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April 29, 2019

247625

VIA OVERNIGHT DELIVERY

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

ENTERED
Office of Proceedings
April 30, 2019
Part of
Public Record



Re: **Docket No. FD 36267**
Grand Trunk Western Railroad Company—
Trackage Rights Exemption — Norfolk Southern Railway Company
and Grand Elk Railroad LLC

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding is the original and ten copies of a **Verified Notice of Exemption of Grand Trunk Western Railroad Company Pursuant to 49 C.F.R. § 1180.2(d)(7)** (including the requisite number of maps required by 49 C.F.R. § 1180.6(a)(6)) and a **Motion for Protective Order of Grand Trunk Western Railroad Company**, each dated April 29, 2019. A check in the amount of \$1,300.00, representing the appropriate fee for this class exemption filing, is likewise enclosed.

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

FEE RECEIVED

April 30, 2019

SURFACE

TRANSPORTATION BOARD

BJS:bs

Enclosure

Respectfully submitted,

Bradon J. Smith
Attorney for Grand Trunk Western
Railroad Company

FILED

April 30, 2019
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. FD 36267

GRAND TRUNK WESTERN RAILROAD COMPANY
— TRACKAGE RIGHTS EXEMPTION —
NORFOLK SOUTHERN RAILWAY COMPANY AND GRAND ELK RAILROAD LLC

**VERIFIED NOTICE OF EXEMPTION OF
GRAND TRUNK WESTERN RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606
(312) 252-1516

**ATTORNEY FOR GRAND TRUNK
WESTERN RAILROAD COMPANY**

Dated: April 29, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36267

GRAND TRUNK WESTERN RAILROAD COMPANY
— TRACKAGE RIGHTS EXEMPTION —
NORFOLK SOUTHERN RAILWAY COMPANY AND GRAND ELK RAILROAD LLC



**VERIFIED NOTICE OF EXEMPTION OF
GRAND TRUNK WESTERN RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Grand Trunk Western Railroad Company (“GTW”), a Class I common carrier by rail, hereby files this verified notice of exemption (“the Notice”) under 49 C.F.R. § 1180.2(d)(7) for additional trackage rights on a line of railroad in Kalamazoo, Michigan, owned by Norfolk Southern Railway Company (“NSR”), and leased to Grand Elk Railroad LLC (“GDLK”).

In accordance with the notice requirements set forth at 49 C.F.R. § 1180.4(g), GTW submits the following information:

Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

GTW is a Class I common carrier railroad that, as is relevant here, operates via trackage rights over certain track in Kalamazoo that is owned by NSR, and that NSR, in turn, leases to GDLK. GTW’s existing, Kalamazoo-area trackage rights extend between Pavilion Junction (approximately milepost 1.30) and Miller Road (milepost 2.17), a distance of approximately 0.90 miles. These existing trackage rights operations are governed by an agreement dating from 1913.¹ Under a December 13, 2018 amendment to the aforementioned

¹ The grant of trackage right to GTW’s predecessor predates the Interstate Commerce Commission’s jurisdiction over trackage rights, and, as such, these existing rights do not require federal regulatory approval now. See Union Pacific Railroad Company — Petition for Declaratory Order and Preliminary Injunction, Docket No. FD 36197 (STB served Jun. 29, 2018), 2 n. 4.

1913 trackage rights agreement, NS and GDLK have agreed, to extend GTW's trackage rights from Miller Road (milepost 2.17) southward to Kilgore Road (milepost 2.67), a distance of approximately 1.50 miles, for the sole purpose of allowing GTW to use the siding positioned between Miller Road and Kilgore Road to run around its railroad equipment. See Exhibit 2, Recitals C and F and Provision 3.

