

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

WILLIAM C. SIPPEL
(312) 252-1505
wsippel@fletcher-sippel.com

212255

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

October 15, 2004

VIA FEDERAL EXPRESS

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

ENTERED
Office of Proceedings

OCT 18 2004

Part of
Public Record

OCT 18 2004
RECEIVED

Re: **Finance Docket No. 34567**
Arkansas Midland Railroad Company, Inc. -- Change in
Operator Exemption -- Line of Union Pacific Railroad Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Arkansas Midland Railroad Company, Inc. Pursuant to 49 C.F.R. § 1150.41(c)**, dated October 15, 2004. A check in the amount of \$1,400.00, 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 the Notice and this letter also are enclosed. I would request that you date-stamp those items 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.

Respectfully submitted,

FILED

OCT 18 2004

TRANSPORTATION BOARD
WCS:tjl

Enclosures


William C. Sippel
Attorney for Arkansas Midland
Railroad Company, Inc.

FREE RECEIVED
OCT 18 2004
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

OCT 18 2004
RECEIVED

FINANCE DOCKET NO. 34567

2/2255

FILED
OCT 18 2004
SURFACE
TRANSPORTATION BOARD

ARKANSAS MIDLAND RAILROAD COMPANY, INC.
-- CHANGE IN OPERATOR EXEMPTION --
LINE OF UNION PACIFIC RAILROAD COMPANY

**VERIFIED NOTICE OF EXEMPTION
OF
ARKANSAS MIDLAND RAILROAD COMPANY, INC.
PURSUANT TO 49 C.F.R. § 1150.41(c)**

FILE RECEIVED
OCT 18 2004
SURFACE
TRANSPORTATION BOARD

Office of Proceedings
OCT 18 2004
Part of
Public Record

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR ARKANSAS MIDLAND
RAILROAD COMPANY, INC.**

Dated: October 15, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34567

ARKANSAS MIDLAND RAILROAD COMPANY, INC.
-- CHANGE IN OPERATOR EXEMPTION --
LINE OF UNION PACIFIC RAILROAD COMPANY

**VERIFIED NOTICE OF EXEMPTION
OF
ARKANSAS MIDLAND RAILROAD COMPANY, INC.
PURSUANT TO 49 C.F.R. § 1150.41(c)**

Pursuant to 49 C.F.R. § 1150.41, et seq., Arkansas Midland Railroad Company, Inc. ("AKMD"), a Class III rail carrier, hereby files this Verified Notice of Exemption to lease and operate a line of railroad between Dermott and Warren, Arkansas (the "Warren Line") owned by Union Pacific Railroad Company ("UP") and previously leased to and operated by Delta Southern Railroad, Inc. ("DSRR"). AKMD also will acquire incidental trackage rights over UP's line between Dermott and McGehee, Arkansas. DSRR terminated its operations on the Warren Line in March, 2004. AKMD has operated the Warren Line and the related trackage rights since April, 2004 pursuant to emergency service authority issued by the Board under 49 U.S.C. § 11123(a) and 49 C.F.R. § 1146. Based on projected revenues for the Warren Line, AKMD expects to remain a Class III rail carrier after consummation of the transaction proposed herein.

This Notice is related to Finance Docket No. 34479, Arkansas Midland Railroad Company, Inc. -- Alternative Rail Service -- Line of Delta Southern Railroad, Inc., in which AKMD is concurrently seeking a final extension of its emergency service authority on the Warren Line pending the effectiveness of the exemption invoked by this Notice.

In accordance with the requirements of 49 C.F.R. § 1150.43, AKMD 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:

Arkansas Midland Railroad Company, Inc.
Jones Mill Industrial Park
314 Reynolds Road, Building 41
Malvern, AR 72104
(501) 844-4444

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

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

William C. Sippel
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
(312) 252-1500

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

On October 4, 2004, AKMD and UP executed a "First Supplement to Lease Agreement" providing for AKMD's lease of the Warren Line and acquisition of overhead trackage rights over UP's Dermott-McGehee line. The agreement supplements a prior lease agreement dated as of August 2, 2000 between AKMD and UP relating to certain rail lines in North Little Rock, Arkansas.

