

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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

THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

247234

ENTERED
Office of Proceedings
March 4, 2019
Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

Part of
Public Record

March 1, 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. AB-227 (Sub-No. 13X)**
Wheeling & Lake Erie Railway Company -- Discontinuance
of Service Exemption -- In Erie County, Ohio

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Wheeling & Lake Erie Railway Company Pursuant to 49 C.F.R. § 1152.50**, dated March 1, 2019. A check in the amount of \$4,200, representing the appropriate fee for this filing, is attached.

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 Wheeling & Lake Erie
Railway Company

TJL:tl

Enclosures

FILED
March 4, 2019
SURFACETRANSPORTATION BOARD

FEE RECEIVED
March 4, 2019
SURFACETRANSPORTATION BOARD

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-227 (SUB-NO. 13X)

WHEELING & LAKE ERIE RAILWAY COMPANY
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN ERIE COUNTY, OHIO



**VERIFIED NOTICE OF EXEMPTION OF
WHEELING & LAKE ERIE RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1152.50**

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

Alexander C. Jarvis
Vice President - Law & Government Relations
Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, Ohio 44613-1202
(330) 767-7250

**ATTORNEYS FOR WHEELING & LAKE ERIE
RAILWAY COMPANY**

Dated: March 1, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-227 (SUB-NO. 13X)

WHEELING & LAKE ERIE RAILWAY COMPANY
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN ERIE COUNTY, OHIO



**VERIFIED NOTICE OF EXEMPTION OF
WHEELING & LAKE ERIE RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1152.50**

Wheeling & Lake Erie Railway Company ("W&LE") hereby submits this Verified Notice of Exemption under 49 C.F.R. § 1152.50 for the discontinuance of W&LE's lease and operation of the rail-water dock facility owned by Norfolk Southern Railway Company ("NS") in Huron, Erie County, Ohio and the discontinuance of W&LE's related overhead trackage rights on NS's lines of railroad extending between Bellevue and Huron, Ohio, a distance of approximately 17.1 miles in Erie County, Ohio. A map showing the location of the dock facility and the related trackage rights to be discontinued is attached hereto as Exhibit A.

In accordance with the requirements of 49 C.F.R. § 1152.50(d)(2), W&LE submits the following information:

General Corporate Information: 49 C.F.R. § 1152.22(a)(1) - (2)

W&LE is a Class II common carrier by rail which owns, leases or operates approximately 840 miles of rail line in the states of Ohio, Pennsylvania, West Virginia and Maryland. W&LE's principal route extends from Connellsville, Pennsylvania through Pittsburgh, Pennsylvania and Brewster, Ohio to Bellevue, Ohio. W&LE began operations in May, 1990 after acquiring its core rail lines from a predecessor of NS. *Wheeling Acquisition*

Corporation -- Acquisition and Operation Exemption -- Lines of Norfolk and Western Railway Company, Docket No. FD 31591 (ICC served Feb. 6, 1990, May 7, 1990 and Dec. 28, 1990). W&LE is a subsidiary of The Wheeling Corporation, and is affiliated with the Akron Barberton Cluster Railway Company. *See Wheeling Corporation -- Continuance in Control Exemption -- Akron Barberton Cluster Railway Company*, Docket No. FD 32538 (ICC served Oct. 27, 1994 and Jan. 12, 1996).

The complete name and address of W&LE is:

Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, Ohio 44613-1202
(330) 767-3401

Relief Sought: 49 C.F.R. § 1152.22(a)(3)

Pursuant to the Board's class exemption for the discontinuance of service and trackage rights, codified at 49 C.F.R. § 1152.50(b), W&LE seeks to discontinue:

- 1) W&LE's lease and operation of the NS rail-water dock facility in Huron, Erie County, Ohio, consisting of approximately 27.6 acres of land, a 5,142-foot loop track, and approximately 2 miles of yard and support tracks in the dock area (the "Huron Dock"); and
- 2) W&LE's overhead trackage rights on NS's rail lines extending from approximately milepost B242 at Bellevue to approximately milepost B229 at Berlin Heights, and from milepost B232/SC2.61 at Shinrock (on the Bellevue-Berlin Heights segment) through milepost SC0.0/H10.7 at Huron Jct. to the Huron Dock connection at milepost H12.2 in Huron, a total distance of approximately 17.1 miles in Erie County, Ohio (the "Bellevue-Huron Trackage Rights").

