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Thomas J. Litwiler
(312) 540-9440
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June 12, 2003

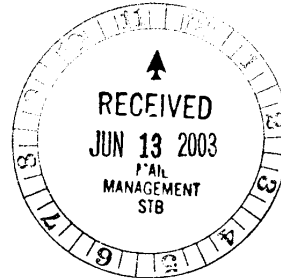
VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

FEE RECEIVED

JUN 13 2003

**SURFACE
TRANSPORTATION BOARD**



Re: **Finance Docket No. 34362**
Akron Barberton Cluster Railway Company --
Lease Exemption -- Metro Regional Transit Authority

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption of Akron Barberton Cluster Railway Company Pursuant to 49 C.F.R. § 1150.42**, dated June 12, 2003. A check in the amount of \$1,300.00, representing the appropriate fee for this filing, and a 3.5-inch computer diskette containing the text of the Notice and the *Federal Register* caption summary in MS Word 2000 format are attached.

One extra copy of this transmittal letter and of the Notice also are enclosed. I would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope.

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 Akron Barberton Cluster
Railway Company

TJL:tl

Enclosures

FILED

JUN 13 2003

**SURFACE
TRANSPORTATION BOARD**

ENTERED
Office of Proceedings

JUN 13 2003

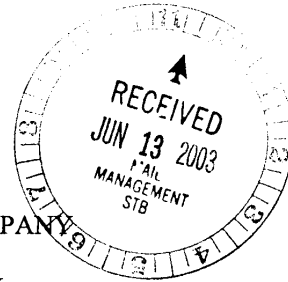
**Part of
Public Record**

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34362

AKRON BARBERTON CLUSTER RAILWAY COMPANY
-- LEASE EXEMPTION --
METRO REGIONAL TRANSIT AUTHORITY



FEE RECEIVED

JUN 13 2003

SURFACE
TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION
OF
AKRON BARBERTON CLUSTER RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1150.42

FILED

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TRANSPORTATION BOARD

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Public Record

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
Two Prudential Plaza, Suite 3125
180 North Stetson Avenue
Chicago, Illinois 60601-6721
(312) 540-0500

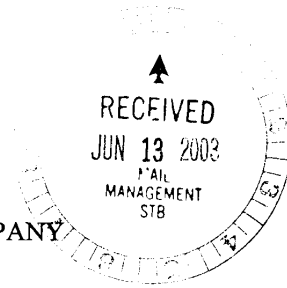
ATTORNEYS FOR AKRON BARBERTON
CLUSTER RAILWAY COMPANY

Dated: June 12, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34362

AKRON BARBERTON CLUSTER RAILWAY COMPANY
-- LEASE EXEMPTION --
METRO REGIONAL TRANSIT AUTHORITY



**VERIFIED NOTICE OF EXEMPTION
OF
AKRON BARBERTON CLUSTER RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1150.42**

Akron Barberton Cluster Railway Company ("ABC"), a Class III switching and terminal railroad, hereby files this notice of exemption under 49 C.F.R. § 1150.41, *et seq.*, to lease from Metro Regional Transit Authority ("METRO") the existing rail freight operating easement (the "Freight Easement") on a 6.72-mile rail line extending from Akron to Krumroy, Ohio (the "Akron-Krumroy Line"). METRO is concurrently acquiring the Freight Easement from CSX Transportation, Inc. ("CSXT"), the current freight carrier on the Akron-Krumroy Line, and ABC will replace CSXT in providing all rail freight service on the line.

Based on projected revenues for the Akron-Krumroy Line, ABC expects to remain within the revenue thresholds for Class III rail carriers.