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

Grand Trunk Western Railroad Company
17641 Ashland Ave.
Homewood, IL 60430
(708) 225-5900

Any questions concerning this Notice should be sent to GTW's representative at the following address:

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

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

GTW anticipates consummating this transaction upon the effective date of this Notice: on or about June 1, 2019.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The proposed trackage rights will afford GTW the ability to use the siding positioned between Miller Road and Kilgore Road to run around its railroad equipment to permit greater operating efficiency in its provision of common carrier service.

States in which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

GTW owns and operates property in the States of Michigan, Ohio, Indiana, and Illinois.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map of the rail line over which GTW proposes to acquire the subject trackage rights is attached hereto as Exhibit 1.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A redacted copy of the aforementioned December 13, 2018 Amendment to the 1913 Trackage Rights Agreement, which will govern GTW's additional trackage rights between Miller Road and Kilgore Road is attached hereto as Exhibit 2. An un-redacted copy is being filed with the Board subject to a Motion for a Protective Order filed contemporaneously with the Notice.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

As a condition to this exemption, GTW agrees to the employee protective conditions established in *Norfolk and Western Ry. Co.—Trackage Rights — BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), although GTW does not anticipate that any railroad employees of any of the involved carriers would be adversely affected by the subject trackage rights arrangement.

Caption Summary: 49 C.F.R. § 1180.4(g)(2)(i)

A caption summary is attached hereto as Exhibit 3.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(4), the proposed trackage rights transaction is exempt from environmental reporting requirements. Similarly, under 49 C.F.R. § 1105.8(b)(3), the proposed trackage rights transaction also is exempt from historic preservation reporting requirements.

Respectfully submitted,

A handwritten signature in blue ink that reads "Bradon J. Smith". The signature is written in a cursive, flowing style.

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

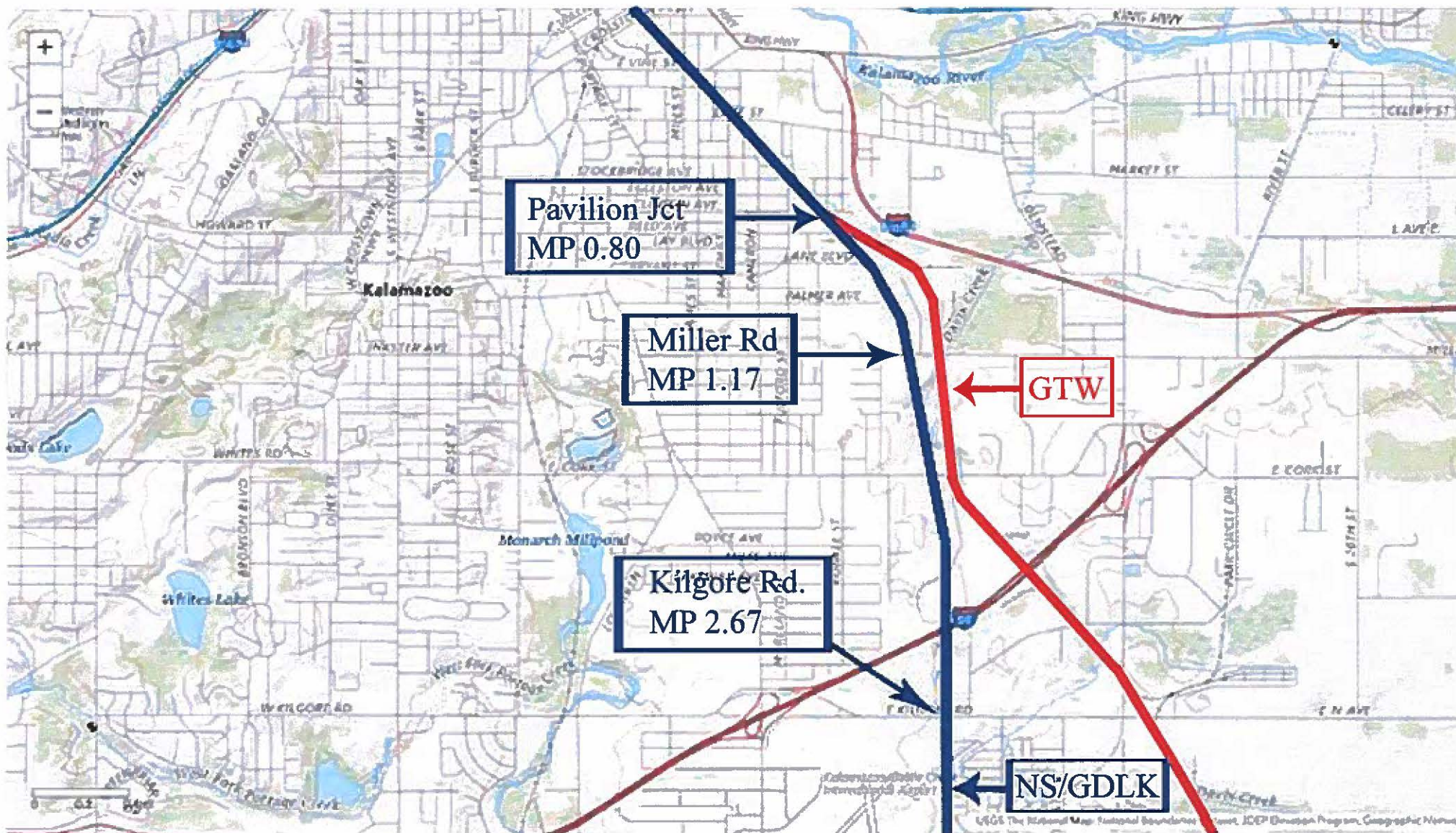
**ATTORNEY FOR GRAND TRUNK WESTERN
RAILROAD COMPANY**

