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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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DOCKET NO. FD 36823

**MACQUARIE INFRASTRUCTURE PARTNERS V GP, LLC, ET AL.
—CONTINUANCE IN CONTROL—
NORTH FLORIDA INDUSTRIAL RAILROAD, LLC**

**PETITION FOR EXEMPTION
FROM 49 U.S.C. § 11323**

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Pinsly Railroad Company, LLC*

Dated January 7, 2024

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**FILED
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Macquarie Infrastructure Partners V GP, LLC (“MIP GP”) submits this Petition for Exemption from 49 U.S.C. § 11323 (“Petition”) pursuant to 49 U.S.C. § 10502 and 49 C.F.R. Part 1121 for the benefit of the Macquarie Infrastructure Partners V fund vehicle (“MIP V”), MIP V Rail, LLC (“MIP Rail”), Pinsly Holdco, LLC, and Pinsly Railroad Company, LLC (“Pinsly”), all non-carriers (and together “Petitioners”), to continue in control of North Florida Industrial Railroad, LLC (“NFIR”), currently a non-carrier, at such time as NFIR becomes a Class III carrier by virtue of the lease transaction that is the subject of NFIR’s concurrently-filed notice of exemption in *North Florida Industrial Railroad, LLC—Lease and Change of Operators Exemption—Columbia County, Florida*, Docket No. FD 36824 (“NFIR Notice”) (the “Transaction”).

I. BACKGROUND

NFIR, a Pinsly-controlled non-carrier, has been organized as a limited liability company under the laws of Delaware to lease and operate 4,891 feet of

track (the “Line”) connecting the North Florida Mega Industrial Park (the “Park”) constructed and owned by Columbia County, Florida with a rail line operated by Florida, Gulf & Atlantic Railroad, LLC (“FG&A”). At such time as NFIR obtains and exercises the requisite Board authority to lease and operate the Line, NFIR will become a common carrier railroad.

Pinsly¹ currently controls seven rail common carriers, Grenada Railroad, LLC (“GRYR”),² FG&A,³ Camp Chase Rail, LLC (“Camp Chase”),⁴ Chesapeake and Indiana Railroad, LLC (“CKIN”),⁵ Vermilion Valley Railroad Company LLC (“VVRC”),⁶ Pioneer Valley Railroad Company, LLC (“PVRr”),⁷ and Hondo Railway,

¹ Pinsly is wholly owned by Pinsly Holdco, LLC, which is wholly owned by MIP Rail, which in turn is wholly owned (indirectly) by MIP V, which is controlled by MIP GP. Accordingly, MIP GP, MIP V, MIP Rail, and Pinsly Holdco, LLC, may be deemed to (indirectly) control NFIR, along with GRYR, FG&A, Camp Chase, CKIN, VVRC, PVRr, and HRC (as each is identified below) for purposes of 49 U.S.C. § 11323 following consummation of the Transaction.

² See *Macquarie Infrastructure Partners V GP, LLC—Acquisition of Control Exemption—Grenada R.R. and Fla., Gulf & Atl. R.R.*, Docket No. FD 36566 (STB served Dec. 10, 2021 and Apr. 7, 2022).

³ *Id.*

⁴ See *Macquarie Infrastructure Partners V GP, LLC—Acquisition of Control Exemption—Camp Chase Rail, LLC, Chesapeake & Ind. R.R., & Vermilion Valley R.R.*, Docket No. FD 36685 (STB served Apr. 7, 2023).

⁵ *Id.* CKIN was formerly known as Chesapeake and Indiana Railroad Company, Inc.

⁶ *Id.* VVRC was formerly known as Vermilion Valley Railroad Company.

⁷ See *Macquarie Infrastructure Partners V GP, LLC—Control Exemption—Pioneer Valley R.R.*, Docket No. FD 36720 (STB served Sept. 13, 2023). PVRr was formerly known as Pioneer Valley Railroad Company, Inc.

LLC.⁸ One of these railroads, FG&A, connects with the line to be leased and operated by NFIR at FG&A milepost 888 near Lake City, Florida. That connection renders the continuance in control exemption codified at 49 C.F.R. § 1180.2(d)(2) inapplicable here and requires NFIR to file this Petition. Neither the NFIR Notice or the Petition would result in any current or future shipper losing access or potential access to alternative rail service—to the contrary, the transactions that are the subject of this Petition and the Notice of Exemption in Finance Docket No. 36824 will ensure the availability of rail service to all customers located in the Park.

Maps of the NFIR and FG&A, including the point of interconnection, are attached as Exhibit 1-A. Maps showing the other Pinsly railroads are attached as Exhibit 1-B. No other Pinsly railroad would interconnect with NFIR (or FG&A), and the Transaction is not intended to effect connections among other Pinsly railroads besides FG&A and NFIR.