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 44203-2642
(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:

William C. Sippel
Fletcher & Sippel LLC
Two Prudential Plaza, Suite 3125
180 North Stetson Avenue
Chicago, Illinois 60601-6721
(312) 540-0500

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

ABC and METRO expect shortly to execute a Freight Operations Lease Agreement providing for ABC's lease of the Freight Easement from METRO and the coordination of freight and passenger rail operations on the Akron-Krumroy Line. Pursuant to a Purchase and Sale Agreement between METRO and CSXT, METRO will beforehand acquire all of CSXT's right, title and interest in and to the Freight Easement.

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

ABC will conduct all rail freight operations on the Akron-Krumroy Line, and will provide service as a neutral terminal switching carrier between industries on the Line and connecting line-haul carriers in Akron/Barberton, Ohio.

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

ABC is a Class III switching and terminal rail 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, Finance Docket No. 32537 (ICC served August 10, 1994 and January 12, 1996). ABC is a subsidiary of The Wheeling Corporation, and is affiliated with the Wheeling & Lake Erie Railway Company ("W&LE"). See Wheeling Corporation -- Continuance in Control Exemption -- Akron Barberton Cluster Railway Company, Finance Docket No. 32538 (ICC served October 27, 1994 and January 12, 1996).

Pursuant to the Freight Operations Lease Agreement to be executed by ABC and METRO, ABC will acquire by lease the existing rail freight operating easement on the Akron-Krumroy Line, extending from milepost 40.42 in Akron, Ohio to milepost 33.70 in Krumroy, Ohio, a distance of approximately 6.72 miles. Immediately prior to consummation of the lease transaction, METRO will acquire the Freight Easement from CSXT.¹ The Freight Easement was initially created and retained by CSXT when CSXT sold the assets comprising the Akron-Krumroy Line to METRO in 2000. See Metro Regional Transit Authority -- Acquisition

¹ METRO is filing a notice of exemption pursuant to 49 C.F.R. § 1150.32 to acquire the Akron-Krumroy Line Freight Easement in Finance Docket No. 34361, Metro Regional Transit Authority -- Acquisition Exemption -- Certain Assets of CSX Transportation, Inc.

Exemption -- Certain Assets of CSX Transportation, Inc., Finance Docket No. 33838 (STB served June 23, 2000).²

ABC will provide rail freight service between industries on the Akron-Krumroy Line and connecting line-haul carriers (W&LE and CSXT) in Akron/Barberton, Ohio. While METRO, as the owner and lessor of the Freight Easement, will retain a residual common carrier obligation on the Akron-Krumroy Line, METRO will not operate any rail freight service on the line.

The complete name and address of the carrier leasing the Freight Easement on the Akron-Krumroy Line to ABC is as follows:

Metro Regional Transit Authority
416 Kenmore Boulevard
Akron, OH 44301

ABC intends to consummate its lease of the Akron-Krumroy Line Freight Easement on or shortly after June 20, 2003.

² Through a motion to dismiss that remains pending in Finance Docket No. 33838, METRO has sought confirmation under Maine DOT -- Acq. Exempt. -- Maine Central R. Co., 8 I.C.C.2d 835 (1991) and its progeny that the acquisition of the assets of the Akron-Krumroy Line (and additional trackage extending south from Krumroy to Canton, Ohio) in 2000 did not -- given the freight easement retained by CSXT -- render METRO a carrier. ABC's affiliate W&LE initially opposed the motion to dismiss in Finance Docket No. 33838, but is expected to withdraw that opposition shortly. Earlier this year, METRO acquired the assets of another, unrelated Akron-area rail line (owned by ABC) and has similarly sought a Maine DOT determination that such transaction did not render METRO a carrier. See Metro Regional Transit Authority -- Acquisition Exemption -- Certain Assets of Akron Barberton Cluster Railway Company, Finance Docket No. 34338 (STB served May 8, 2003). ABC understands that METRO will not file a Maine DOT motion to dismiss with respect to its current notice of exemption in Finance Docket No. 34361 to acquire the Akron-Krumroy Line Freight Easement, and will become a carrier as a result of that transaction.

