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August 27, 2021

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

302937
ENTERED
Office of Proceedings
AUGUST 27, 2021
Part of
Public Record

Re: **FD 36530**

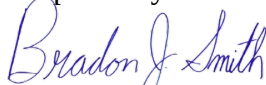
**Midwest & Bluegrass Rail, LLC — Control Exemption —
TransKentucky Transportation Railroad, Inc.**

Dear Ms. Brown

Attached for filing in the above-captioned proceeding is the **Verified Notice of Exemption of Midwest & Bluegrass Rail, LLC Pursuant to 49 C.F.R. § 1180.2(d)(2) and Motion for Protective Order**, dated August 27, 2021. A confidential version of Exhibit A to the notice has been filed separately. 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,



Bradon J. Smith

Attorney for Midwest & Bluegrass Rail, LLC

BJS:bs

Attachment

FILED

AUGUST 27, 2021

SURFACE TRANSPORTATION BOARD

FEE RECEIVED
August 27, 2021
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36530

MIDWEST & BLUEGRASS RAIL, LLC
— CONTROL EXEMPTION —
TRANSKENTUCKY TRANSPORTATION RAILROAD, INC.

**VERIFIED NOTICE OF EXEMPTION OF
MIDWEST & BLUEGRASS RAIL, LLC
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

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

**ATTORNEYS FOR
MIDWEST & BLUEGRASS RAIL, LLC**

Dated: August 27, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36530

MIDWEST & BLUEGRASS RAIL, LLC
— CONTROL EXEMPTION —
TRANSKENTUCKY TRANSPORTATION RAILROAD, INC.

**VERIFIED NOTICE OF EXEMPTION OF
MIDWEST & BLUEGRASS RAIL, LLC
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

Midwest & Bluegrass Rail, LLC (“MB Rail”) a non-carrier, hereby files this notice of exemption (the “Notice”) under 49 C.F.R. § 1180.2(d)(2) for authorization to control of the TransKentucky Transportation Railroad, Inc. (“TransKentucky”).¹

MB Rail is a company in the business of managing rail carrier’s pursuant management agreements with the rail carriers’ equity holders (public and confidential copies of the relevant agreement here are attached Exhibit A to the respective versions of the Notice). MB Rail separately is seeking authority to control four other non-interconnected Class III carriers;² and, as is the case with *MB Rail – 1*, the present control transaction is not part of a series of anticipated transactions that would result in a connection among any MB Rail-controlled carriers, namely, the IB Carriers, and TransKentucky. Also, the proposed control transaction

¹ MB Rail originally sought permissive authority to control TransKentucky in another docket, *Midwest & Bluegrass Rail LLC et al. — Control Exemption — TransKentucky Transportation Railroad Inc.*, FD 36475 (“*TransKentucky Control I*”). Given the difficulties with that docket, MB Rail—amongst others—is seeking to terminate that proceeding by withdrawing the relevant notice filed therein. See Exhibit B.

² MB Rail is also seeking permissive authority to control, via management, four other carriers (the “IB Carriers”). *Midwest & Bluegrass Rail, LLC — Control Exemption — Vermilion Valley Railroad Company, Inc.; Camp Chase Rail, LLC; Youngstown & Southeastern Railroad, LLC; Chesapeake & Ohio Railroad Company*, FD 36413 (Sub No. 1) (“*MB Rail - 1*”) (Notice of Exemption filed Aug. 26, 2021).

does not involve a Class I carrier. Finally, no person or entity controls MB Rail (either by majority stake or otherwise). Accordingly, MB Rail's control of TransKentucky as further described herein qualifies for the exemption at 49 C.F.R. § 1180.2(d)(2).

Pursuant to the requirements of 49 C.F.R. § 1180.4(g), MB Rail submits the following information:

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

MB Rail is a non-carrier entity established principally to provide management services of railroad carriers. MB Rail has entered into a management agreement (the "Agreement") by which MB Rail will manage the day-to-day operations of TransKentucky. A confidential version of the Agreement has been filed under seal with a motion for a protective order pursuant to 49 C.F.R. § 1104.14.

The full name and address of the Applicant herein is:

Midwest & Bluegrass Rail, LLC
10100 N Ambassador Drive,
Suite 105
Kansas City, Missouri 64153

Any questions concerning this Notice should be sent to MB Rail's representative at the following address:

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

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

MB Rail intends to exercise management of TransKentucky concurrent upon the execution of a management agreement pursuant to the authority sought in this Notice.

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

The exemption sought herein will allow MB Rail to manage TransKentucky. Through this proposed transaction, MB Rail will provide common, efficient, management of TransKentucky for TransKentucky's ownership interests and to the benefit of shippers.

States in Which Property of Applicants is Located: 49 C.F.R. § 1180.6(a)(5)

MB Rail is a non-carrier holding company based in Missouri. It does not own any rail property. TransKentucky owns and operates a rail line in Kentucky.

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

Maps of the relative location of TransKentucky and the IB Carriers are attached as Exhibit C.

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

Redacted (public) and confidential versions of the Agreement governing MB Rail's management of TransKentucky are a separately-filed exhibits to this Notice. The confidential version of the Agreement is filed under seal subject to a simultaneously-filed motion for a protective order pursuant to 49 C.F.R. § 1104.14(b).

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

The transaction will involve only Class III carriers. Accordingly, labor protection conditions cannot be imposed pursuant to 49 U.S.C. § 11326(c). *Cathcart Rail, LLC — Continuance in Control Exemption — Belpre Industrial Parkersburg Railroad, LLC*, FD 36421 (STB served Aug. 7, 2020), 2 ("Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions").

