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April 26, 2024

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Office of Proceedings
April 26, 2024
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Public Record

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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: **FD 36771**
Merrimack & Grafton Railroad Corporation —
Change of Operator Exemption — In Grafton and Coos
Counties, New Hampshire, and Essex County, Vermont

Dear Ms. Brown:

Merrimack & Grafton Railroad Corporation (“MGRC”) hereby transmits to the Board in the above-captioned matter a **Verified Notice of Exemption Pursuant to 49 C.F.R. part 1150, subpart E**. MGRC has tendered the applicable filing fee electronically via Pay.gov.

If you have any questions about this filing, please contact me.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish
Counsel for the Merrimack & Grafton
Railroad Corporation

RAW:ah

Attachment

FILED

April 26, 2024

SURFACE

TRANSPORTATION BOARD

FEE RECEIVED

April 26, 2024

SURFACE

TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36771

MERRIMACK & GRAFTON RAILROAD CORPORATION
— CHANGE OF OPERATOR EXEMPTION —
IN GRAFTON AND COOS COUNTIES, NEW HAMPSHIRE,
AND ESSEX COUNTY, VERMONT

**VERIFIED NOTICE OF EXEMPTION OF
MERRIMACK & GRAFTON RAILROAD CORPORATION
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

Robert A. Wimbish
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**ATTORNEY FOR MERRIMACK & GRAFTON
RAILROAD CORPORATION**

Dated: April 26, 2024

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36771

MERRIMACK & GRAFTON RAILROAD CORPORATION
— CHANGE OF OPERATOR EXEMPTION —
IN GRAFTON AND COOSCOUNTIES, NEW HAMPSHIRE,
AND ESSEX COUNTY VERMONT

**VERIFIED NOTICE OF EXEMPTION OF
MERRIMACK & GRAFTON RAILROAD CORPORATION
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

Pursuant to 49 C.F.R. part 1150, subpart E, Merrimack & Grafton Railroad Corporation (“MGCR”), a Class III rail carrier, files this verified notice of exemption to assume railroad common carrier operations over various railroad lines (the “Lines” – described below) owned by the State of New Hampshire through the state’s Department of Transportation (“NHDOT”). Under the proposed transaction, MGCR will assume common carrier operations over the Lines in place of New Hampshire Central Railroad, Inc. (“NHCR”). Upon consummation of the proposed transaction, NHCR will cease to be a railroad common carrier over the Lines. In accordance with 49 C.F.R. § 1150.43, MGCR submits the following:

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

The full name and address of the applicant is:

Merrimack & Grafton Railroad Corporation
1 Railway Lane
Burlington, VT 05401

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

Correspondence on this transaction should be sent to:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500
rwimbish@fletcher-sippel.com

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

MGCR and NHDOT have reached terms under an Operating Agreement (the “Agreement”), pursuant to which MGCR will assume common carrier operations over state-owned Lines currently operated by NHCR. MGCR will commence operations in place of NHCR under the Agreement upon or shortly after the effective date of this class exemption, with an anticipated closing date of May 31, 2024.

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

Subject to appropriate Board authorization, MGCR will become the exclusive provider of rail common carrier service to customers on the Lines upon consummation of the proposed transaction.

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

MGCR is an existing Class III railroad common carrier holding of Trans Rail Holding Co.¹ MGCR currently operates a separate state-owned line in New Hampshire pursuant to *Merrimack & Grafton Railroad Corporation – Change of Operators Exemption – Line of New England Southern Railroad Co.*, FD 36405 (STB served June 5, 2020). Pursuant to the

¹ See *Trans Rail Holding Co. – Continuance of Control Exemption – Merrimack & Grafton Railroad*, FD 36403 (STB served June 5, 2020).

Agreement generally described above, MGCR will assume the exclusive right to conduct railroad common carrier service over the Lines in place of the incumbent operator, NHCR. The Lines, comprising roughly 52 route miles in the aggregate, are as follows:

- Milepost P 131.93 at North Stratford, New Hampshire to Milepost P 145.21 at Colebrook, New Hampshire;
- Milepost C 119.86 east of Wing Road in Bethlehem, New Hampshire to Milepost C 130.7 / P 101.9 at Hazen Road, Whitefield, New Hampshire;
- Milepost C 130.7 / P 101.9 at Hazen Road in Whitefield to Milepost P 112.46 / C 137.42 at Lancaster, New Hampshire;
- Milepost P 112.46 / C 137.42 at Lancaster to Milepost C 145.76 (proximate to the Whistle Post located south of the West Street crossing at the connection with the St. Lawrence & Atlantic Railroad Company) at Groveton, New Hampshire; and
- Milepost P 100.91 at Whitefield, New Hampshire to Milepost P 111.57 at Lunenburg, Vermont.

The name and address of the owner of the Lines is:

New Hampshire Department of Transportation
Attention: Lou Barker, Bureau of Rail and Transit
7 Hazen Drive
Concord, New Hampshire 03302

MGCR expects to commence service over the Lines in place of NHCR on or after the expected May 26, 2024 effective date of the present class exemption. As information, MGCR and NHCR have targeted a transaction closing date of May 31, 2024.

Maps: 49 C.F.R. § 1150.43(f)

A map of the Lines is attached as Exhibit A.

Certificate of Compliance: 49 C.F.R. § 1150.43(g)

MGCR certifies that its projected revenues following the proposed transaction will not result in MGCR becoming a Class I or Class II carrier under *Indexing the Annual*

Operating Revenues of Railroads, EP 748 (STB served June 29, 2023). See Verification and Certification, attached.

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

MGCR certifies that none of the documents governing the proposed transaction include terms that would limit MGCR's ability now or in the future to interchange traffic with a connecting, third-party rail carrier.

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

MGCR's current annual operating revenues are below \$5 million, and MGCR's expected post-transaction annual revenues are expected to remain below \$5 million.

Accordingly, the advance notice requirements of Section 1150.42(e) are inapplicable.

Notice to Shippers – Change of Operator: 49 C.F.R. § 1150.42(b)

MGCR hereby certifies through the undersigned counsel that it has provided a copy of this verified notice of exemption to all customers on the Lines in accordance with the Board's change of operator rules. See Exhibit B.

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

Under 49 C.F.R. § 1105.6(c)(1), this transaction is exempt from environmental reporting requirements because it will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds set forth at 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1) the transaction – which is intended for the purpose of continued rail operations by the incumbent carrier – is exempt from historic preservation reporting requirements. Separate Board approval would be required to discontinue

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. § 1150.42(a)

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

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish
Fletcher & Sippel LLC
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Chicago, Illinois 60606-3208
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**ATTORNEY FOR MERRIMACK & GRAFTON
RAILROAD CORPORATION**

Dated: April 26, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36771

**MERRIMACK & GRAFTON RAILROAD CORPORATION
— CHANGE OF OPERATOR EXEMPTION —
IN GRAFTON AND COOS COUNTIES, NEW HAMPSHIRE,
AND ESSEX COUNTY VERMONT**

EXHIBIT A

MAP



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36771

**MERRIMACK & GRAFTON RAILROAD CORPORATION
— CHANGE OF OPERATOR EXEMPTION —
IN GRAFTON AND COOS COUNTIES, NEW HAMPSHIRE,
AND ESSEX COUNTY VERMONT**

EXHIBIT B

TEXT OF NOTICE TO CUSTOMERS

Re: **FD 36771**
Merrimack & Grafton Railroad Corporation — Change of
Operator Exemption — In Grafton and Coos Counties,
New Hampshire, and Essex County, Vermont

Merrimack & Grafton Railroad Corporation (“MGCR”), a Class III carrier, has filed with the Surface Transportation Board (“STB”) a notice of exemption (the “Notice” – attached) to assume common carrier operations over the following railroad line segments owned by the State of New Hampshire (collectively, the “Lines”): (a) Milepost P 131.93 at North Stratford, New Hampshire to Milepost P 145.21 at Colebrook, New Hampshire; (b) Milepost C 119.86 east of Wing Road in Bethlehem, New Hampshire to Milepost C 130.7 / P 101.9 at Hazen Road, Whitefield, New Hampshire; (c) Milepost C 130.7 / P 101.9 at Hazen Road in Whitefield to Milepost P 112.46 / C 137.42 at Lancaster, New Hampshire; (d) Milepost P 112.46 / C 137.42 at Lancaster to Milepost C 145.76 (proximate to the Whistle Post located south of the West Street crossing at the connection with the St. Lawrence & Atlantic Railroad Company) at Groveton, New Hampshire; and (e) Milepost P 100.91 at Whitefield, New Hampshire to Milepost P 111.57 at Lunenburg, Vermont.

MGCR will replace the incumbent carrier – New Hampshire Central Railroad, Inc. (“NHCR”) – as the exclusive provider of common carrier service over the Lines. Attached is a copy of MGCR’s exemption filing with the STB in the above-referenced docket, which will serve to authorize MGCR’s commencement of rail service in place of NHCR.

MGCR anticipates commencing railroad common carrier service in place of NHCR on or after May 31, 2024,

We are providing you with this information in keeping with the STB’s shipper notice requirements. You are not required (or expected) to respond or to this notification or to participate in the subject STB proceeding. Please contact the undersigned if you have any questions.

Respectfully,

Robert A. Wimbish
Attorney for Merrimack & Grafton
Railroad Corporation

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36771

**MERRIMACK & GRAFTON RAILROAD CORPORATION
— CHANGE OF OPERATOR EXEMPTION —
IN GRAFTON AND COOS COUNTIES, NEW HAMPSHIRE,
AND ESSEX COUNTY, VERMONT**

EXHIBIT C

DRAFT FEDERAL REGISTER NOTICE

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36771

MERRIMACK & GRAFTON RAILROAD CORPORATION
— CHANGE OF OPERATOR EXEMPTION —
IN GRAFTON AND COOS COUNTIES, NEW HAMPSHIRE,
AND ESSEX COUNTY, VERMONT

Merrimack & Grafton Railroad Corporation, a Class III carrier, has filed a notice of exemption under 49 C.F.R. § 1150.41, et seq., to initiate common carrier operations over roughly 52 route miles line of railroad (the “Lines”) owned by the State of New Hampshire as follows: (a) Milepost P 131.93 at North Stratford, New Hampshire to Milepost P 145.21 at Colebrook, New Hampshire; (b) Milepost C 119.86 east of Wing Road in Bethlehem, New Hampshire to Milepost C 130.7 / P 101.9 at Hazen Road, Whitefield, New Hampshire; (c) Milepost C 130.7 / P 101.9 at Hazen Road in Whitefield to Milepost P 112.46 / C 137.42 at Lancaster, New Hampshire; (d) Milepost P 112.46 / C 137.42 at Lancaster to Milepost C 145.76 (proximate to the Whistle Post located south of the West Street crossing at the connection with the St. Lawrence & Atlantic Railroad Company) at Groveton, New Hampshire; and (e) Milepost P 100.91 at Whitefield, New Hampshire to Milepost P 111.57 at Lunenburg, Vermont.

Upon consummation of the subject transaction, MGCR will replace New Hampshire Central Railroad, Inc. as the exclusive common carrier service provider on the Lines.

MGCR expects to commence common carrier service over the Lines on or after the effective date of this exemption.

Comments must be filed with the Board and served on:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606
(312) 252-1500
rwimbish@fletcher-sippel.com

The Notice is filed under 49 C.F.R. § 1150.41. If the Notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

Dated: May __, 2024

By the Board

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36771

**MERRIMACK & GRAFTON RAILROAD CORPORATION
— CHANGE OF OPERATOR EXEMPTION —
IN GRAFTON AND COOS COUNTIES, NEW HAMPSHIRE,
AND ESSEX COUNTY, VERMONT**

VERIFICATION AND CERTIFICATION

VERIFICATION AND CERTIFICATION

Selden J. Houghton, being duly sworn, states as follows:

1. I am President of Merrimack & Grafton Railroad Corporation (“MGCR”).
2. I certify that MGCR is not a Class I or II rail common carrier; that the expected annual revenues of MGCR post-transaction will not exceed \$5 million; and that the transaction proposed herein will not result in MGCR becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201 (1-1).
3. I certify that the documents governing the proposed transaction contain no interchange commitments.
4. I am qualified and authorized to tender this Verification and Certification.
5. I hereby verify have read the foregoing Notice of Exemption, and know that the facts stated herein are true and correct to the best of my information and belief.



Selden J. Houghton

Executed: April 26, 2024