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FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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

MICHAEL J. BARRON, JR.
(312) 252-1511
mbarron@fletcher-sippel.com

ENTERED
Office of Proceedings
March 13, 2019
Part of
Public Record

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

March 12, 2019

VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024



Re: **Docket No. FD 36278**
Akron Barberton Cluster Railway Company – Acquisition
Exemption – Board of Portage County Commissioners

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Akron Barberton Cluster Railway Company, Pursuant to 49 C.F.R. § 1150.41**, dated March 12, 2019. Payment in the amount of \$2,000, representing the appropriate fee for the subject class exemption filing, and a compact disc containing the text of the Notice and the *Federal Register* caption summary in MS Word 2010 format are attached.

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

Respectfully submitted,

Michael J. Barron
Attorney for Akron Barberton Cluster
Railway Company

MIJB/tjh

Enclosures

FILED
March 13, 2019
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
March 13, 2019
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



DOCKET NO. FD 36278

**AKRON BARBERTON CLUSTER RAILWAY COMPANY
– ACQUISITION EXEMPTION –
BOARD OF PORTAGE COUNTY COMMISSIONERS**

**VERIFIED NOTICE OF EXEMPTION OF
AKRON BARBERTON CLUSTER RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1150.41**

Michael J. Barron
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEY FOR AKRON BARBERTON
CLUSTER RAILWAY COMPANY**

Dated: March 12, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36278

**AKRON BARBERTON CLUSTER RAILWAY COMPANY
– ACQUISITION EXEMPTION –
BOARD OF PORTAGE COUNTY COMMISSIONERS**



**VERIFIED NOTICE OF EXEMPTION OF
AKRON BARBERTON CLUSTER RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1150.41**

Pursuant to 49 C.F.R. § 1150.41, et seq., Akron Barberton Cluster Railway Company ("ABC"), a Class III rail carrier, hereby files this Verified Notice of Exemption to acquire the entire line of railroad owned by the Board of Portage County Commissioners ("BPC") in Portage County, Ohio, a total distance of 7.22 miles (the "Line"). Based on projected revenues for the Line, ABC expects to remain a Class III rail carrier after consummation of the transaction proposed herein.

In accordance with the requirements of 49 C.F.R. § 1150.43, ABC submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.43(a)

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

Akron Barberton Cluster Railway Company
43 Second Street NW
Barberton, OH 44203
(330) 745-4431

Applicant's Representative: 49 C.F.R. § 1150.43(b)

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

Michael J. Barron
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1511

Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)

On December 13, 2018, BPC and ABC executed a Purchase and Sale Agreement (“Agreement”) providing for ABC's acquisition of all of BPC’s right, title and interest in and to the Line between milepost 190.04 near Kent and milepost 182.82 near Ravenna, Ohio, subject to ABC’s receipt of appropriate authority or exemption from this Board.

Operation of the Property: 49 C.F.R. § 1150.43(d)

ABC will own and provide rail common carrier service as required on the Line. BPC currently owns the Line, and ABC operates it. See Portage Private Industrial Council, Inc., and Akron Barberton Cluster Railway Company – Acquisition and Operation Exemption – Consolidated Rail Corporation, Docket No. FD 32701 (ICC served June 7, 1995); Portage County Board of Commissioners – Acquisition Exemption – Portage Private Industry Council, Inc., Finance Docket No., Docket No. FD 34463 (STB served March 18, 2004).

Summary of the Transaction: 49 C.F.R. § 1150.43(e)

ABC is a Class III common carrier which owns, operates, or otherwise holds interests in approximately 71 route miles of rail line in the Akron, Ohio area (including Akron, Barberton, Rittman, Wadsworth, Kent and Ravenna, Ohio). ABC began operations in 1994 after acquiring certain Akron-area terminal trackage from Consolidated Rail Corporation and the Akron & Barberton Belt Railroad Company. Akron Barberton Cluster Railway Company – Acquisition and Operation Exemption – Certain Lines of Consolidated Rail Corporation, Docket No. FD 32537 (ICC served August 10, 1994 and January 12, 1996). ABC is a wholly-owned subsidiary of The Wheeling Corporation, and is affiliated with the Wheeling & Lake Erie

Railway Company. See Wheeling Corporation – Continuance in Control Exemption – Akron Barberton Cluster Railway Company, Docket No. FD 32538 (ICC served October 27, 1994 and January 12, 1996).