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

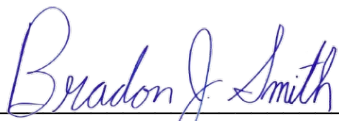
Under 49 C.F.R. § 1105.6(c)(2)(i) and (ii), the proposed control transaction is exempt from environmental reporting requirements. MB Rail's management of TransKentucky will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(3), the proposed control transaction is exempt from historic preservation reporting requirements. The control transaction will not substantially change the level of maintenance of any railroad property.

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

The proposed control transaction does not involve the acquisition or operation of a rail line, and thus the provisions of 49 C.F.R. § 1180.4(g)(4) are not applicable.

Respectfully submitted,

By: 
Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR
MIDWEST & BLUEGRASS RAIL, LLC**

Dated: August 27, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36530

MIDWEST & BLUEGRASS RAIL, LLC
— CONTROL EXEMPTION —
TRANSKENTUCKY TRANSPORTATION RAILROAD, INC.

EXHIBIT A

AGREEMENT

**PUBLIC (REDACTED) EXHIBIT
CONFIDENTIAL EXHIBITS IS FILED
SEPARATELY**

MANAGEMENT AGREEMENT

This MANAGEMENT AGREEMENT is made and entered into September __, 2021 between Transkentucky Transportation Railroad, Inc. (“TTI”) and Midwest & Bluegrass Rail, LLC, a Kansas limited liability company (“Manager”).

Midwest & Bluegrass Rail, LLC is referred to as “Manager”.

TTI is referred to as “Owner”.

TTI owns and operates approximately 50 miles of track in the eastern Kentucky area, and interchanges railcars with CSX.

Midwest & Bluegrass Rail, LLC is a management organization in the freight railroad and rail services business.

Owner wishes to retain Manager to manage Owner’s business and assets.

In consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner and Manager agree as follows:

ARTICLE ONE

Employment of Manager

1.01 **Employment.** Owner employs and authorizes Manager to take sole, entire and exclusive charge of the management of Owner’s business operations, and Manager accepts said employment and authorization and agrees to use the skills and efforts of Manager diligently to effect management of the business operations. In the performance of Manager’s duties under this Agreement, Manager agrees to render capable and competent services and to exercise due care in accordance with standard practices acceptable and common in the industry.

1.02 **Independent Contractor Status.** This Agreement shall be construed, and the rights and duties granted by Owner to Manager, and assumed by Manager, are those of an independent contractor only. Manager shall devote such portion of Manager’s time, energy and skills in the accomplishment of Manager’s duties under this Agreement in such manner as Manager sees fit.

ARTICLE TWO

Duties of Manager

Manager shall take such actions, and perform such duties, as Manager deems necessary and desirable for the care, protection, operation, maintenance, repair and replacement, subject to the provisions of this Agreement, of the Owner’s business operations, including, but not limited to the following:

2.01 Employment of Personnel. Manager shall investigate, hire, train, supervise and discharge such personnel as Manager deems necessary or desirable for the performance of Manager's duties under this Agreement. Such supervision and direction shall be the responsibility of Manager. All salaries, wages and other compensation of personnel employed by Manager under this Agreement, including fringe benefits, medical and health insurance, pension plans, social security, taxes, workman's compensation, et cetera, shall be borne and paid by Manager.

2.02 Collection of Monies. Manager shall collect all amounts due to Owner from Owner's business operations. Owner authorizes Manager to request, demand, collect, receive and receipt for all such revenues and to institute legal proceedings, either in the name of Manager or, if necessary, the name of Owner for the collection of all such sums and authorize Manager to file any legal actions related to Owner's business operations if such is deemed necessary by Manager.

2.03 Books and Reports. Manager shall, during the terms of this Agreement and immediately thereafter, in accordance with the provisions of this Agreement:

(a) Maintain, at the office of Manager, a comprehensive system of office records, books and accounts relating to the income, expenses and operations of Owner's business operations. Owner shall have access to such office records, books and accounts and to all vouchers, files and other material relating to the Owner's business operations and maintained by Manager relating to the Owner's business operations.

(b) Deliver to Owner, on or before the 10th day of each calendar month during the term of this Agreement, a detailed written report of all receipts and disbursements relating to the Owner's business operations and made during the preceding calendar month, or any portion of this Agreement. Such report shall include all such transactions, whether or not reimbursable pursuant to the provisions of this Agreement.

(c) Deliver to Owner, within reasonable time after the end of each fiscal year for the Owner's business operations, which fiscal year is hereby designated as running from January 1 to December 31 of each calendar year during the term of this Agreement, a profit and loss statement showing the results of operations for the preceding fiscal year, or any portion of this Agreement, as well as a balance sheet of the Owner's business operations dated as of the end of such fiscal year.

(d) In the event of the termination of this Agreement, whether by normal expiration or otherwise, Manager shall, within the applicable time period set forth in this Agreement, deliver to Owner both a monthly report and an annual report, each covering that portion of the relevant time period which is included within the term of this Agreement, prior to such termination.

(e) Execute and file in a timely fashion, all forms, reports and returns required by law relating to the employment of personnel in the operation of the Owner's business.

2.04 Compliance with Legal Requirements. Manager shall take such actions as may be necessary to comply with any and all orders or requirements affecting the Owner's business operations by any federal, state, county or municipal authority having jurisdiction over such operations. Provided Manager is timely notified, Manager shall not, however, take any such actions for so long as an Owner is contesting, or has affirmed its intention to contest and promptly institutes proceedings contesting, any such order or requirement, except that, if a failure to comply promptly with any such order or requirement would or might expose Manager to criminal or civil liability, Manager shall cause the same to be complied with.

2.05 Execution of Contracts. Subject to other limitations contained in this Agreement, Manager shall, in the name of Owner, enter into such contracts and other agreements for the providing of all utilities and other services either required or deemed as desirable by Manager in connection with the operation of the Owner's business. Manager shall order, in the name of Owner, such equipment, tools, appliances, materials and supplies as it deems desirable to properly maintain the Owner's property, subject, however, to other limitations contained in this Agreement.