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

AKMD will operate and provide all rail common carrier service on the Warren Line pursuant to the lease transaction proposed herein. AKMD's operations will replace those of DSRR, the line's prior lessee and operator.

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

AKMD is a Class III common carrier by rail which (apart from the Warren Line) own or leases and operates approximately 60 miles of rail line at three locations in the State of Arkansas. See Arkansas Midland Railroad Company, Inc. -- Acquisition and Operation Exemption -- Missouri Pacific Railroad Company, Finance Docket No. 31999 (ICC served March 6, 1992); Arkansas Midland Railroad Company -- Lease and Operation Exemption -- Union Pacific Railroad Company, Finance Docket No. 33908 (STB served August 23, 2000). AKMD is a wholly-owned subsidiary of Pinsly Railroad Company, a non-carrier holding company which also controls four other Class III rail carriers in Florida and Massachusetts. See Pinsly Railroad Company -- Continuance in Control Exemption -- Arkansas Midland Railroad Company, Inc., Finance Docket No. 32001 (ICC served March 6, 1992).

Pursuant to the Board's decisions in Arkansas Midland Railroad Company, Inc. -- Alternative Rail Service -- Line of Delta Southern Railroad, Inc., Finance Docket No. 34479 (STB served March 19, 2004, May 4, 2004 and July 30, 2004), AKMD has provided rail service on the Warren Line since April 5, 2004 under the emergency service provisions of 49 U.S.C. § 11123(a) and 49 C.F.R. § 1146. DSRR and its predecessor had previously operated the Warren Line pursuant to a 1997 lease from UP. See Delta Southern Railroad Company -- Lease and Operation Exemption -- Union Pacific Railroad Company, Finance Docket No. 33451 (STB served September 23, 1997); Delta Southern Railroad, Inc. -- Acquisition and Operation Exemption --

Delta Southern Railroad Company, Finance Docket No. 33802 (STB served October 20, 1999).

DSRR did not ultimately object to issuance of the emergency service order, and indicated to the Board that it was "voluntarily terminating its operations over the subject line so that UP can transfer operations to [AKMD]" March 19th Decision at 1. Since that time, UP and AKMD have been negotiating a long-term arrangement for AKMD's lease and operation of the Warren Line in place of DSRR.

Pursuant to the "First Supplement to Lease Agreement" executed as of October 4, 2004 by AKMD and UP, AKMD will lease and operate UP's line of railroad extending from a connection with UP at milepost 422.32 in Dermott, Arkansas to milepost 461.74 at Warren, Arkansas, a distance of approximately 39.42 miles.¹ AKMD also will obtain incidental, overhead trackage rights over UP's rail line from UP milepost 415.26 at Dermott to UP milepost 409.7 at McGehee, Arkansas, a distance of approximately 5.56 miles. These operations will permanently replace the equivalent operations previously conducted by DSRR on the involved rail lines.

The complete name and address of the carrier leasing the Warren Line to AKMD is as follows:

Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 48179

The complete name and address of the previous operator of the Warren Line to be replaced by AKMD pursuant to this change in operator class exemption notice is as follows:

Delta Southern Railroad, Inc.
P.O. Box 1709
Tallulah, LA 71282

¹ The lease also includes certain car repair facilities at UP's McGehee, Arkansas yard.

AKMD intends to consummate its lease of the Warren Line and the related, incidental trackage rights on December 13, 2004, upon the effectiveness of AKMD's certification pursuant to 49 C.F.R. § 1150.42(e) which was filed with the Board on October 14, 2004.

Map: 49 C.F.R. § 1150.43(f)

A map showing the Warren 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)

AKMD posted the 60-day notice of this transaction required by 49 C.F.R. § 1150.42(e) at the workplace of DSRR employees in McGehee, Arkansas on October 6, 2004, and has so certified to the Board.² A copy of the 60-day notice and certification as separately filed with the Board on October 14, 2004 is attached as Exhibit C to this Notice.

