

300651

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
May 21, 2020
Part of
Public Record

Docket No. FD 36405

**MERRIMACK & GRAFTON RAILROAD CORPORATION
-CHANGE OF OPERATORS EXEMPTION- LINE OF
NEW ENGLAND SOUTHERN RAILROAD CO.**

VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 C.F.R. §§ 1150.31(a)(3) and 1150.33 the Merrimack & Grafton Railroad Corporation ("MGRC") a non-carrier incorporated under the laws of the State of New Hampshire, hereby files this Verified Notice of Exemption to become the operator of a 73-mile long line of railroad owned by the State of New Hampshire and presently operated by New England Southern Railroad Co. ("NESR") a Class III rail carrier. In accordance with the requirements of 49 C.F.R. § 1150.33, MGRC submits the following information:

A. Name and Address of Applicant: 49 C.F.R. §1150.33(a)

Merrimack & Grafton Railroad Corporation
1 Railway Lane
Burlington, VT 05401
802-658-2550

B. Applicant's Representative: 49 C.F.R. §1150.33(b)

Any questions concerning this Notice should be sent to counsel for MGRC at the following address:

FILED
May 21, 2020
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
May 21, 2020
SURFACE
TRANSPORTATION BOARD

Thomas W. Wilcox
GKG Law, P.C.
1055 Thomas Jefferson St. NW
Suite 500
Washington, D.C. 20007
(202) 342-5248
twilcox@gkglaw.com

C. Statement Concerning Agreement: 49 C.F.R. §1150.33(c)

MGRC is a wholly owned subsidiary of Trans Rail Holding Company (“TRHC”), which on April 30, 2020 entered into an agreement to purchase some of the business assets of NESR, a Class III rail carrier that is the designated operator of an approximately 73-mile long line of railroad that runs between Concord and Lincoln, New Hampshire which is owned by the State of New Hampshire (the “Line”). The NESR provides common carrier rail operations over the Line pursuant to an Operating Agreement between NESR and the New Hampshire Department of Transportation (“NHDOT”), dated November 14, 2012. As part of NESR’s agreement with TRHC and subject to NHDOT approval, NESR will assign all of its rights and obligations under the Operating Agreement to MGRC. MGRC has been formed for the purpose of becoming the new designated operator of the Line, and prior to the commencement of service on the Line MGRC will have obtained required consent of NHDOT to the assignment. The NESR will remain an independent Class III rail carrier after the transaction is closed.

D. Operator of the Property: 49 C.F.R. §1150.33(d)

MGRC will operate and provide all rail common carrier service to shippers on the Line pursuant to the terms and conditions of the Operating Agreement. By virtue of the assignment of its rights and obligations, NESR does not object to being replaced as the operator of the Line, and prior to any commencement of service on the Line NHDOT will have approved of the assignment.

E. Background and Summary of the Transaction: 49 C.F.R. § 1150.33(e)

The Line is an approximately 73-mile line of railroad owned by the State of New Hampshire which extends from Milepost P 21.30 at Lincoln, NH to Milepost C 0.58 at Concord, NH, where the Line interchanges with tracks owned by Pan Am Railways. The total route miles involved in this change of operator transaction is 73.

As stated above, the name of the current railroad operator that MGRC is replacing is the New England Southern Railroad Co. NESR is headquartered at 143 New Boston Road, Goffstown, New Hampshire 03045.

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

New Hampshire Department of Transportation
7 Hazen Drive
Concord, New Hampshire 03302

Attn: Ms. Michelle Winters, Administrator
Bureau of Rail & Transit

As also stated above, this change in operator is part of an overall transaction between TRHC, NESR, and NHDOT, whereby TRHC is acquiring some of the business assets of NESR and NESR, with the concurrence of NHDOT, will be assigning its rights and obligations under the aforementioned Operating Agreement to MGRC, which is a newly-formed non-carrier subsidiary of THRC created to conduct freight operations on the Line.

TRHC and NESR intend to consummate the Business Asset Purchase Agreement and the assignment of the Operating Agreement to MGRC thirty days after this Notice is filed, or on or before June 30, 2020.

F. Map: 49 C.F.R. 1150.33(f)

A map showing the Line is attached as Exhibit A to this Notice.

G. Certificate of Compliance: 49 C.F.R. 1150.33(g)

Certification of Compliance with the provisions of 49 C.F.R. 1150.33(g) is included with the verification of this Notice.

H. Interchange Commitments: 49 C.F.R. §1150.33(h)

MGRC's proposed operation of the Line does not involve any provision in any agreement that would limit future interchange with a third-party connecting carrier.

I. Shipper Notice: 49 C.F.R. § 1150.32(b)

MGRC has provided notice of the proposed change of operator to the shippers on the Line. A list of the shippers served and a copy of the notice letter sent to them are attached hereto as Exhibit B.

J. Advance Notice: 49 C.F.R. 1150.32(e)

The advance notice to employees required by this regulation is not applicable because the MGRC's annual revenues will not exceed \$5 million.

K. Environmental and Historic Impacts: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(2), the proposed change in operators 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 change in operators also is exempt from historic preservation reporting requirements. The proposed acquisition will not change any current rail operations nor substantially change the level of maintenance of rail property. Further, Board approval is required to discontinue or abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

L. Caption Summary: 49 C.F.R. §1150.32(a)

A caption summary complying with the format in 49 C.F.R. §1150.34 is attached.

Respectfully submitted,

A handwritten signature in blue ink that reads "Thomas W. Wilcox". The signature is written in a cursive style.

Thomas W. Wilcox
Kristine O. Little
GKG Law, P.C.
The Foundry Building
1055 Thomas Jefferson Street NW
Suite 500
Washington, DC 20007
(202) 342-5248

Dated: May 21, 2020

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36405

**MERRIMACK & GRAFTON RAILROAD CORPORATION
-CHANGE OF OPERATORS EXEMPTION- LINE OF
NEW ENGLAND SOUTHERN RAILROAD CO.**

Merrimack & Grafton Railroad Corporation (“MGRC”), a non-carrier, has filed a notice of exemption to acquire from the New England Southern Railroad Co. (“NESR”) its rights and obligations to provide rail freight operations over approximately 73 miles of rail line owned by the State of New Hampshire and extending from Milepost P 21.30 in Lincoln, New Hampshire to Milepost C 0.58 in Concord, New Hampshire (the “Line”). The operating rights are being acquired through an assignment of an Operating Agreement in place between the New Hampshire Department of Transportation and NESR. The assignment will result in MGRC replacing NESR as the operator of the Line.

Comments must be filed with the Board and served on:

Thomas W. Wilcox
GKG Law, P.C.
1055 Thomas Jefferson Street
Suite 500
Washington, D.C. 20007
(202) 342-5248
twilcox@gkgglaw.com

This proceeding is related to Docket No. FD 36403 in which Trans Rail Holding Company has concurrently filed a notice of exemption under 49 C.F.R. §1180.2(d)(2) to continue to control

MGRC once MGRC is approved as the new operator of the Line and becomes a carrier subject to the Board's jurisdiction.

This notice is filed under §1150.31. 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.

EXHIBIT A – MAP

0 3 6 12 18 24 Miles

STATE OF NEW HAMPSHIRE

-  **MERRIMACK & GRAFTON RAILROAD**
(MP C 0.58 Concord to MP P 21.30 Lincoln NH)
-  **PAN AM RAILWAY**

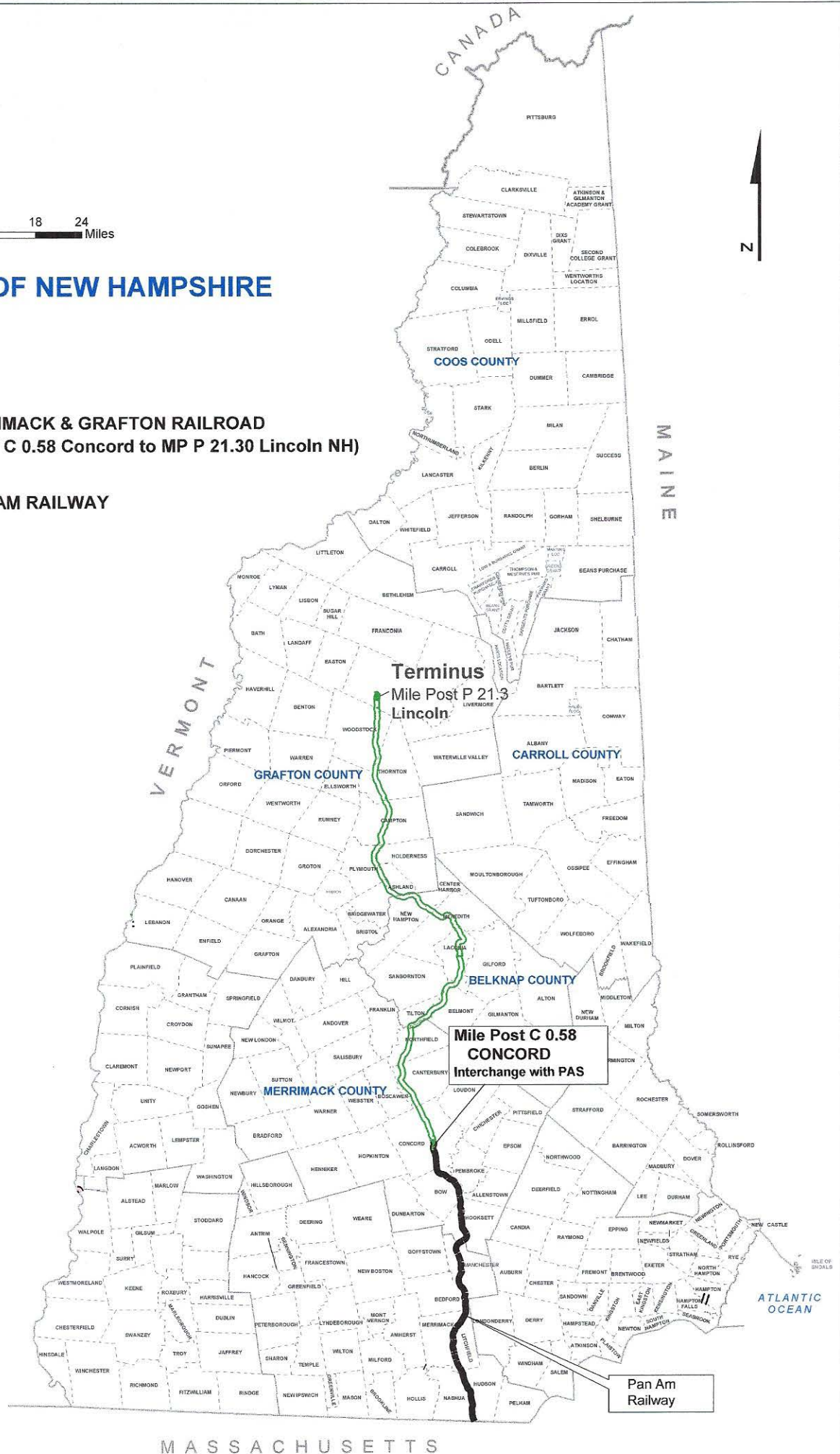


EXHIBIT B

List of Current Shippers

Jeremy Dry, Plant Manager
3M Corporation
11 Paper Trail Road
Tilton, NH 03276

Email ddry@mmm.com

Benjamin Clark, President
Plymouth & Lincoln Railroad
P.O. Box 9
Lincoln, NH 04251

Email hoborailroad@fastmail.net

Benjamin Clark, President
Hobo & Winnepesaukee Scenic Railroad
P.O. Box 9
Lincoln, NH 04251

Email hoborailroad@fastmail.net

New Hampshire DOT, att'n Chuck Corliss, PE
Bureau of Rail & Transit,
John O. Morton Bldg.,
Concord, NH 03302

Email: Chuck.Corliss@dot.nh.gov

New Hampshire National Guard, att'n Russell B. Cox
Joint Force Headquarters Building
1 Minuteman Way
Concord, NH 03301

email: russell.b.cox.mil@mail.mil.



ATTORNEYS AT LAW
THE FOUNDRY BUILDING 1055 THOMAS JEFFERSON STREET, NW WASHINGTON, DC 20007
TELEPHONE: 202.342.5200 FACSIMILE: 202.342.5219

RICHARD BAR
BRENDAN COLLINS
EDWARD D. GREENBERG
KATHARINE FOSTER MEYER
DAVID K. MONROE
TROY A. ROLF
KEITH G. SWIRSKY
THOMAS W. WILCOX
CHRISTOPHER B. YOUNGER

OLIVER KRISCHIK
KRISTINE O. LITTLE

OF COUNSEL:
STEVEN JOHN FELLMAN

MINNESOTA OFFICE:
114 FIRST STREET SOUTH
BUFFALO, MN 55313
TELEPHONE: 763-682-6620
FACSIMILE: 763-682-6261

WRITER'S DIRECT E-MAIL ADDRESS
TWILCOX@GKGLAW.COM

WRITER'S DIRECT DIAL NUMBER
(202) 342-5248

May 21, 2020

By Email hoborailroad@fastmail.net

Benjamin Clark, President
Plymouth & Lincoln Railroad
P.O. Box 9
Lincoln, NH 04251

Re: Docket No. FD 36405, Merrimack & Grafton Railroad Corporation – Change of Operators Exemption – Line of New England Southern Railroad Co.

Dear Sirs:

The Merrimack & Grafton Railroad Corporation ("MGRC") has filed a change of operator's notice of exemption (the "Notice") with the Surface Transportation Board ("STB") in connection with a line of railroad owned by the State of New Hampshire and operated by the New England Southern Railroad Co. ("NESR"). Pursuant to the Notice and subject to NH DOT approval, MGRC will commence common carrier operations over approximately 73 miles of track from Milepost P 21.30 at Lincoln, NH to Milepost C 0.58 at Concord, NH ("the Line") in place of NESR. Effective June 30, 2020, or as soon thereafter as possible, MGRC intends to assume operations, and will be responsible for providing rail service to your facility on that Line.

Kindly refer to the copy of the Notice attached for additional information. We are providing you with the Notice as information in keeping with STB shipper notification requirements. You are not required to respond or to the Notice or otherwise participate in the STB proceeding. If you have any questions regarding this matter, please feel free to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Thomas W. Wilcox".

Thomas W. Wilcox
Attorney for MRGC

Attachment

CERTIFICATION AND VERIFICATION

I, Selden Houghton, hereby certify and declare under penalty of perjury as follows:

1. I am President of the Merrimack & Grafton Railroad Corporation ("MRGC").
2. The annual revenues of MGRC are not expected to exceed levels that would result in MGRC becoming a Class I or Class II rail carrier under the thresholds set forth in 49 C.F.R. Part 1201.
3. I have read the foregoing Verified Notice of Exemption and know that the factual information contained herein is true and correct.

Executed: May 21, 2020

By: 
Selden Houghton
Title: President