2.06 Maintenance and Repair of Owner's Assets. Manager shall maintain Owner's assets in a first class manner, comparable to similar assets in the area of Owner's business operations. All expenses incurred in connection with such maintenance shall be reimbursable by Owner to Manager.

2.07 Insurance. Manager shall maintain and oversee the placement, during the term of this Agreement, insurance in forms, companies and substance reasonably acceptable to Manager, and at Owner's sole cost and expense, a general liability, property and inland marine coverage insurance and such other insurance as may be required by law or deemed desirable by Manager to cover the interest of the Owner, including, but not limited to, worker's compensation insurance, rail liability, FELA, crime insurance. As set forth in Exhibit A (Insurance Requirements). Manager shall maintain Directors and Officers insurance as well as Professional Insurance to cover its activities and legal obligations pursuant to this agreement.

(a) All insurance obtained pursuant to the provisions of this Agreement shall name Owner and Manager as insureds; and

(b) Manager shall promptly oversee and or participate in a prompt investigation and assist in the coordination of investigation, legal, claims services into all accidents, damages and other casualty to the Owner's business operations or any claims of injury to Owner's property or person, arising out of or related to the ownership, operation and maintenance of Owner's business operations. Manager shall prepare any and all reports required of any insurance companies or other interested entities or governmental bodies regarding such damage, destruction or injury.

2.08 Disbursements. Manager shall, to the extent that funds are available from receipts relating to Owner's business operations, cause to be disbursed in a timely fashion:

- (a) To sums reimbursable to Manager pursuant to the provisions of this Agreement;
- (b) To amounts otherwise due and payable as operating expenses of Owner's business operations and authorized pursuant to the terms and provisions of this Agreement, inclusive of any compensation due and payable to Manager under this Agreement.

All such disbursements shall be made from the account maintained by Manager pursuant to the provisions of this Agreement. Owner shall, in connection with Manager's duties under this Agreement, promptly forward to Manager any tax statements, payment schedules, invoices or similar notices received by Owner relating to Owner's business operations and requiring payment.

ARTICLE THREE Responsibilities of Owner

3.01 Contract Execution. Owner agrees that it shall, if requested by Manager or any third party contracting with such Owner pursuant to the provisions of Article Two of this Agreement, execute in its own name and by its own hand any such contracts.

3.02 Payments to and Reimbursement of Manager. Owner covenants and agrees that it shall make available to, or otherwise cause to be made available to, Manager such sums as are required pursuant to the provisions of this Agreement to (i) pay to Manager all compensation required by Article Five of this Agreement, and (ii) reimburse (or provide monies) for all expenses incurred pursuant to this Agreement. Manager shall not be required to, although it may in its sole discretion, advance its own funds for the benefit of Owner. This provision shall survive the termination of this Agreement, whether by normal expiration or otherwise.

ARTICLE FOUR Term

4.01 Term; Extension. The term of this Agreement shall commence on the day and year first above written and remain in effect for one year, unless terminated earlier by either party. Unless terminated by either party, expiration of the original term or any renewal term, this Agreement shall be automatically renewed for a one (1) year period. During any renewal term, the terms, conditions and provisions set forth in this Agreement shall remain in effect unless modified in accordance with this Agreement.

4.02 Termination for Cause. Notwithstanding the foregoing stated term, this Agreement may be terminated by Owner immediately for cause. For this purpose, "for cause" shall mean (i) Manager's indictment or conviction of a felony, (ii) a material breach by Manager of this Agreement, (iii) Manager's gross neglect of its duties, or commission of an act of dishonesty toward Owner's business, or (iv) the occurrence of any act or omission, or set of facts and circumstances, set forth in this Agreement below:

(a) Provided that the necessary funds are available, either through Owner's business operations receipts or deposits by Owner, Manager fails to pay any sum payable under this Agreement when due or fails to perform or comply with any of its obligations under this Agreement at the time or times and in the name required under this Agreement, provided that the Owner first gives the Manager prior written notice of such default or breach and the Manager (A) when the default or breach is a failure to pay a sum payable under this Agreement fails to pay such sum within five (5) days of receipt of such notice; or (B) when the default or breach is other than the failure to pay a sum payable under this Agreement, fails to commence curing any default or breach within five (5) days of receipt of such notice, or after commencing the same fails to pursue the curing of such default with due diligence;

(b) Manager files a petition to be adjudicated a bankrupt or for reorganization or arrangement under the bankruptcy laws of any state or of the United States;

(c) A petition is filed against Manager to have it adjudicated a bankrupt and such petition is not dismissed within thirty (30) days after filing;

(d) An assignment for the benefit of creditors is made by Manager; or

(e) A receiver or trustee of Manager's rights or interests (which include or consist of the rights and interests of Manager under this Agreement) is appointed pursuant to any judicial proceeding and such proceeding is not dismissed, and the receiver or trustee discharged, within thirty (30) days after such appointment.

Manager may terminate this Agreement, immediately and at any time (for so long as the default continues), upon giving written notice to Owner after any one of the following:

(a) Owner does not fulfill its obligations under this Agreement with regard to deposit of any sums required by Manager, as reimbursement of expenses incurred by Manager, on behalf of Owner, under this Agreement or as compensation to Manager, provided that Manager first gives Owner prior written notice of such sums within ten (10) days of receipt of such notice;

(b) Owner files a petition to be adjudicated a bankrupt or for reorganization or arrangement under the bankruptcy laws of any state or of the United States;

(c) A petition is filed against Owner to have it adjudicated a bankrupt and such petition is not dismissed within thirty (30) days after filing;

(d) An assignment for the benefit of creditors is made by Owner;

(e) A receiver or trustee of Owner's rights or interests (which include or consist of the rights and interests of Owner under this Agreement) in the Owner's business operations is appointed pursuant to any judicial proceedings and such proceeding is not dismissed, and the receiver or trustee discharged, within thirty (30) days after such appointment.

