

FLETCHER & SIPPEL LLC

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ENTERED
Office of Proceedings
July 16, 2018
Part of
Public Record

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July 16, 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 36207**
St. Paul & Pacific Railroad Company, LLC – Change in Operators
Exemption – Santa Cruz and Monterey Bay Railway Company

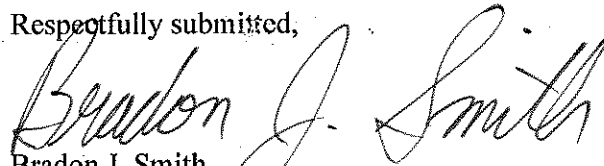
Docket No. FD 36208
Progressive Rail Incorporated – Continuance in
Control Exemption – St. Paul & Pacific Railroad Company, LLC

Dear Ms. Brown:

Attached for filing in the above-captioned proceedings are the **Verified Notice of Exemption of St. Paul & Pacific Railroad Company Pursuant to 49 C.F.R. § 1150.31(a)(3)**, and the **Verified Notice of Exemption of Progressive Rail Inc. Pursuant to 49 C.F.R. § 1180.2(d)(2)** dated July 16, 2018. The sum of \$3,900, representing the appropriate fees for these filings was delivered via Federal Express on July 16, 2018.

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 St. Paul & Pacific
Railroad Company, LLC

BJS/bs

Attachment

FEE RECEIVED
JULY 16, 2018
SURFACE
TRANSPORTATION BOARD

FILED
JULY 16, 2018
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36207

ST. PAUL & PACIFIC RAILROAD COMPANY, LLC
— CHANGE IN OPERATORS EXEMPTION —
SANTA CRUZ & MONTEREY BAY RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
ST. PAUL & PACIFIC RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1150.31(a)(3)**

Audrey L. Brodrick
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR ST. PAUL &
PACIFIC RAILROAD COMPANY, LLC**

Dated: July 16, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36207

ST. PAUL & PACIFIC RAILROAD COMPANY, LLC
— CHANGE IN OPERATORS EXEMPTION —
SANTA CRUZ AND MONTEREY BAY RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
ST. PAUL & PACIFIC RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1150.31(a)(3)**

Pursuant to 49 C.F.R. § 1150.31, et seq., St. Paul & Pacific Railroad Company, LLC (“SPR”), a non-carrier, hereby files this Verified Notice of Exemption to assume operation of approximately 31 miles of track owned by the Santa Cruz County Regional Transportation Commission (“RTC”) extending between Davenport, California, and Watsonville Junction, California (the “Line”). The Line was formerly operated by the Santa Cruz and Monterey Bay Railway Company (“SCM”) before SCM’s sudden cessation of operations in June of 2018. Based on projected annual revenues, SPR expects to be a Class III rail carrier after consummation of the proposed transaction. SPR will enter into an agreement with the RTC governing the operations of the Line; and will assume SCM’s permanent freight easement over it, thereby replacing SCM as common carrier.

This Notice is related to Docket No. FD 36208 in which Progressive Rail Incorporated (“PGR”), SPR’s corporate parent, is concurrently filing a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of SPR once SPR commences

operations and becomes a carrier.¹ PGR is a Class III rail carrier and controls five other Class III rail carriers operating in the Upper Midwest and in North Carolina.

In accordance with the requirements of 49 C.F.R. § 1150.33, SPR submits the following information:

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

The full name and address of the applicant herein is as follows:

St. Paul and Pacific Railroad Company, LLC
21778 Highview Avenue
Lakeville, Minnesota 55044
(612) 791-3255

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

SPR's representative to whom correspondence regarding this transaction should be sent is as follows:

Audrey L. Brodrick
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-2832
(312) 252-1500

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

SPR and RTC will enter into an operating agreement governing SPR's operation of, and provision of rail common carrier service on, the Line. Pursuant to a separate agreement, SCM will transfer its permanent and exclusive freight operations easement to SPR.

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

SPR will operate and provide all rail common carrier service to shippers on the Line pursuant to the aforementioned agreements. SPR will replace SCM, and, upon

¹ Collectively, the exemption notices filed in Dockets. FD 36207 and FD 37208 will be referred to herein as the "Notices."

consummation of the transaction, SCM will cease to serve as a common carrier with respect to the Line. SCM and RTC have agreed that SCM should be relieved of its common carrier obligations by way of the proposed transaction with SPR, and SPR understands that SCM does not object to the proposed change in operators. In light of RTC's negotiation of a new operating agreement, SPR understands that RTC will seek Board determination of continued "State of Maine" status as a title-holding non-carrier.²

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

The subject Line, extending approximately 31 miles from MP 0.433 at Watsonville Junction to MP 31.39 at Davenport, was formerly owned by the Union Pacific Railroad Company ("UP").³ RTC purchased the Line's track assets from UP, subject to UP's retention of a permanent and exclusive freight operating easement, and UP, in turn, conveyed its retained freight easement interest to SCM.⁴

SPR is a newly-formed, non-carrier subsidiary of PGR. Pursuant to the RTC-SPR operating agreement, and the SCM's conveyance of its freight easement interest to SPR, SPR will assume SCM's common carrier status on the Line, and will conduct freight operations in place of SCM.