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

Under 49 C.F.R. § 1105.6(c)(2), AKMD's proposed lease and operation of the Warren Line and acquisition of incidental overhead trackage rights is exempt from environmental reporting requirements. The proposed transaction will not result in significant

² No DSRR employees have worked on the Warren Line since at least March, 2004. DSRR employees were not represented by any labor union. As discussed in AKMD's certification to the Board, the workplace of DSRR crews that formerly worked on the Warren Line is no longer occupied by DSRR. However, McGehee remains a crew base for DSRR operations on another line in the area. Accordingly, notice was posted at the current workplace of DSRR crews in McGehee. In addition, a copy of the notice was provided to DSRR's counsel on the same date for display at DSRR's corporate office in Louisiana.

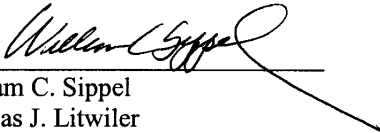
changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), AKMD's lease and operation of the Warren Line also is exempt from historic preservation reporting requirements. The proposed lease 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 D to this Notice.

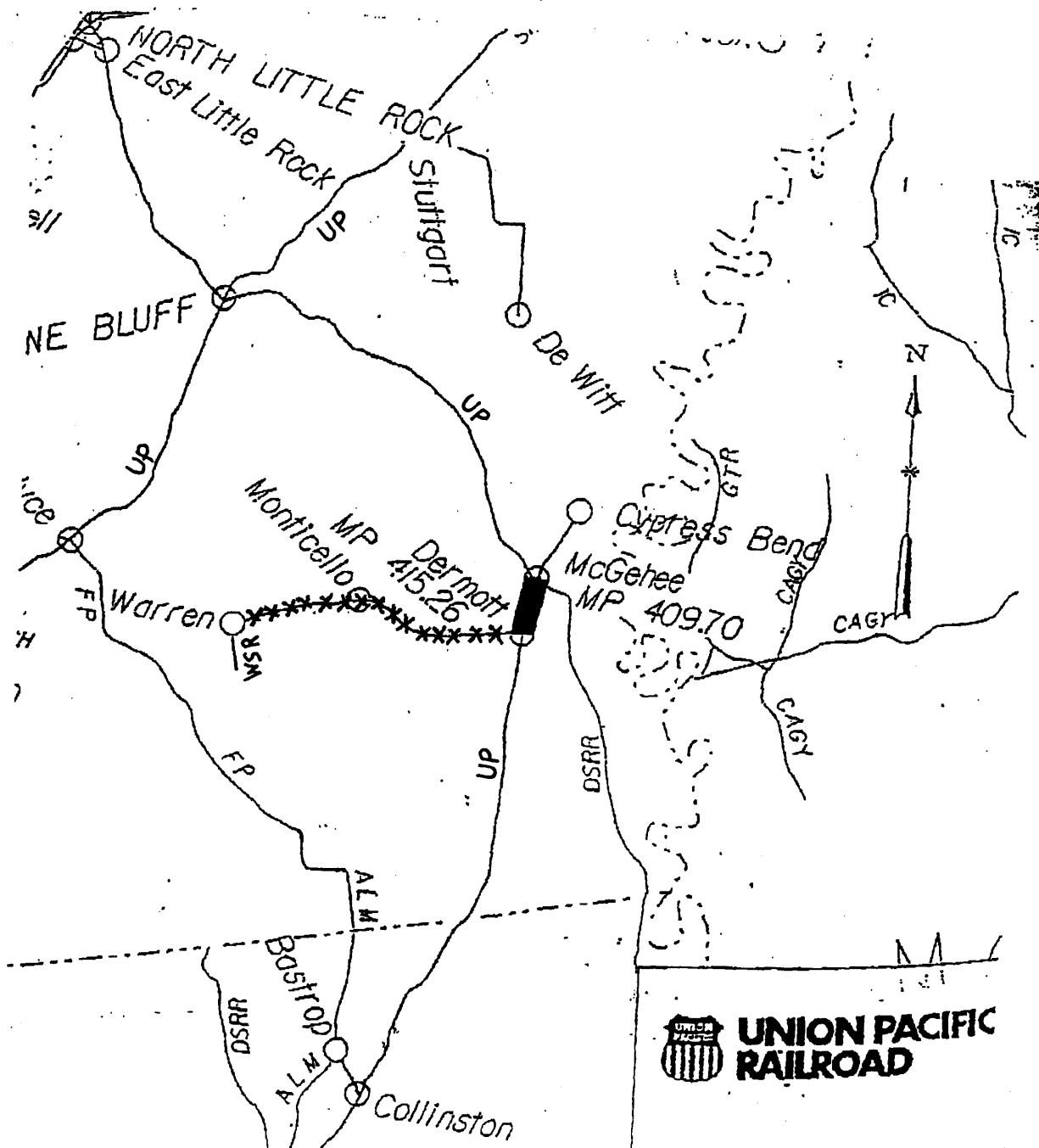
Respectfully submitted,

By: 
William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR ARKANSAS MIDLAND
RAILROAD COMPANY, INC.**

Dated: October 15, 2004

EXHIBIT A



— UNION PACIFIC RAILROAD
 ***** UP DERMOTT - WARREN LINE
 [Solid Black Rectangle] TRACKAGE RIGHTS OVER UP



CREATED BY ENGINEERING DEPARTMENT
 OMAHA, NE NO SCALE
 FILE ORIGINATOR REVISION 4-20-97
 10/15/97

EXHIBIT B

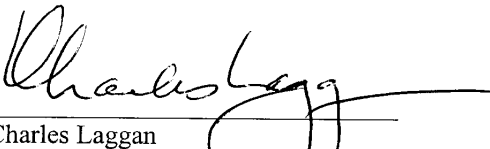
CERTIFICATION

State of Arkansas)
) SS:
County of Hot Spring)

Charles Laggan, being duly sworn, hereby certifies that:

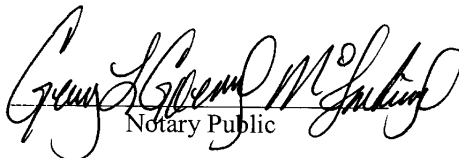
1. The projected annual rail revenue of Arkansas Midland Railroad Company, Inc. does not exceed that which would make it a Class II carrier under the provisions of 49 C.F.R. § 1201 (1-1).

