

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36631

**LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION
CONTINUANCE IN CONTROL
UNDER 49 C.F.R. § 1180.2(d)(2)**

VERIFIED NOTICE OF EXEMPTION

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July 13, 2022
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Counsel for Livonia, Avon & Lakeville Railroad Corporation

Dated: July 13, 2022

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July 13, 2022
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July 13, 2022
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36631

**LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION
ACQUISITION OF CONTROL
UNDER 49 C.F.R. § 1180.2(d)(2)**

VERIFIED NOTICE OF EXEMPTION

Pursuant to the class exemption at 49 U.S.C. § 1180.2(d)(2), the Livonia, Avon & Lakeville Railroad Corporation, (referred to herein for convenience as the “LAL”), a Class III rail carrier, through the undersigned counsel, submits this verified notice of exemption (“Notice”) from 49 U.S.C. § 11323 for authorization for the LAL to acquire control of the Ontario Midland Railroad Corporation (“OMID”), a Class III rail carrier. Pursuant to a Stock Acquisition Agreement, the LAL will acquire fifty-five percent of OMID stock.

The LAL is a Class III rail carrier that owns and operates approximately 65 miles of rail line in upstate New York.¹ The LAL also owns and controls the Western New York & Pennsylvania Railroad,² LLC (“WNYP”),³ a Class III rail carrier operating in Steuben, Allegany, Cattaraugus and Chautauqua Counties, New York, and Cameron, Crawford, Erie, McKean, Potter, Venango and Warren Counties,

¹ Livonia, Avon & Lakeville Railroad Corporation–Continuance in Control Exemption–Western New York & Pennsylvania Railroad, LLC, STB Finance Docket No. 34016 (STB served Apr. 30, 2001) citing Livonia, Avon & Lakeville Railroad Corporation–Acquisition and Operation Exemption–Line of Consolidated Rail Corporation, STB Finance Docket No. 32754 (STB served Mar. 11, 1996); Livonia, Avon & Lakeville Railroad Corp.–Acquisition and Operation Exemption–Steuben County Industrial Development Agency, STB Finance Docket No. 32941 (STB served May 22, 1996).

² The LAL owns a controlling interest, 52%, of the WNYP.

Pennsylvania,⁴ and B&H Rail Corporation (“B&H”), a class III railroad that operates in Steuben County, New York (together, the “LAL Class III Affiliates”).⁵

This notice is required because when the contemplated transaction is consummated, the LAL will be a Class III rail carrier that continues in control of two other Class III rail carriers in addition to OMID, which will also be a Class III rail carrier. 49 U.S.C. § 11323(a)(4); 49 C.F.R. §§ 1180.0(a), 1180.2(d)(2). This transaction is exempt under 49 C.F.R. § 1180.2(d)(2). The lines of railroad on which OMID will operate will not connect with the rail lines operated by the LAL or the LAL Class III Affiliates. This acquisition of control is not part of a series of anticipated transactions that would result in a connection between lines operated or to be operated by OMID, the LAL, or the LAL Class III Affiliates. No Class I carrier is involved in this continuance in control transaction.

The LAL submits the following information in accordance with the requirements of 49 C.F.R. § 1180.4(g):

1. Applicants’ names, business addresses, and telephone numbers (49 C.F.R. § 1180.6(a)(i)):

Carl P. Belke
Livonia, Avon & Lakeville Railroad Corporation
PO Box 190-B
5769 Sweeteners Blvd
Lakeville, NY 14480
(585) 346-2090

2. Counsel to whom questions regarding the transaction can be addressed (49 C.F.R. § 1180.6(a)(i)):

Kevin M. Sheys
Hogan Lovells US LLP
555 13th St. NW
Washington, DC 20004
(202) 637- 5600

⁴ Livonia, Avon & Lakeville Railroad Corporation–Continuance in Control Exemption–Western New York & Pennsylvania Railroad, LLC, STB Finance Docket No. 34016 (STB served Apr. 30, 2001).

⁵ Livonia, Avon & Lakeville Railroad Corporation–Continuance in Control Exemption–B&H Rail Corp., STB Finance Docket No. 34124 (STB served Dec. 5, 2001).

3. Brief summary of the parties and proposed transaction (49 C.F.R. § 1180.6(a)(i)):

The LAL is a Class III rail carrier that currently controls two other Class III rail carriers, WNYP and B&H. Common control of these carriers was authorized in Finance Docket No. 34016, Livonia, Avon & Lakeville Railroad Corporation–Continuance in Control Exemption–Western New York & Pennsylvania Railroad, LLC, (STB served Apr. 30, 2001) and Finance Docket No. 34214, Livonia, Avon & Lakeville Railroad Corporation–Continuance in Control Exemption–B&H Rail Corp., (STB served Dec. 5, 2001), respectively.

OMID operates in Wayne County, New York and Monroe County, New York. The majority of OMID’s operations occur in Wayne County. OMID previously operated pursuant to a Modified Certificate of Public Convenience and Necessity and under an agreement with Monroe County, New York.⁶

The LAL will acquire control of OMID by purchasing fifty-five percent of OMID stock pursuant to the Stock Acquisition Agreement described in the terms provided as Exhibit B. An agreement is expected to be executed on or about August 13, 2022. The LAL will purchase the 11,017 shares currently owned by Sandra and Paul Saracen (together, “the Saracens”).

The LAL’s continued control of the LAL Class III Affiliates together with its acquired control over OMID meets all requirements for exemption from 49 C.F.R. § 1180.2(d)(2). As noted above, the lines of railroad on which OMID operates will not connect with the rail lines currently operated by the LAL or the LAL Class III Affiliates. This acquisition of control is not part of a series of anticipated transactions that would result in a connection between lines operated or to be operated by OMID, the LAL, or the LAL Class III Affiliates. No Class I carrier is involved in this continuance in control transaction. Accordingly, this transaction is exempt under 49 C.F.R. § 1180.2(d)(2).

⁶ Ontario Midland Railroad Corporation - Notice of Intention to Terminate Service, STB Finance Docket No. 29762 (Notice filed Aug. 4, 2010).

4. Proposed consummation date (49 C.F.R. § 1180.6(a)(ii)):

The control exemption will be utilized when the LAL acquires control of OMID at the consummation of the stock acquisition transaction described above, August 13, 2022.

5. Purpose of transaction (49 C.F.R. § 1180.6(a)(iii)):

The LAL will acquire OMID's short line operations in Western New York to expand its Class I-short line partnership with CSX Transportation, Inc. and to increase the LAL's overall rail footprint.

6. List of the State(s) in which any part of the property of each applicant carrier is situated (49 C.F.R. § 1180.6(a)(5)):

The LAL, B&H, and OMID each operate entirely within the state of New York. WNYP operates in New York and Pennsylvania.

7. Map (49 C.F.R. § 1180.6(a)(6)):

A map of the routes that OMID, the LAL, and the LAL Class III Subsidiaries operate are attached hereto as Exhibit A.

8. Agreement (49 C.F.R. § 1180.6(a)(7)(ii)):

The terms sheet that will provide the basis for the Stock Acquisition Agreement between the LAL and the Saracens is attached hereto as Exhibit B (the "Terms Sheet"). The LAL will file the final agreement when the transaction is consummated. An unredacted copy of the Terms Sheet is being filed under seal in conjunction with a Motion for Protective Order being filed by the LAL. After consummation, a copy of the executed Stock Acquisition Agreement will be filed with the Board, also under seal.

9. Labor Protective Conditions (49 C.F.R. § 1180.4(g)(1)(ii)):

This acquisition of control transaction is exempt from labor protective conditions under 49 U.S.C. § 11326(c), which exempts transactions under 49 U.S.C. §§ 11324 and 11325 involving only Class III rail carriers.

10. Environmental and Historic Preservation Matters (49 C.F.R. §§ 1180.4(g)(2), 1180.6(a)(8)):

This acquisition of control transaction is exempt from environmental review under 49 C.F.R. § 1105.6(c)(1)(i) because this acquisition of control will not cause any operating changes that exceed the threshold established in 49 C.F.R. § 1105.7(e)(4) or (5). In addition, this transaction is exempt from historic review under 49 C.F.R. § 1105.8(b)(1) because this acquisition of control will not result in any changes to properties, including disposal or alteration of properties subject to Board jurisdiction that are 50 years old or older. Accordingly, no historic report is required.

11. Interchange Commitments (49 C.F.R. §§ 1180.4(g)(3)):

The LAL certifies that the proposed acquisition of control of OMID and the corresponding Stock Acquisition Agreement will not limit OMID's future interchange with any third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means.

Respectfully submitted,



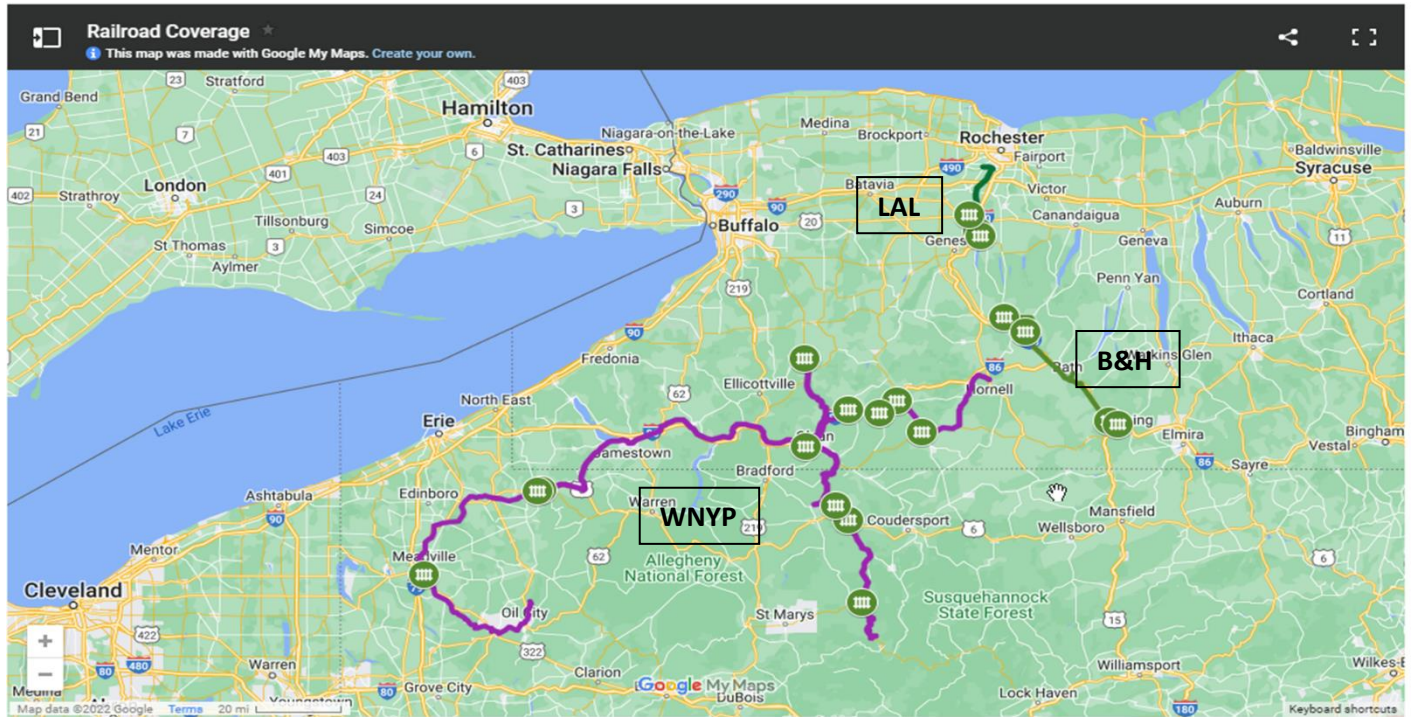
Kevin M. Sheys
Carolyn G. Kraska
Hogan Lovells US LLP
555 13th Street NW
Washington, D.C. 20004

Counsel for Livonia, Avon & Lakeville Railroad Corporation
Dated: July 13, 2022

EXHIBIT A

MAPS

Map 1: Livonia, Avon & Lakeville Railroad System Map (LAL, WNYP, and B&H)



Map 2: Ontario Midland Railroad Corporation System Map

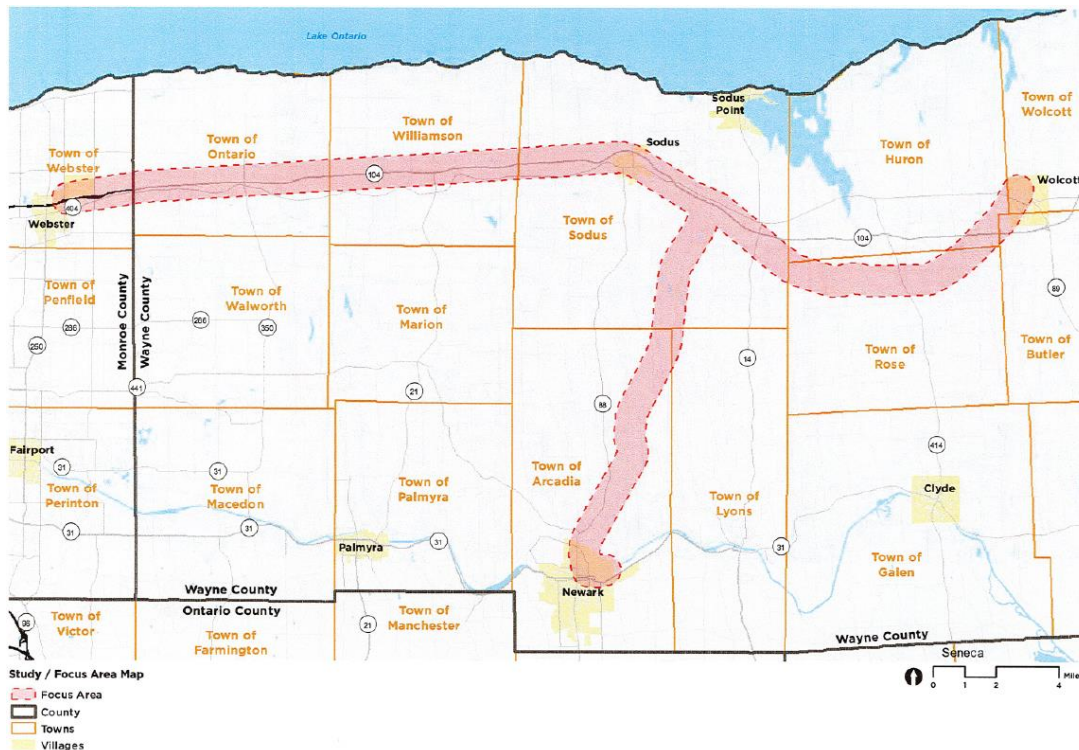


EXHIBIT B

TERMS SHEET

Confidential Business Information Redacted; Filed Under Seal

**LIVONIA, AVON & LAKEVILLE RAILROAD CORP**

P.O. Box 190-B 5769 Sweeteners Blvd.
Lakeville, NY 14480
(585) 346-2090 ph.
(585) 346-6454 fax
www.lalrr.com

To: Sandra J (Sandi) and Paul J (PJ) Saracen

From: Livonia, Avon & Lakeville Railroad (LALRR)

Re: Purchase of OMID (Ontario Midland) shares and Sandi/PJ Assets

Date: June 16th, 2022

The Livonia, Avon & Lakeville Railroad (LALRR) would like to make a formal offer to purchase all shares individually owned by Sandi Saracen, PJ Saracen as well as jointly owned shares by Sandi and PJ Saracen.

The Livonia, Avon & Lakeville Railroad Board has agreed to the [REDACTED] per share price expressed by Sandi Saracen.

- Total shares: 11,017
- Purchase price: [REDACTED]

[REDACTED]

The Livonia, Avon, & Lakeville Railroad Board has also agreed to keep PJ and Sandi Saracen on staff until the end of 12-31-2022 at their current pay-rate. At this point it is our understanding that PJ will retire. The Livonia, Avon & Lakeville Board has also agreed to keep Sandi Saracen on staff for 1 day per month for the next 44 months (about 3 and a half years), starting on January 1st, 2022. The LALRR will pay Sandi a fee of [REDACTED] for one day's work for a total of [REDACTED] over the 44-month agreement. If Sandi is unable to complete the 44-month agreement due to health-related issues the LALRR will pay out the remaining balance to her estate.

This agreement sets the sale compensation at [REDACTED].

We would like to structure the sale of the shares separate from the personal assets.

Handwritten signatures and initials in blue and red ink. A blue signature is at the top, and red initials "PJ" and "JPS" are below it.

Livonia, Avon, & Lakeville Railroad

Name: Jeffrey P. Bauman

Signature: Jeffrey P. Bauman

Date: 6.16.22

Paul J. Saracen

Signature: Paul J. Saracen

Date: 6,16,22

Sandra J. Saracen

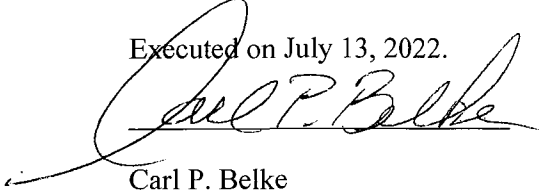
Signature: Sandra J. Saracen

Date: 6/16/22

VERIFICATION

I, Carl P. Belke, President of the Livonia, Avon & Lakeville Railroad Corporation, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.

Executed on July 13, 2022.

A handwritten signature in cursive script, reading "Carl P. Belke", written over a horizontal line.

Carl P. Belke