Dated: April 29, 2019

Exhibit 1

Docket No. FD 36267

Grand Trunk Western Railroad Company - Trackage Rights Exemption - Norfolk Southern Railway Company and Grand Elk Railroad LLC



**AMENDMENT TO THE
1913 TRACKAGE RIGHTS AGREEMENT
AND THE 1982 CONSOLIDATION AGREEMENT**

THIS AMENDMENT ("Amendment") to the 1913 Trackage Rights Agreement and the 1982 Consolidation Agreement is entered into and effective as of this 13th day of DECEMBER, 2018 (hereinafter referred to as the "Effective Date**"), by and between the **GRAND TRUNK WESTERN RAILROAD COMPANY ("GTW")** (hereinafter collectively referred to as "**CN**" or "**User**"); and **GRAND ELK RAILROAD, L.L.C.**, (hereinafter referred to as "**GDLK**" or "**Owner**").**

RECITALS

- A. The Grand Rapids and Indiana Railway Company, predecessor of Norfolk Southern Railway Company ("NSR") and the Chicago & Kalamazoo Terminal Railroad Company, predecessor of CN, entered into an Agreement, as amended, dated July 1, 1913, as amended, (the "1913 Agreement") wherein NSR granted to CN the right to use certain NSR trackage (the "NSR Line") to reach certain specified customers in Kalamazoo, MI;
- B. By agreement dated July 31, 1982 (the "1982 Agreement"), NSR and CN consolidated operations in the greater Kalamazoo, MI region onto certain jointly used lines of railroad, which among other things changed CN's point of ingress/egress to the NSR Line and changed the compensation calculations contained in the 1913 Agreement;
- C. Additionally, the 1982 Agreement, among other things, clarified that the southern boundary of the rights granted in the 1913 Agreement was the location of the grade-separated highway crossing of the NSR Line and Miller Road in Kalamazoo, MI, but in no way changed, expanded, or contracted said southern boundary;
- D. Pursuant to an assignment and assumption agreement dated March 5, 2009 between NSR and the GDLK, GDLK succeeded to NSR's position in the 1913 Agreement and the 1982 Agreement as lessee of materially all of NSR's properties and assets in and around the Kalamazoo, MI region, including the NSR Line governed by the 1913 Agreement and the 1982 Agreement;
- E. CN has requested, and GDLK is willing to grant, amendment of the 1913 Agreement solely for the purpose of granting CN rights over additional trackage to permit CN to run around railroad equipment at a siding south of Miller Road, and for no other purpose whatsoever;
- F. CN has requested and GDLK consents to amendment of the 1982 Agreement solely for the purpose of changing the named southern boundary of the rights granted in the 1913 Agreement to conform with the amendment to the 1913 Agreement contemplated herein, and to change the compensation terms contained in the 1982 Agreement for use of those rights;