The name and address of the current operator of the Line – who will convey its common carrier rights and obligations to SPR – is as follows:

Santa Cruz and Monterey Bay Railroad
118 South Clinton Street, Suite 300
Chicago, IL 60661

² See, e.g., Santa Cruz County Regional Transportation Commission – Petition for Declaratory Order, Docket No. FD 35653, (STB served Sep. 7, 2012).

³ Id.

⁴ Id.; Santa Cruz and Monterey Bay Railway Company – Acquisition and Operation Exemption – Union Pacific Railroad Company, Docket No. FD 35659 (STB served Aug. 17, 2012).

The name and address of the owner of the Line's physical assets is as follows:

Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue
Santa Cruz, CA 95060-3911

SPR intends to acquire the exclusive freight easement over the Line, and commence common carrier service over it, on or after the effective date of the Notices.

Map: 49 C.F.R. § 1150.33(f)

A map showing the Line is attached as Exhibit A to this Notice.

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

Certification of compliance with the provisions of 49 C.F.R. § 1150.33(g) is included with the verification to this Notice.

Interchange Commitments: 49 C.F.R. § 1150.43(h)

SPR's proposed operation of the Lines does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

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

SPR has provided notice of the proposed change in operators to the shippers on the Line. A list of the shippers served and a copy of the notice letter sent to those shippers are attached hereto as Exhibit B.

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

The annual revenues of SPR are not expected to exceed \$5 million. Accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are inapplicable. See the certification included with the verification to this Notice.

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

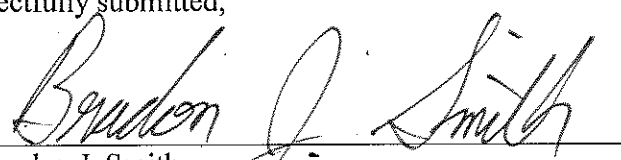
Under 49 C.F.R. § 1105.6(c)(2), SPR's proposed operation of the Line is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), SPR's assumption of operations on the Line also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Further Surface Transportation Board approval is required to discontinue any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.32 (a)

A caption summary in appropriate form is attached as Exhibit C to this Notice.

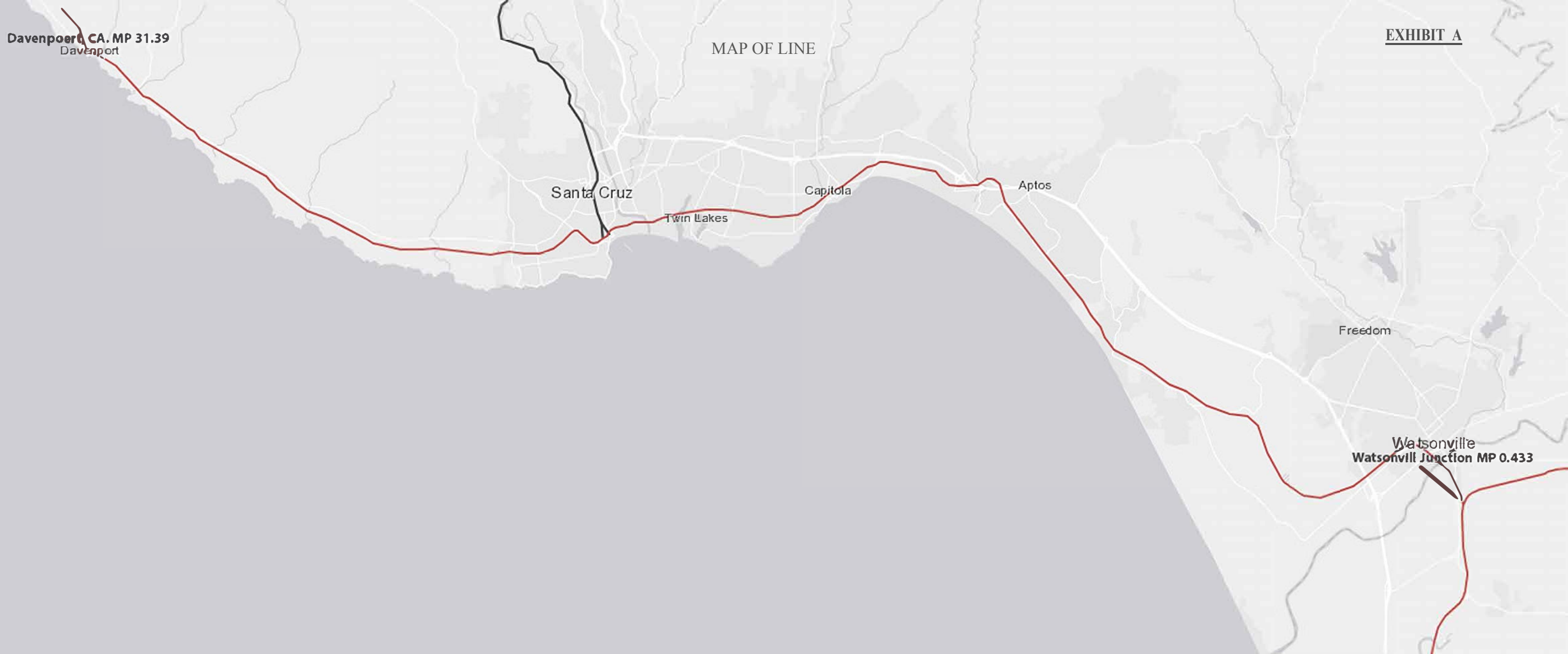
Respectfully submitted,

By: 

