

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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ENTERED
Office of Proceedings
May 7, 2021
Part of
Public Record

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May 7, 2021

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **Docket No. FD 36515**
Southwest Pennsylvania Railroad Company – Acquisition Exemption –
Lines of Westmoreland County Industrial Development Corporation

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Verified Notice of Exemption of Southwest Pennsylvania Railroad Company Pursuant to 49 C.F.R. § 1150.42**, dated May 7, 2021. The sum of \$2,200, representing the appropriate fee for this filing, has been tendered electronically via Pay.gov.

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

Respectfully submitted,

/s/ *Thomas J. Litwiler*

Thomas J. Litwiler
Attorney for Southwest Pennsylvania
Railroad Company

TJL:tl

Attachment

FILED
May 7, 2021
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
May 7, 2021
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36515

SOUTHWEST PENNSYLVANIA RAILROAD COMPANY
-- ACQUISITION EXEMPTION --
LINES OF WESTMORELAND COUNTY
INDUSTRIAL DEVELOPMENT CORPORATION

**VERIFIED NOTICE OF EXEMPTION
OF
SOUTHWEST PENNSYLVANIA RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1150.42**

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

**ATTORNEYS FOR SOUTHWEST
PENNSYLVANIA RAILROAD COMPANY**

Dated: May 7, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36515

SOUTHWEST PENNSYLVANIA RAILROAD COMPANY
-- ACQUISITION EXEMPTION --
LINES OF WESTMORELAND COUNTY
INDUSTRIAL DEVELOPMENT CORPORATION

**VERIFIED NOTICE OF EXEMPTION
OF
SOUTHWEST PENNSYLVANIA RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1150.42**

Pursuant to 49 C.F.R. § 1150.41, et seq., Southwest Pennsylvania Railroad Company (“SWP”), a Class III rail carrier, hereby files this Verified Notice of Exemption to acquire from Westmoreland County Industrial Development Corporation (“WCIDC”) approximately 43.34 miles of rail line in Fayette and Westmoreland Counties, Pennsylvania (the “Subject Rail Lines”) that SWP has leased and operated since 1995. Based on projected revenues for the Subject Rail Lines, SWP expects to remain a Class III rail carrier after consummation of the transaction proposed herein.

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

Southwest Pennsylvania Railroad Company
Building 1, Suite 100
519 Cedar Way
Oakmont, Pennsylvania 15139
(412) 426-2800

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

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

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

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

SWP and WCIDC have executed a Purchase and Sale Agreement dated April 23, 2021 providing for SWP's acquisition of the Subject Rail Lines.

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

SWP will continue to be the operator of the Subject Rail Lines, which SWP has leased from WCIDC and provided all rail common carrier service on since 1995.

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

SWP is a Class III common carrier by rail which owns or operates approximately 66 miles of rail line in the vicinity of Greensburg, Connellsville and Uniontown in southwestern Pennsylvania. SWP began operations in 1995. *Southwest Pennsylvania Railroad Company – Acquisition and Operation Exemption – Lines of Consolidated Rail Corporation*, Docket No. FD 32692 (ICC served July 21, 1995). SWP is a wholly-owned subsidiary of Carload Express, Inc., a non-carrier holding company which also controls two other Class III rail carriers operating in Pennsylvania, Maryland, Delaware and Virginia. *See Carload Express, Inc. – Continuance in*

Control Exemption – Delmarva Central Railroad Company, Docket No. FD 36072 (STB served Dec. 2, 2016).¹

SWP has leased and provided all rail freight service on the Subject Rail Lines since 1995. *Southwest Pennsylvania Railroad Company – Lease and Operation Exemption – Lines of Westmoreland County Industrial Development Corporation and Fay-Penn Land Trust*, Docket No. FD 32737 (ICC served July 21, 1995); *Westmoreland County Industrial Development Corporation – Acquisition Exemption – Southwest Pennsylvania Railroad Company*, Docket No. FD 32767 (ICC served Nov. 3, 1995) (“WCIDC/SWP Acquisition”) at 1 (noting that “SWP will continue to operate the lines upon consummation of the involved transaction.”).

