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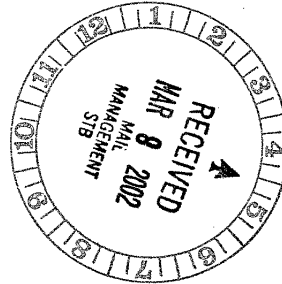
March 8, 2002

204937

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of the Secretary
MAR 11 2002
Part of
Public Record



Re: **Finance Docket No. 34182**
WLR Railroad Acquisition Company – Acquisition and Operation
Exemption – Rail Lines of The Cuyahoga Valley Railway Company and
River Terminal Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding is an original and ten copies of a **Petition for Partial Waiver of 49 C.F.R. § 1150.32(e)**. This petition relates to a Verified Notice of Exemption under 49 C.F.R. 1150.31 *et seq.* that WLR Railroad Acquisition Company¹ expects to file shortly with the Board. It should be noted that **expedited consideration** has been requested for this petition.

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

Respectfully submitted,

Edward J. Fishman
Attorney for WLR Acquisition Corp.

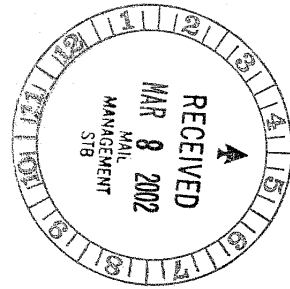
Enclosures

cc: Mr. Byron A. Boyd, Jr. – United Transportation Union
Mr. Leo W. Gerard – United Steelworkers of America

¹ The name of the wholly-owned subsidiary of WLR Acquisition Corp. that will be formed to acquire the assets of RTRC and CVRC has not been established. For purposes of this waiver request, we have used the name "WLR Railroad Acquisition Company." The Board will be notified once the actual name of the acquiring company is determined, which most likely will be at the time of the filing of the notice of exemption related to this transaction.

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BEFORE THE
SURFACE TRANSPORTATION BOARD



204937

FINANCE DOCKET NO. 34182

WLR RAILROAD ACQUISITION COMPANY
-- ACQUISITION AND OPERATION EXEMPTION --
RAIL LINES OF THE CUYAHOGA VALLEY RAILWAY COMPANY AND RIVER
TERMINAL RAILWAY COMPANY

PETITION FOR PARTIAL WAIVER
OF
49 C.F.R. § 1150.32(E)

EXPEDITED CONSIDERATION REQUESTED

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ATTORNEYS FOR WLR RAILROAD
ACQUISITION COMPANY

Dated: March 8, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34182

WLR RAILROAD ACQUISITION COMPANY
-- ACQUISITION AND OPERATION EXEMPTION --
RAIL LINES OF THE CUYAHOGA VALLEY RAILWAY COMPANY AND RIVER
TERMINAL RAILWAY COMPANY

**PETITION FOR PARTIAL WAIVER
OF
49 C.F.R. § 1150.32(E)**

WLR Railroad Acquisition Company ("WLR Railroad")¹, a non-carrier subsidiary to be formed by WLR Acquisition Corp. ("WLR"), hereby files this petition in support of its request for partial waiver of the 60-day notice period set forth in 49 C.F.R. § 1150.32(e). WLR Railroad expects to file shortly with the Surface Transportation Board ("STB") a Verified Notice of Exemption under 49 U.S.C. § 10901 and 49 C.F.R. § 1150.31 *et. seq.* in order to acquire the railroad lines and substantially all other assets of River Terminal Railway Company ("RTRC") and The Cuyahoga Valley Railway Company ("CVRC"), Class III rail carrier subsidiaries of LTV Steel Company, Inc. ("LTV"). WLR anticipates that the annual revenues of WLR Railroad, following the acquisition of the assets of RTRC and CVRC, will exceed \$5 million. Therefore, in accordance with 49 C.F.R. § 1150.32(e), WLR has posted the required labor notice at the workplace of RTRC and CVRC employees, has served a copy of that notice on the

¹ The name of the wholly-owned subsidiary of WLR that will be formed to acquire the assets of RTRC and CVRC has not been established. For purposes of this waiver request, we have used the name "WLR Railroad Acquisition Company." The Board will be notified once the actual name of the acquiring company is determined, which most likely will be at the time of the filing of the notice of exemption related to this transaction.

national offices of the labor unions representing those employees, and has certified to the Board that it has done so by letter filed March 7, 2002.

