

306344

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**ENTERED  
Office of Proceedings  
March 17, 2023  
Part of  
Public Record**

\_\_\_\_\_  
**Finance Docket No. 36683**  
\_\_\_\_\_

**FORTRESS INVESTMENT GROUP LLC ET AL.—CONTINUANCE IN  
CONTROL EXEMPTION— EAST OHIO VALLEY RAILWAY LLC**

\_\_\_\_\_  
**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

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*Attorneys for Fortress Investment Group LLC*

**Dated: March 17, 2023**

**Filing Contains Color Images**

**FILED  
March 17, 2023  
SURFACE TRANSPORTATION BOARD**

**FEE RECEIVED  
March 17, 2023  
SURFACE TRANSPORTATION BOARD**

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**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

Fortress Investment Group LLC (“Fortress”), a non-carrier, files this Verified Notice of Exemption pursuant to 49 C.F.R. § 1180.2(d)(2) for the benefit of FTAI Infrastructure, Inc. (“FTAI Infrastructure”), which is managed by an affiliate of Fortress, and Percy Acquisition LLC (“PALLC”) and Transtar, LLC (“Transtar”), both of which are indirectly controlled by FTAI Infrastructure, to continue in control of East Ohio Valley Railway LLC (“EOVR”) upon EOVR becoming a rail common carrier. FTAI Infrastructure indirectly controls Transtar, which currently owns and directly controls five non-connecting common carrier railroad subsidiaries.<sup>1</sup>

Ohio River Partners Shareholder LLC, in which FTAI Infrastructure has a 50.1% equity interest, owns a 12.2-mile railroad line extending between Milepost 60.5 at Powhatan Point, Ohio and Milepost 72.7 in the vicinity of Hannibal, Ohio (the “Omal Line”). The Omal Line is

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<sup>1</sup> Transtar’s five common carrier subsidiaries include Union Railroad Company, LLC (“URR”), Gary Railway Company (“GRW”), Delray Connecting Railroad Company (“DCR”), Texas & Northern Railway Company (“TNR”) and The Lake Terminal Railroad Company (“LTR”).

currently operated by another affiliate of FTAI Infrastructure, Katahdin Railcar Services LLC (“KRS”), a Class III carrier, pursuant to a lease with ORPS.<sup>2</sup>

ORPS has agreed to sell to EOVR, and EOVR has agreed to purchase from ORPS, the rail assets constituting the Omal Line. EOVR is concurrently filing a Verified Notice of Exemption pursuant to 49 C.F.R. § 1150.31 to acquire and operate the Omal Line. *See East Ohio Valley Railway LLC—Acquisition and Operation Exemption—Ohio River Partners Shareholder LLC*, STB Finance Docket No. 36682 (filed March 17, 2023). Upon consummation of the sale transaction in Finance Docket No. 36682, EOVR will become a rail common carrier.<sup>3</sup>

Transtar is indirectly controlled by FTAI Infrastructure.<sup>4</sup> Fortress may be deemed to indirectly control Transtar’s rail carrier affiliates (including, prospectively, EOVR) for purposes of 49 U.S.C. § 11323 because FTAI Infrastructure is managed by an affiliate of Fortress.<sup>5</sup> The

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<sup>2</sup> *See Fortress Investment Group LLC – Exemption for Intra-Corporate Family Transaction – Ohio River Partners Shareholder LLC and Katahdin Railcar Services LLC*, STB Finance Docket No. 36402 (STB served May 15, 2020). *See also Katahdin Railcar Services LLC—Change in Operators Exemption—Ohio Terminal Railway Co.*, STB Finance Docket No. 36487 (STB served March 30, 2021).

<sup>3</sup> KRS will continue to operate the Omal Line until EOVR can complete arrangements to assume operations. The ORPS- KRS lease of the Omal Line will be terminated as of the date on which EOVR commences operations on the line.

<sup>4</sup> *See Fortress Investment Group LLC—Exemption for Intra-Corporate Family Transaction—Ohio River Partners Shareholder LLC, Katahdin Railcar Services, LLC, Union R.R. Co., Gary Ry. Co., Delray Connecting R.R. Co., Texas & Northern Ry. Co., and Lake Terminal R.R. Co.*, STB Finance Docket No. 36576 (STB served Feb. 4, 2022).