WCIDC is a quasi-public, non-profit entity established by Westmoreland County to, among other things, preserve and improve rail freight service in the County. It is a non-operating rail carrier by virtue of its ownership of the Subject Rail Lines. One segment of the Subject Rail Lines, previously owned by CSX Transportation, Inc., was transferred to WCIDC after being acquired by the Commonwealth of Pennsylvania in an offer of financial assistance. *CSX Transportation, Inc. – Abandonment Exemption – In Fayette and Westmoreland Counties, PA*, Docket No. AB-55 (Sub-No. 420X) (ICC served Nov. 28, 1994); see *WCIDC/SWP Acquisition* at 1, n.2. WCIDC acquired the remainder of the Subject Rail Lines from SWP in late 1995. *WCIDC/SWP Acquisition*.²

¹ The operations of a fourth Carload Express subsidiary in Ohio were recently assumed by another rail carrier. See *Katahdin Railcar Services LLC – Change in Operators Exemption – Ohio Terminal Railway Company*, Docket No. FD 36487 (STB served Mar. 30, 2021).

² Thus, as to those portions of the Subject Rail Lines, the proposed transaction in this docket will bring the lines full circle, returning them to SWP ownership.

Pursuant to the Purchase and Sale Agreement executed by the parties, SWP will acquire the Subject Rail Lines from WCIDC, as follows:

- From milepost 0.05 in Greensburg, Pennsylvania through milepost 2.5 at County Home Junction and milepost 17.54 at the Westmoreland/Fayette County border near Everson to the end of track at milepost 23.8 in Bullskin, Pennsylvania, a distance of approximately 23.75 miles. SWP denominates the northern segment of this line as the Greensburg Industrial Track; the middle segment as the Radebaugh Sub; and the southern segment as the Bullskin Branch.
- From the connection with Norfolk Southern Railway Company at milepost 3.9 in Greensburg, Pennsylvania to milepost 0.0 at County Home Junction (milepost 2.5 on the first line above), a distance of approximately 3.9 miles. SWP considers this segment part of its Radebaugh Sub.
- The Yukon Branch from milepost 0.0 at Hunker, Pennsylvania to the end of track at milepost 3.5 at Waltz, Pennsylvania, a distance of approximately 3.5 miles.³
- The Mt. Pleasant Sub from milepost 3.31 near Everson, Pennsylvania⁴ to the end of track at approximately milepost 15.3 at Westmoreland Yard near

³ The last half-mile of the Yukon Branch, from milepost 3.0 to milepost 3.5, was included in the abandonment authorization in *Conrail Abandonment in Westmoreland County, PA*, Docket No. AB-167 (Sub-No. 564N) (ICC served June 25, 1984). That half-mile of track was not removed, however, and is part of the rail line being acquired by SWP.

⁴ SWP previously acquired the segment of the Mt. Pleasant Sub from milepost 0.0 in Broad Ford, Pennsylvania to milepost 3.31 in *Southwest Pennsylvania Railroad Company – Acquisition Exemption – Laurel Hill Development Corporation*, Docket No. FD 35584 (STB served Jan. 13, 2012).

Mount Pleasant, Pennsylvania, a distance of approximately 11.99 miles, including certain yard tracks and a 0.58-mile spur track at Westmoreland Yard.⁵

- The W&LE Connector from the connection with SWP at milepost 0.05 to the connection with Wheeling & Lake Erie Railway Company at milepost 0.25 near Everson, Pennsylvania, a distance of approximately 0.20 miles.

The total distance of the rail lines being acquired by SWP (excluding yard and spur trackage at Westmoreland Yard) is approximately 43.34 miles. The proposed acquisition of rail lines which SWP has leased for more than 25 years will not result in changes to SWP's existing rail service and operations on the Subject Rail Lines.

The complete name and address of the entity conveying the Subject Rail Lines to SWP is as follows:

⁵ The portion of the Mt. Pleasant Sub from milepost 9.56 to the end of track was constructed by the Commonwealth of Pennsylvania in the 1970s to serve a Volkswagen manufacturing facility, and its treatment as a regulated line of railroad versus unregulated spur track has been inconsistent since that time. Compare *The Baltimore and Ohio Railroad Company and Norfolk and Western Railway Company – Acquisition and Operation of an Extension of Line – In Westmoreland County, Pennsylvania*, Docket No. FD 28582 (ICC served Oct. 17, 1978) with *Volkswagen of America, Inc. v. Baltimore & O. R. Co.*, 361 I.C.C. 521, 522 (1979) (“Railroad access to the plant . . . was accomplished with the completion of 5.6 miles of spur track between Mount Pleasant and the plantsite.”) and *CSX Transportation, Inc. – Abandonment Exemption – In Fayette and Westmoreland Counties, PA*, Docket No. AB-55 (Sub-No. 420X) (ICC served Oct. 31, 1994), Environmental Assessment at 1 (“[B]ecause of the proposed action, CSXT and WLE will no longer be operating over approximately 4.32 miles of industrial track owned by the Commonwealth of Pennsylvania from its point of connection with the line to be abandoned at Mt. Pleasant north to Old Route 119 (near Westmoreland).”). The former Volkswagen plant site is now an industrial park hosting multiple shippers, and the transaction proposed in this docket will, for the first time, unite ownership and operation of the track segment to Westmoreland in a single entity. The segment is thus appropriately included in this notice of exemption. Cf. *Chicago Rail Link, L.L.C. – Lease & Oper. – Union Pacific R. Co.*, 2 S.T.B. 534, 540-541 (1997) (upholding use of 49 C.F.R. § 1150.41 class exemption to acquire trackage previously considered spur track based on buyer's anticipated usage of track).

Westmoreland County Industrial Development Corporation
5th Floor, Suite 520
40 North Pennsylvania Avenue
Greensburg, Pennsylvania 15601

SWP intends to consummate its acquisition of the Subject Rail Lines from WCIDC on or shortly after June 7, 2021.

Map: 49 C.F.R. § 1150.43(f)

A map showing the Subject Rail Lines 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.

Interchange Commitments: 49 C.F.R. § 1150.43(h)

SWP's proposed acquisition of the Subject Rail Lines does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

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

SWP has leased and operated the Subject Rail Lines for more than 25 years. WCIDC is a non-operating rail carrier. As a result there are no WCIDC "employees on the affected line(s)" as contemplated by 49 C.F.R. § 1150.42(e). On May 7, 2021, SWP posted a notice of the proposed acquisition transaction at the workplaces of SWP employees who already work on the Subject Rail Lines and certified that action to the Board.⁶ A copy of the notice and certification as filed with the Board is attached as Exhibit C to this Notice.

⁶ SWP employees are not represented by any labor union.

The proposed acquisition transaction will simply convert SWP's leasehold and operational interest in the Subject Rail Lines to an ownership interest, and will not result in any changes to the rail operations of SWP or have any effect on SWP or WCIDC employees. Accordingly, and consistent with precedent, SWP is filing concurrently herewith a petition for waiver of the requirements of Section 1150.42(e) as necessary to allow the transaction to proceed 31 days after posting of the notice to SWP employees.

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

Under 49 C.F.R. § 1105.6(c)(2), SWP's proposed acquisition of the Subject Rail Lines does not require preparation of environmental documentation. The proposed transaction 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), SWP's acquisition of the Subject Rail Lines also is excepted from historic preservation reporting requirements. The proposed transaction 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,

/s/ Thomas J. Litwiler

By: _____

Thomas J. Litwiler

Stephen J. Rynn

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

**ATTORNEYS FOR SOUTHWEST
PENNSYLVANIA RAILROAD COMPANY**

Dated: May 7, 2021

CARLOAD EXPRESS

Southwest Pennsylvania Railroad



Allegheny Valley Railroad (AVR) ■ Delmarva Central Railroad (DCR)
Southwest Pennsylvania Railroad (SWP)

CERTIFICATION

Mark A. Rosner, under penalty of perjury, hereby certifies that the projected annual rail revenues of Southwest Pennsylvania Railroad Company as a result of the transaction proposed herein will not result in the creation of a Class II or a Class I rail carrier under the provisions of 49 C.F.R. § 1201 (1-1).



Mark A. Rosner
President

Dated: May 7, 2021

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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

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May 7, 2021

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **Docket No. FD 36515**
Southwest Pennsylvania Railroad Company – Acquisition Exemption –
Lines of Westmoreland County Industrial Development Corporation

Dear Ms. Brown:

Pursuant to 49 C.F.R. § 1150.42(e), Southwest Pennsylvania Railroad Company (“SWP”) hereby certifies that on May 7, 2021 the attached Notice was posted at the following workplaces of SWP employees:

4500 Hempfield Boulevard
Greensburg, PA 15601

25 South Broadway Street
Scottdale, PA 15683

SWP employees are not represented by any labor union.