Map: 49 C.F.R. § 1150.43(f)

A map showing the Akron-Krumroy 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.

Advance Notice: 49 C.F.R. § 1150.42(e)

The projected annual operating revenue of ABC does not exceed \$5 million, and accordingly the advance notice requirements of 49 C.F.R. § 1150.42(e) are not applicable to this transaction. See Exhibit B hereto.

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

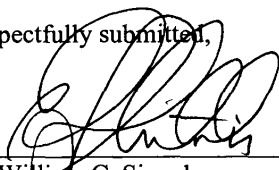
Under 49 C.F.R. § 1105.6(c)(2), ABC's proposed lease of the Akron-Krumroy Line Freight Easement is exempt from environmental reporting requirements. The proposed acquisition will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), ABC's proposed acquisition by lease of the Akron-Krumroy Line Freight Easement also is exempt from historic preservation reporting requirements. ABC's acquisition of the Freight Easement is for the purpose of continued rail operations. Further Surface Transportation Board approval is required to 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: 

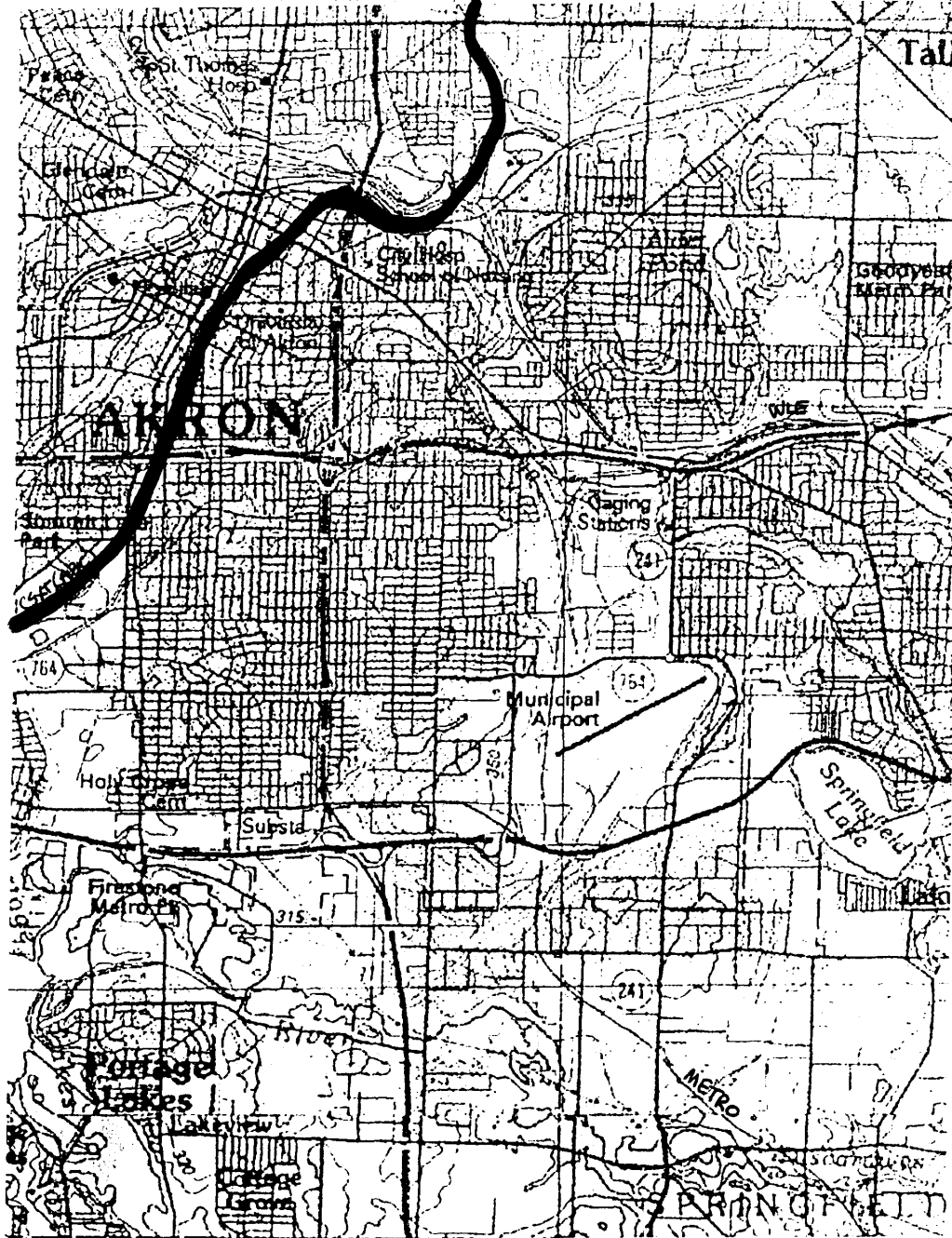
William C. Sippel
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Chicago, Illinois 60601-6721
(312) 540-0500