<sup>5</sup> Another Fortress affiliate, Brightline Holding LLC, owns DesertXpress Enterprises, LLC (“DXE”), a common carrier railroad authorized to construct a high-speed passenger rail line in California and Nevada. *See DesertXpress Enterprises, LLC and DesertXpress HSR Corp.—Construction & Operation Exemption—In Victorville, Cal. & Las Vegas, Nev.*, STB Finance Docket No. 35544 (STB served Oct. 25, 2011). DXE has pending before the Board a Petition for Exemption to construct and operate an approximately 50-mile extended rail line for high-speed passenger rail service between Victor Valley and Rancho Cucamonga, California. *See DesertXpress Enterprises, LLC—Construction & Operation Exemption—Passenger Rail Line Between Victor Valley & Rancho Cucamonga, Cal.*, STB Finance Docket No. 36488. Brightline

Omal Line that is the subject of the Notice of Exemption in Finance Docket No. 36682 does not connect with the lines of any of the rail common carriers currently owned by Transtar, nor would it connect with the proposed DXE passenger rail line. This control transaction is not part of a series of anticipated transactions that would connect any of those rail common carriers, nor does it involve any Class I carrier. Accordingly, the control transaction that is the subject of this Verified Notice of Exemption is exempt under Section 1180.2(d)(2) of the Board's regulations.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), Fortress submits the following information as required by 49 C.F.R. § 1180.4(g):

### **SPECIFIC INFORMATION REQUIRED BY THE REGULATIONS**

49 C.F.R. § 1180.4(g) specifies certain information that must be included in every Verified Notice of Exemption filed under 49 C.F.R. § 1180.2(d)(2). The required information is provided below, preceded by the subsection of the Board's regulations to which it is responsive:

**1180.6(a)(1)(i)**      *A description of the proposed transaction, including . . . a brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.*

Pursuant to the transaction that is the subject of the Notice of Exemption in Finance Docket No. 36682, ORPS will sell the rail assets constituting the Omal Line to EOVR, a newly-created subsidiary of Transtar. As a result of that transaction, Transtar (directly) and PALLC (indirectly) will own and control a sixth rail common carrier, EOVR. Fortress may be deemed to indirectly control Transtar's five existing common carrier railroads through its management of

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Holding LLC also owns Brightline Trains LLC, which operates a passenger rail line between Miami and West Palm Beach, Florida but is not a carrier subject to the Board's jurisdiction. *See All Aboard Florida – Operations LLC and All Aboard Florida – Stations LLC – Construction and Operation Exemption – In Miami and Orlando, FLA*, STB Docket No. 35680 (STB served December 21, 2012).

FTAI Infrastructure, and DXE through its management of Brightline Holding LLC. Fortress (and FTAI Infrastructure) may likewise be deemed to indirectly control EOVR upon its acquiring the Omal Line and becoming a rail common carrier subsidiary of Transtar. None of the rail lines owned or operated by current affiliates of Fortress will connect with EOVR.

Transferring ownership of the Omal Line to a new Transtar subsidiary (EOVR) will enable the Omal Line to benefit directly from Transtar's longstanding experience and expertise in operating short-line railroads, and will improve the overall management and efficiency of FTAI Infrastructure's freight rail business.

The Omal Line is located entirely in the State of Ohio. The rail common carriers subject to the Board's jurisdiction that are currently controlled by entities managed by affiliates of Fortress include:

- DXE, which is indirectly owned by investment funds managed by an affiliate of Fortress, has been authorized by the Board to construct and operate a high-speed passenger rail line between Victorville, CA and Las Vegas, NV. DXE has pending before the Board a petition to construct and operate an extended passenger rail line between Victor Valley and Rancho Cucamonga, CA.<sup>6</sup> DXE's proposed passenger rail line will be located in the States of California and Nevada. DXE currently has no operating revenue.
- URR, a Class III carrier, operates 128 miles of track that serve three steel manufacturing facilities that comprise United States Steel Corporation's ("USS's") Mon Valley Works in the vicinity of Pittsburgh, PA. URR's rail lines are located entirely in the Commonwealth of Pennsylvania.
- GRW, a Class III carrier, operates 71 miles of track that serve USS's Gary Works in the vicinity of Gary, IN. GRW's rail lines are located entirely in the State of Indiana.

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<sup>6</sup> See *DesertXpress Enterprises, LLC – Authority to Construct and Operate – Petition for Exemption from 49 U.S.C. 10901 – Passenger Rail Line Between Victorville, CA and Rancho Cucamonga, CA.*, STB Finance Docket No. 36488.