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

Respectfully submitted,

/s/ *Thomas J. Litwiler*

Thomas J. Litwiler
Attorney for Southwest Pennsylvania
Railroad Company

TJL:tl

Attachment

SOUTHWEST PENNSYLVANIA RAILROAD COMPANY
Bldg. 1, Suite 100
519 Cedar Way
Oakmont, PA 15139

NOTICE

Pursuant to regulations of the Surface Transportation Board ("STB") at 49 C.F.R. § 1150.42(e), Southwest Pennsylvania Railroad Company ("SWP"), a Class III rail carrier, hereby gives notice to its employees that on or about June 7, 2021, SWP intends to acquire and thereafter continue operation of the following rail lines of Westmoreland County Industrial Development Corporation ("WCIDC") currently leased by SWP (the "Subject Rail Lines"):

- From milepost 0.05 in Greensburg, Pennsylvania to the end of track at milepost 23.8 in Bullskin, Pennsylvania, a distance of approximately 23.75 miles.
- From the connection with Norfolk Southern Railway Company at milepost 3.9 in Greensburg, Pennsylvania to milepost 0.0 at County Home Junction (milepost 2.5 on the first line above), a distance of approximately 3.9 miles.
- The Yukon Branch from milepost 0.0 at Hunker, Pennsylvania to the end of track at milepost 3.5 at Waltz, Pennsylvania, a distance of approximately 3.5 miles.
- The Mt. Pleasant Sub from milepost 3.31 near Everson, Pennsylvania to the end of track at approximately milepost 15.3 at Westmoreland Yard near Mount Pleasant, Pennsylvania, a distance of approximately 11.99 miles, including certain yard tracks and a 0.58-mile spur track at Westmoreland Yard.
- The W&LE Connector from the connection with SWP at milepost 0.05 to the connection with Wheeling & Lake Erie Railway Company at milepost 0.25 near Everson, Pennsylvania, a distance of approximately 0.20 miles.

SWP has leased and provided all rail freight service on the Subject Rail Lines since 1995. SWP's acquisition of the Subject Rail Lines will have no effect on existing rail operations or on employees of SWP or WCIDC.

A notice of exemption to authorize the proposed transaction will be filed with the STB on or shortly after May 7, 2021 in Docket No. FD 36515. SWP anticipates that it will

concurrently seek waiver of the normal 60-day waiting period for this advance notice, so as to allow the transaction to be consummated 30 days after filing of the notice of exemption.

SWP does not expect to hire any additional employees as a result of the proposed transaction. Employees desiring further information regarding the transaction may contact John Ashbridge, Vice President and Chief Operating Officer, at (412) 426-4800.

5/7/21

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36515

SOUTHWEST PENNSYLVANIA RAILROAD COMPANY
-- ACQUISITION EXEMPTION --
LINES OF WESTMORELAND COUNTY
INDUSTRIAL DEVELOPMENT CORPORATION

Southwest Pennsylvania Railroad Company (“SWP”), a Class III rail carrier, has filed a Verified Notice of Exemption to acquire from Westmoreland County Industrial Development Corporation (“WCIDC”) the following lines of railroad currently leased to and operated by SWP:

- From milepost 0.05 in Greensburg, Pennsylvania to the end of track at milepost 23.8 in Bullskin, Pennsylvania, a distance of approximately 23.75 miles.
- From the connection with Norfolk Southern Railway Company at milepost 3.9 in Greensburg, Pennsylvania to milepost 0.0 at County Home Junction (milepost 2.5 on the first line above), a distance of approximately 3.9 miles.
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The total distance of the rail lines being acquired by SWP (excluding yard and spur trackage at Westmoreland Yard) is approximately 43.34 miles.

SWP expects to consummate the proposed acquisition transaction on or shortly after June 7, 2021.

Comments must be filed with the Board and served on:

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

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.

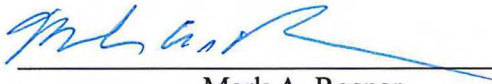
Board decisions and notices are available at www.stb.gov.

Decided: May __, 2021

By the Board, Allison C. Davis, Director, Office of Proceedings

VERIFICATION

Mark A. Rosner, under penalty of perjury, declares and verifies that he is President of Southwest Pennsylvania 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.



Mark A. Rosner

Dated: May 7, 2021