II. THE TRANSACTION MEETS THE STANDARD FOR EXEMPTION.

Pursuant to 49 U.S.C. § 11323(a)(5), acquisition of control of a rail carrier by a “person” that is not a carrier but that controls any number of rail carriers requires Board approval.⁹ The application process is found at 49 U.S.C. § 11324(d). The

⁸ See *Macquarie Infrastructure Partners VGP, LLC—Control Exemption—Hondo Railway, LLC*, Docket No. FD 36802 (STB served September 26, 2024).

⁹ See, e.g., *Genesee & Wyoming Inc.—Control Exemption—Georgia Southwestern R.R., Inc.*, Docket No. FD 35183, at 4 (STB served Dec. 15, 2008) (“The acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval by the Board under 49 U.S.C. 11323(a)(5).”).

Board, however, may exempt such a transaction under 49 U.S.C. § 10502 if the Board finds that an application:

- (1) is not necessary to carry out the transportation policy of section 10101 of this title; and
- (2) either—
 - (A) the transaction or service is of limited scope; or
 - (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.¹⁰

Granting an exemption for Pinsly’s continuance in control of NFIR is wholly consistent with both the statute and Board precedent. In depth review of a full application is not necessary to carry out the rail transportation policy (“RTP”) codified at 49 U.S.C. § 10101. In fact, as described more fully below, the RTP will be advanced by grant of the Petition. It would also be a far more efficient use of Board resources. This modest shortline transaction—involving less than a mile of track—is of “limited scope” and presents no threat to market power. In *Paul Didelius—Continuance in Control Exemption—Rainier Rail LLC*, Docket No. FD 36659 (STB served May 1, 2023) (“*Didelius*”), the Board approved a petition for exemption in a similar situation. Specifically, the applicant sought to continue control of a newly created shortline railroad that would connect with an existing shortline already controlled by the applicant. The Board has also approved petitions where a shortline holding company was acquiring another connecting shortline under common control. *See, e.g., Genesee & Wyoming Inc.—Acquisition of Control*

¹⁰ 49 U.S.C. § 10502(a).

Exemption—Atlantic Western Transportation, Inc. and Heart of Georgia Railroad, Inc., Docket No. FD 36105 (STB served Apr. 18, 2017) (“*Atlantic Western*”); *Genesee & Wyoming Inc.—Acquisition of Control Exemption—Providence and Worcester Railroad Company*, FD 36064 (STB served Dec. 16, 2016).

a. An Application Is Not Necessary To Carry Out The Transportation Policy.

The transportation policy codified at 49 U.S.C. § 10101 enumerates 15 different policies goals, none of which require a full control application here. Each is briefly addressed below.

- (1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;

Grant of the Petition will have no effect on competition. It will facilitate the creation of a new common carrier railroad which will serve currently unserved customers. *See, e.g., Lone Star R.R., Inc. and Southern Switching Co.—Track Construction and Operation Exemption—In Howard County, Tex.*, Docket No. FD 35874, at 3 (STB served March 3, 2016) (grant of petition for exemption to expand service to industrial park “ensur[es] the continuation of a sound rail transportation system to meet the needs of the public, consistent with the goals of 49 U.S.C. §§ 10101(1)”).

- (2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

Grant of the Petition will effectuate this policy goal by avoiding the unnecessary expenditure of Board resources to consider a full application. Grant of the Petition will provide a fair and expeditious regulatory decision regarding control of a new Class III carrier. The Petition is also consistent with the codified exemption being used for the change in operator aspect of the Transaction. *See, e.g., Didelius*, at 3 (“An exemption would promote the RTP by minimizing the need for federal regulatory control over the proposed transaction”); *Atlantic Western*, at 2 (same).

- (3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;

Grant of the Petition will allow NFIR to commence operations and earn revenues for providing common carrier rail service to new customers. *See, e.g., Pinsky Railroad Company—Control Exemption—Warren & Saline River Railroad Company*, Docket No. FD 35293, at 2 (STB served Nov. 3, 2009) (“*Warren & Saline*”) (exemption will promote the RTP by “ensuring that a sound rail transportation system will continue to meet the needs of the shipping public”).

- (4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;

The Park is not currently rail-served. Prompt approval of the Petition will enable NFIR to introduce common carrier rail service to the industrial park, thereby expanding the transportation options available to shippers located there.

See, e.g., Didelius, at 3 (“ensuring the continuation of a sound rail transportation system that would continue to meet the needs of the public”); *Atlantic Western*, at 2 (same).

- (5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;

Again, the Park is currently an unserved area with no common carrier rail service and grant of the Petition will allow that new transportation service to commence. *See, e.g., Didelius*, at 3; *Atlantic Western*, at 2.

- (6) to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital;

Grant of the Petition will have no impact on the rates for common carrier service but will allow for new common carrier service to shippers in the Park.

- (7) to reduce regulatory barriers to entry into and exit from the industry;

Grant of the Petition will reduce the regulatory barriers for NFIR to enter the rail industry by not requiring the Petitioners to file a full application and not requiring the Board to devote time and resources to that application. *See, e.g., Didelius*, at 3; *Atlantic Western Transportation*, at 2.

