to Section 3 of the Lease, NSR hereby gives notice that it is renewing the Lease for one (1) additional term of ninety-nine (99) years, thereby extending the term of the Lease to 11:59 p.m., Eastern time, on October 15, 2162. Nothing in this notice constitutes a waiver of NSR's right to further renew the Lease as prescribed by Section 3 thereof.

Thank you for your attention to this matter.

Very truly yours,

NORFOLK SOUTHERN
RAILWAY COMPANY

By: 

Name: Michael R. McClellan
Title: Vice President

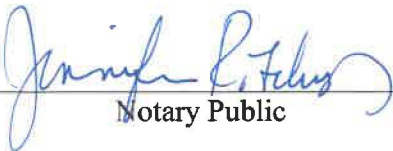
VERIFICATION

State of Ohio)
) ss:
County of Stark)

Jonathan M. Chastek, being duly sworn, deposes and says that he is President of
Wheeling & Lake Erie Railway Company, that he has read the foregoing Notice of Exemption
and knows the facts asserted therein, and that the same are true as stated.


Jonathan M. Chastek

SUBSCRIBED AND SWORN TO
before me this 23rd day
of August, 2022.


Notary Public

My Commission expires:



JENNIFER L. RITCHEY
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Wayne County
My Comm. Exp. 11/2/2023