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ENTERED
Office of Proceedings
November 18, 2022
Part of
Public Record

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November 18, 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 36649**
Illinois Western Railroad Company --
Operation Exemption – In Greenville, Illinois

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Verified Notice of Exemption of Illinois Western Railroad Company Pursuant to 49 C.F.R. § 1150.31**, dated November 18, 2022. The sum of \$2,200, 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.

Respectfully submitted,

/s/ *Michael J. Barron, Jr.*

Michael J. Barron, Jr.
Attorney for Illinois Western
Railroad Company

FILED
November 18, 2022
SURFACE
TRANSPORTATION BOARD
MJB:tjl

Attachment

FEE RECEIVED
November 18, 2022
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36649

ILLINOIS WESTERN RAILROAD COMPANY
-- OPERATION EXEMPTION --
IN GREENVILLE, ILLINOIS

**VERIFIED NOTICE OF EXEMPTION
OF
ILLINOIS WESTERN RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1150.31**

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

**ATTORNEY FOR ILLINOIS WESTERN
RAILROAD COMPANY**

Dated: November 18, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36649

ILLINOIS WESTERN RAILROAD COMPANY
-- OPERATION EXEMPTION --
IN GREENVILLE, ILLINOIS

**VERIFIED NOTICE OF EXEMPTION
OF
ILLINOIS WESTERN RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1150.31**

Illinois Western Railroad Company (“ILW”), a non-common carrier rail operator, hereby files this notice of exemption under 49 C.F.R. § 1150.31, et seq. to operate approximately thirteen hundred feet of existing rail trackage owned by the City of Greenville, Illinois extending from a connection with CSX Transportation, Inc. (“CSXT”) into the Alan E. Gaffner Industrial Park (formerly the Howard M. Wolf Business Park) in Greenville, Bond County, Illinois (“the Greenville Track”). ILW has conducted rail switching operations on the Greenville Track since 1996, and is submitting this filing to establish and confirm its rail carrier status under the Board’s so-called “*Effingham*” precedent.

Based on current and projected revenues for the Greenville Track, ILW expects to be a Class III rail carrier.

This Notice is related to Docket No. FD 36650, *3i RR Holdings GP LLC, et al. and Regional Rail, LLC – Control Exemption – Effingham Railroad Company, Illinois Western Railroad Company and South Point & Ohio Railroad, Inc.*, in which Regional Rail, LLC (“Regional Rail”), a shortline railroad holding company, and its parent entities are concurrently

filing a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to acquire control of ILW and two affiliated rail carriers.

In accordance with the requirements of 49 C.F.R. § 1150.33, ILW 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:

Illinois Western Railroad Company
192 North Kennedy Boulevard
P.O. Box 190
Vandalia, Illinois 62471
(618) 283-2268

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

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

Michael J. Barron, Jr.
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)

ILS and the City of Greenville are parties to an Operating Agreement dated as of March 14, 2016 which provides for ILW's operations over the Greenville Track owned by the City.

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

ILW will be the common carrier operator of the Greenville Track. ILW will provide service to industries within the Alan E. Gaffner Industrial Park¹ and the adjacent John W. Kelsey Business & Technology Park, and will interchange with CSXT. The service will constitute the entirety of ILW's common carrier railroad operations, and, as such, the Board has jurisdiction over the proposed common carrier operation under *Effingham R. Co. – Pet. For Declaratory Order*, 2 S.T.B. 606 (1997) (“*Effingham Status*”), *reconsideration denied* (STB served Sep. 18, 1998), *aff'd sub nom. United Transp. Union-Ill. Legis. Bd. v. STB*, 183 F.3d 606 (7th Cir. 1999) (“*Effingham Status*”).

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

The Greenville Track extends approximately thirteen hundred feet from a connection with CSXT's St. Louis Line Subdivision just east of the Illinois State Route 127 overpass into the Alan E. Gaffner Industrial Park, on the eastern side of Greenville, Bond County, Illinois.² The Greenville Track was constructed by the City of Greenville in the 1990s, and was previously operated by Consolidated Rail Corporation (CSXT's predecessor) as exempt spur trackage under former 49 U.S.C. § 10907(b)(1) (now 49 U.S.C. § 10906). ILW first entered into an agreement with the City of Greenville and assumed operation of the Greenville Track in 1996, but its notice of exemption to operate the Greenville Track filed at that time was dismissed as not being within the Board's authority. *Illinois Western Railroad Company – Change in Operator*

¹ The City of Greenville's Alan E. Gaffner Industrial Park was formerly known as the Howard M. Wolf Business Park, and was renamed by the City in 2021.

² The Greenville Track does not have mileposts.

Exemption – The City of Greenville, IL, Docket No. FD 32853 (STB served Jan. 30, 1996) (“*ILW Dismissal*”).

In 1997 the Board decided *Effingham Status*, which determined that an affiliate of ILW would be a rail carrier under circumstances essentially identical to those found not to qualify ILW as a rail carrier the previous year. The *Effingham Status* precedent established that operations on trackage otherwise exempt under 49 U.S.C. § 10906 can be subject to the Board’s authority where such service constitutes the entirety of an entity’s common carrier railroad operations. In the years since, while the Board had not granted ILW operating authority, there nonetheless was ambiguity regarding ILW’s rail carrier status. See *Charles Barenfanger – Continuance in Control Exemption – Effingham Railroad Company*, Docket No. FD 33480 (STB served Oct. 22, 1997) (authorizing a party to commonly control ILW and another rail carrier); *Charles Barenfanger – Acquisition of Control Exemption – Vandalia Railroad Company*, Docket No. FD 35744 (STB served July 11, 2013), slip op. at 1-2, n.3 (seeming to note apparent conflict between *ILW Dismissal* and *Effingham Status*). ILW today operates with characteristics that are typical of a rail carrier.

In connection with the pending sale of ILW and two other rail carriers, ILW is now seeking to obtain operating authority from the Board to establish and resolve its status as a rail carrier, consistent with *Effingham Status*. Operations on the Greenville Track will continue under the current iteration of the Operating Agreement with the City of Greenville, which was entered into in 2016.

The full name and address of the owner of the Greenville Track is:

City of Greenville
404 South Third Street
Greenville, IL 62246

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 ILW and the City of Greenville is filed under seal as Exhibit D to this notice. That agreement does not allow the City to interfere with ILW's freight operations or ILW'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).

ILW intends to commence operations as a regulated rail common carrier on the Greenville Track on or after December 18, 2022, concurrently with the consummation of the control transaction which is the subject of exemption in Docket No. FD 36650.

Map: 49 C.F.R. § 1150.33(f)

A map showing the Greenville Track 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 ILW and the City of Greenville contains no restriction on ILW interchanging traffic with any rail carriers.

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

The projected annual revenue of ILW 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 common carrier operation of the Greenville Track by ILW is exempt from environmental reporting requirements. ILW's operation of the Greenville Track 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 common carrier operation of the Greenville Track by ILW 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/ *Michael J. Barron, Jr.*

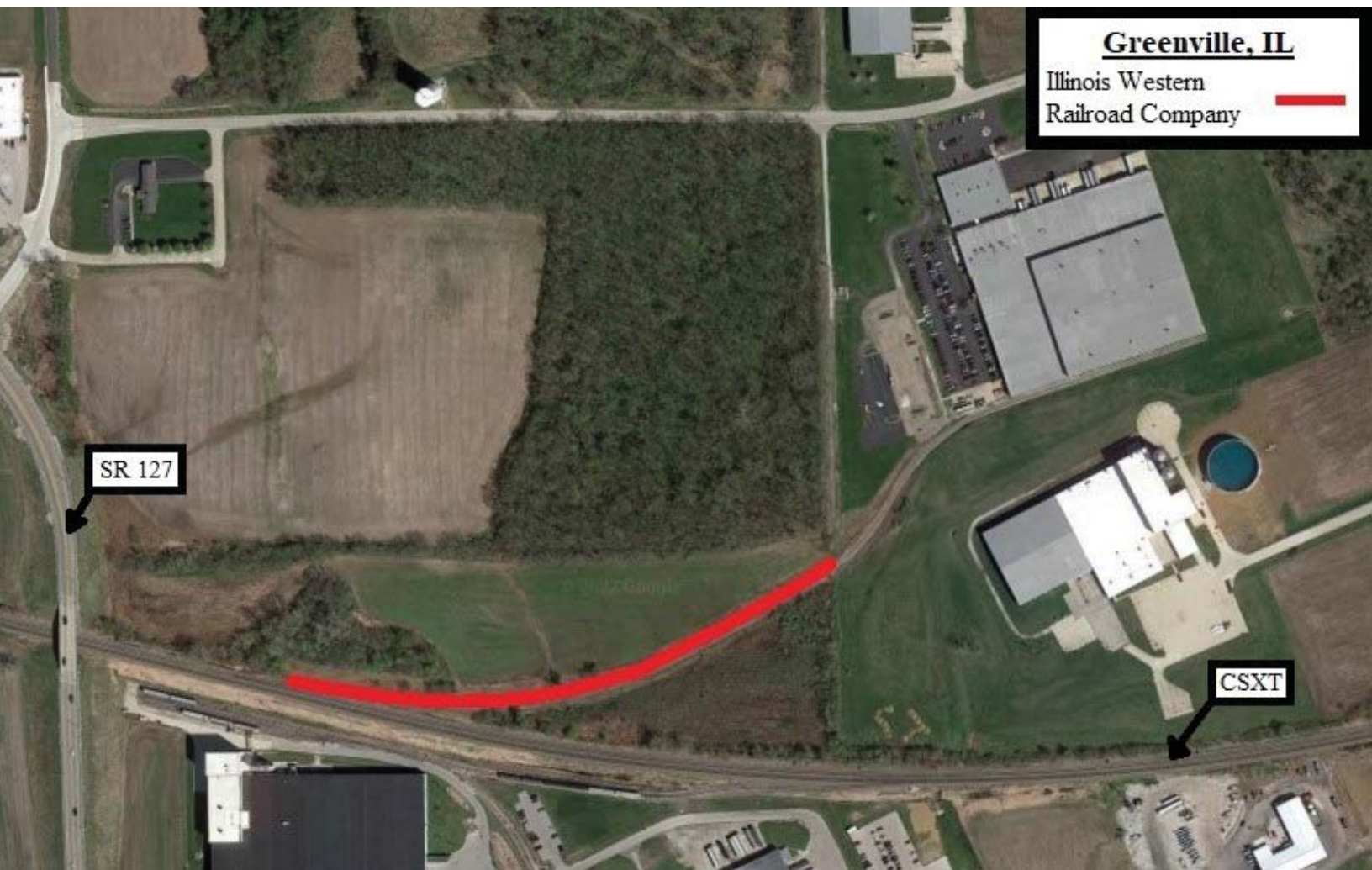
By: _____

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

**ATTORNEY FOR ILLINOIS WESTERN
RAILROAD COMPANY**

Dated: November 18, 2022

EXHIBIT A



Greenville, IL

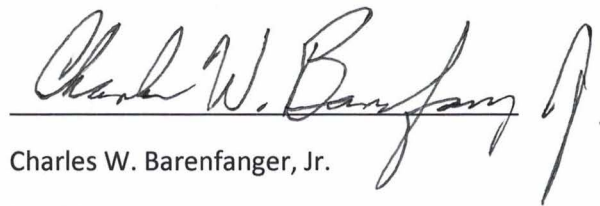
Illinois Western
Railroad Company

SR 127

CSXT

CERTIFICATION

I, Charles W. Barenfanger, Jr., hereby certify under penalty of perjury that the projected annual rail revenue of Illinois Western 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).

A handwritten signature in black ink, reading "Charles W. Barenfanger, Jr.", is written over a horizontal line. The signature is cursive and includes a large, stylized initial "J" at the end.

Charles W. Barenfanger, Jr.

President

Dated: November 18, 2022

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36649

ILLINOIS WESTERN RAILROAD COMPANY
-- OPERATION EXEMPTION --
IN GREENVILLE, ILLINOIS

Illinois Western Railroad Company (“ILW”), a non-carrier, has filed a Verified Notice of Exemption under 49 C.F.R. § 1150.31, *et seq.* to operate as a common carrier trackage owned by the City of Greenville, Illinois and extending approximately thirteen hundred feet from a connection with the CSX Transportation, Inc. St. Louis Line Subdivision just east of the Illinois State Route 127 overpass into the Alan E. Gaffner Industrial Park (formerly the Howard M. Wolf Business Park) on the eastern side of Greenville, Bond County, Illinois (the “Greenville Track”). The Greenville Track does not have mileposts.

ILW expects to commence common carrier operation of the Greenville Track on or after December 18, 2022, concurrently with consummation of the control transaction which is the subject of the notice of exemption concurrently filed in Docket No. FD 36650, *3i RR Holdings GP LLC, et al. and Regional Rail, LLC – Control Exemption – Effingham Railroad Company, Illinois Western Railroad Company and South Point & Ohio Railroad, Inc.*

Comments must be filed with the Board and served on:

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

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: November __, 2022

By the Board

OPERATING AGREEMENT

BETWEEN

CITY OF GREENVILLE

and

ILLINOIS WESTERN RAILROAD COMPANY

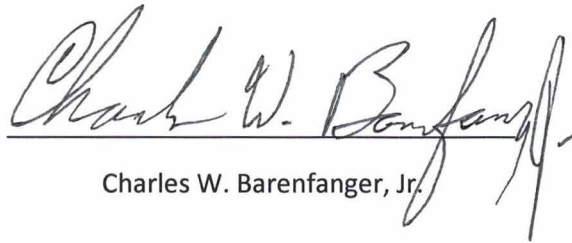
DATED AS OF MARCH 14, 2016

CONFIDENTIAL

[Filed Under Seal Subject to Request for Protective Order]

VERIFICATION

I, Charles W. Barenfanger, Jr., hereby verify under penalty of perjury that I am President of Illinois Western Railroad Company, that I have read the foregoing Notice of Exemption and know the facts asserted therein, and that the same are true as stated to the best of my knowledge, information and belief.

A handwritten signature in black ink, reading "Charles W. Barenfanger, Jr.", is written over a horizontal line. The signature is cursive and stylized, with a long, sweeping tail on the final letter.

Dated: November 18, 2022