4.03 Duties Upon Termination. Upon termination, whether by normal expiration or otherwise, of this Agreement, the parties agree that:

(a) Manager shall deposit cash in the amount equal to all amounts then due Owner under this Agreement;

(b) Manager shall deliver to Owner any papers or items of any kind held by Manager relating to the Owner's business operations.

Manager shall be entitled to retain copies of all records, documents and other agreements which were in Manager's possession relating to Owner's business operations.

(c) Anything contained in this Agreement to the contrary notwithstanding, no termination of this Agreement, whether by normal expiration or otherwise, shall release either party from any obligations or liabilities arising under the terms and provisions of this Agreement prior to the date of such termination or pursuant to continuing contracts or other commitments approved, pursuant to the terms and provisions of this Agreement, prior to the date of such termination. No such termination shall effect or modify in any respect the compensation due and payable, or to become due and payable, by Owner to Manager under this Agreement. In connection with any termination of this Agreement, Manager shall assign to Owner, if same are assignable, all contracts and other agreements, if any, executed in the name of Manager, relating to the operation and maintenance of the Owner's business operations. Owner shall expressly assume and agree to pay all obligations arising under such contracts or other agreements and shall indemnify and hold Manager harmless from and against any and all costs, damages and expenses (including attorney's fees) arising out of or related to said contracts and other agreements.

(d) Manager shall, in addition to other requirements placed on Manager pursuant to this Article, furnish all additional information and take such further actions, at Owner's expense, as Owner shall reasonably require in order to effectuate an orderly and systematic termination of Manager's duties and activities with regard to the termination of Manager's duties and activities with regard to Owner's business operations. Within ten (10) days after any such termination, Manager shall deliver to Owner the written reports required by Section 2.03 of this Agreement for any periods not covered by prior reports submitted pursuant to such Section and shall, within thirty (30) days after any such termination, deliver to Owner a profit and loss statement for the fiscal year, or portion of this Agreement, ending on the date of termination, and a balance sheet of the Owner's business operations as of the date of termination.

ARTICLE FIVE Compensation of Manager

5.01 Management Fee

(a) Owner shall pay to Manager, in consideration of Manager's management services under this Agreement, an amount equal [REDACTED] as defined in

this Agreement, as reflected in the monthly reports delivered by Manager to Owner pursuant to Section 2.03 of this Agreement for the time period from January 1, 2021 to June 30, 2021.

(b) Owner shall pay to Manager, in consideration of Manager's management services under this Agreement, an amount equal [REDACTED] as defined in this Agreement, as reflected in the monthly reports delivered by Manager to Owner pursuant to Section 2.03 of this Agreement for the time period from and after July 1, 2021.

(c) Owner shall pay to Manager, in consideration of Manager's management services under this Agreement, an amount equal [REDACTED] of assets under management of TTI for the time period from and after acquisition.

(d) Owner shall reimburse Manager for any expenditures paid by Manager on behalf of Owner, including but not limited to insurance premiums, brokerage fees, consulting fees, engineering and construction fees and costs. [REDACTED]
[REDACTED]

(e) Said Management Fees shall be paid by Owner to Manager on a monthly basis, in arrears, and shall be prorated for any partial month during the term of this Agreement. The term "Gross Receipts" is defined as all amounts actually collected by Manager or Owner from any persons as a result of the operation of the Owner's business operations, in the ordinary course of business. There shall not be included within the term Gross Receipts interest or other income derived from investments or interest bearing accounts, proceeds of claims on account of insurance policies, abatement of taxes, awards arising out of taking by eminent domain (or conveyance in lieu of this Agreement), discounts or dividends on insurance policies, court awards or other damages.

ARTICLE SIX Miscellaneous

6.01 Indemnification

(a) Manager agrees to indemnify and hold Owner harmless from and against any and all liabilities, claims, obligations, expenses, losses, damages, judgments or other injuries (including, but not limited to, attorney's fees, costs and expenses of litigation and appeals), which Owner may incur or suffer in connection with grossly negligent acts, willful misconduct or knowing misrepresentations of material fact by Manager, acting as such under the provisions of this Agreement.

(b) Owner agrees to indemnify and hold Manager harmless from and against:

(i) Any and all liabilities, claims obligations, expenses, losses, damages, judgments or other injuries (including, but not limited to, attorney's fees, costs and expenses of litigation and appeals), which Manager may incur or suffer in connection with any Owner's failure to discharge its obligations under this Agreement, actions or inactions at Owner's

directive; and,

(ii) Any and all liabilities, claims, obligations, expenses, losses, damages judgments or other injuries (including, but not limited to, attorney's fees and costs and expenses of litigation and appeals) which Manager may incur in the performance of its duties under this Agreement which are not caused in whole or in part by the gross negligence or willful misconduct of, or knowing misrepresentation of a material fact by Manager.

6.02 Survival. The indemnifications contained in Section 6.01 and the agreement contained in Articles Three, Four, and Five of this Agreement shall survive any termination of this Agreement.

6.03 Notice. Any notices required or authorized, by this Agreement shall be deemed effective three (3) days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, when mailed to the following addresses, or to such other addresses as parties may designate, in writing and in accordance with the provisions of this Agreement, or personal service shall be deemed effective when delivered:

To Manager	Avory Beggs Jessica Stockton 10100 N. Ambassador Dr. Suite 105 Kansas City Missouri 64153
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To Owner	Brian Miller Dustin Shaver 10100 N. Ambassador Dr. Suite 105 Kansas City Missouri 64153
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6.04 Assignment. Manager shall not, without the prior written approval of Owner, assign any of its rights or obligations under this Agreement. Owner may, with Manager's approval, assign its right and obligations to any successor in title to the Owner's business operations and shall, provided that Owner complies with the terms and provisions of this Section, be relieved of all liability accruing after the effective date of such assignment; provided, however that such Owner shall remain secondarily liable to Manager for reimbursement of any expenses incurred by Manager either:

(a) Prior to the date of such assignment; or,

(b) Pursuant to Approved Contracts executed prior to the effective date of such assignment Owner agrees that it will obtain, from any such successor in title, an express assumption of all obligations and liabilities of Owner under this Agreement.