In order to expedite regulatory approval for its acquisition of the assets of RTRC and CVRC, and to coordinate the acquisition of those assets with WLR's acquisition of non-rail assets from LTV, WLR Railroad seeks a partial waiver of the 60-day notice period set forth in 49 C.F.R. § 1150.32(e). Specifically, WLR Railroad seeks a reduction in the applicable notice period so that its Verified Notice of Exemption (which it anticipates filing within ten days hereof) becomes effective within twenty days of the date of its labor notice certification (filed yesterday) but in no event earlier than seven days after it has been filed. For the reasons set forth herein, WLR Railroad respectfully submits that a reduction of the notice period to approximately 20 days is warranted in this case because it will not have an adverse effect on RTRC or CVRC employees, will benefit WLR Railroad's primary rail customer and will promote the public interest.

Background

WLR has entered into an agreement to acquire certain assets of LTV, including but not limited to the assets of LTV's wholly-owned subsidiaries RTRC, CVRC and one additional Class III railroad subsidiary of LTV², pursuant to a plan recently approved by the United States Bankruptcy Court for the Northern District of Ohio. WLR will form a non-carrier subsidiary, WLR Railroad, that will acquire the railroad lines and substantially all other assets of RTRC and

² WLR will form a separate, wholly-owned subsidiary to acquire the railroad lines and substantially all other assets of the Chicago Short Line Railway Company ("CSLRC") from LTV. WLR has determined that the projected annual revenues of that subsidiary will not exceed \$5 million after the acquisition and therefore the 60-day notice requirement will not be applicable to the acquisition of the assets of CSLRC. WLR will file a notice of exemption under 49 C.F.R. § 1180.2(d) to continue in control of both WLR Railroad and the separate subsidiary to be formed for the CSLRC acquisition once those subsidiaries become rail carriers.

CVRC, Class III switching/terminal carriers that provided primarily inbound, outbound and intra-plant switching service to the LTV Cleveland Works steel complex in Cleveland, Ohio before production at that complex was shut down completely in December 2001 as a result of LTV's distressed financial condition. WLR Railroad expects shortly to file a Verified Notice of Exemption under 49 C.F.R. § 1150.31 et. seq. in order to obtain an exemption from Board regulation under 49 U.S.C. § 10901 for the consummation of its acquisition of the assets of RTRC and CVRC. WLR Railroad anticipates that, following its acquisition of the railroad lines and other assets of RTRC and CVRC, its projected annual revenues will exceed \$5 million but will not exceed the revenue threshold applicable to Class II rail carriers. Under 49 C.F.R. § 1150.32(e), if the projected annual revenue of the Class III rail carrier to be created by the proposed transaction exceeds \$5 million, the acquiring entity is required to post a notice of intent to undertake the transaction at the workplace of the employees on the affected rail lines, to serve a copy of that notice on the national offices of the labor unions representing those employees and to certify to the Board that it has done so at least sixty (60) days before the applicable notice of exemption becomes effective.

On March 7, 2002, WLR posted the required labor notice ("Notice") at the workplace of the employees of RTRC and CVRC and served a copy of that Notice on the national offices of the labor unions representing those employees. By letter dated March 7, 2002 WLR certified to the Board that it had posted and served the requisite Notice. In accordance with the requirements of 49 C.F.R. § 1150.32(e), the Notice sets forth in general terms the types and numbers of jobs expected to be available, the terms of employment and the principles of employee selection to be used by WLR Railroad. See 49 C.F.R. § 1150.32(e); Acquisition of Rail Lines Under 49 U.S.C.

10901 and 10902 – Advance Notice of Proposed Transactions, Ex Parte 562 (STB served Sept. 9, 1997).