- TNR, a Class III carrier, operates 40 miles of track that provide in-plant and terminal switching for USS's steel plant in Lone Star, TX. TNR's rail lines are located entirely in the State of Texas.
- DCR, a Class III carrier, operates 15 miles of track that provide in-plant and terminal switching for USS's Great Lakes Works in the vicinity of Ecorse, MI. DCR's rail lines are located entirely in the State of Michigan.
- LTR, a Class III carrier, operates 14 miles of track that provide terminal switching service for USS's plant at Lorain, OH. LTR's rail lines are located entirely in the State of Ohio.

The full name and address of the Applicant herein is:

Fortress Investment Group LLC  
1345 Avenue of the Americas, 47th Floor  
New York, New York 10105  
(212) 798-6100

Applicants' Counsel:

Terence M. Hynes  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
(202) 736-8198

**1180.6(a)(1)(ii)      *The proposed time schedule for consummation of the proposed transaction.***

The parties intend to consummate the proposed control transaction as soon as practicable after the effective date of this Verified Notice of Exemption and the closing of the rail line sale transaction that is the subject of EOVR's Verified Notice of Exemption in Finance Docket No. 36682.

**1180.6(a)(1)(iii)      *The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.***

Pursuant to the transactions that are the subject of this Verified Notice of Exemption and the Verified Notice of Exemption filed by EOVR in Finance Docket No. 36682, the Omal Line

will be owned in common with Transtar's five existing rail carriers. This will enable EOVR to benefit directly from Transtar's experience and expertise in successfully operating short-line railroads, and improve the overall management and efficiency FTAI Infrastructure's freight rail business.

**1180.6(a)(5)**            *A list of the State(s) in which any part of the property of each applicant carrier is situated.*

EOVR's Omal Line is located entirely within the State of Ohio. Union Railroad Company, LLC is located in the Commonwealth of Pennsylvania. Delray Connecting Railroad Company is located in Michigan. Texas & Northern Railway Company operates in Texas. Gary Railway Company operates in Indiana. The Lake Terminal Railroad Company is located in Ohio, but does not connect with the Omal Line. The proposed DXE line will be located in the states of California and Nevada.

**1180.6(a)(6)**            *Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed.*

Color maps depicting the subject carriers are attached as Exhibit 1.

**1180.6(a)(7)(ii)**        *Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.*

FTAI Infrastructure already has the corporate authority to indirectly control EOVR (a non-carrier) through its control of Transtar LLC. Therefore, no agreement or documentation is contemplated or necessary for FTAI Infrastructure to exercise corporate control of EOVR upon its becoming a rail common carrier.

**1180.4(g)(i) *Level of Labor Protection to be Imposed***

Transtar's five existing rail carrier subsidiaries are all Class III rail carriers, and EOVR will likewise be a Class III carrier upon commencing operations. DXE has not commenced operations, and does not currently have any operating employees or revenues. Therefore, in accordance with 49 U.S.C. § 11326(c), labor protection provisions do not apply to the proposed control transaction.

**1150.6 *Environmental Impacts***

Under 49 C.F.R. § 1105.6(c)(1), the proposed transaction is exempt from environmental reporting requirements because it will not result in a "significant change in carrier operations," *i.e.*, changes that exceed the thresholds set forth in 49 C.F.R. § 1105.7(e)(4) or (5).

Specifically, the continuance in control transaction that is the subject of this Verified Notice of Exemption will not cause a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of these lines to motor carriage. The control transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the lines of any of the subject railroads; (2) an increase of rail yard activities of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. This continuance in control transaction will not affect a Class I or nonattainment area under the Clean Air Act, nor will the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) be exceeded. The control transaction will not result in the transportation of any ozone depleting materials. Therefore, pursuant to the Board's regulations at 49 C.F.R. § 1105.6(c), no environmental documentation is required.

**1150.8*****Historic Impacts***

The continuance in control transaction that is the subject of this Verified Notice of Exemption will not substantially change the level of maintenance of any railroad property. Therefore, under 49 CFR 1105.8(b)(3), the proposed continuance in control is exempt from historic preservation reporting requirements.

\* \* \*

For the foregoing reasons, Fortress respectfully requests that the Board publish the requisite Notice of Exemption.

