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ENTERED
Office of Proceedings

August 28, 2018

Part of
Public Record

August 27, 2018

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VIA FEDEX

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20006

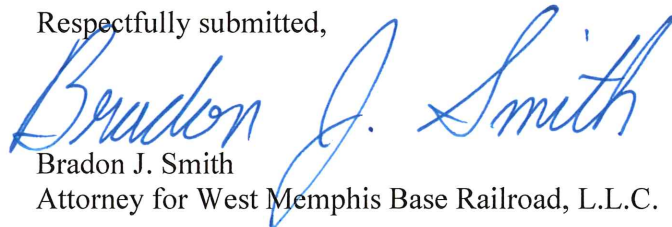
Re: **Docket No. FD 36215**
West Memphis Base Railroad, L.L.C. – Acquisition Exemption – City
of West Memphis, Arkansas

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of West Memphis Base Railroad, L.L.C. Pursuant to 49 C.F.R. part 1150, subpart D**, dated August 27, 2018. A check in the amount of \$2,000.00 representing the appropriate fee for this filing, and a disc containing the text of the Notice and the *Federal Register* caption summary in MS Word format are attached.

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 West Memphis Base Railroad, L.L.C.

Enclosures

FILED
August 28, 2018
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
August 28, 2018
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36215

WEST MEMPHIS BASE RAILROAD, L.L.C.
-- ACQUISITION EXEMPTION --
CITY OF WEST MEMPHIS, ARKANSAS

**VERIFIED NOTICE OF EXEMPTION OF
WEST MEMPHIS BASE RAILROAD, L.L.C.
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

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

**ATTORNEY FOR WEST MEMPHIS
BASE RAILROAD, L.L.C.**

Dated: August 27, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36215

WEST MEMPHIS BASE RAILROAD, L.L.C.
-- ACQUISITION EXEMPTION --
CITY OF WEST MEMPHIS, ARKANSAS

**VERIFIED NOTICE OF EXEMPTION OF
WEST MEMPHIS BASE RAILROAD, L.L.C.
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Pursuant to 49 C.F.R. part 1150, subpart D, West Memphis Base Railroad, L.L.C. ("WMBR"), a non-carrier, hereby files this Verified Notice of Exemption ("the Notice") to acquire by lease (with an imminent option to purchase) approximately 2.25 miles of rail line (the "Line") extending between mileposts 353.281 and 355.539 in West Memphis, Crittenden County, Arkansas. The Line is currently owned by the City of West Memphis, Arkansas (the "City"). Based upon projected annual revenues, WMBR expects to be a Class III rail carrier following consummation of the transaction proposed herein.

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

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

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

West Memphis Base Railroad, L.L.C.
1203 E. 33rd Street, Suite 250
Tulsa, OK 74105
(918) 744-5400

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

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

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

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

WMBR and the City have agreed for WMBR to lease the Line for an initial term expiring at the later occurrence of – (1) completion of certain publicly-funded improvements to the Line, or (2) December 31, 2020. Subject to Board authorization invoked hereby, the lease grants WMBR a presently-exercisable option to purchase the Line during the initial term of the lease for an already-agreed-upon sum. WMBR anticipates that it will be in a position to exercise its purchase option in October of this year. WMBR is filing this Notice for the lease and anticipated subsequent purchase of the Line.¹

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

Upon consummation of this transaction, WMBR will assume rail common carrier obligations for the Line, including the provision of common carrier service.

¹ Advance Board authorization of a two-step transaction such as the one proposed here is not unprecedented. See Carolina Coastal Railway, Inc. – Lease and Operation and Acquisition Exemption – Southern Railway Company, Docket No FD 31408, 1 (ICC served Mar. 8, 1989) FN 1 (“CCR has the option to purchase the line anytime after the end of the second lease year. This notice of exemption extends to the prospective purchase of this line by CCR, thus obviating the need for CCR to file a separate notice of exemption in the future covering that transaction, should CCR exercise its option to purchase”).