6.05 Conflicting Activities of Manager. Anything contained in this Agreement to the contrary notwithstanding, Owner agrees that, during the term of this Agreement, Manager,

affiliated (or wholly owned) companies or related entities of Manager, may render services identical or similar to those required of Manager under this Agreement to other Owner of business operations, managed in a similar fashion to the Owner's business operations or otherwise, and may themselves engage in the acquisition, development, leasing and exploitation of business operations for their own account and benefit and without any accountability or liability whatsoever to Owner even though such services or business activities compete with or are enhanced by the business activity of Owner, including Owner's involvement in the Owner's business operations.

6.06 Time of Essence. Time is of the essence of this Agreement.

6.07 Force Majeure. In the event that any obligation contained in this Agreement is not fulfilled within the applicable time period, and such failure is beyond the obligor's reasonable control, including but not limited to, compliance with any regulations, order or instruction of any federal, state or municipal government or any department or agency, acts or omissions of any other party, acts of civil or military authority, fires, strikes, embargoes, war, riots, delays in transportation, tempests, earthquakes, floods and the inability due to causes beyond such obligor's reasonable control to obtain necessary labor, manufacturing facilities or materials (all of the foregoing, without limitation, being in this Agreement referred to as "force majeure"), such party shall give the other parties prompt notice of the occurrence of any such force majeure delay or expected delay, specifying the cause and the suspected duration. In the event of any such delay, the date required for fulfillment of such obligation shall be automatically extended for a period equal to the time lost by reason of the delay. In no event, however, shall this provision apply to an obligation requiring solely the payments of money.

6.08 Amendment Neither this Agreement nor any provision of this Agreement may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

6.09 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Kansas law, but if any provision of this Agreement shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

6.10 Entire Agreement. This Agreement, and other documents executed in connection with Owner's business operations, constitute and express the entire Agreement of the parties and no agreements, warranties, representations or covenants not in this Agreement expressed shall be binding upon the parties.

6.11 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one and the same instrument.

6.12 Captions. The captions appearing before Sections and Articles in this Agreement

have been inserted solely for the purposes of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the Sections or Articles to each they appertain.

6.13 Binding Effect and Pronouns. The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the parties and their respective heirs, successors and assigns (if permitted under this Agreement) and the legal representatives of their estates, as the case may apply. The terms “Owner” and “Manager” shall be construed in the plural and the appropriate gender shall be read into all pronouns used in this Agreement to reference any of said parties whenever the sense of this Agreement requires.

The parties have set their hands as of the day and year first above written.

Manager:

MIDWEST & BLUEGRASS RAIL, LLC

By: _____

Printed Name: _____

Owner:

TRANSKENTUCKY TRANSPORTATION
RAILROAD, INC.

By: _____

Printed Name: _____

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36530

MIDWEST & BLUEGRASS RAIL, LLC
— CONTROL EXEMPTION —
TRANSKENTUCKY TRANSPORTATION RAILROAD, INC.

EXHIBIT B

SUBSTITUTION OF COUNSEL AND REQUEST FOR PERMISSION TO WITHDRAW EXEMPTION NOTICE IN FD 36475

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36475

MIDWEST & BLUEGRASS RAIL, LLC, AVORY BEGGS, BRIAN MILLER, AND DUSTIN
SHAVER AND MB RAIL TTI, LLC
– CONTROL EXEMPTION –
TRANSKENTUCKY TRANSPORTATION RAILROAD, INC.

**NOTICE OF SUBSTITUTION OF COUNSEL AND VERIFIED REQUEST FOR
PERMISSION TO WITHDRAW NOTICE OF EXEMPTION**

Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR
MIDWEST & BLUEGRASS RAIL, LLC,
AVORY BEGGS, BRIAN MILLER, AND
DUSTIN SHAVER AND MB RAIL TTI, LLC**

Dated: August 26, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36475

MIDWEST & BLUEGRASS RAIL, LLC, AVORY BEGGS, BRIAN MILLER, AND DUSTIN
SHAVER AND MB RAIL, TTI, LLC
– CONTROL EXEMPTION –
TRANSKENTUCKY TRANSPORTATION RAILROAD, INC.

**NOTICE OF SUBSTITUTION OF COUNSEL AND VERIFIED REQUEST FOR
PERMISSION TO WITHDRAW NOTICE OF EXEMPTION**

Midwest & Bluegrass Rail, LLC (“MB Rail”), Avory Beggs (“Beggs”), Brian Miller (“Miller”), and Dustin Shaver (“Shaver”),¹ and MB Rail TTI, LLC (“MBRT”)² hereby notify the Surface Transportation Board (the “Board”) of a change in legal counsel for the above-captioned control exemption proceeding. The Parties request that the Board update the subject docket to list the undersigned counsel as attorney for the Parties.

For the reasons supplied below the Parties request Board permission to withdraw the Notice of Exemption filed in this proceeding on December 29, 2020 (the “December Notice”) as part of a renewed effort (via concurrently-filed and forthcoming exemption notices) to exercise management control of four other common carrier railroads (concurrent) in common with TransKentucky Transportation Railroad, Inc. (“TransKentucky”) (forthcoming).

¹ Beggs, Miller, and Shaver will be referred to collectively as the “Individuals.”

² MB Rail, the Individuals, and MBRT, when referred to collectively, are the “Parties.”