WLR has agreed to acquire the Cleveland Works steel complex and certain other assets of LTV in order to resume steel production at that facility. The Cleveland Works East facility has been in “hot idle” condition since December 2001. Since that time, no significant revenue-generating steel production, processing or finishing activities have occurred at the facility and RTRC and CVRC rail service into, out of and within the Cleveland Works East facility has essentially ceased. The costs of keeping the facility in “hot idle” condition are substantial. The Cleveland Works West facility has been shut down since approximately April 2001.³

WLR intends to consummate its acquisition of the Cleveland Works East facility and other LTV assets as soon as reasonably practicable so that it can take prompt and appropriate steps to resume revenue operations at the Cleveland Works East. The resumption of revenue operations will translate into a resumption of rail service within, into and out of the Cleveland Works East facility.

For efficiency and operational reasons, WLR Railroad would like to consummate its acquisition of the assets of RTRC and CVRC at the same time as WLR consummates its acquisition of the other LTV assets including the Cleveland Works East facility. This will enable WLR Railroad to provide necessary rail service to the Cleveland Works East facility as revenue-producing steel operations are resumed. CVRC, RTRC and LTV also have an interest in consummating the acquisition at that time so that there can be one transition of ownership and

³ It is our understanding that a significant number of CVRC and RTRC employees were laid off and/or furloughed as a result of the cessation of steel mill operations at the Cleveland Works steel complex.

operations. It is currently anticipated that WLR's acquisition of LTV assets will close on or about March 27, 2002.

As stated above, WLR Railroad intends to file a Verified Notice of Exemption under 49 U.S.C. § 10901 and 49 C.F.R. § 1150.31 *et. seq.* in order to obtain regulatory authority from the Board to consummate its acquisition of the assets of RTRC and CVRC. In order to expedite regulatory approval for its acquisition of those assets, WLR Railroad seeks a partial waiver of the 60-day notice period set forth in 49 C.F.R. § 1150.32(e). WLR Railroad expects to file its Verified Notice of Exemption approximately ten days after the filing of this waiver request (i.e., on or about March 18, 2002). In order to meet the currently anticipated closing schedule for the WLR acquisition of LTV assets, WLR Railroad respectfully seeks a reduction in the notice period so that its Notice of Exemption becomes effective within twenty days of its labor notice certification (filed yesterday) but in no event earlier than seven days after the Verified Notice of Exemption has been filed.

Argument

The 60-day notice requirement set forth at 49 C.F.R. § 1150.32(e) was adopted by the Board in 1997 in order to provide affected employees of the selling Class III carrier in a proposed transaction under 49 U.S.C. § 10901 with advance notice of a proposed acquisition by the non-carrier in order to make "adjustments and decisions relating to their livelihoods."

Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902 – Advance Notice of Proposed Transactions, Ex Parte 562 (STB served Sept. 9, 1997). In the same proceeding, the Board adopted a similar notice requirement in 49 C.F.R. § 1150.42(e) for transactions involving Class III rail carriers under 49 U.S.C. § 10902 and in 49 C.F.R. § 1121.4(h) for transactions involving Class II rail carriers under 49 U.S.C. § 10902. Id.

The Board has indicated that it will entertain requests for waiver of the 60-day notice requirement set forth in 49 C.F.R. § 1150.32(e) and applicable here under the appropriate circumstances. See, e.g., Lake Michigan & Indiana Railroad Company LLC – Acquisition and Operation Exemption – Keystone Railroad, Inc., Finance Docket No. 34140 (STB served Dec. 27, 2001) (granting waiver of 60-day notice requirement where record reflected no adverse effect on personnel of rail carrier that was acquired by applicant); Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902 – Advance Notice of Proposed Transactions, Ex Parte 562 (STB served Sept. 9, 1997) (“We recognize that exceptional situations may occur necessitating acquirer requests for waiver of the 60-day notice provision and we will consider such requests at the appropriate time.”) WLR Railroad respectfully submits that the limited waiver of the 60-day notice period sought herein is justified under the circumstances of this proceeding because it will not have an adverse effect on RTRC and CVRC employees and it will promote a smooth transition in the ownership of LTV assets and the resumption of steel mill and related rail operations.