Respectfully submitted,



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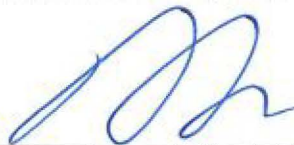
Terence M. Hynes  
Marc A. Korman  
Allison C. Davis  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
(202) 736-8000

***Attorneys for Fortress Investment Group LLC***

Dated: March 17, 2023

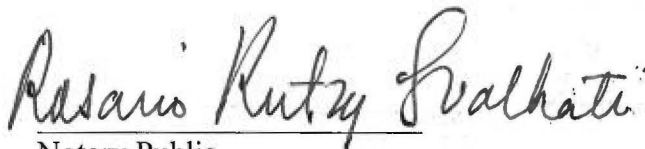
## VERIFICATION

I, David N. Brooks, being duly sworn, state that I am the Secretary of Fortress Investment Group LLC and that I am an officer duly authorized to execute, verify and file this Verified Notice of Exemption. I have knowledge of the matters contained herein, and the statements made herein are true and correct to the best of my knowledge, information and belief.



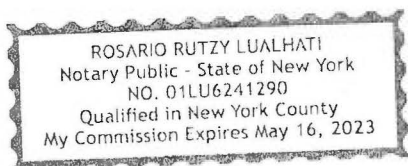
Name: David N. Brooks  
Title: Secretary

Subscribed and sworn to before me this 16 day of March, 2023.



Notary Public

My Commission expires: May 16, 2023



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 36683**

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**FORTRESS INVESTMENT GROUP LLC ET AL.—CONTINUANCE IN CONTROL—  
EAST OHIO VALLEY RAILWAY LLC, DESERTXPRESS ENTERPRISES, LLC**

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**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