Pursuant to the Agreement, ABC will purchase the Line from the Portage County Board of Commissioners. The Line is a portion of the former Consolidated Rail Corporation's Freedom Secondary, between milepost 190.04 near Kent and milepost 182.82 near Ravenna, Ohio. ABC has provided rail service on the Line since 1995. See Portage Private Industrial Council, Inc., and Akron Barberton Cluster Railway Company – Acquisition and Operation Exemption – Consolidated Rail Corporation, Docket No. FD 32701 (ICC served June 7, 1995). ABC has been the owner and operator of a contiguous line of railroad since 1994. Akron Barberton Cluster Railway Company – Acquisition and Operation Exemption – Certain Lines of Consolidated Rail Corporation, Docket No. FD 32537 (ICC served August 10, 1994 and January 12, 1996).¹

¹ There has been prior confusion as to the precise point of demarcation between the rail line purchased by ABC from Conrail in 1994 and the Line subject to this Notice. In its 1994 acquisition, ABC sought authority to acquire and operate between mileposts 192.51 and 190.05 of Conrail's Freedom Secondary (among other lines acquired by ABC from Conrail at that time). Akron Barberton Cluster Railway Company – Acquisition and Operation Exemption – Certain Lines of Consolidated Rail Corporation, Docket No. FD 32537 (ICC served Aug. 10, 1994). The following year, Conrail sold the adjoining portion of the Freedom Secondary to the Portage Private Industry Council, Inc., with ABC securing authority to operate the Council's new track. Portage Private Industry Council, Inc. and Akron Barberton Cluster Railway Company – Acquisition and Operation Exemption – Consolidated Rail Corporation, Docket No. FD 32701 (ICC served Jun. 7, 1995). That track was identified in 1995 as extending from milepost 190.05 (the end milepost of ABC's purchase a year earlier) to milepost 182.82. Then, in 2004, the Council sold its track segment to the Portage County Board of Commissioners, with ABC remaining on the line as the operator. Portage County Board of Commissioners – Acquisition Exemption – Portage Private Industry Council, Inc., Docket No. FD 34463 (STB served Mar. 18, 2004). Although the Commissioners' filing originally sought acquisition authority commencing at milepost 190.05 (the same milepost as in 1995), an amendment was filed before the notice of exemption became effective, correcting that milepost designation from 190.05 to 190.04. The amendment filing included a "corrective deed" issued between Conrail and the Council in 1995, indicating that the 1995 sale to the Council legally had commenced at milepost

The seller of the Line, BPC, is a Class III common carrier by rail that purchased the Line in 2004. Portage County Board of Commissioners – Acquisition Exemption – Portage Private Industry Council, Inc., Docket No. FD 34463 (STB served March 18, 2004). The Line constitutes BPC's entire line of railroad.

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

Board of Portage County Commissioners
449 South Meridian Street
Ravenna, OH 44266

ABC intends to consummate its acquisition of the Line on or after April 11, 2019.

Map: 49 C.F.R. § 1150.43(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. § 1150.43(g)

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.43(g) is attached as Exhibit B to this Notice.

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

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

190.04 and not milepost 190.05, because in 1994 Conrail had already transferred the segment between mileposts 190.05 and 190.04 to ABC. The corrective deed makes clear that the revised milepost designation made the segment sold in 1995 contiguous to the line previously purchased by ABC in 1994. The discrepancy, which amounts to approximately 50 feet of track, has never indicated any gap between the ABC-owned track and the Council's (now the Commissioners') track segment, which instead were intended to be contiguous. In any event, ABC received authority to operate the .01-mile portion of track in 1995, and to the extent any further authority is deemed necessary for ABC to own the 0.1-mile segment, such authority is requested as part of the exemption invoked here.

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

Under 49 C.F.R. § 1105.6(c)(2), ABC's proposed acquisition 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), ABC's acquisition of 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 abandon or 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. § 1150.44

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

Respectfully submitted,

By: Michael J. Barron Jr.
Michael J. Barron
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR AKRON BARBERTON
CLUSTER RAILWAY COMPANY**

Dated: March 12, 2019

Docket No. FD 36278

Akron Barberton Cluster Railway Co. - Acquisition Exemption -
Board of Portage County Commissioners.