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

The City acquired the Line from the Missouri Pacific Railroad Company (“MoPac”), a corporate predecessor of the Union Pacific Railroad Company (“UP”)² in 1992. See The City of West Memphis, Arkansas – Acquisition and Operation Exemption – Missouri Pacific Railroad Company, Docket No. 32121 (ICC served Jul. 31, 1992).

WMBR has been formed to lease the Line (subject to a right to purchase) and to assume common carrier obligations. Upon consummation of WMBR’s purchase of the Line as contemplated herein, the City will be relieved of its current common carrier status and the obligations associated with being a rail common carrier. To that end, it has negotiated with the City a Lease Agreement which extends to WMBR an option to purchase the Line for an agreed-upon sum. The agreed-to lease between the City and WMBR expires at the later occurrence of: (1) completion of certain improvements of the Line, or (2) December 31, 2020. WMBR and the City anticipate that the improvements contemplated shall be accomplished within 90 days of the filing of this Notice. WMBR anticipates that it will be in a position to exercise its purchase option and to assume full title to the Line this year, possibly as soon as October.

The Line extends between mileposts 353.381 and 355.539 (a distance of approximately 2.25 route miles) in West Memphis, Crittenden County, Arkansas,

The complete name and address of the owner of the Line is as follows:

City of West Memphis, Arkansas
205 South Redding
West Memphis, AR 72301

WMBR intends to consummate the subject transaction Line on or after October 1, 2018.

² MoPac was officially merged into UP on January 1, 1997.

Map: 49 C.F.R. § 1150.33(f)

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

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

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.33(g) accompanies this Notice. Please see the attached Certification and Verification.

Interchange Commitments: 49 C.F.R. § 1150.33(h)

The proposed railroad line transaction does not involve, and the agreement between WMBR and the City does not include, any provision or agreement that would limit future interchange with a third-party connecting carrier.

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

The projected annual revenue of WMBR are not expected to exceed \$5 million, and, accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are inapplicable to this transaction. See Certification and Verification.

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

Under 49 C.F.R. § 1105.6(c)(1) (i), WMBR'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).

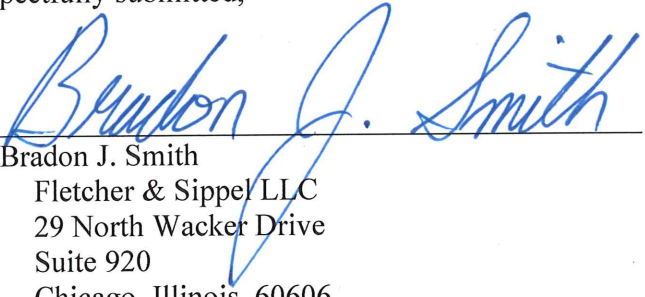
Under 49 C.F.R. § 1105.8(b)(1), WMBR's assumption of operations on the Line also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail service. Further Surface Transportation Board approval is required

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. § 1150.34

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

Respectfully submitted,

By: 