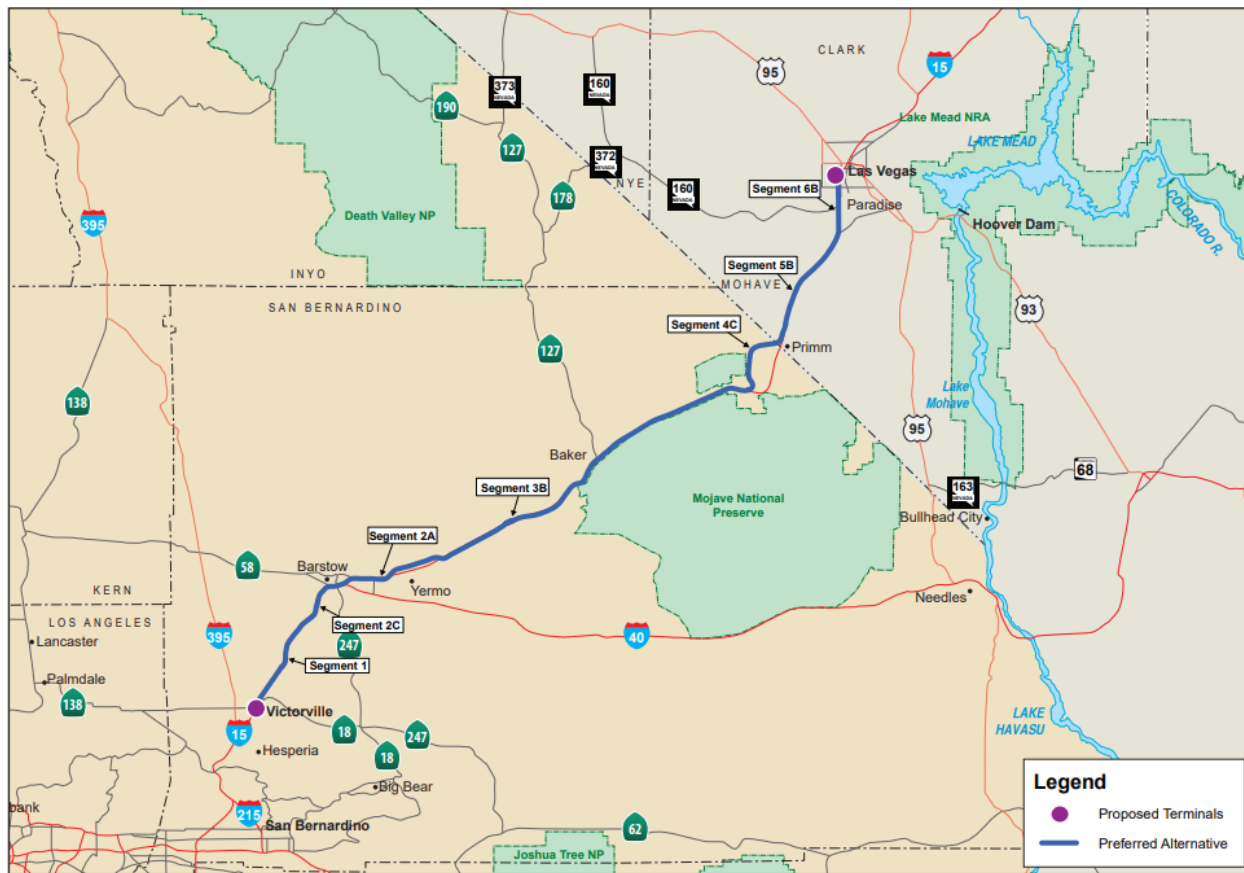
**EXHIBIT A  
SYSTEM MAPS**

## THE OMAL LINE<sup>7</sup>



