

# FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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September 13, 2010



## VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20024

227797

Re: **Finance Docket No. 35423**  
**FreightCar Short Line, Inc. – Acquisition and Operation**  
**Exemption – Line of Cornhusker Railways, LLC**

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of FreightCar Short Line, Inc. Pursuant to 49 C.F.R. § 1150.32**, dated September 13, 2010. A check in the amount of \$1,800, representing the appropriate fee for this filing, and a computer disk containing the text of the Notice and the *Federal Register* caption summary in MS Word 2003 format are attached.

One extra copy of the Notice and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

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

**FEE RECEIVED**

SEP 14 2010

**SURFACE  
TRANSPORTATION BOARD**

TJL:tl

Enclosures

**FILED**

SEP 14 2010

**SURFACE  
TRANSPORTATION BOARD**

Respectfully submitted,

Thomas J. Litwiler  
Attorney for FreightCar Short Line, Inc.

ENTERED  
Office of Proceedings

SEP 14 2010

Part of  
Public Record

ORIGINAL

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35423

FREIGHTCAR SHORT LINE, INC.  
-- ACQUISITION AND OPERATION EXEMPTION --  
LINE OF CORNHUSKER RAILWAYS, LLC



VERIFIED NOTICE OF EXEMPTION  
OF  
FREIGHTCAR SHORT LINE, INC.  
PURSUANT TO 49 C.F.R. § 1150.32

ENTERED  
Office of Proceedings

SEP 14 2010

Part of  
Public Record

**FILED**

SEP 14 2010

SURFACE  
TRANSPORTATION BOARD

**FEE RECEIVED**

SEP 14 2010

SURFACE  
TRANSPORTATION BOARD

Myles L. Tobin  
Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

ATTORNEYS FOR FREIGHTCAR  
SHORT LINE, INC.

Dated: September 13, 2010

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35423

FREIGHTCAR SHORT LINE, INC.  
-- ACQUISITION AND OPERATION EXEMPTION --  
LINE OF CORNHUSKER RAILWAYS, LLC

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**VERIFIED NOTICE OF EXEMPTION  
OF  
NEW SUB RAILROAD COMPANY  
PURSUANT TO 49 C.F.R. § 1150.32**

FreightCar Short Line, Inc. ("FCSL"), a non-carrier, hereby files this notice of exemption under 49 C.F.R. § 1150.31, et seq., to acquire and operate a rail line of Cornhusker Railways, LLC ("CHR") extending approximately 5.0 miles between Ovina and Alda, Nebraska, just west of Grand Island, Nebraska (the "Subject Line").

Based on projected revenues for the Subject Line, FCSL expects to be a Class III rail carrier.

In accordance with the requirements of 49 C.F.R. § 1150.33, FCSL submits the following information:

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

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

FreightCar Short Line, Inc.  
Two North Riverside Plaza, Suite 1250  
Chicago, Illinois 60606  
(312) 928-0850

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

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

Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

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

An affiliate of FCSL, FreightCar Rail Services, LLC ("FCRS"), has executed an Asset Purchase Agreement with CHR and CHR's parent providing for, inter alia, acquisition of the Subject Line. FCRS will assign its right to acquire the Subject Line to FCSL.

**Operation of the Property: 49 C.F.R. § 1150.33(d)**

No common carrier operations are currently conducted on the Subject Line. FCSL will provide service on the line as needed in the future, either itself or through contractual arrangements with other parties.

**Summary of the Transaction: 49 C.F.R. § 1150.33(e)**

The Subject Line extends between a connection with BNSF Railway Company at West Airport Road near BNSF milepost 103.55 in Ovina, Nebraska and a connection with Union Pacific Railroad Company at County Road 27 near UP milepost 154.5 in Alda, Nebraska, a distance of approximately 5.0 miles. The line is located just west of Grand Island, Nebraska. Prior to 2005, the line was private trackage associated with a U.S. Army ordnance plant. In 2004, the line was acquired by DTE Rail Services, Inc. ("DTERS") for use in connection with a railcar repair facility being developed on the site. In 2005, the line was transferred from DTERS

to DTERS's affiliate CHR to provide future common carrier service for other potential shippers who might locate on the former Army site. See Cornhusker Railways LLC -- Acquisition and Operation Exemption -- Rail Line of DTE Rail Services, Inc., Finance Docket No. 34719 (STB served July 20, 2005). It was anticipated in 2005 that common carrier service would not be provided until some time in the future, and indeed to FSCL's knowledge CHR has never provided such service. DTERS has conducted its own non-common carrier operations over the Subject Line and related trackage in connection with DTERS's railcar repair facility.

