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SERVICE DATE – MAY 29, 2009

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35251]

Cleveland Commercial Railroad Company, LLC–Lease and Operation Exemption–
Norfolk Southern Railway Company

Cleveland Commercial Railroad Company, LLC (CCR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and to operate, pursuant to a lease agreement (Agreement) entered into on May 13, 2009, with Norfolk Southern Railway Company (NSR), approximately 25.3 miles of NSR's rail line between milepost RH 2.2+/- at Cleveland, OH, and milepost RH 27.5+/- at Aurora, OH.

CCR states that it will interchange traffic with NSR at a track in the vicinity of Von Willer Yard in Cleveland. CCR also states that it interchanges traffic with the Wheeling & Lake Erie Railway Company (W&LE) at Falls Junction in Glenwillow, OH, and that CCR's lease and operation of the subject line, which physically connects with the line that CCR currently leases from W&LE, will not affect the existing CCR and W&LE relationship.¹

CCR states that it does not believe that the Agreement contains an interchange commitment that would impede CCR's ability to interchange with third party carriers.

¹ See Cleveland Commercial Railroad Company, LLC–Change in Operators Exemption–Wheeling & Lake Erie Railway Company, STB Finance Docket No. 34521 (STB served Aug. 6, 2004).

See 49 CFR 1150.43(h). According to CCR, the Agreement does contain a standard rental credit provision, which CCR sought in negotiations to afford it greater financial flexibility to, among other things, improve the line's infrastructure. To ensure adherence to 49 CFR 1150.43(h) for transactions involving interchange commitments, CCR concurrently has filed with its notice a complete version of the Agreement, marked "highly confidential" and submitted under seal pursuant to 49 CFR 1104.14(a).

CCR certifies that its projected annual revenues as a result of the transaction will not result in CCR becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

CCR states that it expects to consummate the transaction on or after June 15, 2009. The earliest this transaction may be consummated is the June 14, 2009 effective date of the exemption (30 days after the exemption was filed).

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term "solid waste" is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified 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 effectiveness of the exemption. Petitions for stay must be filed no later than June 5, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35251, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Baker & Miller, PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037.

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

Decided: May 21, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan

Acting Secretary