**ATTORNEYS FOR AKRON BARBERTON
CLUSTER RAILWAY COMPANY**

Dated: June 12, 2003

EXHIBIT A

USGS Akron, Ohio, United States



CSXT (ABC)

WLE

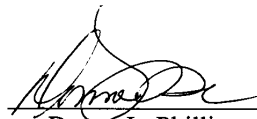
FREIGHT EASEMENT TO BE LEASED TO ABC

EXHIBIT B

CERTIFICATION

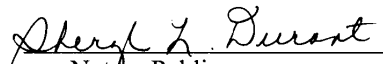
State of Ohio)
) SS:
County of Stark)

Donna L Phillips, being duly sworn, does hereby certify that the projected annual rail revenue of Akron Barberton Cluster Railway Company exceeds neither \$5 million nor that which would make it a Class II carrier under the provisions of 49 C.F.R. § 1201 (1-1).



Donna L. Phillips
Controller

Subscribed and sworn to
before me this 11th day of
June, 2003.



Notary Public

My Commissions expires:
SHERYL L. DURANT
NOTARY PUBLIC, STATE OF OHIO
NO. 24209
~~COMMISSION EXPIRES AUG. 30, 2004~~

EXHIBIT C
CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34362

AKRON BARBERTON CLUSTER RAILWAY COMPANY
-- LEASE EXEMPTION --
METRO REGIONAL TRANSIT AUTHORITY

Akron Barberton Cluster Railway Company ("ABC"), a Class III switching and terminal carrier, has filed a Notice of Exemption under 49 C.F.R. § 1150.41 et seq. to lease from Metro Regional Transit Authority the existing rail freight operating easement on a line of railroad extending from milepost 40.42 in Akron, Ohio to milepost 33.70 in Krumroy, Ohio, a distance of approximately 6.72 miles.

ABC expects to consummate its lease of the subject freight easement on or shortly after June 20, 2003.

Comments must be filed with the Board and served on:

William C. Sippel
Fletcher & Sippel LLC
Two Prudential Plaza, Suite 3125
180 North Stetson Avenue
Chicago, IL 60601-6721
(312) 540-0500

This Notice is filed under 49 C.F.R. § 1150.41. If the 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: June __, 2003

By the Board

Vernon A. Williams
Secretary

VERIFICATION

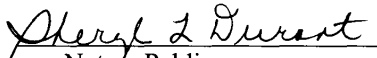
State of Ohio)
) SS:
County of Stark)

Donna L. Phillips, being duly sworn, deposes and says that she is Controller 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.



Donna L. Phillips
Controller

Subscribed and sworn to
before me this 11th day of
June, 2003.



Notary Public

SHERYL L. DURANT
NOTARY PUBLIC, STATE OF OHIO
NO. 24209
COMMISSION EXPIRES AUG. 30, 2004

My Commissions expires: _____