- G. Notwithstanding the provision in GDLK's Lease Agreement dated December 29, 2008, with NSR that prohibits GDLK from granting rights of any nature over the properties covered by such Lease Agreement, including the NSR Line, NSR is willing to consent to GDLK's grant of the rights covered herein.

NOW, THEREFORE, for and in consideration of the covenants, obligations, and agreements hereafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, GDLK and CN covenant and agree to amend and modify the 1913 Agreement and the 1982 Agreement as of the Effective Date as follows:

1. The following is hereby added as a new Section (3A) to the 1913 Agreement, in full recognition that the southern boundary of the trackage rights granted in the 1913 Agreement is Miller Rd. (as referenced in the 1982 Agreement):

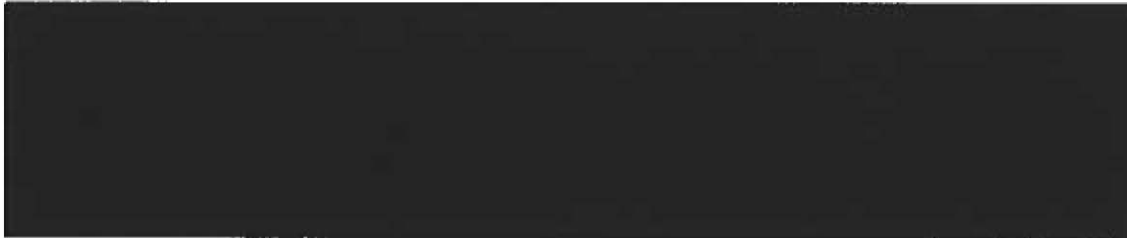
"Section (3A)

- i. GDLK grants to CN the right to use the tracks extending from Miller Road to Kilgore Road as depicted on Exhibit A, attached hereto and made a part hereof. The extended rights between Miller Road and Kilgore Road are granted for the sole purpose of allowing CN to use the siding positioned between Miller Road and Kilgore Road (as generally depicted on Exhibit A to Amendment No. 1 to this agreement, the "Run-Around Track") to run around their railroad equipment. Any grant of commercial access to customers north of Miller Road under this agreement does not extend south of Miller Road, and CN is explicitly prohibited from providing freight rail service to any customer, siding, team or house track, transload facility, auto facility, or any other shipper/receiver location of any kind on the NSR Line between Miller Road and Kilgore Road.
- ii. CN shall not set out, pick up or store any equipment on the NSR Line between Miller Road and Kilgore Road.
- iii. Neither CN nor GDLK shall be permitted to store cars, park trains, otherwise occupy the NSR Line between Miller Road and Kilgore Road, including the Run-Around Track, in any manner inconsistent with either party's ability to utilize the Run-Around Track to run around railroad equipment. Notwithstanding the forgoing, GDLK, but not CN, shall be permitted to use the NSR Line between Miller Road and Kilgore Road, including the Run-Around Track, to serve customers."