2. Arkansas Midland Railroad Company, Inc. has posted notice of the transaction proposed herein to employees of the former operator of the involved rail line in conformance with 49 C.F.R. § 1150.42(e).



Charles Laggan
Vice President & General Manager

SUBSCRIBED AND SWORN TO
before me this 14 day
of October, 2004.



Notary Public

My Commission expires:

Aug 8, 2007

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

WILLIAM C. SIPPEL
(312) 252-1505
wsippel@fletcher-sippel.com

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

October 13, 2004

VIA FEDERAL EXPRESS

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

Re: **Finance Docket No. 34567**
Arkansas Midland Railroad Company, Inc. -- Change in
Operator Exemption -- Line of Union Pacific Railroad Company

Dear Secretary Williams:

Arkansas Midland Railroad Company, Inc. ("AKMD") hereby certifies that on October 6, 2004, the attached Notice was posted at the workplace in McGehee, Arkansas of employees of Delta Southern Railroad, Inc. ("DSRR") who formerly worked on the rail line between Dermott and Warren, Arkansas (the "Warren Line") that is the subject of this change in operator exemption proceeding. AKMD has conducted all operations on the Warren Line since April 5, 2004 pursuant to emergency service authority under 49 U.S.C. § 11123 and 49 C.F.R. § 1146, and thus no DSRR employees have worked on the line for more than six months. None of the DSRR employees who formerly worked on the Warren Line were or are represented by any labor union.

While McGehee (which was the crew base for DSRR's operations on the Warren Line) continues to be the crew base for DSRR's operations on another line in the area, DSRR does not own or occupy any physical structure at that location. Accordingly, the attached Notice was posted on the DSRR locomotive stationed at McGehee, and also on a nearby telephone pole. A copy was also provided to DSRR's counsel on the same date for display at DSRR's corporate office in Louisiana.