BACKGROUND

On December 29, 2020, a filing was made in this docket – the December Notice – encompassing a proposed transaction under which CSX Transportation, Inc. (“CSXT”) would arrange for the transfer of control of TransKentucky to MBRT. As the Board observed, the December Notice was not consistent with respect to the entities who sought authorization to acquire control of TransKentucky.

Observing inconsistencies in the December Notice, and perceiving other concerning issues in the filing, the Board, served a decision on January 27, 2021 (the “January Order”), ordering that “the exemption in this docket will not become effective until further order of the Board.” It also ordered the Parties to “file a supplement addressing the issues described above by February 10, 2021.”

In response, the Parties (including MBRT) filed on February 10, 2021, a motion to dismiss the subject proceeding (the “Motion”), and requested expedited consideration of the same. The Motion addressed some of the Board’s information requests accurately. However, on further careful review of the facts and law and in consultation with new counsel, the Parties concluded that the Motion is not accurate in some respects, and that MB Rail is the only party seeking to control more than one railroad.

BOARD ACTION IS NEEDED

In the absence of STB authorization or dismissal of the proposed TransKentucky transaction, CSXT recently has informed MB Rail and MBRT that it was extending the date for closing to October 29, 2021, subject to further extensions if justified. Accordingly, the Parties

have determined to take action now in order to best preserve MBRT's prospects to acquire control of TransKentucky as they long had planned.

At this point, and given the pressing interest in concluding the TransKentucky transaction the Parties believe that it would help the Board to explain in greater (and consistent) detail the relationship among them, and to supply information that they believe may be relevant to obtaining the definitive Board action that CSXT rightfully requires. The Parties intend such information will give useful context to the present request for withdrawal of the December Notice and to the filing of two new notices of exemption (in FD 36413 (Sub-No. 1) (filed concurrently herewith) and FD 36530) (forthcoming). As such, the Parties offer the following:

MB RAIL

MB Rail (which happens also to be the official, licensed trade name of Midwest & Bluegrass Rail, LLC) is a railroad management and strategic services limited liability company. MB Rail does not own any common carrier railroads in the U.S. However, MB Rail has a contract to manage, and does manage (the MB Rail website uses the term "operate"), four U.S. short line railroads as follows:

- Vermillion Valley Railroad Co., Inc. ("VVRR")
- Camp Chase Rail, LLC ("CAMY")
- Youngstown & Southeastern Railroad, LLC ("YSRR")
- Chesapeake & Indiana Railroad Co., Inc. ("CKIN")³

³ VVRR, CAMY, YSRR and CKIN (collectively, the "MBR-IB Short Lines"), which do not interconnect, are all controlled by MB Rail IB, LLC ("MBR-IB") pursuant to authority obtained in *MB Rail IB, LLC—Acquis. & Continuance in Control Exemption—Chesapeake & Ind. R.R., et al.*, FD 36413 (STB served July 1, 2020) ("*MBR-IB – Control*"). MBR-IB does not have a controlling interest in any railroads other than the above-listed MBR-IB Short Lines. Furthermore, MBR-IB does not have a membership interest in, and it does not control, MB Rail. However, Beggs possesses a 9% membership stake in MBR-IB, and Miller and Shaver possess a 16.2% and 9% stake, respectively, in MBR-IB. Hence, the Motion's accurate statement (at 2)

Among other things, MB Rail: ensures that the MBR-IB Short Lines are properly maintained in the interest of MBR-IB; makes hiring and related personnel decisions for the railroads (actual operation of each of the railroads is entrusted to a general manager, who is an employee of the individual MBR-IB-controlled railroad); oversees MBR-IB Short Lines marketing, rail services pricing and contracts; and supplies various back-office functions (such as human resources, payroll, strategic planning, and accounting) – functioning, essentially, as a short line holding company typically would. Upon reflection, MB Rail acknowledges that the Motion (at 2) has understated MB Rail’s role in overseeing the MBR-IB Short Lines, by stating that Beggs, Miller and Shaver “provide only mid-level management services for” the MBR-IB railroads, “and will do the same for TransKentucky.”⁴

As such, applicable Board precedent appears to require that, despite not having any membership interest in MBR-IB, MB Rail’s contracted-for management oversight means that MB Rail has the ability to control, and does control, the MBR-IB Short Lines.⁵ As such,

that the Individuals are “minority owners.” (Technically, individually and collectively, the Individuals possess a minority membership interest in MBR-IB). The balance of MBR-IB membership interests are distributed amongst three other individuals and one limited liability company, each one of which also possesses a minority non-controlling interest in MBR-IB (the limited liability company membership is divided in three minority stakes, none of which are common to the other MBR-IB members). Moreover none of the MBR-IB members, *other than Beggs, Miller, and Shaver*, have any membership or ownership interest in MB Rail or MBRT. Finally, MB Rail has no membership interest in MBR-IB.

⁴ The quoted passage from the Motion inaccurately ascribes MB Rail’s short line management services to Beggs, Miller and Shaver, as individuals.

⁵ See 49 U.S.C. § 11323 (b); 49 C.F.R. § 1013 (governing Board review of control arrangements for one or more rail carriers by way of an independent voting trust, by which the trustee would lack an ownership interest in the carrier or carriers it is entrusted to manage); *West Branch Intermediate Holdings, LLC and Continental Rail LLC – Continuance in Control Exemption – New Mexico Central Railroad, LLC*, FD 36087 (STB served Feb. 2, 2017) (involving, in part, common management of multiple carriers by a short line management

MB Rail has been advised that, in retrospect, it should have joined MBR-IB in seeking authorization to control the MBR-IB Short Lines in *MBR-IB – Control*. As discussed below, MB Rail seeks to remedy this oversight in a concurrently-filed (and remedial) notice of exemption.

As indicated, MB Rail has an agreement with MBRT to manage TransKentucky at such time as MBRT assumes a controlling ownership stake in that railroad. MB Rail will take appropriate action in a separate notice of exemption to assume management control of TransKentucky in common with the MBR-IB Short Lines, as is also discussed below.