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606
(312) 252-1500

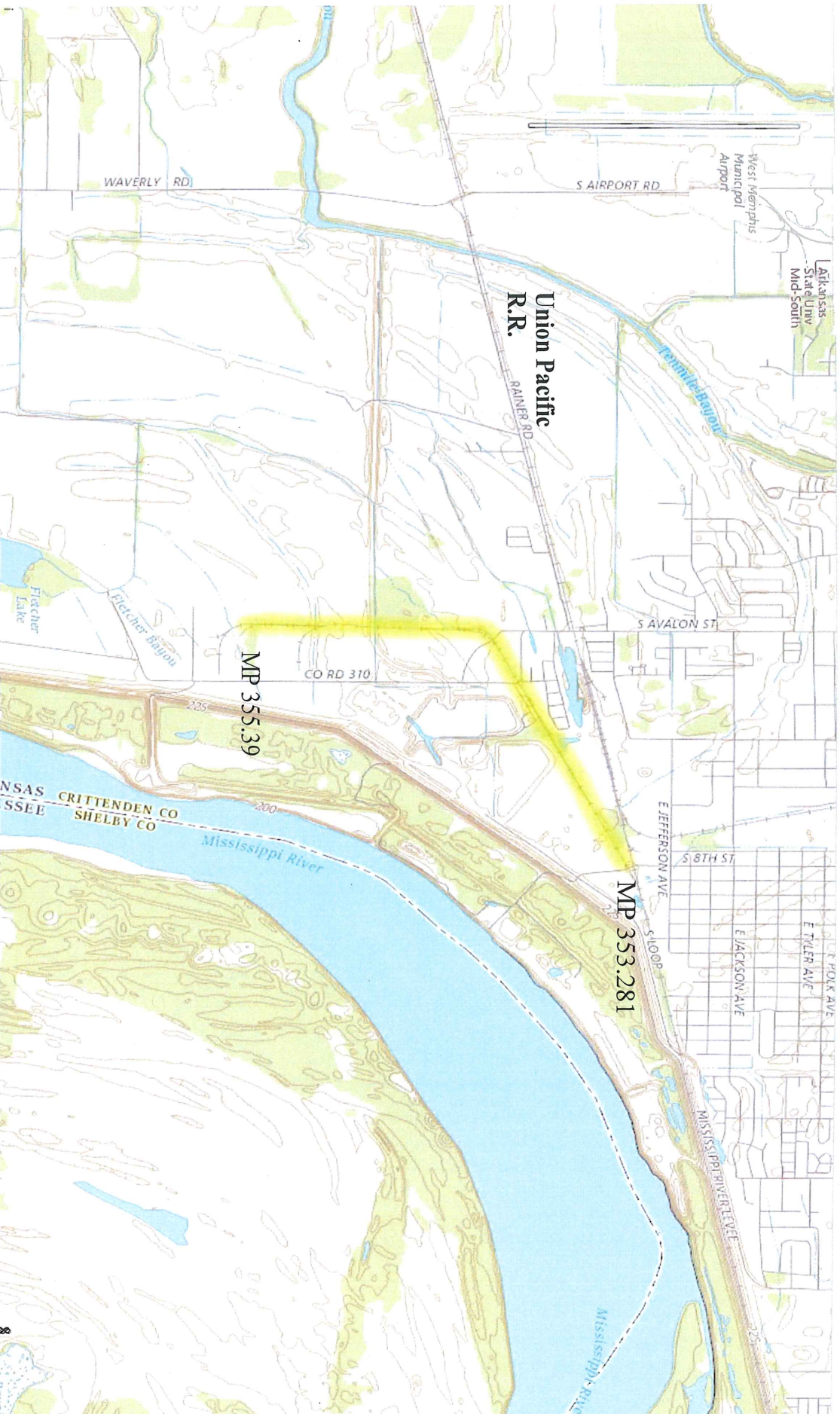
**ATTORNEY FOR WEST MEMPHIS
BASE RAILROAD, L.L.C.**

Dated: August 27, 2018

Docket No. FD 36215

West Memphis Base Railroad, L.L.C. – Acquisition Exemption – City of West Memphis, Arkansas

MP 353.281 to 355.539, highlighted portion, connecting with Union Pacific R.R. Co.



SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36215

WEST MEMPHIS BASE RAILROAD, L.L.C.
-- ACQUISITION EXEMPTION --
CITY OF WEST MEMPHIS, ARKANSAS

West Memphis Base Railroad, L.L.C. ("WMBR"), a non-carrier, has filed a Verified Notice of Exemption to lease, and subsequently to purchase, and to operate approximately 2.25 miles of rail line (the "Line") extending between mileposts 353.281 and 355.539 in West Memphis, Crittenden County, Arkansas. The Line is owned by the City of West Memphis, Arkansas.

WMBR expects to consummate the subject on or after October 1, 2018.

Comments must be filed with the Board and served on:

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

This Notice is filed under 49 C.F.R. § 1150.31. 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.

Dated: August __, 2018

By the Board

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings

CERTIFICATION AND VERIFICATION

I, J. Scott Dickman, hereby certify and verify under penalty of perjury as follows:

1. I am the manager of the West Memphis Base Railroad L.L.C ("WMBR") authorized to execute this document on the part of WMBR.
2. The annual rail revenues of WMBR are not expected to exceed \$5 million, and will not result in WMBR 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: August 24, 2018



J. Scott Dickman