- (7) to operate transportation facilities and equipment without detriment to the public health and safety;

NFIR will operate in compliance with all applicable rules and regulations to protect public health and safety. Granting the Petition will enable NFIR to benefit from Pinsly’s operational expertise and experience. *See, e.g., Douglas M. Head, Kent P. Shoemaker and Charles H. Clay—Continuance in Control Exemption—Rutland*

Line, Inc., Docket No. FD 33501, at 3 (STB served Jan. 7, 1998) (observing petitioner representations that they “will operate in accordance with rules similar to those standard in the industry, and both will be subject to the safety requirements imposed on carriers by the Federal Railroad Administration, the Environmental Protection Agency, and other federal and state agencies.”).

Moreover, grant of the Petition will enable NFIR to provide common carrier rail service (which is typically better for public health and safety than motor carrier options) to the Park.

(9) to encourage honest and efficient management of railroads;

Grant of the Petition is efficient both for the applicant as well as the Board, which will not have to use additional resources to consider a full application. *See, e.g., Didelius*, at 3; *Atlantic Western*, at 2.

(10) to require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the use of increases of general applicability;

Grant of the Petition will have no impact on this element of the RTP.

(11) to encourage fair wages and safe and suitable working conditions in the railroad industry;

Grant of the Petition will allow for increased employment in the railroad industry with a new common carrier railroad providing service to a currently unserved industrial park.

(12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination;

Grant of the Petition will extend common carrier service to new, unserved

shippers. Because these shippers are not currently rail-served, common control of NFIR and Pinsly's existing rail subsidiaries will not impact market power or concentration. No shipper will lose a competitive option as a result of the Transaction.

(13) to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information;

Grant of the Petition will have no impact on the availability of accurate cost information in regulatory proceedings.

(14) to encourage and promote energy conservation; and

Grant of the Petition will have no impact on energy conservation except to the extent that freight by rail is generally more energy efficient than freight by motor carrier.

(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.

Grant of the Petition will provide for the expeditious handling and resolution of Board proceedings by not requiring the Board to consider a full application for no additional benefit. *See, e.g., Didelius*, at 3; *Atlantic Western*, at 2.

Therefore, based on the elements of the RTP, a full application is not necessary.

b. The Transaction Is Limited In Scope.

Although the Board does not often rely on the "limited scope" criteria of 49 U.S.C. § 10502 in considering a petition, it has previously commented that the addition of "a separately incorporated Class III regional carrier to a group of Class

III rail carriers already under the [applicant's] control" is limited in scope. *See Genesee & Wyoming, Inc.—Continuance In Control Exemption—Pittsburgh & Shawmut Railroad, Inc.*, Docket no. FD 32904 (STB served June 21, 1996) ("*Pittsburgh & Shawmut*"). In that case, the Board stated that the lines to be acquired totaled approximately 237 miles and were concentrated in one geographic region. *Id.* And the applicant would have been able to use the class exemption if the shortline did not connect to a commonly controlled line. *Id.*

Here, a separately incorporated shortline is being added to a group of shortlines already under the Petitioners' control. The length of jurisdictional track—less than 5,000 feet—is even shorter than in *Pittsburgh & Shawmut* and the geographic area to be served is concentrated around an industrial park. For those reasons, the continuance in control exemption is limited in scope.

c. Regulation of the Transaction is Not Needed to Protect Shippers From Abuse of Market Power.

There is no risk of abuse of market power here. No shipper will lose a competitive rail option as a result of the instant continuance in control. *See Didelius*, at 3 ("[T]he record reflects that no shipper would lose access to alternative railroad service."). NFIR will connect with FG&A and common ownership will, in all likelihood, provide for more efficient service than if NFIR was separately controlled. *See, e.g., Warren & Saline*, at 2-3 ("shippers will benefit from the substantial experience and resources of PRC and from the connection between WSR and the other PRC-controlled carriers.").

III. ADDITIONAL INFORMATION.

Petitioners provide the following additional information about the Transaction consistent with the information required for a class exemption under 49 C.F.R.

§ 1180.4(g) to enable the Board to process the Petition.

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.

On December 16, 2024, Pinsly formed NFIR. NFIR has entered a Development Agreement with Columbia County to provide common carrier rail service to the Park. Pursuant to the Development Agreement, NFIR will lease from Columbia County and operate 4,891 feet of main line track connecting the Park with the line currently operated by FG&A.¹¹

Pinsly, a Delaware limited liability company, is wholly owned by Pinsly Holdco, LLC, a Delaware limited liability company, which is wholly owned by MIP Rail. MIP Rail, a Delaware limited liability company, is wholly owned (indirectly) by MIP V, a Delaware limited liability company. MIP V is controlled by MIP GP, a Delaware limited liability company. As explained above, Pinsly currently controls seven common carrier railroads.

¹¹ See *Hondo Ry.—Lease and Operation Exemption—Rail Lines in Medina Cnty., Tex.*, Docket No. FD 34901, (STB served Aug. 16, 2006) (creation of a Class III railroad to provide common carrier service on track related to the development of an industrial park).

