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August 18, 2020

300991

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 20024

ENTERED
Office of Proceedings
August 18, 2020
Part of
Public Record

Re: **Docket No. FD 36427**
Akron Barberton Cluster Railway Company – Amendment of Lease
Exemption – Metro Regional Transit Authority

Dear Chief Brown:

Enclosed for filing in the above-captioned proceeding is the **Verified Notice of Exemption of Akron Barberton Cluster Railway Company pursuant to 49 C.F.R. § 1150.41**, dated August 18, 2020, along with payment in the amount of \$2,100, representing the appropriate fee for this filing, and a pdf of the *Federal Register* summary.

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/Michael J. Barron, Jr.

Michael J. Barron, Jr.
Attorney for Akron Barberton Cluster Railway
Company

Enclosures

FILED
August 18, 2020
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
August 18, 2020
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36427

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

**VERIFIED NOTICE OF EXEMPTION
OF
AKRON BARBERTON CLUSTER RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1150.41**

Michael J. Barron, Jr.
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(312) 252-1511

**ATTORNEY FOR
AKRON BARBERTON CLUSTER RAILWAY
COMPANY**

Dated: August 18, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36427

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

**VERIFIED NOTICE OF EXEMPTION
OF
AKRON BARBERTON CLUSTER RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1150.41**

Pursuant to 49 C.F.R. § 1150.41, et seq., Akron Barberton Cluster Railway Company (“ABC”), a Class III switching and terminal railroad, hereby files this Verified Notice of Exemption to amend its lease from Metro Regional Transit Authority (“Metro”) of an 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”).¹

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:

¹ Authority to enter into the original lease was granted in Docket No. FD 34362, Akron Barberton Cluster Railway Company – Lease Exemption – Metro Regional Transit Authority (STB served July 11, 2003). Since this transaction involves an amendment and not simply a renewal, the class exemption at 49 C.F.R. 1180.2(d)(4), covering lease renewals where only an extension of time is involved, is not available here.

Name and Address of Applicant: 49 C.F.R. § 1150.43(a)

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

Akron Barberton Cluster Railway Company
100 E. First Street
Brewster, OH 44613

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

The ABC representative to whom correspondence regarding this transaction should be sent is as follows:

Michael J. Barron, Jr.
Fletcher & Sippel
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-2832
(312) 252-1500

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

ABC and Metro have entered into an amendment of the Freight Operations Lease Agreement so that ABC can continue its lease of the Freight Easement from Metro and the coordination of freight and passenger operations on the Akron-Krumroy Line.

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

ABC will continue to conduct all rail freight operations on the Akron-Krumroy Line, and will continue to 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. Docket No. FD 32537, Akron Barberton Cluster Railway Company – Acquisition and Operation Exemption – Certain Lines of Consolidated Rail Corporation (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 Docket No. FD 32538, Wheeling Corporation – Continuance in Control Exemption – Akron Barberton Cluster Railway Company (ICC served October 27, 1994 and January 12, 1996).

Pursuant to an amendment to the Freight Operations Lease Agreement, ABC will continue to lease the existing rail freight operating easement on the Akron-Krumroy Line, extending from approximately milepost 40.42 in Akron, Ohio to approximately milepost 33.70 in Krumroy, Ohio, a distance of approximately 6.72 miles.

ABC will continue to 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 the amendment to the lease of the Akron-Krumroy Line Freight Easement on or shortly after September 17, 2020.

Map: 49 C.F.R. § 1150.43(f)

A map showing the Line 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. § 1150.33(h)

The lease agreement between ABC and Metro does not include any provision limiting ABC's future interchange of traffic on the line with a third-party connecting carrier.

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

The projected annual operating revenue of ABC upon consummation of this transaction 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.

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

Under C.F.R. § 1105.6(c)(2), the proposed transaction is exempt from environmental reporting requirements. 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), the proposed transaction also is exempt from historic preservation reporting requirements. The proposed amendment to lease is for the purpose of continuing rail operations. Additional Board approval would be required to discontinue rail service or to abandon the line. Moreover, 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. § 1150.34

A caption summary in appropriate form is attached as Exhibit C to this notice.

Respectfully submitted,

By: /s/Michael J. Barron, Jr

Michael J. Barron, Jr.
Fletcher & Sippel
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1511

**ATTORNEY FOR
AKRON BARBERTON CLUSTER RAILWAY
COMPANY**

Dated: August 18, 2020

CERTIFICATION AND VERIFICATION

I, Larry R. Parsons, Chief Executive Officer of Akron Barberton Cluster Railway Company ("ABC") hereby certify that ABC's projected annual revenues will not as a consequence of the proposed transaction result in ABC becoming a Class II or Class I rail carrier so as to require processing of the foregoing notice of exemption under 49 C.F.R. § 1150.45, and that ABC's projected annual revenues will not exceed \$5,000,000.00.

Also, pursuant to 28. U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing notice of exemption is true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'L. R. Parsons', written over a horizontal line.

Name: Larry R. Parsons

Title: Chief Executive Officer

Akron Barberton Cluster Railway Company

Executed on: August 17, 2020

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36427

AKRON BARBERTON CLUSTER RAILWAY COMPANY
-- AMENDMENT OF 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 amend a lease from Metro Regional Transit Authority (“Metro”), and allow ABC to continue operating on, 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 the amendment to the lease of the subject freight easement on or shortly after September 17, 2020.

Comments must be filed with the Board and served on:

Michael J. Barron, Jr.
Fletcher & Sippel
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

This Notice is filed under 49 C.F.R § 1150.41. If this 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: _____, 2020

By the Board