W&LE leased the Huron Dock and acquired the related Bellevue-Huron Trackage Rights from the Norfolk and Western Railway Company ("N&W"), an NS predecessor,¹ in 1994. *Wheeling & Lake Erie Railway Company -- Lease and Operation Exemption -- Norfolk and Western Railway Company's Dock at Huron, OH*, Docket No. FD 32516 (ICC served Jun. 27, 1994); *Wheeling & Lake Erie Railway Company -- Trackage Rights Exemption -- Norfolk and Western Railway Company*, Docket No. FD 32525 (STB served Jul. 15, 1994). The overhead Bellevue-Huron Trackage Rights provided W&LE with access to the Huron Dock from the west end of W&LE's own line at Bellevue. Together, the related transactions permitted W&LE to handle iron ore traffic from the Great Lakes through the Huron Dock and onto W&LE's rail system.

In the 1998 CSX/NS-Conrail transaction, the STB imposed a condition requiring NS to extend W&LE's lease of, and trackage rights access to, the Huron Dock. *CSX Corp. et al. -- Control -- Conrail Inc. et al.*, 3 S.T.B. 196, 311, 392 (ordering paragraph 68), *aff'd sub nom. Erie-Niagara Rail Steering Comm. v. STB*, 247 F.3d 437 (2nd Cir. 2001). NS and W&LE subsequently entered into a settlement agreement providing for, *inter alia*, the extension of the Huron Dock lease and the Bellevue-Huron Trackage Rights, and the STB approved those arrangements. *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation [Petition to Approve Settlement Agreement and Exempt Embraced Transactions]*, Docket No. FD 33388 (Sub-No. 95)² (STB served Jan. 26, 2005) ("NS/W&LE Settlement") at 3-4.

¹ N&W was merged into NS on September 1, 1998. See *Norfolk Southern Railway Company -- Merger Exemption -- Norfolk and Western Railway Company*, Docket No. FD 33648 (STB served Aug. 31, 1998).

² Embracing Docket No. FD 32516 (Sub-No. 1), *Wheeling & Lake Erie Railway Company -- Lease and Operation Exemption -- Norfolk and Western Railway Company's Dock at Huron, OH* and Docket No. FD 32525 (Sub-No. 1), *Wheeling & Lake Erie Railway Company -- Trackage Rights Exemption -- Norfolk and Western Railway Company*.

No W&LE revenue traffic has moved via the Huron Dock and the Bellevue-Huron Trackage Rights in several years,³ and the extended agreements with NS governing the Huron Dock lease and the Bellevue-Huron Trackage Rights have now expired. The requested discontinuance exemptions will terminate W&LE's remaining common carrier status with respect to those rights, and permit NS to pursue abandonment and disposition of the Huron Dock property.

The discontinuance of W&LE's Bellevue-Huron Trackage Rights is unrelated to, and will have no effect on, W&LE's existing trackage rights on other NS rail lines from Bellevue to Parkertown, Ohio; from Bellevue to Flat Rock and Chatfield, Ohio; and from Bellevue to Toledo, Ohio. See *Wheeling Acquisition Corporation -- Acquisition and Operation Exemption -- Lines of Norfolk and Western Railway Company*, Docket No. FD 31591 (ICC served Feb. 6, 1990); *NS/W&LE Settlement* at 3, 6.

Map: 49 C.F.R. § 1152.22(a)(4)

A map showing the location of the Huron Dock and the Bellevue-Huron line as to which W&LE seeks to discontinue its leasehold and overhead trackage rights, respectively, is attached hereto as Exhibit A.

³ W&LE has received railroad ballast for its own use at the Huron Dock within the last two years. Such non-revenue handling of company material does not affect the availability of the class exemption for abandonment or discontinuance of out-of-service rail lines. *Dallas Area Rapid Transit -- Abandonment Exemption -- In Dallas County, TX*, Docket No. AB-439 (Sub-No. 5X) (STB served Apr. 13, 2000) at 2 (nonrevenue movements "would not qualify as traffic that would remove the line from coverage under the abandonment class exemption."); *Cambria and Indiana Railroad Company -- Abandonment Exemption -- In Cambria County, PA*, Docket No. AB-240 (Sub-No. 4X) (ICC served Nov. 23, 1994) at 1, n.1; see *Illinois Central Railroad Company -- Abandonment Exemption -- In Macon County, IL*, Docket No. AB-43 (Sub-No. 153X) (ICC served Feb. 21, 1991) at 2.