GRYR owns and operates a 228-mile rail line in Mississippi.¹² FG&A owns and operates 430 miles of track (including 373 main line miles) in Florida and Georgia.¹³ Camp Chase operates approximately 14 miles of track in Ohio.¹⁴ CKIN owns and operates approximately 28 miles of track in northwestern Indiana.¹⁵ VVRC operates approximately 8.4 miles of track (including approximately 7.81 main line miles) in east-central Illinois and west-central Indiana.¹⁶ PVRR operates approximately 27 miles of track—including 18 mainline miles—in Massachusetts.¹⁷ And HRC owns 13,200 feet of main line track in Texas.¹⁸ Each of these railroads is a Class III carrier.

The names and business addresses of Applicants are as follows:

¹² See *Grenada R.R.—Acquisition & Operation Exemption—N. Cent. Miss. Reg’l R.R. Auth. & Grenada Ry.*, Docket No. FD 36700 (STB served May 25, 2023).

¹³ See *RailUSA, LLC and Am. Rail Partners, LLC—Continuance in Control Exemption—Fla. Gulf & Atl. R.R.*, Docket No. FD 36248 (STB served Dec. 21, 2018).

¹⁴ See *Camp Chase Rail, LLC—Acquisition & Operation Exemption—Camp Chase Ry.*, Docket No. FD 36414 (STB served July 1, 2020).

¹⁵ See *Chesapeake & Ind. R.R.—Lease & Operation Exemption—N. Ind. R.R.*, Docket No. FD 36702 (STB served May 26, 2023); *Gulf & Atl. Rys.—Intra-Corp. Fam. Transaction Exemption—Chesapeake & Ind. R.R. and N. Ind. R.R.*, Docket No. FD 36760 (STB served Mar. 1, 2024).

¹⁶ See *Vermilion Valley R.R.—Operation Exemption—FNG Logistics Co.*, Docket No. FD 34340 (STB served May 16, 2003); *Vermilion Valley R.R.—Lease & Operation Exemption—CSX Transp., Inc.*, Docket No. FD 36350 (STB served Oct. 18, 2019).

¹⁷ See *Macquarie Infrastructure Partners V GP, LLC—Control Exemption—Pioneer Valley R.R.*, Docket No. FD 36720 (STB served Sept. 13, 2023).

¹⁸ See *Macquarie Infrastructure Partners V GP, LLC—Control Exemption—Hondo Ry., LLC*, Docket No. FD 36802 (STB served Sept. 26, 2024).

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

The parties intend to consummate the Transaction as soon as practicable after the effective date of the Board's decision.

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.

The purpose of the Transaction is to allow Petitioners to continue in control of NFIR, a new common carrier railroad that will provide service to the Park. This will promote the development and expansion of new common carrier rail-served industries.

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

NFIR will operate entirely in the state of Florida.

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.***

Maps depicting the Line (NFIR), as well as FG&A, is attached as Exhibit 1-A.

Maps depicting the other Pinsky-controlled lines are attached as Exhibit 1-B.

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.***

There is no agreement specific to the continuance in control of NFIR.

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

NFIR and each of the carriers currently controlled by Pinsky are Class III rail carriers. Therefore, in accordance with 49 U.S.C. § 11326(c), the labor protection provisions of 49 U.S.C. § 11326 do not apply to the present Transaction.¹⁹

1105.6 ***Environmental Impacts.***

49 C.F.R. § 1105.6(c) provides that no environmental documentation will normally be prepared where a transaction will not result in a “significant change in carrier operations” and does not exceed the thresholds in 49 C.F.R. § 1105.7(e)(4) or

¹⁹ See, e.g., *RailUSA, LLC and Am. Rail Partners, LLC—Continuance in Control Exemption—Fla. Gulf & Atl. R.R.*, Docket No. FD 36248, at 2 (“[T]he Board may not impose labor protective conditions here, because only Class III carriers are involved.”).

(5). The Transaction that is the subject of this Petition involves only a continuance in corporate control of NFIR and will not result in any operational changes.

Therefore, the Transaction will not result in changes that exceed the relevant thresholds, and pursuant to the Board's regulations at 49 C.F.R. § 1105.6(c), no environmental documentation is required.

This action will not affect either the quality of the human environment or energy conservation.

1150.8 *Historic Impacts.*

Prior Board approval or exemption would be required if, in the future, Applicants proposed to abandon or discontinue rail service over any portion of the Line. Applicants have no plans to dispose of or alter any property that is subject to the Board's jurisdiction and is 50 years old or older. Accordingly, pursuant to the Board's regulations at 49 C.F.R. § 1105.8(b)(1), this Petition does not require a historic report.

1180.4(g)(3)(i) *Interchange Commitments.*

Neither the Transaction that is the subject of this Petition nor the Development Agreement between NFIR and Clark County includes any provision that would limit the interchange of traffic with any third-party connecting carrier.²⁰

²⁰ Section 1180.4(g)(3)(i), which refers to "acquisition or operation of a rail line," does not apply to a transaction involving the acquisition or continuance of control of a carrier. In any event, there is no interchange commitment in connection with the Transaction that is the subject of this Petition for Exemption.