FCRS is now acquiring the DTERS Grand Island railcar repair facility, and FCSL has been created to essentially mirror the function served by CHR with respect to the Subject Line. As DTERS did previously, it is anticipated that FCRS will use the Subject Line and related trackage for unregulated, private switching movements, while FCSL will be available to provide common carrier service (directly or through a contactor) to other entities that may require service over the Subject Line.

The full name and address of the entity transferring the Subject Line to FCSL is as follows:

Cornhusker Railways, LLC  
425 South Main  
Ann Arbor, MI 48104

FCSL expects to consummate the acquisition of the Subject Line on or about October 14, 2010.

**Map: 49 C.F.R. § 1150.33(f)**

A map showing the Subject Line and indicating the area served by the line, including origins, termini, stations, and cities, is attached as Exhibit A to this notice.

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

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.33(g) is attached as Exhibit B to this notice.

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

The proposed acquisition of the Subject Line by FCSL does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

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

The projected annual revenue of FCSL does not exceed \$5 million, and accordingly the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable to this transaction. See Exhibit B hereto.

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

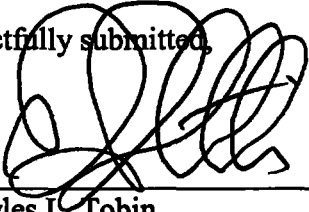
Under 49 C.F.R. § 1105.6(c)(2), the proposed acquisition of the Subject Line by FCSL is exempt from environmental reporting requirements. FCSL's acquisition of the line will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), the proposed acquisition of the Subject Line by FCSL also is exempt from historic preservation reporting requirements. FCSL's acquisition of the line is for the purpose of future rail operations. Further Surface Transportation 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.

**Caption Summary: 49 C.F.R. § 1150.34**

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

Respectfully submitted,

By: 