Applicant's Representative: 49 C.F.R. § 1152.22(a)(7)

Any correspondence regarding the proposed discontinuance should be sent to W&LE's representative at the following address:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208
(312) 252-1508

ZIP Codes Traversed: 49 C.F.R. § 1152.22(a)(8)

The Huron Dock is located in United States Postal Service ZIP Code 44839. The Bellevue-Huron Trackage Rights traverse United States Postal Service ZIP Codes 44839, 44814, 44846, 44847 and 44811.

Qualification for Class Exemption: 49 C.F.R. § 1152.50(b)

W&LE certifies that no W&LE revenue traffic has moved via the Huron Dock and the Bellevue-Huron Trackage Rights for at least two years and that any overhead traffic formerly handled via the dock and those trackage rights could be rerouted over other lines. W&LE further certifies that no formal complaint by a user of the Huron Dock or the Bellevue-Huron Trackage Rights (or a state or local governmental entity acting on behalf of such user) regarding W&LE cessation of service either is pending with the Board or any U.S. District Court or has been decided in favor of such complainant during the last two years. See Certification and Verification of Jonathan M. Chastek, attached hereto as Exhibit B.

Proposed Consummation Date: 49 C.F.R. § 1152.50(d)(2)

W&LE intends to consummate the discontinuance of the Huron Dock lease and the Bellevue-Huron Trackage Rights on or shortly after April 23, 2019.

Suitability for Other Public Purposes: 49 C.F.R. § 1152.22(e)(4)

Not applicable. Because this is a lease and trackage rights discontinuance proceeding and not an abandonment, public use conditions would be unavailable. *E.g., BNSF Railway Company -- Discontinuance of Trackage Rights Exemption -- In Kootenai County, ID*, Docket No. AB-6 (Sub-No. 466X) (STB served Mar. 4, 2009).

Notice Requirement: 49 C.F.R. §§ 1152.50(d)(2), 1105.11, 1105.12

A certification that the agencies designated in 49 C.F.R. § 1152.50(d)(1) have been served with written prefiling notice of the proposed discontinuance is attached hereto as Exhibit C. A certification that, in accordance with 49 C.F.R. § 1105.12, W&LE has published notice of the proposed discontinuance in a newspaper of general circulation in the county in which the Huron Dock is located and through which the Bellevue-Huron Trackage Rights pass is attached hereto as Exhibit D. Because preparation of an Environmental/Historic Report is not required for this proposed discontinuance of lease and trackage rights, the notice requirements of 49 C.F.R. §§ 1105.7(b) and 1105.11 are not applicable to this proceeding.

Labor Protection: 49 C.F.R. § 1152.50(d)(2)

The appropriate level of labor protection for the transaction proposed herein is that set forth in *Oregon Short Line R. Co. -- Abandonment -- Goshen*, 360 I.C.C. 91 (1979). No W&LE employees will be adversely affected by the proposed discontinuance.

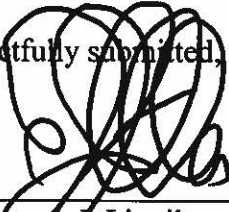
Environmental and Historic Preservation Data: 49 C.F.R. § 1105

W&LE's proposed discontinuance of the Huron Dock lease and the Bellevue-Huron Trackage Rights is exempt from environmental reporting requirements. Further STB authority is required for NS to abandon the Huron Dock or any portion of the Bellevue-Huron

rail line, and environmental matters related to any such abandonment would be considered at that time. *See* 49 C.F.R. § 1105.6(c)(6).

Under 49 C.F.R. § 1105.8(a) and (b), the proposed discontinuance also is exempt from historic preservation reporting requirements. Discontinuance will not result in the lease, transfer or sale of a railroad's line, sites or structures, and further STB approval is required for abandonment of the Huron Dock or any portion of the Bellevue-Huron rail line.