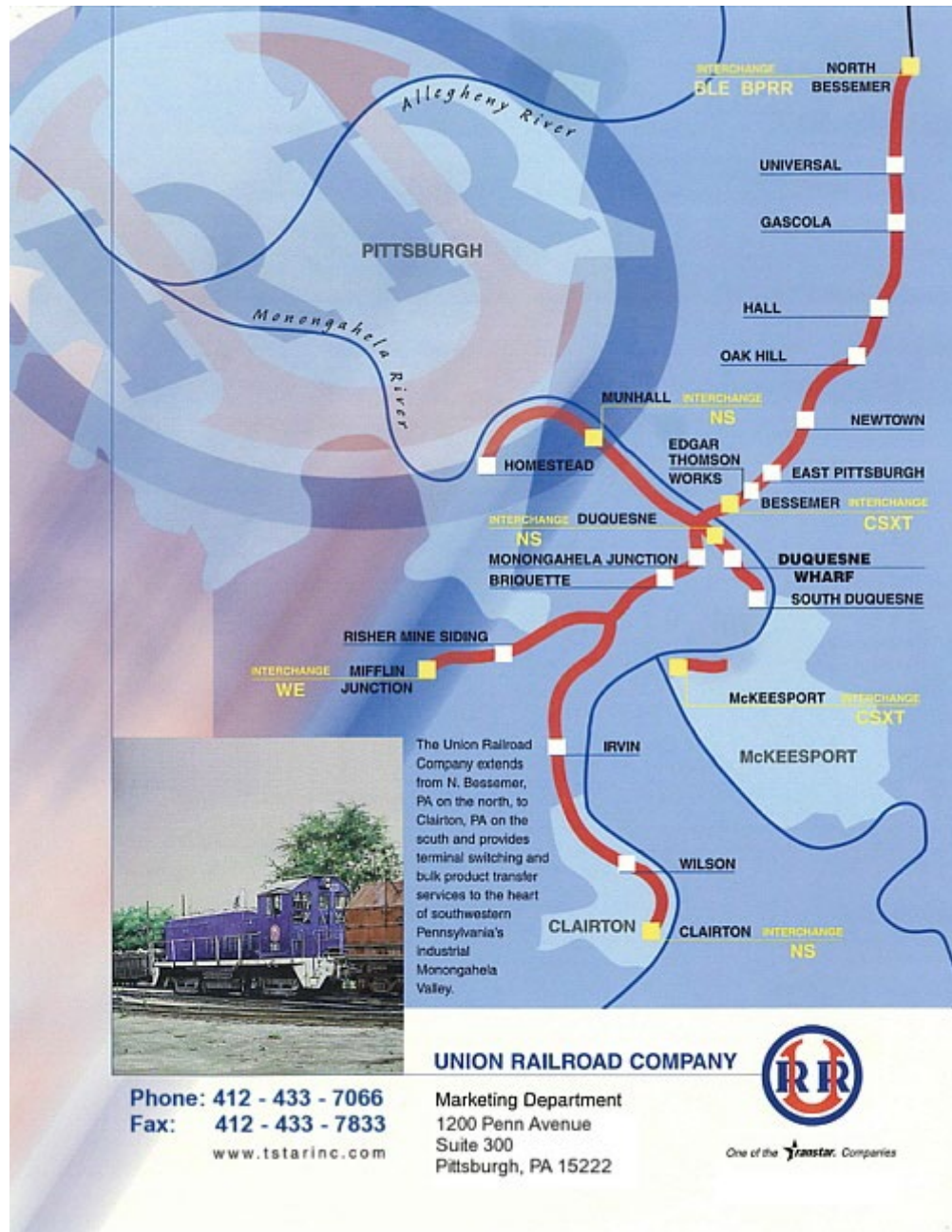
<sup>7</sup> To be acquired by EOVR in STB Finance Docket No. 36682.