THE INDIVIDUALS

Beggs has a (non-controlling) 9% membership stake in MBR-IB; a (non-controlling) 34% membership stake in MB Rail; and a (non-controlling) 10% membership stake in MBRT. She does not directly or indirectly control any common carrier railroads – whether by ownership/membership, or under a railroad management contract.

Miller has a (non-controlling) 16.2% membership stake in MBR-IB; a (non-controlling) 33% membership stake in MB Rail; and a (non-controlling) 10% membership stake in MBRT. He does not directly or indirectly control any common carrier railroads – whether by ownership/membership, or under a railroad management contract.

Shaver has a (non-controlling) 9% membership stake in MBR-IB; a (non-controlling) 33% membership stake in MB Rail; and a (non-controlling) 10% membership stake in MBRT.

company distinct from the owner of those railroads); and *Michigan Central Railway LLC — Acquisition and Exemption — Lines of Norfolk Southern Railway Company*, FD 35063 (STB served Dec. 10, 2007), 6 (“The chief objective of a control analysis is to determine whether two companies are so closely intertwined as to be considered a single entity. The issue of control is fact-specific for each transaction.”) (internal citations omitted).

He does not directly or indirectly control any common carrier railroads – whether by ownership/membership, or under a railroad management contract.

The Individuals do not collectively manage any common carrier railroads apart from those managed through their membership venture in MB Rail. Also, the Individuals do not possess, individually or collectively, a direct or indirect controlling interest in any common carrier railroads, except as through MB Rail.

MBRT

MBRT has been established for the purpose of acquiring control of TransKentucky. Beggs, Miller and Shaver each possesses a separate and equal (and non-controlling) 10% membership stake in MBRT, as was more generally represented in the Motion. The remaining 70% membership stake in MBRT is held by a separate investment partner that does not currently possess a controlling interest in any common carrier railroads, but would secure an indirect controlling interest in its first railroad – TransKentucky – upon consummation of the transaction originally presented in the December Notice. Because MBRT and, in turn, MBRT's controlling member (who has asked not to be identified here) do not have a controlling interest in any common carriers today, neither requires control authority from the Board to acquire direct (in the case of MBRT) or indirect (in the case of MBRT's controlling member) control of TransKentucky, as the Motion (again at 2) correctly noted.

NEXT STEPS

In light of the above information, and upon further consideration of the situation, the Parties have concluded that the present FD 36475 exemption proceeding is not well-suited

for its intended purpose, given the occasionally inaccurate and conflicting information that is contained in the December Notice and subsequent Motion. Rather, the Parties have concluded that the better approach here would be to seek permission to withdraw the December Notice, and to start again afresh with respect to the TransKentucky transaction that MBRT is pursuing with MB Rail (and that MBRT and MB Rail hope soon will conclude – after the Board’s authorization). And so the Parties hereby request permission to withdraw the December Notice.

Before addressing the TransKentucky transaction, it now appears to MB Rail that it should have sought Board authorization to assume management control of the MBR-IB Short Lines simultaneously with MBR-IB; something that MB Rail believes could have been accomplished as part of the *MBR-IB – Control* proceeding, but was not. Indeed the Board itself detected the oversight when it remarked in its January Order (at 2) that, “the fact that [MB Rail] is seeking control authority here [in connection with the TransKentucky transaction] raises a question as to *why [MB Rail] was not an applicant when [MBR-IB] filed a verified notice of exemption to acquire the [MBR-IB Short Lines] last year*” (emphasis added). As bears upon the quoted passage, MB Rail has come to appreciate that this Board is keenly interested in assuring that the statutes and regulations it administers are carefully complied with, particularly when it comes to issues of common control of multiple common carriers, as this and other, recent proceedings readily demonstrate.

For that reason, MB Rail seeks to rectify matters by seeking authorization under a class exemption, FD 36413 (Sub-No. 1), to control (under its management agreement with MBR-IB) the four MBR-IB Short Lines. In so doing, MB Rail asks that the Board be fair (but also lenient) in allowing MB Rail to remedy its unintentional oversight in not having sought such control authority before, especially in view of MB Rail’s concerted and thorough efforts here

evidencing its resolve to start afresh with the Board. MB Rail respectfully submits that punitive Board action would result in a disproportionate harm to MBRT and its controlling member (neither of which requires Board authorization to acquire control of TransKentucky), and, by extension to MB Rail, if MBRT were to be deprived of its acquisition opportunity.

In addition, MB Rail will file in yet another docket (FD 36530) a notice of exemption to assume management control of TransKentucky. That exemption, which will be filed the day after the FD 36413 (Sub-No. 1) class exemption, would be expected to take effect the day after the effective date of the Board's remedial authorization for MB Rail's control of the MBR-IB Short Lines. Through this ordered process, MB Rail's authorization to control TransKentucky in common with the MBR-IB Short lines would be predicated upon authorization of MB Rail's management control of the MBR-IB Short Lines.

Neither MBRT nor MBRT's controlling member-investor entity (KGP Solutions, LLC) currently controls any carriers. Therefore, under 49 U.S.C. 11323, they do not require, and will not be requesting, authority to control TransKentucky. In fact, MBRT and its controlling member could assume control of TransKentucky immediately without the need for any Board proceeding, but for the plans to have MB Rail manage TransKentucky. If the Board were to be unable to accommodate the newly-filed and forthcoming class exemptions in a time frame acceptable to CSXT, then MBRT may place TransKentucky in a voting trust during the pendency of the Board's consideration.

