

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

244016

FD 36133

ENTERED
Office of Proceedings
July 31, 2017
Part of
Public Record

**CLEVELAND COMMERCIAL RAILROAD COMPANY, LLC
—AMENDED LEASE AND OPERATION EXEMPTION
CONTAINING INTERCHANGE COMMITMENT—
NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10902 and 49 CFR §1150.41**

Submitted By:

John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Avenue, N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Counsel for Applicant

FEE RECEIVED
July 31, 2017
SURFACE TRANSPORTATION BOARD

Dated: July 31, 2017

FILED
July 31, 2017

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Cleveland Commercial Railroad Company, LLC (“CCR”), an existing Class III short line railroad common carrier, files this Notice of Exemption, pursuant to 49 C.F.R. §1150.41, *et. seq.*, with the Surface Transportation Board (the “Board”) to permit it to enter into an amended lease agreement to extend the life of and to make other changes to its lease of approximately 25.3 miles of a line of railroad between milepost RH 2.2+/- at Cleveland, OH, and milepost RH 27.5+/- at Aurora, OH (“the Line”). The lease was originally entered into on May 13, 2009. A map depicting the Line is shown on the attached Exhibit A.

INFORMATION REQUIRED BY 49 CFR §1150.43

Name and Address of Applicant	49 CFR §1150.43(a)
Cleveland Commercial Railroad	
7632 Bond St,	
Cleveland, OH 44139	

Name and Address of Applicant's Representative 49 CFR §1150.43(b)

John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
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Statement of Agreement 49 CFR §1150.43(c)

CCR and Norfolk Southern Railway Company ("NSR") first entered into a lease of the Line in 2009. That transaction was authorized by the Board in a decision served on May 29, 2009, and docketed as *Cleveland Commercial Railroad Company, LLC–Lease and Operation Exemption–Norfolk Southern Railway Company*, FD 35251. On September 15, 2016, CCR and NSR agreed to amend the Original Agreement ("1st Amendment") to extend the agreement's termination date an additional 6 years, through December 31, 2025, and to make other changes.

Operator of the Property 49 CFR §1150.43(d)

CCR is currently the operator and will continue to be the operator under this extension.

Summary of Transaction 49 CFR §1150.43(e)

CCR and NSR have agreed to extend the term of this lease which presently expires on December 31, 2019, to December 31, 2025.

- (1) Name and address of the lessor of the subject property:
Norfolk Southern Railway Company
3 Commercial Place
Norfolk, VA 23510
- (2) The proposed time schedule for consummation of the transaction:

The amended lease will become effective upon the effective date of this

Notice of Exemption.
- (3) The mileposts of the subject property, including any branch lines:

The Line extends between milepost RH 2.2+/- at Cleveland, OH, and

milepost RH 27.5+/- at Aurora, OH. The Line also includes any sidings,

sidetracks, yards, or facilities owned by NSR and accessed via the Line.
- (4) The length of the Line subject to the lease extension: approximately 25.3

miles.

Map 49 CFR §1150.43(f)

A map depicting the involved operation is attached as Exhibit A.

Certificate Regarding Class III status 49 CFR §1150.43(g):

Attached as Exhibit B.

Interchange Commitments 49 CFR §1150.43(h)

- (1) CCR certifies that the Amended Lease contains an interchange commitment

in the form of lease credits. These credits were part of the Original Lease

entered back in 2009 and exempted in FD 35251. CCR sought the original

lease credits in negotiations to afford CCR greater financial flexibility to,

among other things, improve the Line's infrastructure. At CCR's request, the amendment includes, among other things, a modification to the amount of the lease credits to standardize the credit that can be earned on every carload, which will further that same purpose. Pursuant to the Board's revised regulations concerning interchange commitments, CCR provides the following information.

- (i) The interchange commitment's affected interchange points are with NSR at a track in the vicinity of Von Wilier Yard in Cleveland, OH, and with the Wheeling & Lake Erie Railway Company at Falls Junction in Glenwillow, OH. However, the lease agreement governing the subject transaction does not prohibit CCR from interchanging with other carriers, and it does not set forth the terms under which CCR may interchange traffic with third party carriers. Indeed, CCR can and does regularly interchange traffic with Wheeling & Lake Erie Railway Company ("W&LE") at Falls Junction in Glenwillow, OH, and CCR's lease and operation of the Line, which physically connects with the line that CCR currently leases from W&LE, will not affect the existing CCR-W&LE relationship.
- (ii) The Amended Lease is being filed under seal with the Board per 49 CFR §1104.14(a).