Respectfully submitted,

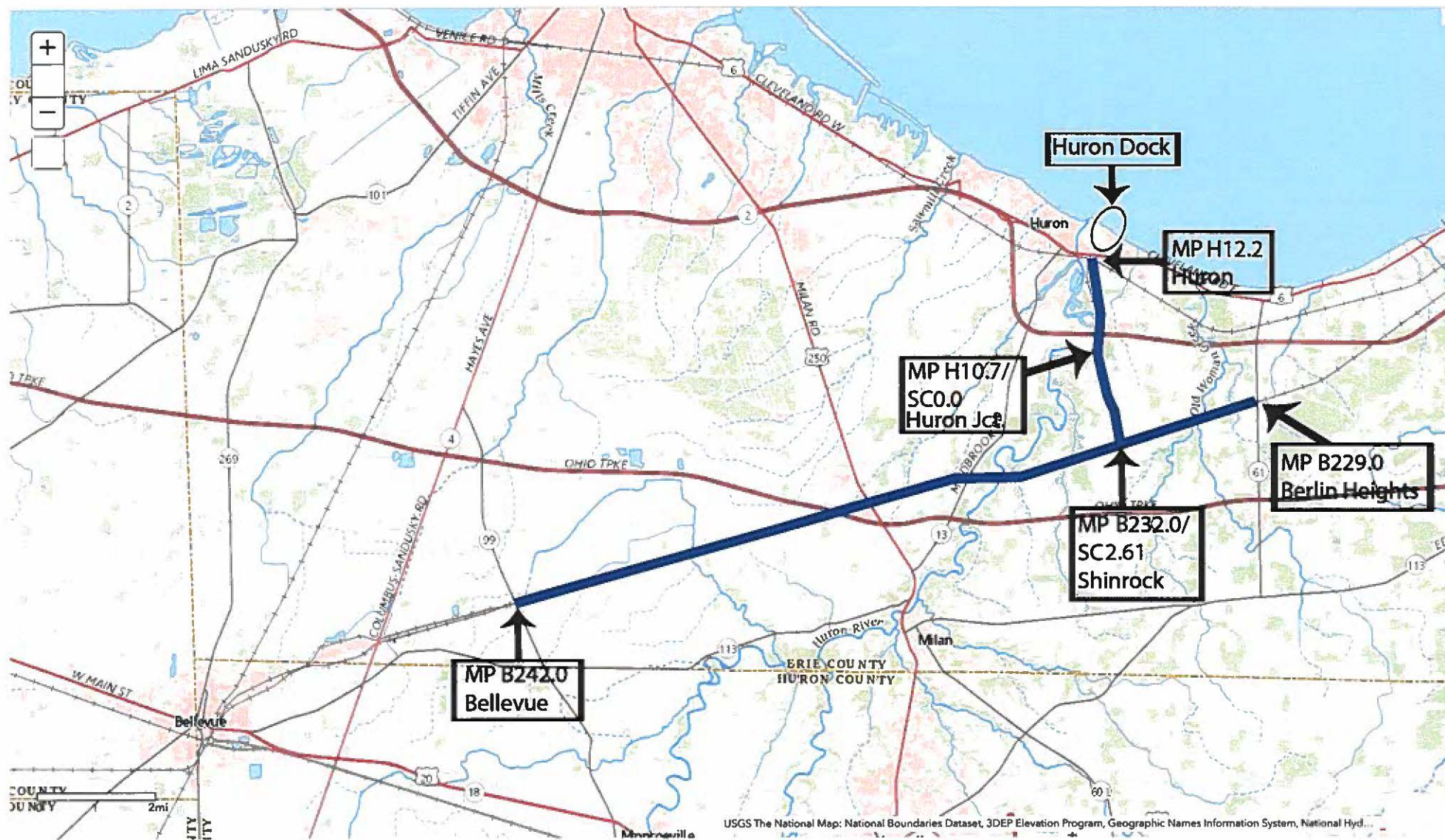
By: 

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

Alexander C. Jarvis
Vice President - Law & Government Relations
Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, Ohio 44613-1202
(330) 767-7250

**ATTORNEYS FOR WHEELING & LAKE ERIE
RAILWAY COMPANY**

Dated: March 1, 2019



CERTIFICATION AND VERIFICATION

State of Ohio)
) ss:
County of Stark)

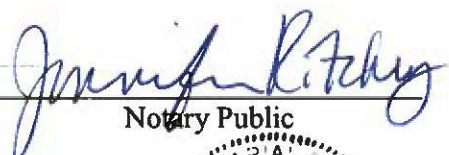
Jonathan M. Chastek, being duly sworn, deposes and says that he is Executive Vice President of Wheeling & Lake Erie Railway Company and that:

1) No W&LE revenue traffic has moved for at least two years via the Huron, Ohio rail-water dock facility leased by W&LE from Norfolk Southern Railway Company or W&LE's overhead trackage rights on the NS rail lines between Huron and Bellevue, Ohio; any W&LE overhead traffic formerly handled via the dock facility and trackage rights could be rerouted over other lines; and no formal complaint filed by a user of the dock facility or the trackage rights (or a state or local government entity acting on behalf of such user) regarding W&LE cessation of service either is pending with the Board or any U.S. District Court or has been decided in favor of such complainant during the last two years;

2) He has read the foregoing Notice of Exemption and knows the facts asserted therein, and the same are true as stated.


Jonathan M. Chastek

SUBSCRIBED AND SWORN TO
before me this 14th day
of February, 2019.


Notary Public
My Commission Expires 11/2/2023

JENNIFER L. RITCHIEY
NOTARY PUBLIC
STATE OF OHIO
Residence
Wayne County
My Comm. Exp. 11/2/2023

CERTIFICATE OF NOTIFICATION

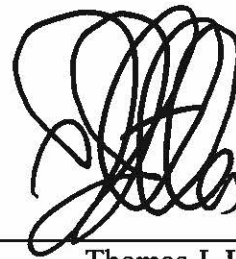
I hereby certify that on October 19, 2018, written notice in the form attached hereto and containing the information specified in 49 C.F.R. § 1152.50(d)(1) was served by first class mail, postage prepaid, upon the following agencies designated in that subsection:

Public Utilities Commission of Ohio
Transportation Department, Rail Division
180 East Broad Street, 4th Floor
Columbus, OH 43215-3793

Military Surface Deployment & Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Bldg. 1900W
Scott AFB, IL 62225-5006

Mr. Robert Ratcliffe
Chief, Conservation and Outdoor Recreation
National Park Service
1849 C Street, N.W., Org. Code 2220
Washington, DC 20240-0001

Ms. Victoria C. Christiansen
Chief of the Forest Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250-1111

A handwritten signature in black ink, appearing to be 'T. Litwiler', written over a horizontal line.

Thomas J. Litwiler

Dated: March 1, 2019

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

THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

October 19, 2018

Public Utilities Commission of Ohio
Transportation Department, Rail Division
180 East Broad Street, 4th Floor
Columbus, OH 43215-3793

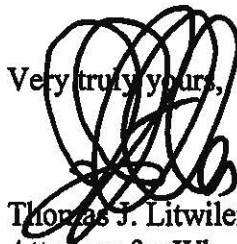
Re: **Docket No. AB-227 (Sub-No. 13X)**
Wheeling & Lake Erie Railway Company -- Discontinuance
of Service Exemption -- In Erie County, Ohio

Ladies and Gentlemen:

On or about October 30, 2018, Wheeling & Lake Erie Railway Company ("W&LE") expects to file with the Surface Transportation Board a notice of exemption for the discontinuance of 1) W&LE's lease and operation of the Norfolk Southern Railway Company (NS) rail-water dock facility in Huron, Erie County, Ohio, consisting of approximately 27.6 acres of land, a 5,142-foot loop track, and approximately 2 miles of yard and support tracks in the dock area; and 2) W&LE's related overhead trackage rights on NS's rail lines extending from approximately milepost B242 at Bellevue to approximately milepost B229 at Berlin Heights, and from milepost B232/SC2.61 at Shinrock (on the Bellevue-Berlin Heights segment) through milepost SC0.0/H10.7 at Huron Jct. to the Huron Dock connection at milepost H12.2 in Huron, a total distance of approximately 17.1 miles in Erie County, Ohio. The rail-water dock facility is located in United States Postal Service ZIP Code 44839, and the related trackage rights traverse ZIP Codes 44839, 44814, 44846, 44847 and 44811. W&LE's notice of exemption will be filed pursuant to 49 C.F.R. § 1152.50(b).

We are notifying you of the proposed discontinuance in accordance with the requirements of 49 C.F.R. § 1152.50(d)(1). Should you have any questions or need additional information regarding this proposed discontinuance, please feel free to contact me at 312-252-1508. Kind regards.