**DESERTXPRESS ENTERPRISES, LLC<sup>8</sup>**



<sup>8</sup> The line is not yet operating. DXE has a pending Petition for Exemption to extend its high-speed passenger rail line from Victor Valley to Rancho Cucamonga, CA.

# UNION RAILROAD COMPANY



# DELRAY CONNECTING RAILROAD COMPANY



Exhibit A-5

## TEXAS & NORTHERN RAILWAY COMPANY

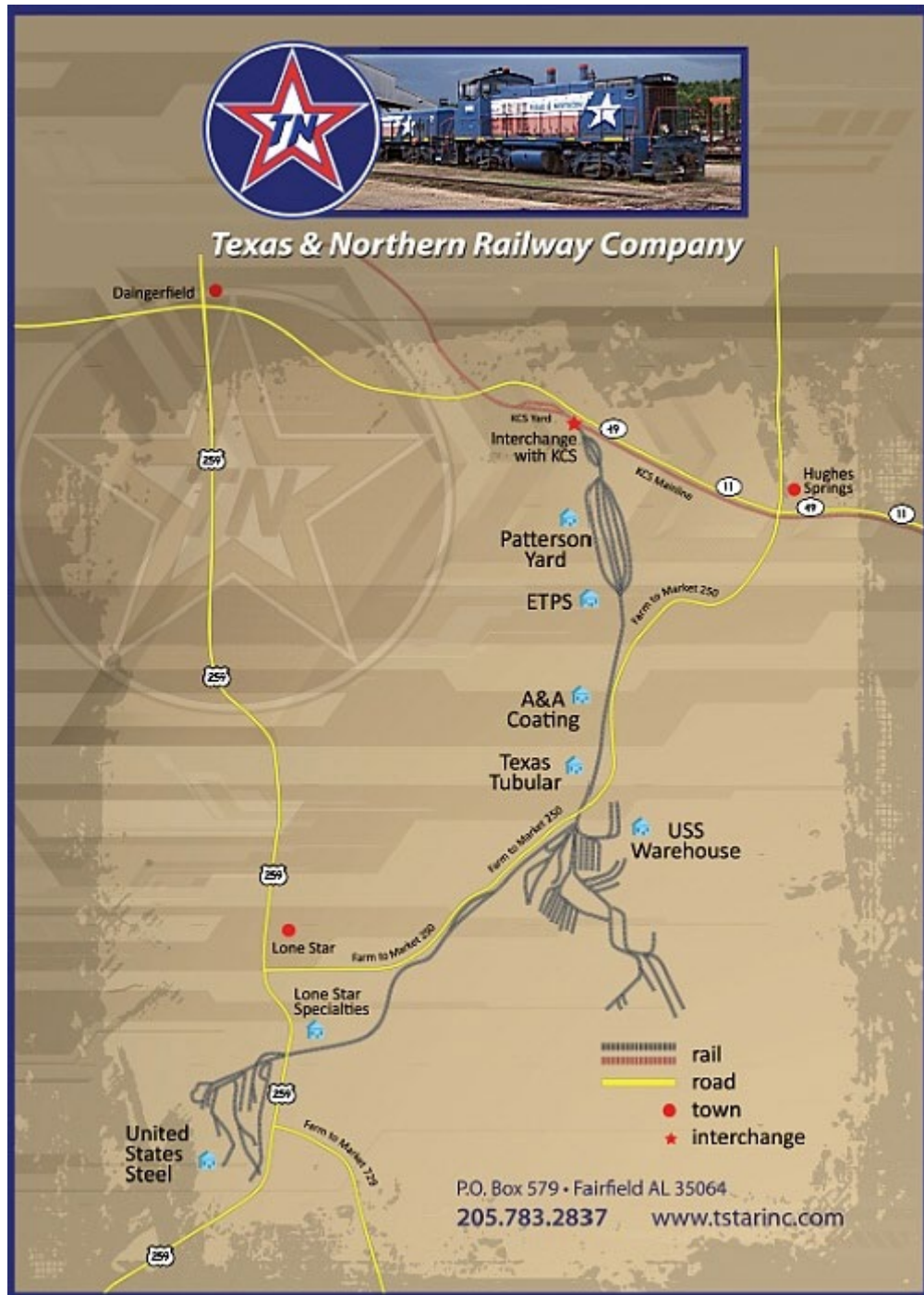
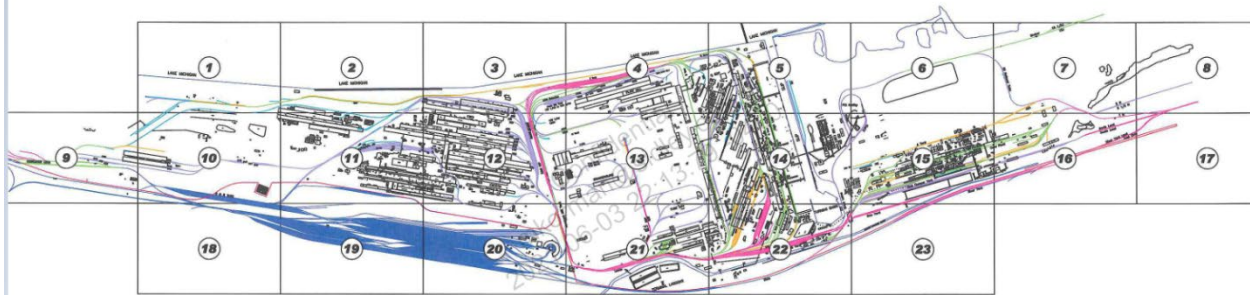