- (iii) Shippers that currently use or have used the Line within the last two years include:

Ferrous Processing & Trade
Chapel Steel
Nestle
Sherwin Williams
Cleveland Track Material
Giant Eagle
JBI International

- (iv) The aggregate number of carloads the shippers in subsection (h) (1) (iii) originated or terminated in the last two years is being filed under deal with the Board per 49 CFR §1104.14(a). Provided under seal.
- (v) CCR certifies that it has provided notice of the proposed transaction and the interchange commitment to the shippers identified in subsection (h) (1) (iii). A copy of that certification is attached as Exhibit C.
- (vi) A list of third party railroads that could physically interchange with the Line to which this lease extension applies: W&LE
- (vii) An estimate of the difference between the lease payment with and without the interchange commitment is being filed under seal with the Board per 49 CFR §1104.14(a).

(viii) The attached caption summary notes the existence of an interchange commitment.

Caption Summary 49 CFR §1150.44

A caption summary in the prescribed form which identifies the existence of an interchange agreement is attached as Exhibit D.

Environmental and Historic Preservation Data 49 CFR §1105

Pursuant to 49 CFR §1105.6(c) (2), the proposed transaction is exempt from environmental review because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 49 CFR §1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John D. Heffner', with a long, sweeping horizontal stroke extending to the right.

John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Avenue, N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Counsel for Applicant