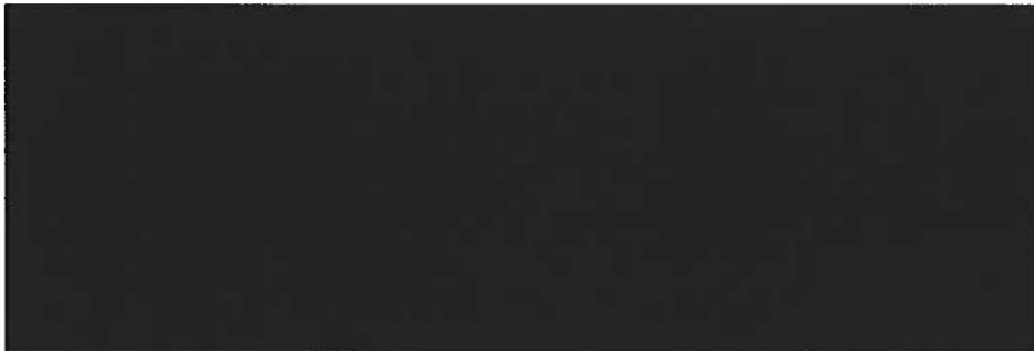
2.



**EXHIBIT 2
PUBLIC COPY**



3. In Section 1(d) of the 1982 Agreement, the words "Miller Road" are hereby deleted and replaced with "Kilgore Road (provided that use of the tracks extending from Miller Road to Kilgore Road is subject to the express limitations of Section 3(A) of the 1913 Agreement)."
4. The "Trackage Charges" table within Section 4(a) of the 1982 Agreement are hereby modified as follows, with said End Point X understood to be Kilgore Rd as the southern boundary of the rights granted in the 1913 Agreement:



5. 
6. Except as expressly modified by this Amendment, all terms, covenants, provisions, and conditions of the 1913 Agreement and the 1982 Agreement, each as previously modified and amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have entered into this Amendment as of the Effective Date.

GRAND ELK RAILROAD, L.L.C.:

By: 

Name: DAMIEN CAMPBELL

Its: GENERAL MANAGER

GRAND TRUNK WESTERN

EXHIBIT 2
PUBLIC COPY

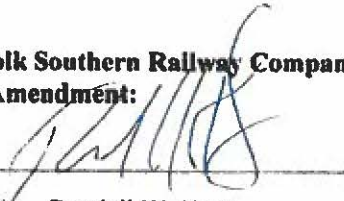
RAILROAD COMPANY

By: 

Name: Michael Matteucci

Its: Region Director
Contracts & Administration

Norfolk Southern Railway Company has reviewed and consents to GDLK's entrance into this Amendment:

By: 

Name: Randall W. Hunt

Its: Director Joint Facilities

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36267

**GRAND TRUNK WESTERN RAILROAD COMPANY
— TRACKAGE RIGHTS EXEMPTION —
NORFOLK SOUTHERN RAILWAY COMPANY AND GRAND ELK RAILROAD LLC**

Pursuant to a written amendment agreement dated December 13, 2018, Norfolk Southern Railway Company and Grand Elk Railroad LLC have agreed to extend trackage rights to Grand Trunk Western Railroad Company over a railroad line in Kalamazoo, Michigan, extending between Miller Road (milepost 2.17) and Kilgore Road (milepost 3.67), a distance of approximately 1.5 route miles, for the sole purpose of allowing GTW to use the siding positioned between Miller Road and Kilgore Road to run around its railroad equipment.

This notice is filed under § 1180.2(d)(7). 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 stay the transaction.

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

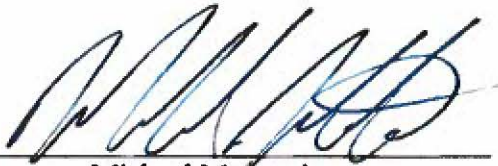
Dated:

By the Board. [Insert Name], Director, Office of Proceedings.

VERIFICATION

State of Illinois)
) ss:
Cook County)

Michael Matteuci, being duly sworn, deposes and says that he is Regional Director of Contracts and Administration for the Grand Trunk Western Railroad Company, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Michael Matteuci

SUBSCRIBED AND SWORN TO
before me this 23rd day
of April, 2019.