* * *

For the foregoing reasons, Applicants respectfully request that the Board grant this Petition for Exemption.

Respectfully submitted,

/s/ Terence M. Hynes

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Dated January 7, 2024

VERIFICATION

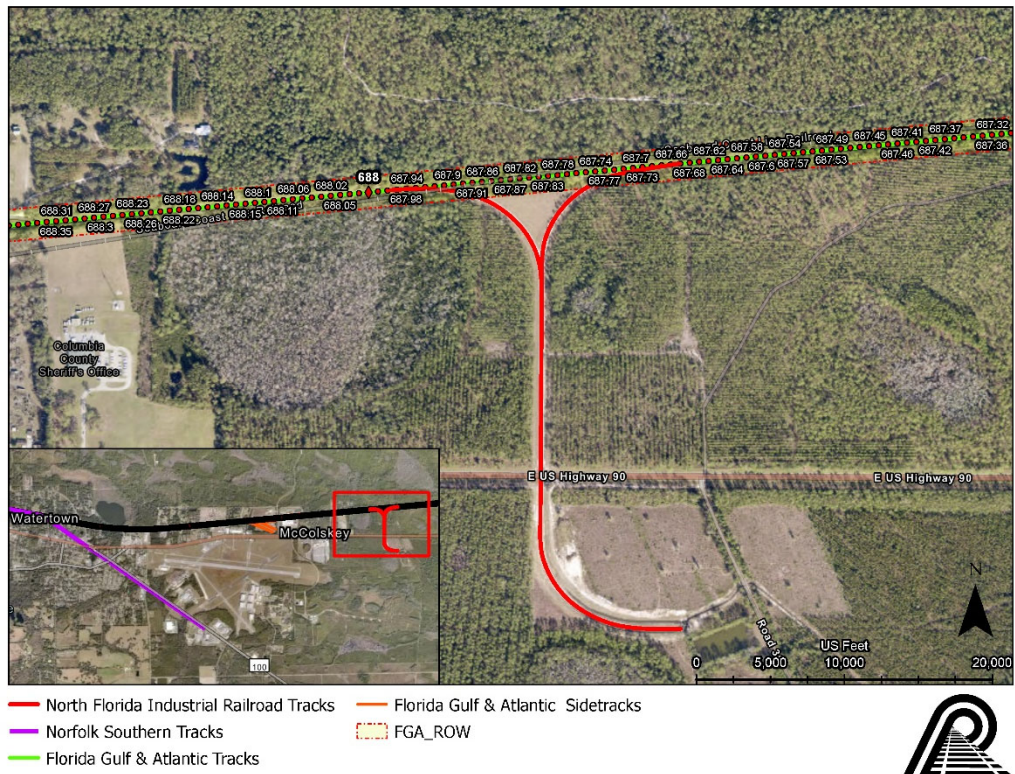
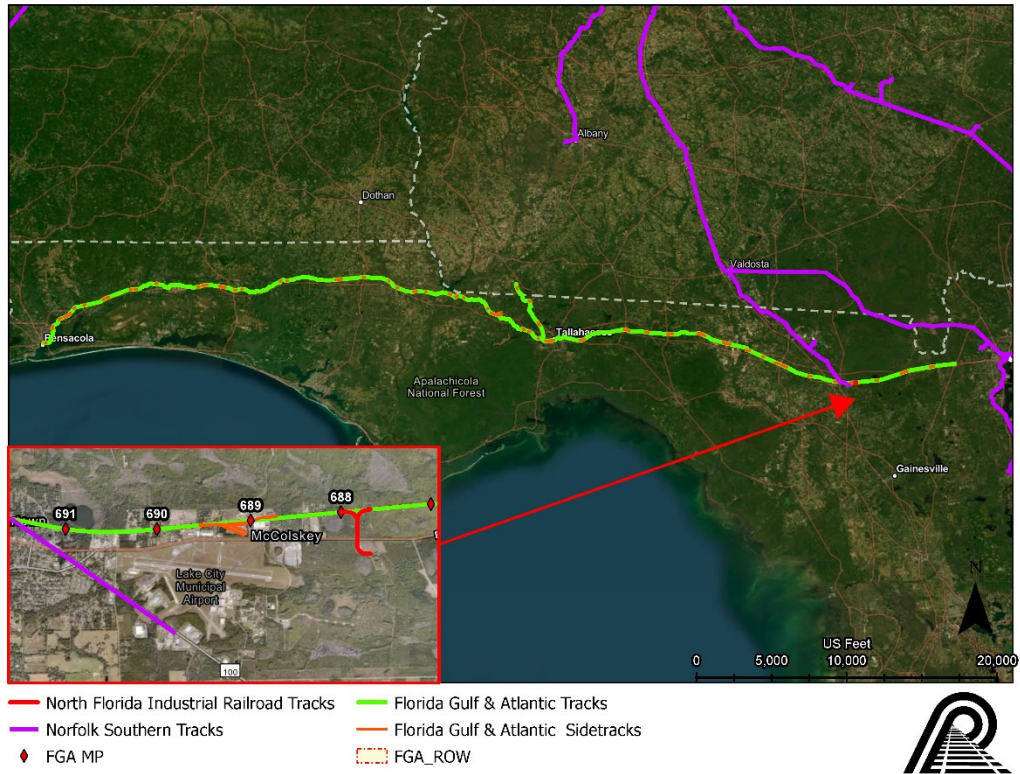
I, John H. Kim, being duly sworn, state that I am General Counsel and Assistant Secretary of Macquarie Infrastructure Partners V GP, LLC and that I am an officer duly authorized to execute, verify, and file this Petition for Exemption. I have knowledge of the matters contained herein, and the statements made herein are true and correct to the best of my knowledge, information, and belief.