Finally, as the foregoing plans indicate, the Individuals (Beggs, Miller and Shaver) have not joined in the newly-filed control class exemptions. They are excluded from those proceedings on the understanding that, in keeping with *OmniTRAX Holdings Combined, Inc.—Acquis. of Control Exemption—Ala. & Tenn. River Ry.*, FD 36032 (STB served July 14,

2016) (discussed in footnote 5 of the January Order), each of them is a non-controlling member in MB Rail and in MBRT. As such, the Individuals understand that they do not need authority to control the MBR-IB Short Lines or TransKentucky. Only MB Rail requires such authority. If, however, the Board determines that the Individuals are incorrect, and that they require such authorization as a group independent of MB Rail, then they are willing to be named as co-applicants in the FD 36413 (Sub-No. 1) and FD 36530 proceedings, and, if so directed, will promptly supplement each of the notices for that purpose.

CONCLUSION

WHEREFORE, the Parties request that this docket be updated to reflect a substitution of legal counsel, and, for the reasons supplied above, that the Parties be permitted to withdraw their class exemption filing in this proceeding

Respectfully submitted,

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

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**ATTORNEYS FOR
MIDWEST & BLUEGRASS RAIL, LLC,
AVORY BEGGS, BRIAN MILLER, AND
DUSTIN SHAVER AND MB RAIL TTI, LLC**

Dated: August 26, 2021

cc: all parties of record

VERIFICATION

I, Avory Beggs, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify I am qualified and authorized to make this verification.

A handwritten signature in black ink, appearing to read 'Avory Beggs', is written over a horizontal line.

Avory Beggs

Title: *Mgr*

Midwest and Bluegrass Rail, LLC

Dated: 8/19/21

BEFORE THE
SURFACE TRANSPORTATION BOARD

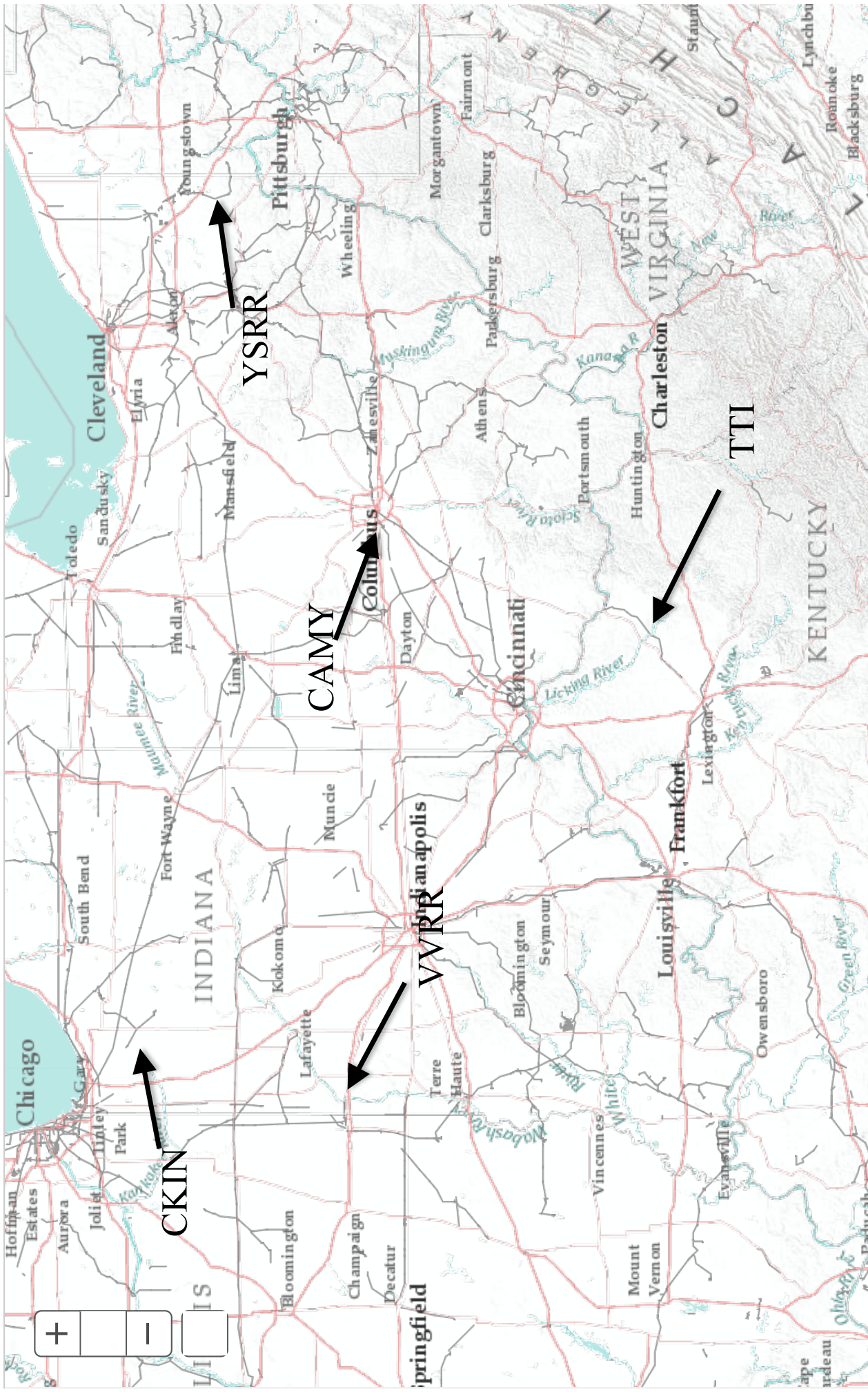
FD 36530

MIDWEST & BLUEGRASS RAIL, LLC
— CONTROL EXEMPTION —
TRANSKENTUCKY TRANSPORTATION RAILROAD, INC.

EXHIBIT C

MAPS OF CARRIER OPERATIONS

FD 36530



VERIFICATION

I, Avory Beggs, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify I am qualified and authorized to make this verification.

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Avory Beggs

Title: *Mgr*

Midwest and Bluegrass Rail, LLC

Dated: 8/19/21