Very truly yours,



Thomas J. Litwiler
Attorney for Wheeling & Lake Erie
Railway Company

TJL:tl

CERTIFICATE OF PUBLICATION

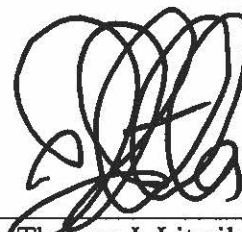
I hereby certify that:

1. I have contacted the following newspapers of general circulation for the counties in which the subject dock facility and trackage rights in this proceeding are located, and arranged for the publication of a Notice of Intent to Discontinue Lease and Trackage Rights, in the form attached hereto, pursuant to 49 C.F.R. § 1105.12:

Erie County, OH	-	<i>Sandusky Register</i>
		314 West Market Street
		Sandusky, OH 44870

2. The Notice of Intent to Discontinue Lease and Trackage Rights was published in the *Sandusky Register* on October 24, 2018.

3. A proof of publication from the *Sandusky Register* is attached.



Thomas J. Litwiler

Dated: March 1, 2019

Remit to:
Sandusky Register
314 W. Market Street
Sandusky, Ohio 44870

FLETCHER & SIPPEL, LLC
29 N. WACKER DR. SUITE 800
CHICAGO IL 60606

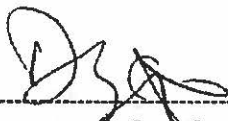
Customer # 1261845
Cost of Advertisement: 115.50
Ad # 572752
Fed ID # 34-4346500

Proof of Publication

I, Dave Baumgartner, do attest that I am the Advertising Director of the Sandusky Register, that said paper is a daily newspaper printed and has general circulation in Erie County, State of Ohio, and that the annexed advertisement was published in said paper on:

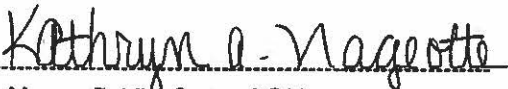
10/24/2018
LEGAL NOTICE NOTICE OF IN

LEGAL NOTICE
Notice of Intent to Discontinue Lease and Trackage Rights - Wheeling & Lake Erie Railway Company Wheeling & Lake Erie Railway Company (W&LE) gives notice that on or about October 30, 2018, it intends to file with the Surface Transportation Board, Washington, DC 20423, a notice of exemption under 49 C.F.R. 1152 Subpart F - Exempt Abandonments and Discontinuances permitting the discontinuance of 1) W&LE's lease and operation of the Norfolk Southern Railway Company (NS) rail-water dock facility in Huron, Erie County, Ohio, consisting of approximately 27.6 acres of land, a 5,142-foot loop track, and approximately 2 miles of yard and support tracks in the dock area; and 2) W&LE's related overhead trackage rights on NS's rail lines extending from approximately milepost B242 at Bellevue to approximately milepost B229 at Berlin Heights, and from milepost B232/SC2.61 at Shinrock (on the Bellevue-Berlin Heights segment) through milepost SC0.0/H10.7 at Huron Jct. to the Huron Dock connection at milepost H12.2 in Huron, a total distance of approximately 17.1 miles in Erie County, Ohio. The rail-water dock facility is located in United States Postal Service ZIP Code 44839, and the related trackage rights traverse United States Postal Service ZIP Codes 44839, 44814, 44846, 44847 and 44811. The proceeding will be docketed as No. AB-227 (Sub-No. 13X). The proposed discontinuance is exempt from the Board's



Dave Baumgartner

Subscribed in my presence and sworn to on October 24th, 2018



Notary Public, State of Ohio

Kathryn A. Nageotte
Notary Public - Ohio
My Commission Expires Aug. 01, 2019

environmental and historic reporting requirements. 49 C.F.R. 1105.8(c) and 1105.8(b). Interested persons may make inquiries regarding environmental matters by writing to the Office of Environmental Analysis, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423 or by calling that office at 202 245-0291.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Public use conditions and rail banking/trails use are not available in proceedings involving only a discontinuance and not an abandonment. An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423-0001 [see 49 C.F.R. 1104.1(a) and 1104.3(a)], and one copy must be served on W&LE's representative [see 49 C.F.R. 1104.12(a)]. Questions regarding offers of financial assistance or the Board's discontinuance procedures may be directed to the Board's Office of Public Assistance, Governmental Affairs & Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on W&LE's representative at the following address:

Thomas J. Litwiler, Esq.
Fletcher & Sippl LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500
October 24, 2018