Bradon J. Smith
Audrey L. Brodriek
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR ST. PAUL & PACIFIC
RAILROAD COMPANY, LLC**

Dated: July 16, 2018



MAP OF LINE

Davenport, CA, MP 31.39
Davenport

Santa Cruz

Twin Lakes

Capitola

Aptos

Freedom

Watsonville
Watsonville Junction MP 0.433

SHIPPERS ON THE LINE

Big Creek Lumbar Co.
3564 Highway 1
Davenport, CA 95017

Agron Bioenergy
860 W. Beach Street
Watsonville, CA 95076

Del Mar Foods
1720 Beach Road
Watsonville, CA 95076

Lineage Logistics
400 Cascade Way
Watsonville, Ca 95076

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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

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

July 16, 2018

Lineage Logistics
400 Cascade Way
Watsonville, Ca 95076

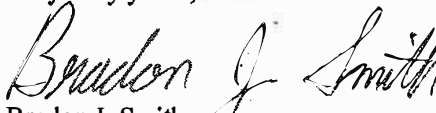
Re: **Docket No. FD 36207**
St. Paul & Pacific Railroad Company, LLC – Change in Operators
Exemption – Santa Cruz & Monterey Bay Railway Company

Dear Sirs:

St. Paul & Pacific Railroad Company (“SPR”) has filed a change of operators notice of exemption (the “Notice”) with the Surface Transportation Board (“STB”) in connection with a line of railroad formerly operated by Santa Cruz and Monterey Bay Railway Company (“SCM”). Pursuant to the Notice, SPR will commence common carrier operations over approximately 31 miles of track from MP 0.433 at Watsonville Junction, Cal. to MP 31.39 at Davenport, Cal. (“the Line”) in place of SCM. Effective August 16, 2018, or as soon thereafter as possible, SPR will assume operations, and will be responsible for providing rail service to your facility on that Line.

Kindly refer to the copy of the Notice attached for additional information. We are providing you with the Notice as information in keeping with STB shipper notification requirements. You are not required to respond or to the Notice or otherwise participate in the STB proceeding. If you have any questions regarding this matter, please feel free to contact me.

Very truly yours,



Bradon J. Smith
Attorney for St. Paul & Pacific
Railroad Company, LLC

BJS/bs
Enclosure

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 32607

ST. PAUL & PACIFIC RAILROAD COMPANY, LLC
— CHANGE IN OPERATORS EXEMPTION —
SANTA CRUZ AND MONTEREY BAY RAILWAY COMPANY

St. Paul & Pacific Railroad Company (“SPR”), a non-carrier, has filed a notice of exemption to acquire from Santa Cruz and Monterey Bay Railway Company a freight operating easement over approximately 31 miles of rail line extending between MP 0.433 at Watsonville Junction, California, and MP 31.39 at Davenport, California (the “Line”).¹

Comments must be filed with the Board and served on:

Audrey L. Brodrick
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-2832
(312) 252-1500

This proceeding is related to Docket No. FD 36208 in which Progressive Rail Incorporated has concurrently filed a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of SPR once SPR assumes operation of the Line and becomes a carrier.

¹ The Line was formerly owned by the Union Pacific Railroad Company (“UP”). UP sold the track assets comprising the line to Santa Cruz County Regional Transportation Commission, subject to UP’s retention of a permanent and exclusive freight operating easement, and UP, in turn, transferred its easement interest to SCM. See Santa Cruz County Regional Transportation Commission – Petition for Declaratory Order, Docket No. FD 35653, (STB served Sep. 7, 2012); Santa Cruz and Monterey Bay Railway Company – Acquisition and Operation Exemption – Union Pacific Railroad Company, Docket No. FD 35659 (STB served Aug. 17, 2012).

Exhibit C

The notice is filed under 49 C.F.R. § 1150.31(a)(3). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

CERTIFICATION AND VERIFICATION

I, James L. Thornton, hereby certify and verify under penalty of perjury as follows:

1. I am the Managing Director and Legal Secretary for the St. Paul & Pacific Railroad Company, LLC ("SPR").
2. The annual rail revenues of SPR are not expected to exceed \$5 million, and will not result in SPR becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201 (11).
3. I have read the foregoing Notice of Exemption and know that the facts stated herein are true.

Dated: July 16, 2018


James L. Thornton