A. The Limited Waiver Sought Herein Will Not Have An Adverse Effect on RTRC and CVRC Employees

The limited waiver sought herein by WLR Railroad will not have an adverse effect on RTRC and CVRC employees because those employees almost certainly have been aware for quite some time that the assets of RTRC and CVRC would be sold and the approximately twenty (20) day advance notice that WLR Railroad seeks to provide should be more than sufficient because those employees will not be faced with a choice between staying with their current employers or joining WLR Railroad.

The RTRC and CVRC employees most certainly knew about the possible sale of the assets of the LTV railroad subsidiaries long before receiving the notice posted by WLR Railroad

on March 7, 2002. The LTV bankruptcy has been widely publicized since LTV's filing for reorganization under Chapter 11 of the Bankruptcy Code on December 29, 2000. RTRC and CVRC employees in all likelihood were aware of LTV's distressed financial condition since the December 2000 bankruptcy filing. RTRC and CVRC are not only wholly-owned subsidiaries of LTV, but the overwhelming majority of their rail business derives from the LTV Cleveland Works steel complex in Cleveland. Although RTRC, CVRC and the other LTV railroad subsidiaries were excluded from the Chapter 11 filing, RTRC and CVRC employees certainly knew that the sale of LTV assets, including those of RTRC and CVRC, was a distinct possibility since December 2000.

Moreover, RTRC and CVRC employees most certainly knew by at least December 2001 that the assets of LTV, including those of RTRC and CVRC, would be sold to an independent third party in the near future. On December 7, 2001, the United States Bankruptcy Court approved procedures for bidding on and auctioning substantially all of the assets related to the LTV Cleveland Works steel complex that is served by RTRC and CVRC. Since that date, the Cleveland Works East facility has been in "hot idle" condition and is not conducting steel manufacturing, processing or finishing operations. The Cleveland Works West facility has been completely shut down. Many RTRC and CVRC employees were furloughed as a result of the cessation of those steel operations. Therefore, since at least December 7, 2001, RTRC and CVRC employees most certainly knew that a buyer was being sought for all LTV assets, including those of RTRC and CVRC.

Finally, WLR's agreement to acquire certain assets of LTV, including the assets of RTRC and CVRC, was entered into and became a matter of public record on February 26, 2002. The asset purchase agreement between WLR and LTV was approved by the United States

Bankruptcy Court on February 28, 2002. This agreement includes the proposed sale of RTRC and CVRC assets to WLR. Therefore, the RTRC and CVRC employees have had notice of the identity of the buyer of the RTRC and CVRC assets since at least February 28, 2002 if not earlier. For these reasons, a partial waiver of the 60-day notice period should not adversely affect the interest of RTRC and CVRC employees. The Board has granted waivers of comparable 60-day notice requirements for similar reasons. See, e.g., Belt Line Division of Tacoma Public Utilities – Operation Exemption – In Pierce, Thurston and Lewis Counties, WA, Finance Docket No. 33666 (STB served Oct. 30, 1998)(granting waiver request where petitioner argued, *inter alia*, that the proposed transaction was well known throughout the local community and to existing employees).

In addition, the affected employees in this case will not be evaluating a choice between remaining with their current employers or seeking employment with WLR Railroad Company, a decision which otherwise might require additional time. See Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902 – Advance Notice of Proposed Transactions, Ex Parte 562 (STB served May 1, 1997)(in explaining rationale for the proposed 60-day rule, the STB specifically noted that “employees are faced at a minimum with having to decide whether to accept a position on the acquiring entity or to exercise seniority on the carrier that is selling, leasing or otherwise transferring the line.”) WLR Railroad is acquiring all of the railroad lines and substantially all other assets of RTRC and CVRC. The affected employees will not have the option of exercising seniority with those railroads or seeking redeployment on other rail lines owned by RTRC or CVRC. This further reduces the need for the full 60-day notice period in this case.⁴

⁴ It should be noted that the specificity of the Notice posted and served by WLR Railroad in this proceeding, including the specific descriptions of types, numbers and pay ranges of jobs expected to be available, arguably contains more specific information than required under 49