Exhibit A-6

# GARY RAILWAY COMPANY



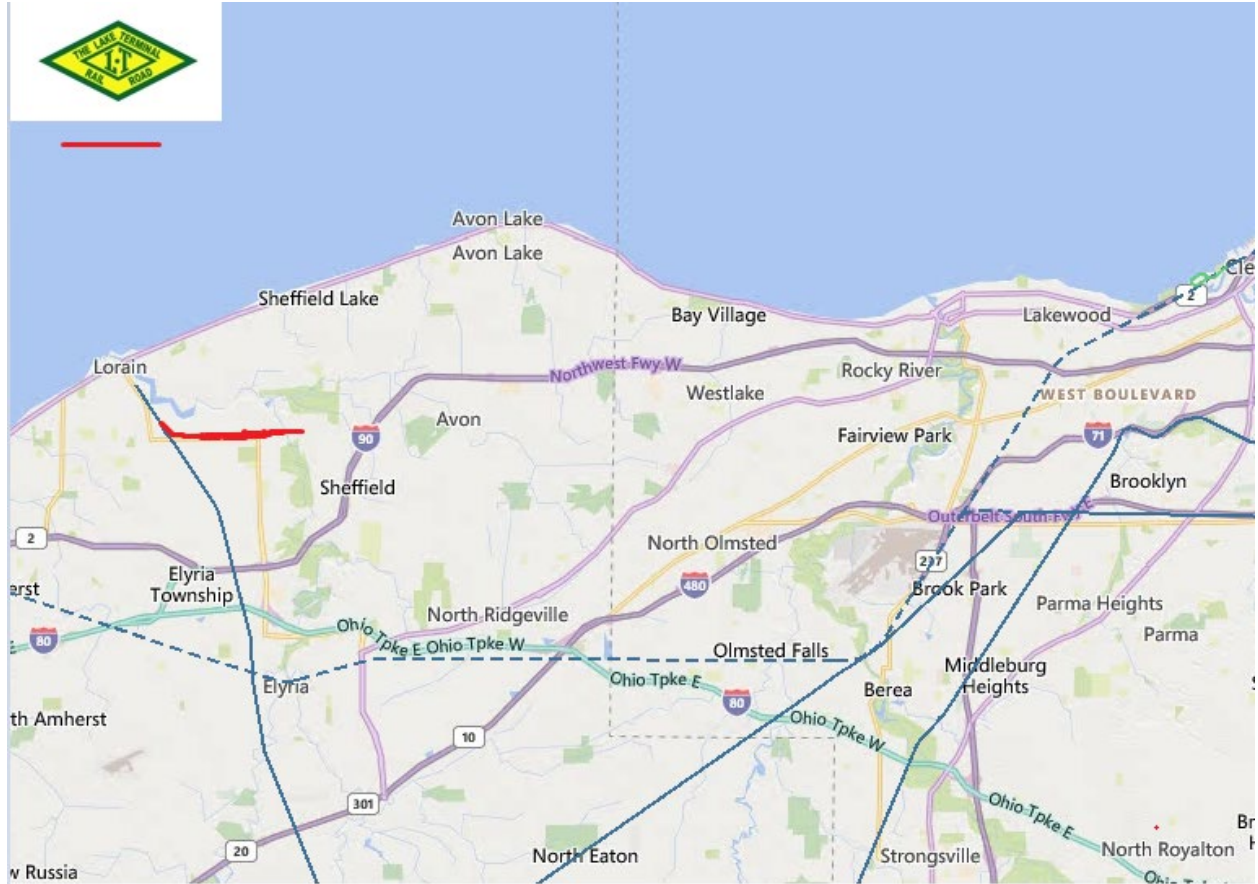
## LEGEND

|         |                                               |
|---------|-----------------------------------------------|
| RED     | FORMER EJ&E PROPERTY LINE                     |
| ORANGE  | ABANDONED TRACK OWNED BY GRW                  |
| CYAN    | ABANDONED TRACK OWNED BY USS                  |
| MAGENTA | TRACK OWNED BY GRW, MAINTAINED AT GRW EXPENSE |
| PURPLE  | TRACK OWNED BY USS, MAINTAINED AT USS EXPENSE |
| GREEN   | TRACK OWNED BY GRW, MAINTAINED AT USS EXPENSE |
| BLUE    | TRACK OWNED BY CNIEJ&E                        |



Gary Railway

## LAKE TERMINAL RAILROAD COMPANY



## CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Verified Notice of Exemption to be served by first class mail, postage pre-paid, this 17th day of March 2023, on:

Secretary of US Department of Transportation  
Docket Clerk, Office of Chief Counsel  
Federal Railroad Administration  
1200 New Jersey Ave, S.E.  
Washington, D.C. 20590

Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

Federal Trade Commission  
600 Pennsylvania Avenue, N.W.,  
Washington, D.C. 20580

Chairman J. Bruce Bugg, Jr.  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701

Governor Greg Abbott  
P.O. Box 12428  
Austin, Texas 78711-2428

Governor Eric J. Holcomb  
Office of the Governor  
Statehouse  
Indianapolis, Indiana 46204-2797

Chairman Peter Lake  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
PO Box 13326  
Austin, TX 78711-3326

Michael Smith, Commissioner  
Indiana Department of Transportation  
100 N. Senate Ave., IGCN 755  
Indianapolis, IN 46204-2249

Chairman Jim Huston  
Indiana Utility Regulatory Commission  
PNC Center, 101 W. Washington Street,  
Suite 1500E  
Indianapolis, IN 46204

Governor Kay Ivey  
State Capitol, 600 Dexter Avenue  
Montgomery, AL 36130

John R. Cooper, Transportation Director  
Alabama Department of Transportation  
P.O. Box 303050  
Montgomery, AL 36130-3050

President Twinkle Andress Cavanaugh  
Alabama Public Service Commission  
100 N Union St, RSA Union  
Montgomery, AL 36104

Governor Mike Dewine  
Riffe Center, 30th Floor, 77 S High St  
Columbus, OH 43215

Director Jack Marchbanks  
Ohio Department of Transportation  
1980 West Broad Street  
Columbus, OH 43223

Chair Jennifer French  
Ohio Public Utilities Commission  
180 E Broad St  
Columbus, OH 43215

Acting Secretary Michael Carroll  
Pennsylvania Department of Transportation  
Keystone Building, 400 North St., Fifth Floor  
Harrisburg, PA 17120

Governor Tom Wolf  
Office of the Governor  
508 Main Capitol Building  
Harrisburg, PA 17120

Governor Gretchen Whitmer  
P.O. Box 30013  
Lansing, MI 48909

Chairman Gladys Brown Dutrieuille  
Pennsylvania Public Utility Commission  
400 N. Street, Keystone Building  
Harrisburg, PA 17120

Chairman Dan Scripps  
Michigan Public Service Commission  
7109 W. Saginaw Highway  
Lansing, MI 48917

Acting Director Brad Wieferich  
Michigan Department of Transportation  
State Transportation Building  
425 W. Ottawa St.  
P.O. Box 30050  
Lansing, MI 48909

/s/ Deesha Shah

Deesha Shah