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ENTERED
Office of Proceedings
May 31, 2018
Part of
Public Record

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May 31, 2018

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

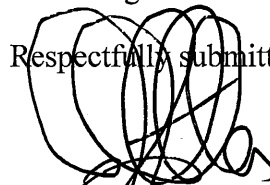
Re: **Docket No. FD 36179**
Lake State Railway Company -- Lease Exemption --
Line of Grand Trunk Western Railroad Company

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Reply of Lake State Railway Company to Protest and Petition for Stay of Grand Trunk Western General Committee of Adjustment**, dated May 31, 2018.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Lake State Railway Company

TJL:tl

Attachment

cc: Parties on Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36179

LAKE STATE RAILWAY COMPANY
-- LEASE EXEMPTION --
LINE OF GRAND TRUNK WESTERN RAILROAD COMPANY

**REPLY OF LAKE STATE RAILWAY COMPANY
TO PROTEST AND PETITION FOR STAY OF
GRAND TRUNK WESTERN GENERAL COMMITTEE OF ADJUSTMENT**

Thomas J. Litwiler
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**ATTORNEY FOR LAKE STATE
RAILWAY COMPANY**

Dated: May 31, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36179

LAKE STATE RAILWAY COMPANY
-- LEASE EXEMPTION --
GRAND TRUNK WESTERN RAILROAD COMPANY

**REPLY OF LAKE STATE RAILWAY COMPANY
TO PROTEST AND PETITION FOR STAY OF
GRAND TRUNK WESTERN GENERAL COMMITTEE OF ADJUSTMENT**

Lake State Railway Company ("LSRC") hereby submits this reply to the "Protest in Opposition to Application [and] Petition to Stay" of the Grand Trunk Western General Committee of Adjustment ("GTW/GCA") of the Brotherhood of Locomotive Engineers and Trainmen ("BLET"). GTW/GCA filed its Petition in response to LSRC's May 10, 2018 verified notice of exemption under 49 C.F.R. § 1150.42 to lease from Grand Trunk Western Railroad Company ("GTW") and operate a 3.9-mile line of railroad in Port Huron, Michigan.¹ Notice of LSRC's exemption was served and published in the *Federal Register* on May 25, 2018. 83 Fed. Reg. 24384.

While GTW/GCA asks that the transaction be "Stayed, in its entirety," Petition at 5, GTW/GCA has neither identified nor addressed the relevant stay criteria of Washington Metropolitan Area Transit Comm'n v. Holidays Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977), as to which GTW/GCA would bear the burden of proof. Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974). As such, no stay could be granted. E.g., Consolidated Rail Corporation -- Abandonment Exemption -- In Vermillion and Champaign Counties, IL, Docket

¹ In its notice, LSRC referred to this line as the "PH Track." GTW/GCA indicates that the tackage is known as the "HR" line.

No. AB-167 (Sub-No. 1161X) (STB served May 19, 2000) at 5 (stay not available because "the stay petition did not address the standard [Holiday Tours] criteria for consideration of a stay").

GTW/GCA has not otherwise shown any reason why LSRC's invocation of the class exemption at 49 C.F.R. § 1150.41, et seq. is improper. GTW/GCA mistakenly relies on Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996), Petition at 4, but that decision adopted regulations that govern the abandonment of rail lines under 49 U.S.C. § 10903. Leases of rail lines by Class III carriers such as LSRC are governed by 49 U.S.C. § 10902 and the class exemption adopted in Class Exem. For Acq. or Oper. Under 49 U.S.C. 10902, 1 S.T.B. 95 (1996) ("10902 Exemption"); see also Chicago Rail Link, L.L.C. -- Lease & Oper. -- Union Pacific R. Co., 2 S.T.B. 534, 541-542 (1997) (specifically confirming that lease transactions are covered by the Section 10902 class exemption), aff'd sub nom. United Transp. Union-III. Legis. Bd. v. STB, 169 F.3d 474 (7th Cir. 1999).

GTW/GCA complains that the current GTW train assignment that serves the PH Track will be abolished, but that kind of shift in operations is inherent in transactions under Section 10902. E.g., 10902 Exemption, 1 S.T.B. at 103 ("under the exemption, the purchasing carrier's operation will merely supplant the selling carrier's operation."). Regardless of any impact of the transaction, "the statute is unambiguous that we may not impose any manner of labor protection on a Class III carrier's acquiring or operating rail property under section 10902." 10902 Exemption, 1 S.T.B. at 104.

GTW/GCA also complains that LSRC has not specifically asserted or proven that its annual revenues are in excess of five million dollars. Petition at 4. That revenue threshold triggers the 60-day advance labor notice obligation of 49 C.F.R. § 1150.42(e), with which LSRC has fully complied. LSRC Verified Notice of Exemption, Exhibit C. The 60-day notice is

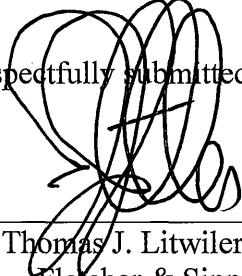
intended to provide advance information about a transaction to an incumbent's employees, a purpose that has been fully satisfied here.² See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 -- Advance Notice, 2 S.T.B. 592 (1997), aff'd sub nom. Ass'n of Amer. Railroads v. STB, 161 F.3d 58 (D.C. Cir. 1998). There would be no reason for a rail carrier such as LSRC to comply with the 60-day notice requirement -- which extends the otherwise applicable timeline for transactions under the Section 10902 class exemption -- if the railroad's annual revenues were not more than \$5 million. For the record, LSRC confirms that its revenues do exceed that threshold.

Finally, LSRC rejects categorically GTW/GCA's bald assertion that LSRC engineers are somehow less skilled, qualified or safe because they are not members of GTW/GCA's union. Petition at 4-5. LSRC engineers and conductors are held to the same high federal certification standards as GTW employees. LSRC's Training and Safety Manager is a former Class I locomotive engineer and former BLET official, and ensures that the training standards on LSRC meet or exceed federal requirements. LSRC management is wholly committed to the operation of a safe, professional railroad. LSRC respects the pride that GTW engineers take in their work. LSRC is likewise proud of the skill and safety of its workforce, and knows that customers on the PH Track and the broader public interest will be well-served by LSRC employees.

² As required, LSRC served its 60-day notice on the national office of BLET. LSRC Verified Notice of Exemption, Exhibit C.

WHEREFORE, LSRC respectfully requests that the relief sought in GTW/GCA's "protest" and "petition for stay" be denied.

Respectfully submitted,

By: 

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(312) 252-1500

**ATTORNEY FOR LAKE STATE
RAILWAY COMPANY**

Dated: May 31, 2018

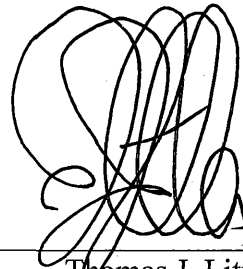
CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of May, 2018, a copy of the foregoing **Reply of Lake State Railway Company to Protest and Petition for Stay of Grand Trunk Western General Committee of Adjustment** was served by overnight delivery upon:

Mr. J.M. Karakian
General Chairman
Brotherhood of Locomotive Engineers & Trainmen
General Committee of Adjustment – GTW
43422 West Oaks Drive, PMB 137
Novi, MI 48377-3300

and by first-class mail, postage prepaid, upon:

Shawn M. McKinley, Esq.
Assistant General Counsel
International Association of Sheet Metal, Air, Rail and
Transportation Workers – Transportation Division
24950 Country Club Boulevard, Suite 340
North Olmsted, OH 44070



Thomas J. Litwiler