B. The Limited Waiver Sought Herein Will Promote the Public Interest and Is Not Inconsistent With The Objectives of the 60-Day Notice Requirement

WLR Railroad respectfully submits that the granting of the requested partial waiver of the 60-day notice period would be in the public interest. After lengthy negotiations and the expenditure of considerable resources, WLR agreed to acquire certain assets of LTV in order to reestablish steel manufacturing, processing and finishing operations at the Cleveland Works East facility and other LTV locations. The Cleveland Works East plant has been in "hot idle" since December 7, 2001 and the Cleveland Works West plant has been completely shut down. RTRC's and CVRC's primary rail customer is the Cleveland Works steel complex. The lack of steel production from the plant has translated into a virtual cessation of RTRC's and CVRC's business.

WLR intends to reestablish steel manufacturing, processing and finishing operations at the Cleveland Works East plant as soon as practicable. This will necessitate the resumption of rail service into, within and out of the Cleveland Works East plant. For operating and efficiency reasons, WLR Railroad would like to consummate its acquisition of the assets of CVRC and RTRC at the same time as WLR consummates its acquisition of the non-rail assets of LTV. Upon acquisition of the Cleveland Works East plant, WLR will be focused on the transition from "hot idle" to steel production mode and in conjunction therewith will be, among various other tasks, coordinating transportation and logistics needs arising from the resumption of steel mill operations. The simultaneous closing will allow WLR Railroad to prepare for and coordinate rail operations with the resumption of steel production by WLR at the Cleveland Works East

C.F.R. § 1150.32(e). The specificity of the Notice is an additional factor that should militate in favor of granting the partial waiver of the 60-day time period that WLR Railroad is seeking in this petition.

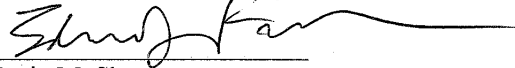
facility. The simultaneous closing also will ensure a smooth transition with LTV from the change in ownership of the railroads and the integration of operations for both rail and non-rail assets by WLR and WLR Railroad.

In order to expedite the process of restarting steel mill production and related rail operations at the Cleveland Works East plant, WLR Railroad seeks to reduce the time period required under 49 C.F.R. § 1150.32(e) before it can consummate its acquisition of the assets of RTRC and CVRC from an STB regulatory perspective. Under the circumstances, WLR Railroad respectfully submits that a partial waiver of the 60-day notice period is in the public interest because it will expedite the resumption of revenue-producing steel operations and related rail operations at the Cleveland Works facility that has been dormant since the end of December. In other contexts, the Board has granted waivers of comparable 60-day notice requirements for similar reasons. See, e.g., Minnesota Commercial Railway Company -- Lease and Operation Exemption – Canadian Pacific Railway Company, Finance Docket No. ____ (STB served Oct. 20, 1998)(granting partial waiver of 60-day requirement where delay in transaction would create traffic delays and congestion and petitioner could not afford to carry employee training costs and capital investments for the acquisition without creating a major cash flow crisis).

Conclusion

For the foregoing reasons, WLR Railroad respectfully seeks a limited waiver from the 60-day notice period set forth in 49 C.F.R. § 1150.32(e) in order to consummate its acquisition of the assets of RTRC and CVRC within twenty days of the date of its labor notice certification (which was filed on March 7, 2002) but in no event earlier than seven days after filing its Verified Notice of Exemption.

Respectfully submitted,



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**Attorneys for WLR Railroad Acquisition
Company**

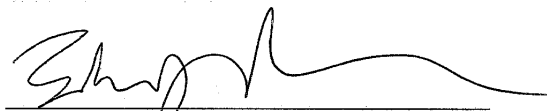
Dated: March 8, 2002

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2002, a copy of the foregoing Petition for Partial Waiver of 49 C.F.R. § 1150.32(e) was served by express overnight delivery on:

Mr. Byron A. Boyd, Jr.
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107-4250

Mr. Leo W. Gerard
United Steelworkers of America
Five Gateway Center
Pittsburgh, PA 15222



Edward J. Fishman