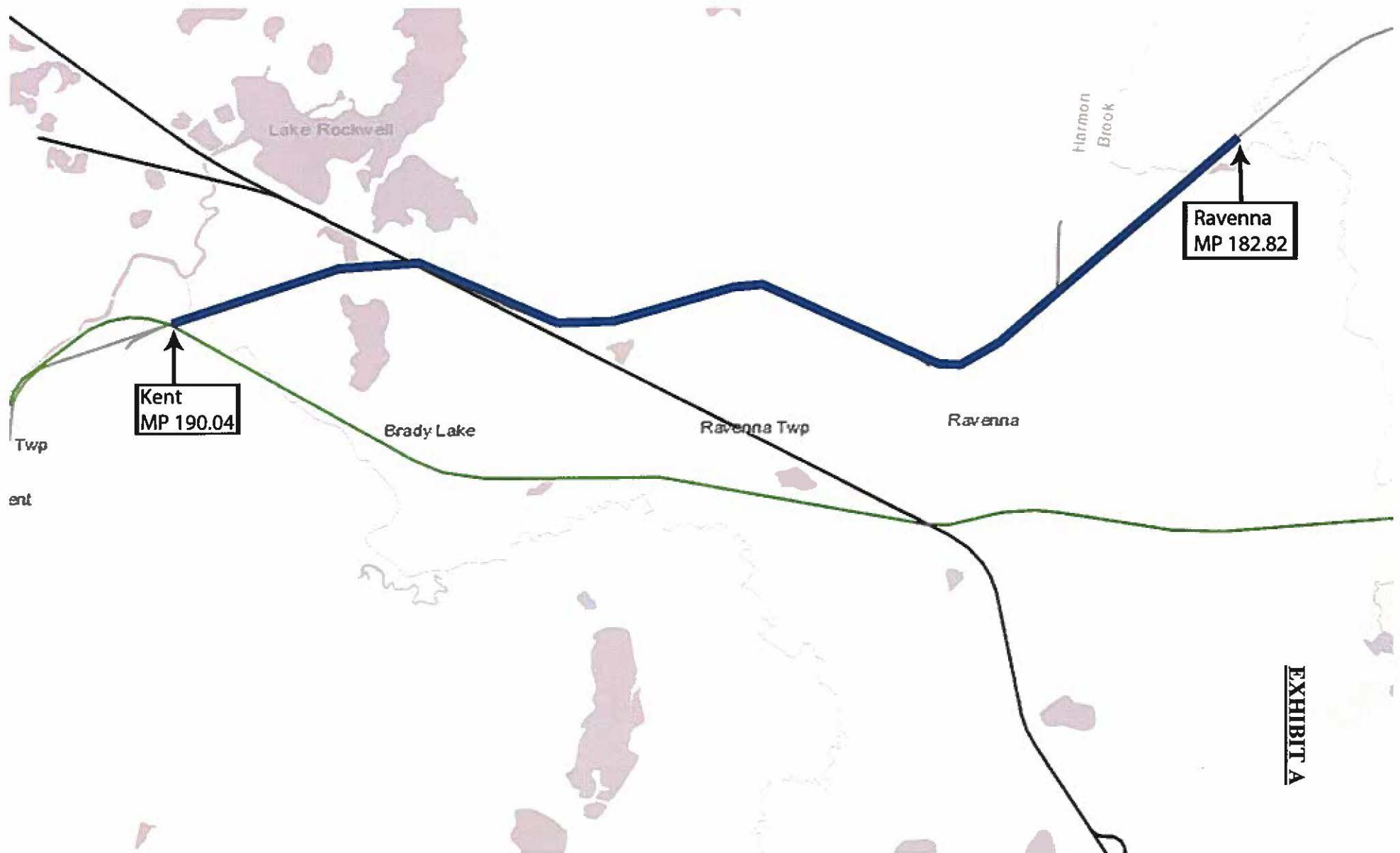


EXHIBIT A

EXHIBIT B

CERTIFICATION

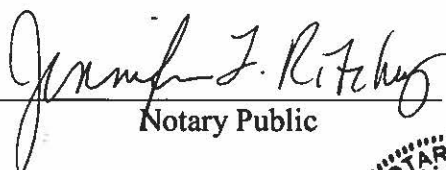
State of Ohio)
) SS:
County of Stark)

Jonathan Chastek, Executive Vice President, being duly sworn, hereby certifies that the projected annual rail revenues of Akron Barberton Cluster Railway Company as a result of the transaction proposed herein will not exceed \$5,000,000 and will not result in the creation of a Class II or a Class I rail carrier under the provisions of 49 C.F.R. § 1201 (1-1).



JONATHAN CHASTEK
EXECUTIVE VICE PRESIDENT

SUBSCRIBED AND SWORN TO
before me this 7th day
of March, 2019.



Notary Public

My Commission expires:



JENNIFER L. RITCHEY
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Wayne County
My Comm. Exp. 11/2/2023

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36278

**AKRON BARBERTON CLUSTER RAILWAY COMPANY
– ACQUISITION EXEMPTION –
BOARD OF PORTAGE COUNTY COMMISSIONERS**

Akron Barberton Cluster Railway Company ("ABC"), a Class III rail carrier, has filed a Verified Notice of Exemption to acquire the entire line of railroad of the Board of Portage County Commissioners ("the Line"), consisting of a contiguous line of railroad from milepost 190.04 near Kent and milepost 182.82 near Ravenna, Ohio. The total distance of the Line is approximately 7.22 miles.

ABC expects to consummate the proposed acquisition transaction on or after April 11, 2019.

Comments must be filed with the Board and served on:

Michael J. Barron
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-2832
(312) 252-1500

This Notice is filed under 49 C.F.R. § 1150.41. If this 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: March XX, 2019

By the Board

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

VERIFICATION

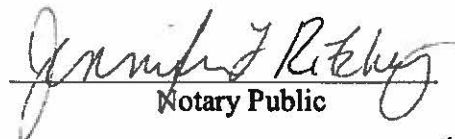
State of Ohio)
) SS:
County of Stark)

Jonathan Chastek, being duly sworn, deposes and says that he is Executive Vice President of Akron Barberton Cluster Railway Company, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



JONATHAN CHASTEK
EXECUTIVE VICE PRESIDENT

SUBSCRIBED AND SWORN TO
before me this 7th day
of March, 2019.



Notary Public

My Commission expires:



JENNIFER L. RITCHEY
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Wayne County
My Comm. Exp. 11/2/2023