

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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

ROBERT A. WIMBISH

(312) 252-1504
rwimbish@fletcher-sippel.com

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ENTERED
Office of Proceedings
February 27, 2023
Part of
Public Record

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

February 27, 2023

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 20006

Re: **FD 36674**
Ottawa Northern Railroad LLC — Acquisition and Change in
Operator Exemption — Midland Railway Historical Association

Dear Ms. Brown:

A **Verified Acquisition and Change in Operator Notice of Exemption of the Ottawa Northern Railroad LLC** is attached for filing under 49 C.F.R. part 1150, subpart D. Payment of the filing fee has been tendered via Pay.gov.

If you have any questions regarding this filing, please contact me at either rwimbish@fletcher-sippel.com or (312) 252-1504. Thank you for your assistance on this matter.

Yours truly,

/s/ *R. A. Wimbish*

Robert A. Wimbish
Attorney for Ottawa Northern Railroad LLC

Attachment

RAW:bjs

FEE RECEIVED
February 27, 2023
SURFACE
TRANSPORTATION BOARD

FILED
February 27, 2023
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36674

OTTAWA NORTHERN RAILROAD LLC
— ACQUISITION AND CHANGE IN OPERATOR EXEMPTION —
MIDLAND HISTORICAL RAILWAY ASSOCIATION

**VERIFIED NOTICE OF EXEMPTION OF
OTTAWA NORTHERN RAILROAD LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500
rwimbish@fletcher-sippel.com
bsmith@fletcher-sippel.com

**ATTORNEYS FOR OTTAWA NORTHERN
RAILROAD LLC**

Dated: February 27, 2023

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36674

OTTAWA NORTHERN RAILROAD LLC
— ACQUISITION AND CHANGE IN OPERATOR EXEMPTION —
MIDLAND HISTORICAL RAILWAY ASSOCIATION

**VERIFIED NOTICE OF EXEMPTION OF
OTTAWA NORTHERN RAILROAD LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Ottawa Northern Railroad LLC (“ONR”), a non-carrier,¹ files this Verified Notice of Exemption (“Notice”) under 49 C.F.R. part 1150 subpart D to acquire, and to conduct common carrier operations over, an approximately 11.09-mile line of railroad (the “Line”) owned by the Midland Historical Railway Association (“MHRA”), also a non-carrier.² Under the proposed transaction, ONR also will replace the Leavenworth, Lawrence & Galveston Railroad (doing business as the Baldwin City & Southern Railroad Company – “BC&S”) as the common carrier service provider on the Line.³

Under the requirements of 49 C.F.R. § 1150.33, ONR submits the following information:

¹ Upon consummation of the proposed railroad asset acquisition and change of operator exemption, ONR will be a rail carrier under the control of the Chicago Rock Island & Pacific Railroad LLC (“Rock Island”). Rock Island is seeking authority to continue control of ONR upon such transaction consummation pursuant to the contemporaneously-filed *Chicago Rock Island & Pacific Railroad LLC — Continuance in Control Exemption — Ottawa Northern Railroad LLC*, FD 36675.

² See *Midland Railroad LLC — Acquisition and Change in Operator Exemption — Midland Historical Railway Association*, FD 36440 (Sep. 15, 2023) (“*Midland – Exemption*”), 1, Request to Withdraw Exemption Notice, filed February 23, 2023, pending.

³ *Id.*

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

The full name and address of the applicant is:

Ottawa Northern Railroad LLC
165 W. South St.
Suite 201
Hernando, Miss. 38632

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

Correspondence should be sent to:

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Ill. 60606
(312) 252-1500
bsmith@fletcher-sippel.com

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

ONR and MHRA have reached an agreement under which ONR will acquire the Line and will, upon consummation of its purchase of the Line, replace BC&S a railroad common carrier on the Line. ONR understands that MHRA controls BC&S, the incumbent carrier, and that, under the circumstances, BC&S does not object to being replaced by ONR.

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

ONR will operate and provide rail common carrier service to shippers on the Line.

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

This transaction involves ONR's proposed purchase of, and commencement of common carrier service over, approximately 11.09 route miles of MHRA-owned railroad track (the Line) extending between milepost 14.95 near Baldwin City, Kansas, and milepost 26.04 at Ottawa, Kansas, where the Line connects with a line of BNSF Railway Company ("BNSF") at

BNSF milepost 55.8. Attached as Exhibit A is a map of the Line.

MHRA purchased the track from BNSF predecessor Atchison Topeka & Santa Fe Railway Company (the “Santa Fe”) after Santa Fe abandoned the Line sometime after 1988.⁴ In 2019, BC&S obtained authorization to provide common carrier service over the Line.⁵ ONR has reached an agreement with MHRA to acquire the Line and, in so doing, replace MHRA-controlled BC&S as a common carrier operator.⁶

ONR intends to complete its acquisition of, and commence common carrier operations over, the Line in place of BC&S on or after the anticipated effective date of this notice.

The name and address of the transferor entity is as follows:

Midland Historical Railway Association
1515 High Street
Baldwin City, KS 66006

Map: 49 C.F.R. § 1150.33(f)

Attached as Exhibit A.

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

The proposed transaction will not cause ONR revenues to meet or exceed the Class I or II thresholds. See attached Certification and Verification.

⁴ See *Leavenworth, Lawrence and Galveston Railroad d/b/a Baldwin City & Southern Railroad Company — Operation Exemption — Midland Railway Company*, FD 36300 (STB served Aug. 21, 2019).

⁵ *Id.*

⁶ In 2002, Midland Railroad LLC secured permissive authorization to acquire the line and operate it in place of BC&S per *Midland – Exemption*. Midland Railroad LLC, however, did not undertake the authorized transaction, has advised that it no longer intends to undertake that transaction, and, accordingly, has, contemporaneously with this filing, sought Board permission to withdraw its exemption notice in FD 36440.

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

The agreement governing this transaction does not include any provision that may limit future interchange with a third-party connecting carrier. See attached Certification and Verification.

Shipper Notice: 49 C.F.R. § 1150.32(b)

The Board's rules require the proponent of a change in operator notice of exemption to notify customers of the proposed transaction. There are no customers currently located on the Line, and accordingly, there is no one to which to supply the required notice.

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

ONR does not anticipate its annual revenues will exceed \$5 million. Therefore, no labor notice is required.

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

Under 49 C.F.R. § 1105.6(c)(1), a change in operator transaction such as this one is exempt from environmental reporting requirements. The proposed transaction 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)(3), the proposed change in operator transaction is also exempt from historic preservation reporting requirements. The proposed transaction is intended to facilitate common carrier rail service over the Line; it will not substantially change the maintenance of rail property. Additionally, a common carrier operator requires further Board approval to discontinue 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. § 1150.32(a)

A Caption Summary is attached as Exhibit B.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