A handwritten signature in dark ink, appearing to read "John H. Kim", is written over a horizontal line.

John H. Kim
General Counsel and Secretary

**EXHIBIT 1-A:
NFIR AND FG&A MAP**

North Florida Industrial Railroad, LLC

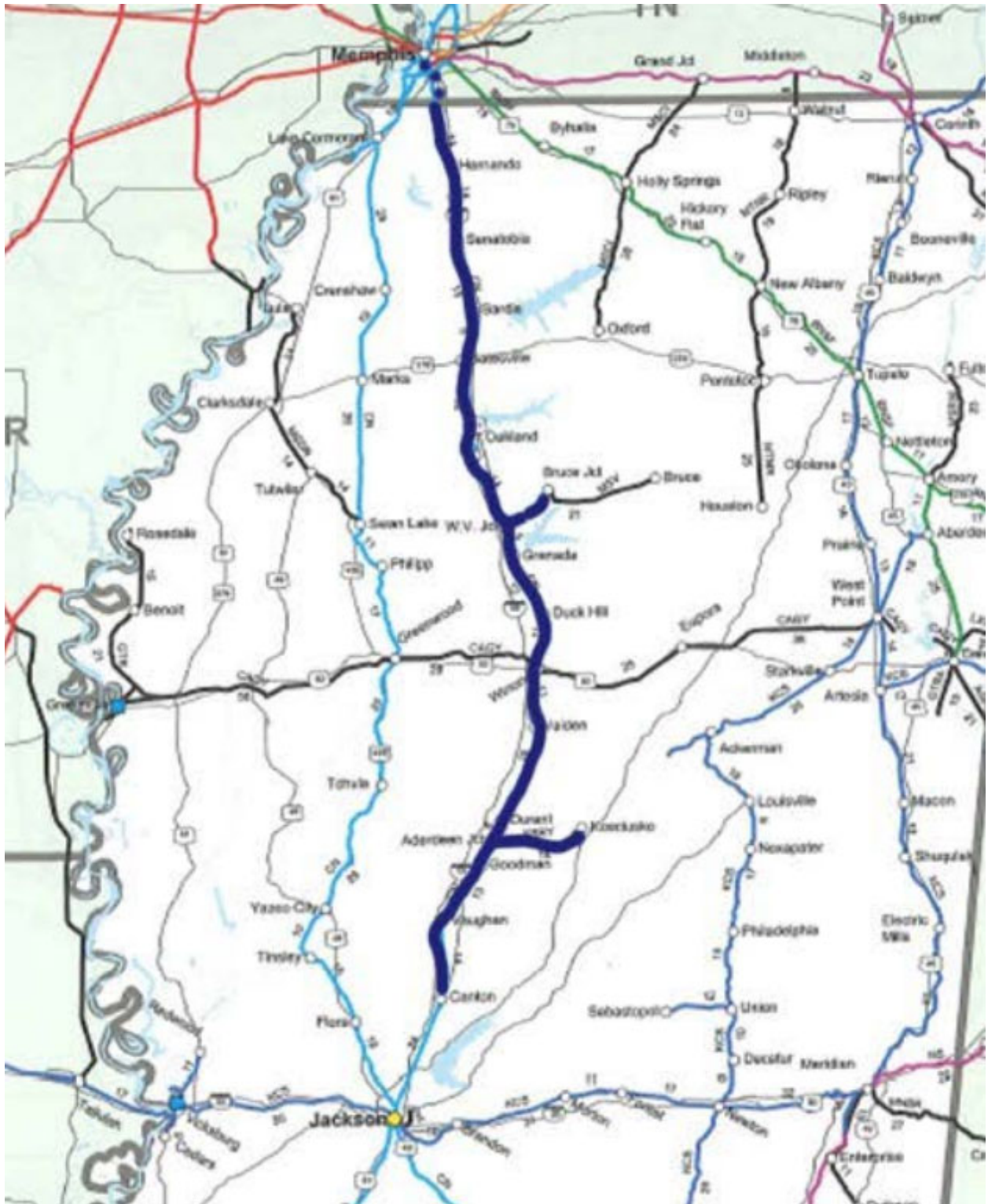


Florida Gulf & Atlantic Railroad, LLC

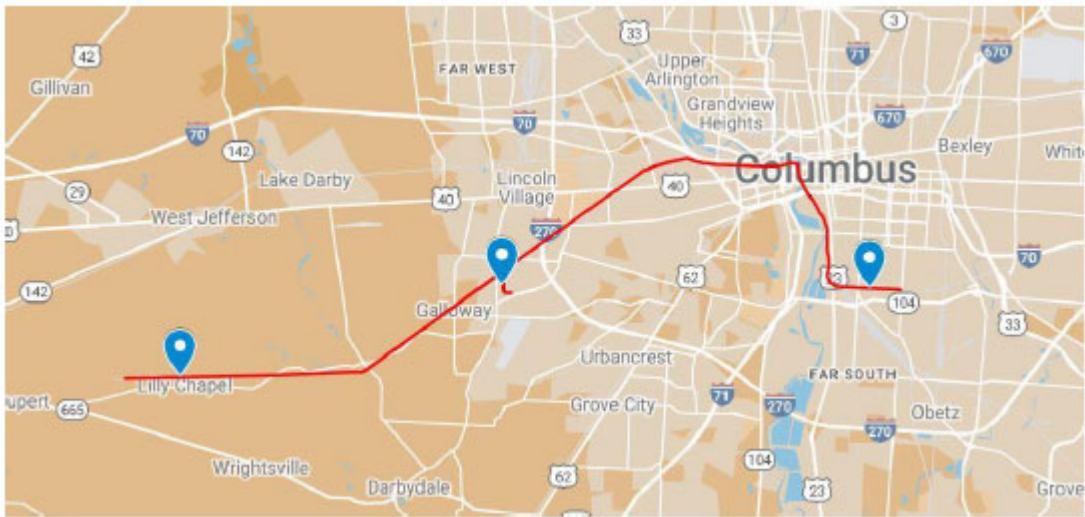


Exhibit 1-B:
Pinsly Railroad Company, LLC's Current Carrier Maps

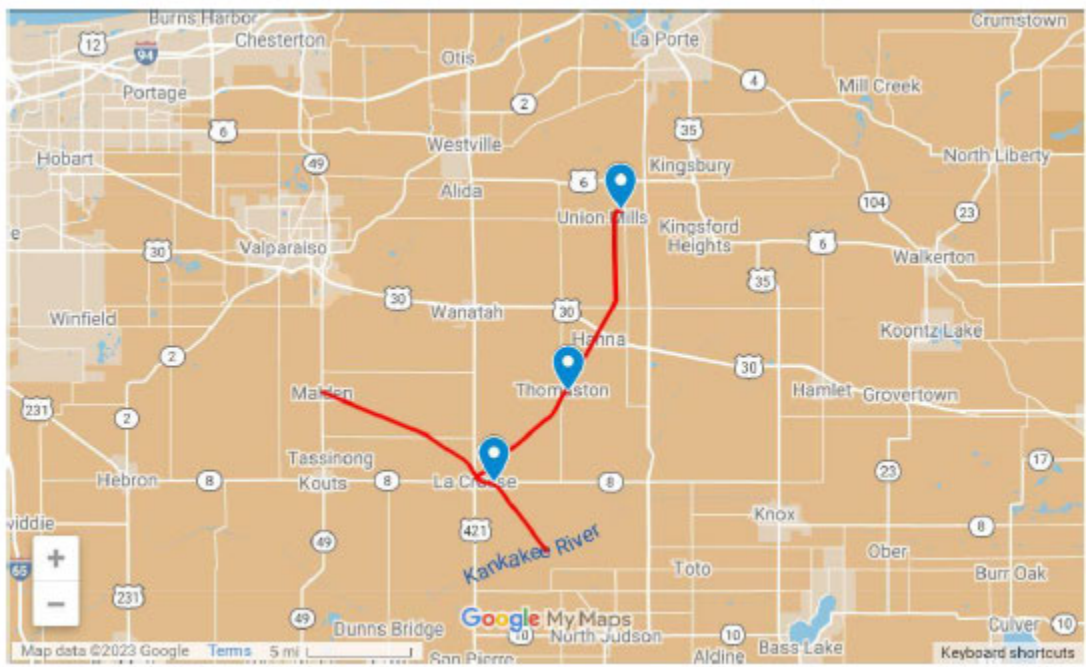
Grenada Railroad, LLC