Dated: July 31, 2017

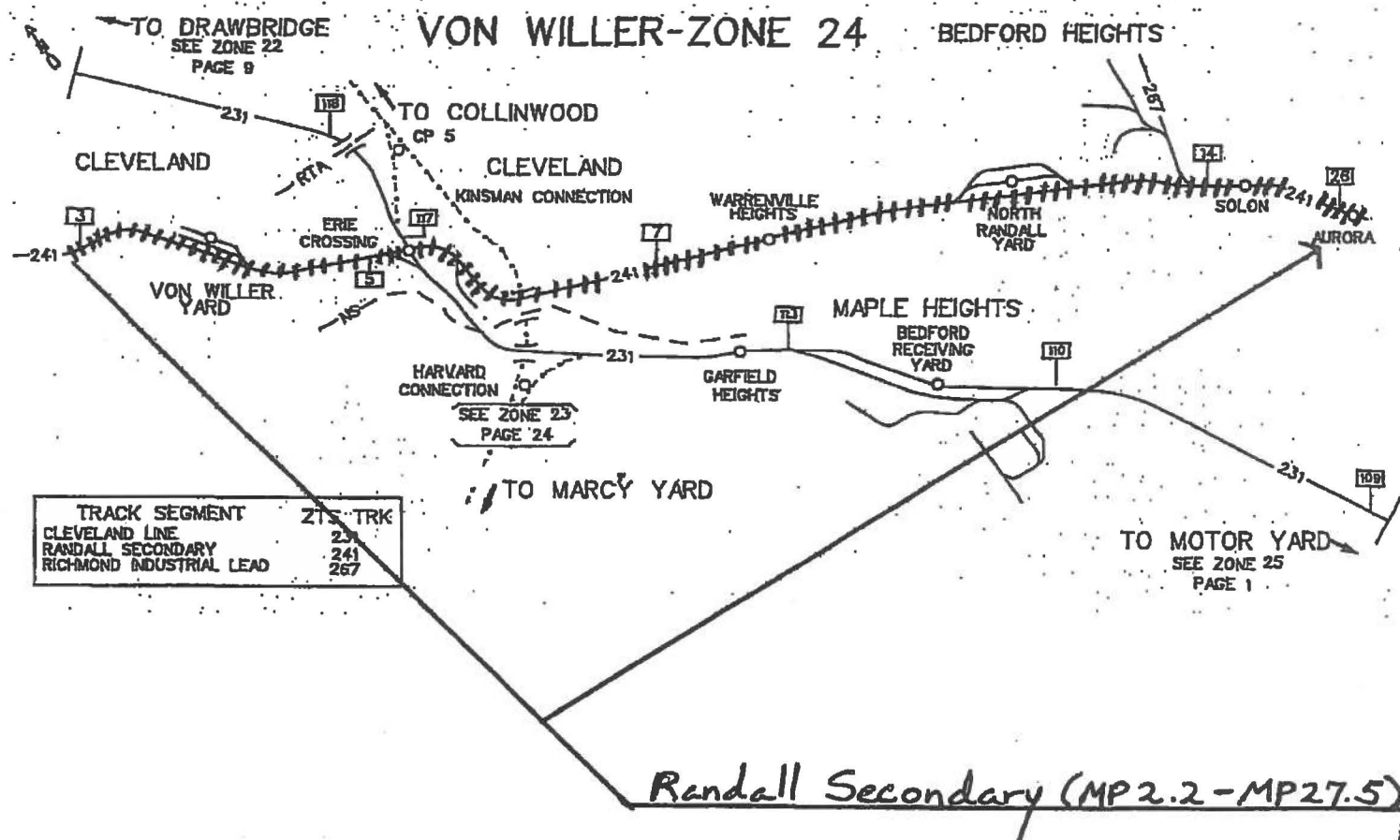


Exhibit B

Certification

I, William D Brown, certify that I am
Treasurer (state position) of Cleveland Commercial Railroad,
LLC (name of carrier) and that applicant's projected
revenues will not exceed \$5 million annually and will not result in the
applicant becoming a Class I or Class II carrier under the provisions of 49
CFR 1201(1-1).

Dated: July 10 __, 2017

Signature

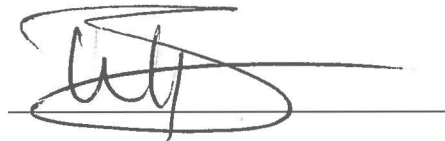
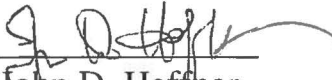
A handwritten signature in black ink, appearing to be 'W.D. Brown', written over a horizontal line.

EXHIBIT C

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certifies pursuant to 49 C.F.R. § 1150.43(h)(1)(iii) and 49 C.F.R. § 1150.43(h)(1)(v) that I served this 31st day of July 2017 by first class US Mail postage prepaid a copy of the foregoing Notice of Exemption of Cleveland Commercial Railroad Company, LLC, filed in FD 36133 on the following named customers who have been served by this subject line of railroad during the last two years:

Ferrous Processing & Trade
Chapel Steel
Nestle
Sherwin Williams
Cleveland Track Material
Giant Eagle
JBI International


John D. Heffner

**EXHIBIT D
CAPTION SUMMARY**

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An original and ten copies of all pleadings referring to FD 36133 must be filed with the Board and served on CCR’s representative: John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Avenue, N.W., Suite 717, Washington, D.C. 20036, (202) 742-8607. This notice is filed under 49 C.F.R. §

1150.41, *et. seq.* If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction. Petitions to stay must be filed no later than August 23, 2017, at least 7 days before this exemption becomes effective.

Board decisions and notices are available on its website at WWW.STB.GOV

Decided:
By the Board

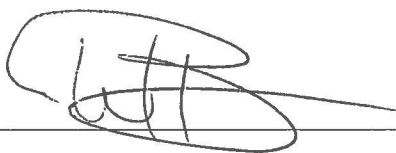
VERIFICATION

STATE OF Ohio)

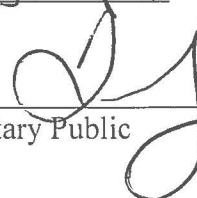
)

CITY OF Glenwillow)

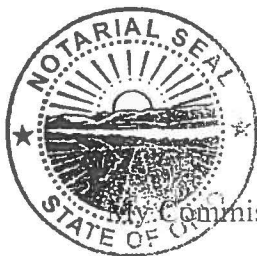
William D Brown _____, being duly sworn according to law, hereby deposes and states that (s)he holds the position of ___Treasurer_____ with applicant/petitioner, is authorized to make this Verification, had read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of (her)his knowledge, information, and belief.



Subscribed to and sworn to before me, a Notary Public, in and for the County of Cuyahoga
in the State of Ohio, this 11 day of July 2017



Notary Public



TERI L. CASEY
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
SEPT. 28, 2018

My Commission expires: