

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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Office of Proceedings
December 10, 2018
Part of
Public RecordPhone: (312) 252-1500
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December 10, 2018

VIA ELECTRONIC FILINGMs. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

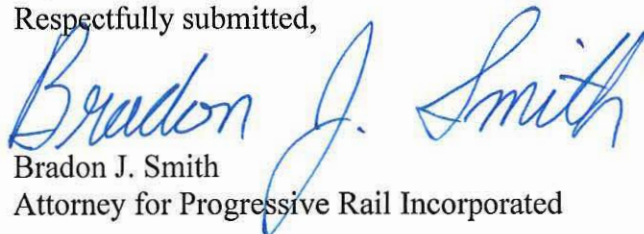
Re: **Docket No. FD 36251**
Progressive Rail Incorporated — Lease Exemption with
Interchange Commitment — Soo Line Railroad Company
and Dakota, Minnesota & Eastern Railroad Corporation

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Verified Notice of Exemption of Progressive Rail Incorporated Pursuant to 49 C.F.R. § 1150.41 *et seq.*** dated December 10, 2018. A check in the amount of \$2,000 representing the appropriate fee for this filing was forwarded to and received by the Surface Transportation Board via overnight delivery on November 20, 2018.

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

Respectfully submitted,


Bradon J. Smith
Attorney for Progressive Rail IncorporatedFILED
December 10, 2018
SURFACE TRANSPORTATION BOARD

BJS/bs

Attachment

FEE RECEIVED
December 10, 2018
SURFACE TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36251

PROGRESSIVE RAIL INCORPORATED
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
SOO LINE RAILROAD COMPANY AND
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

**VERIFIED NOTICE OF EXEMPTION OF
PROGRESSIVE RAIL INCORPORATED
PURSUANT TO 49 C.F.R. § 1150.41 *ET SEQ***

Thomas J. Litwiler
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR PROGRESSIVE RAIL
INCORPORATED**

Dated: December 10, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36251

PROGRESSIVE RAIL INCORPORATED
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
SOO LINE RAILROAD COMPANY AND
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

**VERIFIED NOTICE OF EXEMPTION OF
PROGRSSIVE RAIL INCORPORATED
PURSUANT TO 49 C.F.R. § 1150.41 ET SEQ**

Pursuant to 49 CFR § 1150.41 *et seq*, Progressive Rail Incorporated (“PGR”), a Class III rail carrier, hereby files this Verified Notice of Exemption (“the Notice”) to (1) renew its lease from Soo Line Railroad Company (“Soo Line”) of two lines of railroad extending between Northfield and Lakeville, Minnesota (the “Lakeville Line”) and between Rosemount and Eagan, Minnesota (the “Eagandale Line”); and (2) lease from Soo Line and the Dakota, Minnesota & Eastern Railroad Corporation (“DM&E”) a line of railroad extending between Faribault, Minnesota and Northfield (the “Faribault Line”).¹ Soo Line and DM&E are affiliated railroads under common control of Canadian Pacific Railway Company (“CP”). *Canadian Pacific Railway Company — Control — Dakota, Minnesota & Eastern Railroad Corporation*, Docket No. FD 35081 (STB served Sep. 30, 2008). Collectively, the Lakeville, Eagandale, and Faribault Lines are referred to herein as the “Leased Lines.”

¹ PGR holds existing trackage rights on the Faribault Line which will merge into PGR’s leasehold interest in the line once the transaction proposed herein is consummated. *See Norfolk and Western Railway Company — Acquisition Exemption — Consolidated Rail Corporation*, Docket No. FD 32957 (STB served Aug. 15, 1996) at 1, n.3.

In accordance with the requirements of 49 C.F.R. § 1150.43, PGR submits the following information:

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

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

Progressive Rail Incorporated
21778 Highview Ave.
Lakeville, MN 55044

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

PGR's representative to whom correspondence regarding this transaction should be sent is as follows:

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606
(312) 252-1500

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

Soo Line, DM&E, and PGR have negotiated and executed a Lease Agreement and an Operating Agreement governing operations of the Leased Lines; the effectiveness of each agreement is contingent on receipt of all necessary regulatory approvals.

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

PGR will operate and provide all rail common carrier service to shippers on the Leased Lines.

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

PGR has leased and operated Soo Line's Lakeville Line and the Eagandale Line since 2004. *Progressive Rail Incorporated — Lease and Operation Exemption — Rail Lines of Soo Line Railroad Company, In Dakota County, Minnesota, Docket No. FD 34496* (STB served

May 19, 2004). The Lakeville Line extends approximately 21 miles from UP Milepost 309.6 at Northfield, Minnesota, in the south, through UP Milepost 313.77 (MN&S (CP) Milepost 52.9) to MN&S (CP) Milepost 35.25² near Lakeville, Minnesota, in the north.³ The Lakeville Line also includes a short 0.1-mile segment of track known as the “Cannon Falls Branch” that diverges east in Northfield to the Cannon River, as identified on Exhibit A-2. The Eagandale Line extends approximately 12 miles between UP Milepost 332.05 at Rosemount, Minnesota, in the south, through UP Milepost 333.85 (CP Milepost 150.8), to CP Milepost 160.7 at Eagan, Minnesota, in the north.⁴ Pursuant to the new agreement executed by the parties, PGR’s lease of the Lakeville Line and the Eagandale Line will be revised and renewed for a period of 15 years, with possible 5-year extensions.

Faribault Line

The third line subject to this Notice, the Faribault Line, consists of two relevant segments, over which PGR operates pursuant to *Progressive Rail Incorporated — Acquisition of Operation Exemption — Rail Lines of Union Pacific Railroad Company*, Docket No. FD 34476 (STB served Apr. 7, 2004) (“UP-PGR”). The Faribault Line was originally owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (“the Milwaukee Road”). Soo Line purchased the assets of the bankrupt Milwaukee Road, including the Faribault Line, in 1985. *See gen. In re: Chi. Milw. St. Paul & Pac. R.R.* 827 F.2d 112 (7th Cir. 1987). A series of transactions commencing in 1997 resulted in DM&E-ownership of the Faribault–Comus segment of the

² This milepost has a legacy designation of the former Minneapolis, Northfield, & Southern Railway Company, which Soo Line acquired in 1982. *Soo Line Railroad Company and Minneapolis Northfield & Southern Railway Company, Inc. — Petition for Exemption*, 366 I.C.C. 286 (1982).

³ The leased trackage includes the Northfield Yard between UP Milepost 312.13 (south yard point of switch) and UP Milepost 313.15 (north yard point of switch).

⁴ The leased trackage includes the Rosemount siding, team track, house track and wye track between UP Milepost 332.05 (south yard point of switch) to UP Milepost 333.85 (north yard point of switch).

Faribault Line, while Soo Line has retained ownership of the Comus–Northfield segment.⁵ UP’s predecessor had acquired those trackage rights from the Milwaukee Road in 1978.⁶ *See Chicago and North Western Transportation Co. — Trackage Rights over Chicago, Milwaukee, St. Paul and Pacific Railroad Company Between Faribault and Northfield in Rice County, MN.* (“CNW Rights”) Docket No. FD 28764 (ICC served Jun. 21, 1978). The *CNW Rights* on the Soo/DM&E Faribault Line held by PGR as a result of the *UP-PGR* conveyance will be cancelled and superseded by PGR’s lease of the line from Soo Line and DM&E.

The Faribault Line extends approximately 9 miles between UP Milepost 300.5 at Faribault, Minnesota, in the south to UP Milepost 309.6 at Northfield, Minnesota, in the north.⁷ DM&E owns the Faribault Line from Comus to Faribault; Soo Line owns the Faribault Line from Comus to Northfield.⁸ Pursuant to the lease agreement executed by the parties, PGR will lease and operate the Faribault Line for a term of 15 years with the possibility of 5-year extensions.

The total length of the Leased Lines is approximately 42 miles (not inclusive of yard track). PGR intends to consummate the proposed lease transaction on or shortly after the receipt of all requisite regulatory approvals.

⁵ *See I&M Rail Link, LLC – Acq. & Oper. Exem. – Canadian Pacific Ry.*, 2 S.T.B. 167, 186 (1997); *Iowa Chicago and Eastern Railroad Corporation — Acquisition and Operation Exemption — Lines of I&M Rail Link LLC*, Docket No. FD 34177 (STB served Jun. 12, 2002); *Canadian Pacific Railway Company, Soo Line Holding Company, and Dakota Minnesota & Eastern Railroad Corporation et. al. – Corporate Family Transaction – Iowa, Chicago and Eastern Railroad Corporation*, Docket No. 35202 (STB served Dec. 12, 2008).

⁶ UP separately holds trackage rights on the Comus-Northfield segment of the Faribault Line pursuant to the 1983 “Spine Line” transaction in which a UP predecessor acquired the Kansas City-Twin Cities route of the bankrupt Chicago, Rock Island and Pacific Railroad Company. *See Midwestern Rail Properties, Inc., Subsidiary of the Chicago and North Western Transportation Company — Purchase (Portion) — Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) — Lines in Minnesota, Iowa, and Missouri*, 366 I.C.C. 915, Appendices A and B (ICC served Jun 16, 1983). Those trackage rights are not affected by the lease transaction proposed herein.

⁷ The trackage to be leased to PGR includes of spur and side tracks lying between Prairie Ave. and across Division Street West in Faribault (south of CP Milepost 116.9).

⁸ The division of ownership between Soo Line and DM&E is at UP Milepost 306.5 in Comus.

The name and address of the transferring railroads are:

Soo Line Railroad Company
120 S. Sixth St.
Minneapolis, MN 55402

Dakota, Minnesota, and Eastern Railroad Corporation
120 S. Sixth St.
Minneapolis, MN 55402

Map: 49 C.F.R. § 1150.43(f)

Maps showing the Leased Lines are attached as Exhibits A-1 through A-3 to this Notice.

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

The projected revenues will not result in the creation of a Class II or Class I rail carrier. A certification to this effect is made with the verification of this Notice.

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

(i) The Lease Agreement for the Leased Lines includes an interchange commitment whereby PGR cannot enter into any other agreement for the movement of PGR traffic to or from the respective lines without the prior consent of Soo Line or DM&E. Affected interchanges are at Northfield Yard for the Lakeville and Faribault Lines, and Rosemount Yard for the Eagandale Line.

(ii) The complete, confidential version of the Lease Agreement and Operations Agreement to be entered into by and among Soo Line, DM&E and PGR is separately filed under seal.

(iii) A list of shippers located on the Leased Lines that have made use of rail service over the past two years is attached hereto as Exhibit B-1.

(iv) The confidential aggregate number of carloads originated or terminated on the Leased Lines by the above-listed shippers is being filed separately under seal.

(v) PGR certifies that it has provided notice of the proposed transaction and interchange commitment to the above-listed shippers, under cover of the letter attached hereto as Exhibit B-2.

(vi) Union Pacific Railroad Company is the only third party railroad that could physically interchange with PGR on the Leased Lines.

(vii) The confidential difference between the lease price with and without the interchange commitment is being filed separately under seal.

(viii) PGR has filed this Notice of Exemption with the existence of an interchange commitment designated in the caption.

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

PGR's annual revenue, with the lease of the lines, is anticipated to exceed \$5 million. PGR has posted and served the advance notice required under this subsection, and certified to the Board that it had done so on November 15, 2018. Concurrent with this Notice, PGR is seeking a partial waiver of this provision.

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

Under 49 C.F.R. § 1105.6(c)(2), PGR's proposed lease of the Leased Lines 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), PGR's lease of the Leased Lines also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of

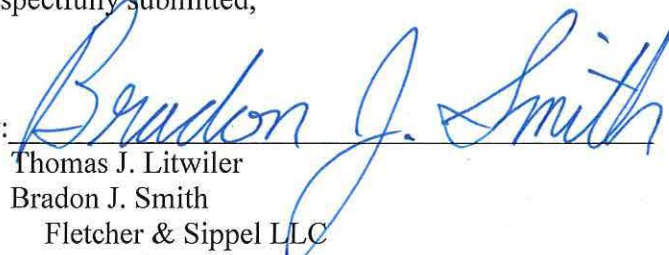
continued rail operations. Further Surface Transportation Board approval is required to discontinue any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.42(a)

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

Respectfully submitted,

By:


Thomas J. Litwiler

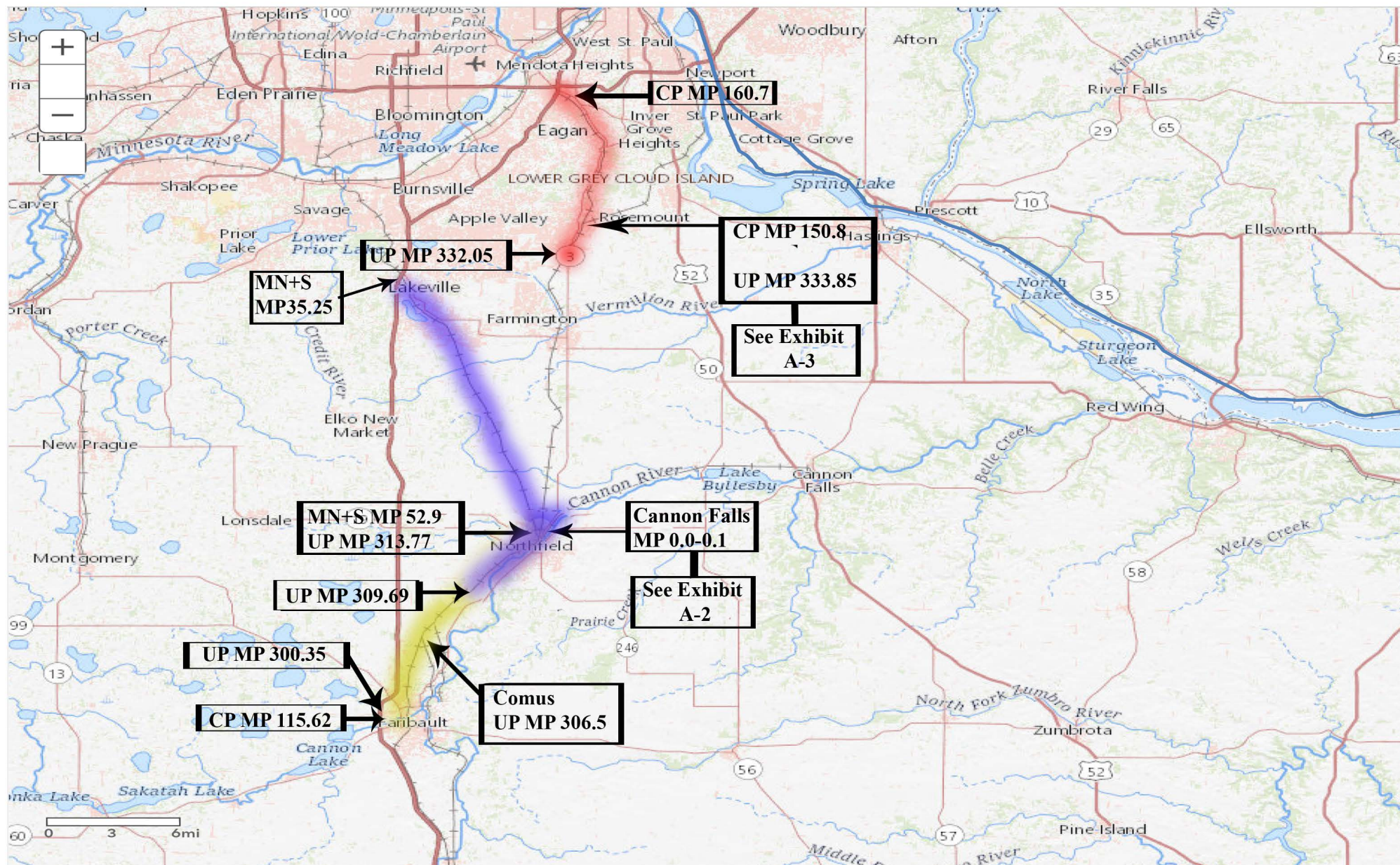
Bradon J. Smith

Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800

Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR PROGRESSIVE RAIL
INCORPORATED**

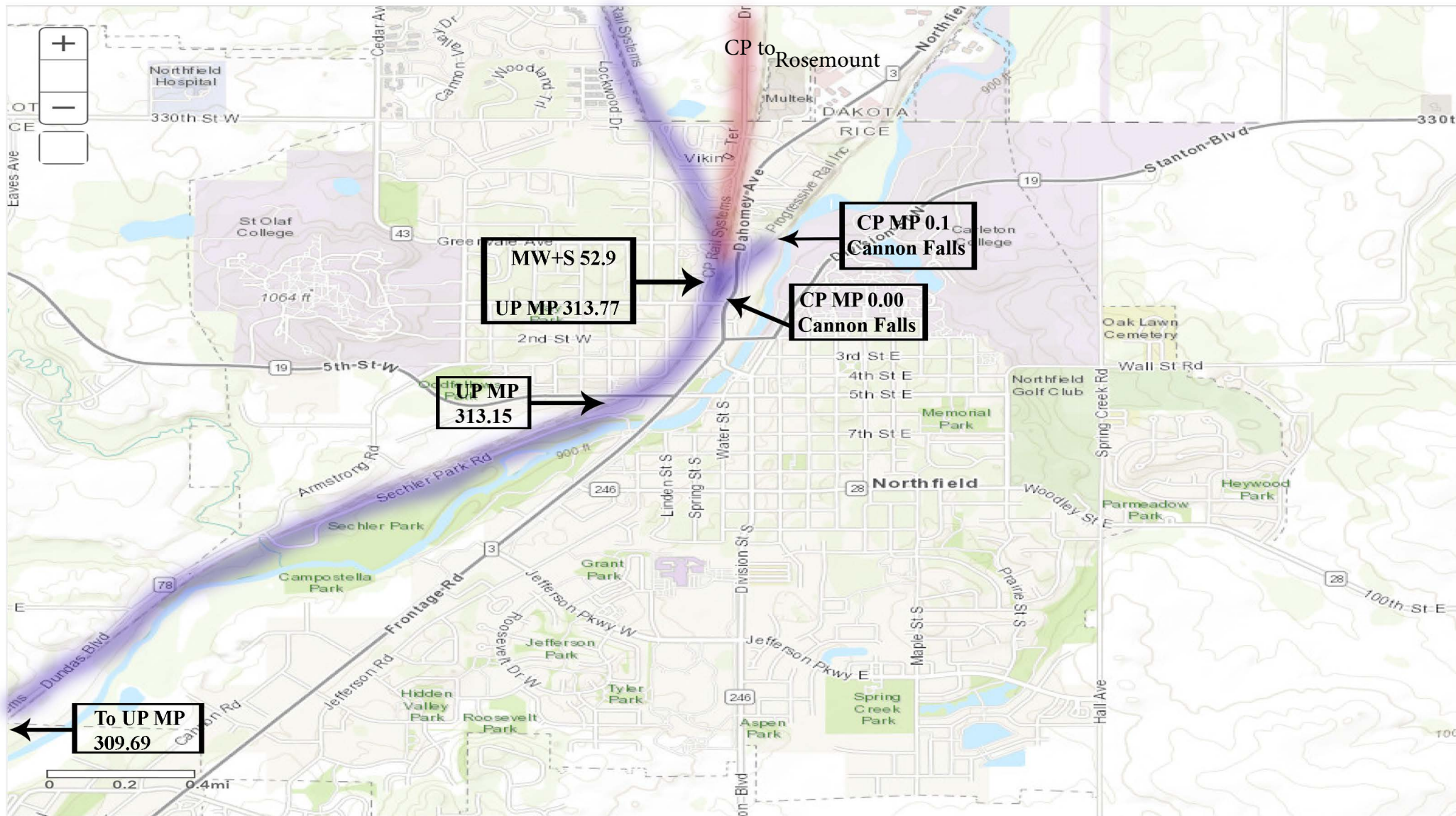
Dated: December 10, 2018



Docket No. FD 36251

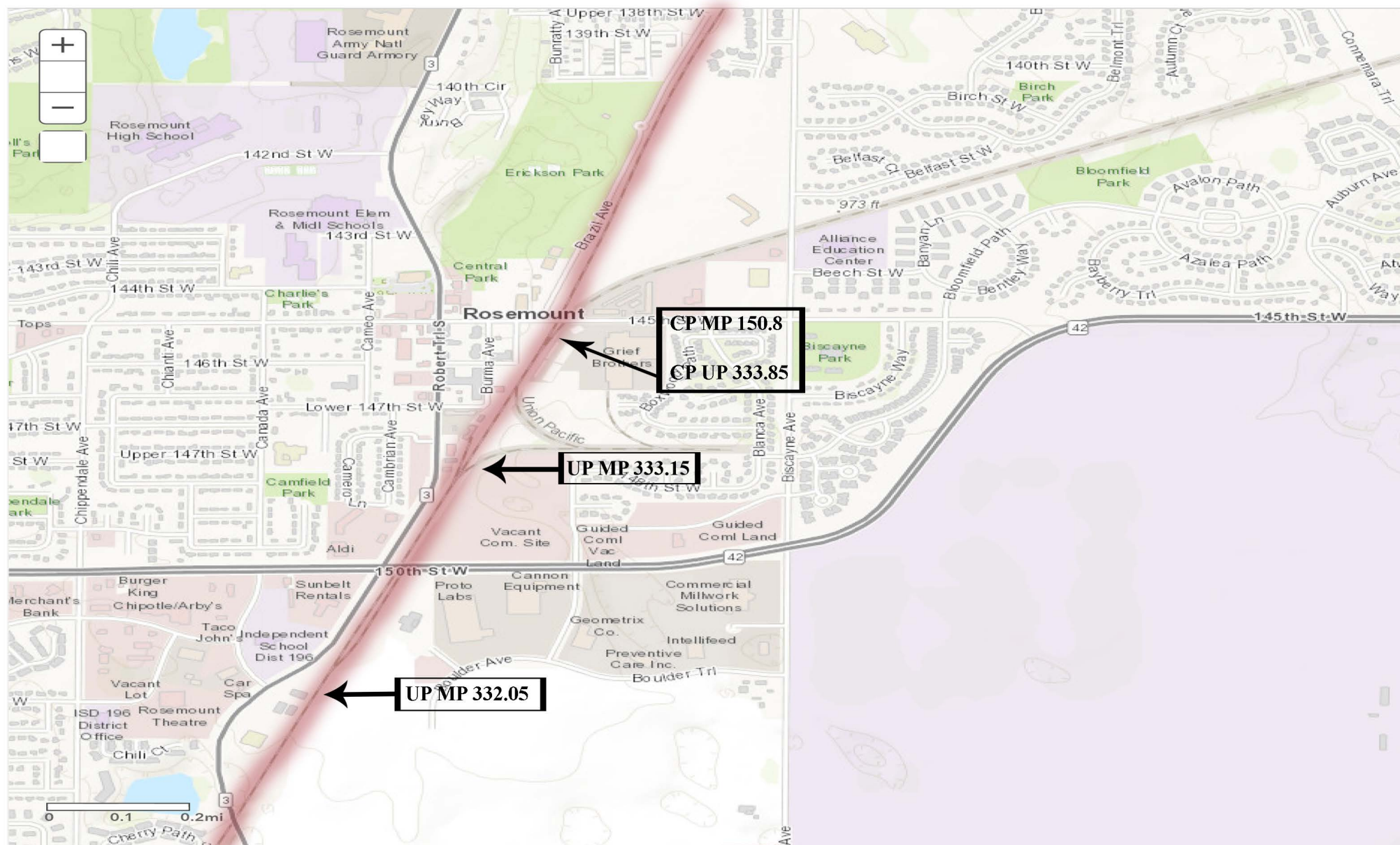
Progressive Rail Incorporated – Lease Exemption with Interchange Commitment –
Soo Line Railroad Company and Dakota, Minnesota & Eastern Railroad
Corporation

Lakeview Line
Eagandale Line
Faribault Line



Docket No. FD 36251

**Progressive Rail Incorporated – Lease Exemption with Interchange Commitment –
Soo Line Railroad Company and Dakota, Minnesota & Eastern Railroad
Corporation**

**Docket No. FD 36251**

**Progressive Rail Incorporated – Lease Exemption with Interchange Commitment –
Soo Line Railroad Company and Dakota, Minnesota & Eastern Railroad
Corporation**

LIST OF SHIPPERS PURSUANT TO 49 C.F.R. § 1150.43(h)(iii)

ADA CARBON SOLUTIONS LLC
ALBEMARLE CATALYST COMPANY
AMERICAN CAST IRON PIPE CO
AMVAC CHEMICAL CORP
APG MEDIA OF SOUTHERN MINNESOTA
BASF CORP
BERRY PALLETS
BOISE CASCADE, LLC
BUILDERS FIRSTSOURCE INC
CALUMET SPECIALTY PRODUCTS PARTNERS
CAROLINA STALITE CO
CASCADES CONTAINERBOARD PACKAGING
CHS INC
CITI-CARGO & STORAGE
CIT GROUP/EQUIPMENT FINANCING INC
CLOVERLEAF COLD STORAGE
COCA-COLA BOTTLING CO
THE DOW CHEMICAL CO
ENVIROTECH SERVICES INC
EVER CAT FUELS LLC
FCTG STRUCTURED PRODUCTS LLC
FEDERAL WHITE CEMENT
GAF-ELK CORP
GCC DACOTAH INC
GENPAK LLC
GENERAL RESOURCE TECHNOLOGY CORP
GENERAL TRANSPORT INC
GERDAU AMERISTEEL US INC
GERTENS GREENHOUSES & GARDEN CENTRE
GOPHER RESOURCE CORP
GREEN TOUCH SYSTEMS LLC
LAFARGE NORTH AMERICA INC
LANSING TRADE GROUP LLC
LOGAN ALUMINUM
MALARKEY ROOFING PRODUCTS
MENASHA CORP
MICRO NUTRIENTS USA, LLC
MOM BRANDS CO
MORTON BUILDINGS INC
MOSAIC GLOBAL SALES LLC
NATIONAL POLYMERS
NC MINERALS LLC
NGL SUPPLY TERMINAL COMPANY LLC
NORTHWEST HARDWOODS INC

OLYMPIC INDUSTRIES INC
PERFORMANCE OFFICE PAPERS
POLYONE DISTRIBUTION CO
POLYETHYLENE TECHNOLOGY INC
PVS TECHNOLOGIES INC
RATIONAL ENERGIES HC, INC.
RECYCLE MINNESOTA LLC
RESOURCE PLASTICS CORPORATION
RUSH CREEK LUMBER INC
SAFETY-KLEEN SYSTEMS INC
SHAMROCK BUILDING MATERIALS INC
SHAMOKIN FILLER COMPANY INC
SOLVAY CHEMICALS INC
SPECTRO ALLOYS
SPOKANE FOREST PRODUCTS INC.
STELLA-JONES CANADA INC
ST PAUL PARK REFINING CO LLC
THOMASSON CO
THOMSON REUTERS
TWIN CITY CONCRETE PRODUCTS COMPANY
UNIVAR USA INC
UPONOR INC
US SALT INC
VIKING FOREST PRODUCTS LLC
VILLAUME INDUSTRIES INC
WATERFORD OIL CO
WAUSAU SUPPLY COMPANY
WESTERN PETROLEUM CO

Re: **Docket No. FD 36251**
Progressive Rail Incorporated — Lease Exemption with
Interchange Commitment — Soo Line Railroad Company
and Dakota, Minnesota & Eastern Railroad Corporation

Dear Sirs:

Progressive Rail Incorporated (“PGR”) has filed a Notice of Exemption (the “Notice”) with the Surface Transportation Board (“STB”) to lease three railroad lines, the Lakeville, Eagandale, and Faribault lines. The Lakeville Line extends approximately 21 miles between UP Milepost 309.6 at Northfield, Minnesota, in the south, through UP Milepost 313.77 (MN&S (CP) Milepost 52.9), to MN&S (CP) Milepost 35.25 near Lakeville, Minnesota, in the north. The Lakeville Line also includes a short 0.1-mile segment of track known as the “Cannon Falls Branch” that diverges east in Northfield to the Cannon River. The Eagandale Line extends approximately 12 miles between UP Milepost 332.05 at Rosemount, Minnesota, in the south, through UP Milepost 333.85 (CP Milepost 150.8), to CP Milepost 160.7 at Eagan, Minnesota, in the north. The Faribault Line extends approximately 9 miles between UP Milepost 300.5 at Faribault, Minnesota, in the south, to UP Milepost 309.69 at Northfield, in the north. Effective as soon as December 20, 2018, or as soon thereafter as possible, PGR will continue providing rail service to your facility (regarding the Lakeville and Eagandale Lines) or will commence service (for the Faribault Line).

We are providing you with this information in keeping with STB shipper notice requirements. You are not required to respond or to this letter or otherwise participate in the STB proceeding. If you have any questions regarding this matter, please feel free to contact me.

Very truly yours,

Bradon J. Smith
Attorney for Progressive Rail Incorporated

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

PROGRESSIVE RAIL, INCORPORATED
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
SOO LINE RAILROAD COMPANY AND DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

Progressive Rail Incorporated, (“PGR”) a carrier, has filed a notice of exemption (“the Notice”) to lease from the Soo Line Railroad Company (“the Soo line”) two lines of railroad, the Lakeville and Eagandale Lines, and a third line, the Faribault Line, from the Soo Line and the Dakota, Minnesota & Eastern Railroad Corporation. The Lakeville Line extends approximately 21 miles from UP Milepost 309.6 at Northfield, Minnesota, in the south, through UP Milepost 313.77 (MN&S (CP) Milepost 52.9) to MN&S (CP) Milepost 35.25 near Lakeville, Minnesota, in the north. The Lakeville Line also includes a short 0.1-mile segment of track known as the “Cannon Falls Branch” that diverges east in Northfield to the Cannon River. The Eagandale Line extends approximately 12 miles between UP Milepost 332.05 at Rosemount, Minnesota, in the south, through UP Milepost 333.85 (CP Milepost 150.8), to CP Milepost 160.7 at Eagan, Minnesota, in the north. The Faribault Line extends approximately 9 miles between UP Milepost 300.5 at Faribault, Minnesota, in the south to UP Milepost 309.6 at Northfield, Minnesota, in the north.

Comments must be filed with the Board and served on:

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

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*. 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.

CERTIFICATION AND VERIFICATION

Jim Thornton, Managing Director-Legal, hereby certifies and verifies under penalty of perjury as follows:

1. I am the Managing Director-Legal of Progressive Rail Incorporated ("PGR").
2. The annual rail revenues will not result in PGR becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201 (1-1).
3. I have read the foregoing Notice of Exemption and know that the facts stated herein are true.

Dated: December 10, 2018


Jim Thornton