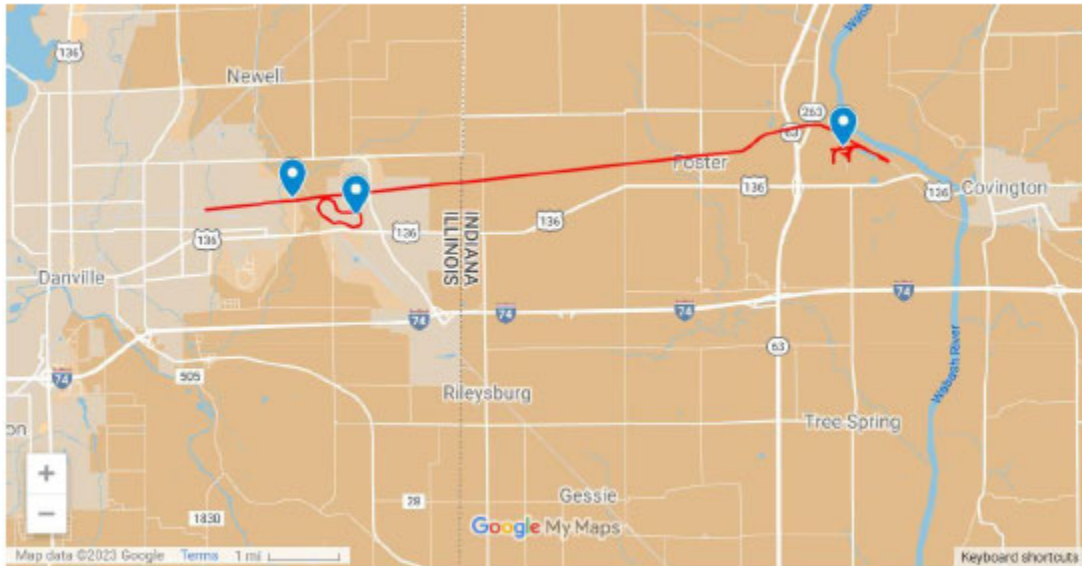
Camp Chase Rail, LLC



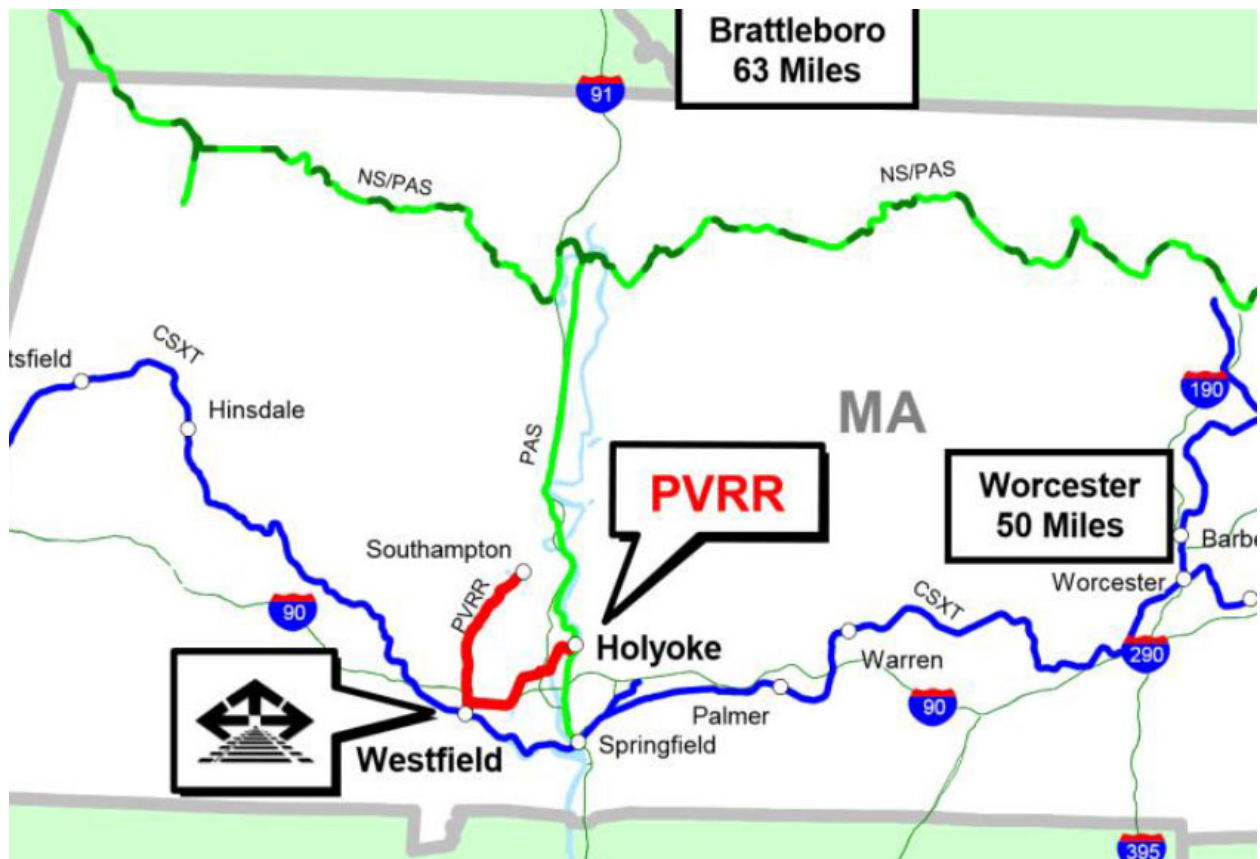
Chesapeake and Indiana Railroad, LLC



Vermilion Valley Railroad Company LLC



Pioneer Valley Railroad Company, LLC



Hondo Railway, LLC