Robert A. Wimbish

Bradon J. Smith

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

**ATTORNEYS FOR OTTAWA NORTHERN
RAILROAD LLC**

Dated: February 27, 2023

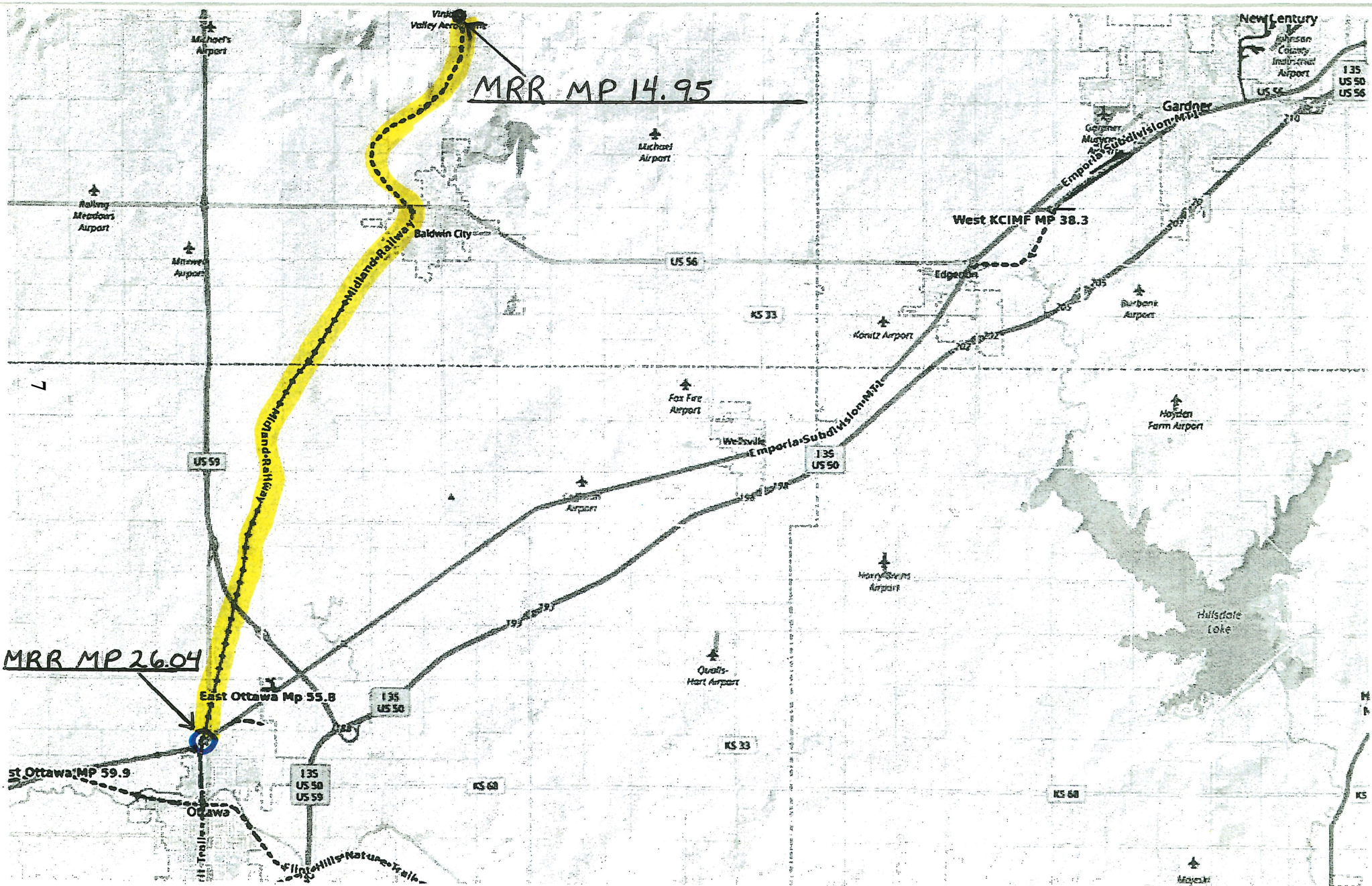
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36674

**OTTAWA NORTHERN RAILROAD LLC
— ACQUISITION AND CHANGE IN OPERATOR EXEMPTION —
MIDLAND HISTORICAL RAILWAY ASSOCIATION**

EXHIBIT A

MAP



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36674

**OTTAWA NORTHERN RAILROAD LLC
— ACQUISITION AND CHANGE IN OPERATOR EXEMPTION —
MIDLAND HISTORICAL RAILWAY ASSOCIATION**

EXHIBIT B

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36674

OTTAWA NORTHERN RAILROAD LLC
— ACQUISITION AND CHANGE IN OPERATOR EXEMPTION —
MIDLAND HISTORICAL RAILWAY ASSOCIATION

Ottawa Northern Railroad LLC (“ONR”), a non-carrier, has filed a notice of exemption (“Notice”) to operate approximately 11.09 route miles of railroad track (the “Line”) owned by Midland Historical Railway Association (also a non-carrier) extending between milepost 14.95 near Baldwin City, Kansas, and milepost 26.04 at Ottawa, Kansas. With the proposed transaction, ONR will replace the Leavenworth, Lawrence & Galveston Railroad (doing business as the Baldwin City & Southern Railroad Company) as the common carrier service provider on the Line.

Comments must be filed with the Board and served on:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606
(312) 252-1500

The notice is filed under 49 C.F.R. § 1150.31. If the 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.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36674

**OTTAWA NORTHERN RAILROAD LLC
— ACQUISITION AND CHANGE IN OPERATOR EXEMPTION —
MIDLAND HISTORICAL RAILWAY ASSOCIATION**

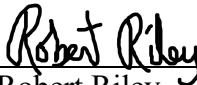
CERTIFICATION AND VERIFICATION

VERIFICATION AND CERTIFICATION

I, Robert Riley, Chief Executive Officer of the Ottawa Northern Railroad LLC verify under penalty of perjury that the foregoing notice of exemption is true and correct to the best of my information and belief.

Further, I certify that the agreement governing the proposed transaction does not have an interchange commitment; that ONR's expected annual revenues will not exceed \$5 million; and, thus, ONR will not become a Class I or II rail carrier under the applicable thresholds set forth at 49 C.F.R. § 1201 (1-1).

Dated: February 27, 2023


Robert Riley