AKMD expects to file with the Board shortly a Verified Notice of Exemption pursuant to 49 C.F.R. § 1150.41(c) for AKMD to lease and operate the Warren Line as a replacement for DSRR.

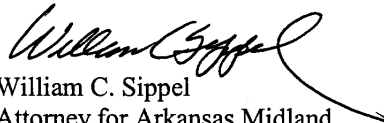
FLETCHER & SIPPEL LLC

Mr. Vernon A. Williams
October 13, 2004
Page 2

Ten copies of this letter and the attached Notice are enclosed for filing with the Board. One extra copy of this letter and the Notice are also enclosed. I would request that you date-stamp them 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.

Respectfully submitted,



William C. Sippel
Attorney for Arkansas Midland
Railroad Company, Inc.

WCS:tjl

Enclosures

**ARKANSAS MIDLAND RAILROAD COMPANY
314 Reynolds Road, Building 41
Malvern, Arkansas 72104**

NOTICE

Pursuant to regulations of the Surface Transportation Board ("STB") at 49 C.F.R. § 1150.41(e), Arkansas Midland Railroad Company ("AKMD"), a Class III rail carrier, hereby gives notice to employees of Delta Southern Railroad, Inc. ("DSRR") that on or about December 10, 2004, AKMD intends to lease and operate UP's line between Milepost 461.74 at Warren, Arkansas and Milepost 422.32 at Dermott, Arkansas ("the Warren Branch") including overhead trackage rights over UP between Dermott and McGehee, Arkansas. The Warren Branch was formerly leased to and operated by DSRR. Since April 5, 2004, AKMD has operated the Warren Branch under emergency service authority from the STB.

As a result of its operation of the Warren Branch under emergency service authority, AKMD created seven new positions: 1 Assistant Trainmaster position, 3 Trainman/Engineman positions and 3 Trackman positions. As of the date of this Notice, all positions have been filled. AKMD has no plans to create any additional positions as a result of its lease and operation of the Warren Branch. Information regarding employment opportunities on AKMD may be obtained from:

Gary Brown
Manager of Administration
Arkansas Midland Railroad Company
314 Reynolds Road, Building 41
Malvern, Arkansas 72104
501/844-4444.

EXHIBIT D
CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34567

ARKANSAS MIDLAND RAILROAD COMPANY, INC.
-- CHANGE IN OPERATOR EXEMPTION --
LINE OF UNION PACIFIC RAILROAD COMPANY

Arkansas Midland Railroad Company ("AKMD"), a Class III rail carrier, has filed a Verified Notice of Exemption to lease from Union Pacific Railroad Company ("UP") and operate a line of railroad (the "Warren Line") extending from a connection with UP at milepost 422.32 in Dermott, Arkansas to milepost 461.74 at Warren, Arkansas, a distance of approximately 39.42 miles. AKMD also will obtain incidental, overhead trackage rights over UP's rail line from UP milepost 415.26 at Dermott to UP milepost 409.7 at McGehee, Arkansas, a distance of approximately 5.56 miles. These operations will replace equivalent operations previously conducted by Delta Southern Railroad, Inc.

The Notice of Exemption is related to Finance Docket No. 34479, Arkansas Midland Railroad Company -- Alternative Rail Service -- Line of Delta Southern Railroad Company, Inc., under which AKMD has since April 5, 2004 conducted all rail operations on the Warren Line pursuant to emergency service authority issued by the Board under 49 U.S.C. § 11123(a) and 49 C.F.R. § 1146.

AKMD expects to consummate its lease of the Warren Line and the related incidental trackage rights on December 13, 2004.

Comments must be filed with the Board and served on:

William C. Sippel
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

This Notice is filed under 49 C.F.R. § 1150.41(c). 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: October __, 2004

By the Board

Vernon A. Williams
Secretary

VERIFICATION

State of Arkansas)
) ss:
County of Hot Spring)

Charles Laggan, being duly sworn, deposes and says that he is Vice President and General Manager of Arkansas Midland Railroad Company, Inc., that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Charles Laggan

SUBSCRIBED AND SWORN TO
before me this 14 day
of October, 2004.



Notary Public

My Commission expires:

Aug 8, 2007