Myles L. Tobin

Thomas J. Litwiler

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 920

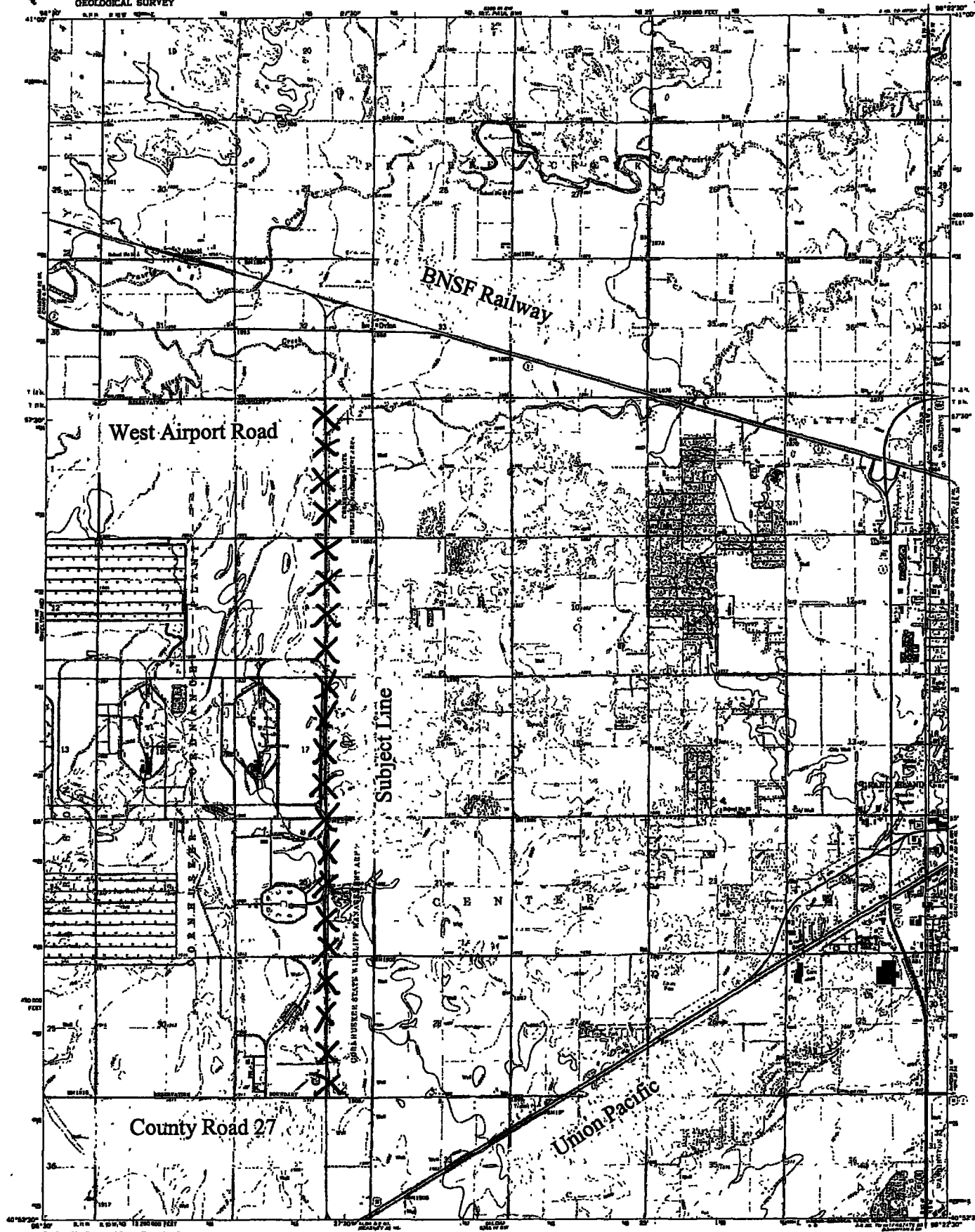
Chicago, Illinois 60606-2832

(312) 252-1500

**ATTORNEYS FOR FREIGHTCAR  
SHORT LINE, INC.**

Dated: September 13, 2010

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
GEOLOGICAL SURVEY



Produced by the United States Geological Survey  
Control by USGS, NOAA, and U.S. Bureau of Reclamation  
Planimetry by photogrammetric methods from aerial photographs  
taken 1953. Stereoscopic by photostereoscopic survey 1953  
Projection and 100,000-foot grid (NAD 83). Meters (contour lines)  
North arrow (true) shown in corner of map  
1:24,000 National Topographic Map Series, sheet 14, shown in map  
1:250,000 North American Datum (NAD 83)  
North American Datum of 1983 (NAD 83) is shown by dotted corner ticks  
The values of the NAD 83 and NAD 83 for 7.5 degree  
quadrangles are given in USGS Bulletin 1195  
There may be minor discrepancies between the boundaries of  
the National or State boundaries shown on this map  
The red dashed lines indicate selected areas and field lines where  
generally visible on aerial photographs. This information is unclassified



ROAD CLASSIFICATION  
Primary Highway, hard surface, light-duty road, hard or improved surface  
Secondary Highway, hard surface, unpaved road  
Unimproved road  
Bridle Path  
U.S. Route  
State Route



ABBOTT, NEBR.  
400944-17-01  
1983  
DATA AND OF 100-52533 V01

**CERTIFICATION**

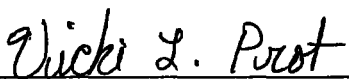
State of Illinois        )  
                                  ) ss:  
County of Cook        )

Laurence M. Trusdell, being duly sworn, hereby certifies that the projected annual rail revenue of FreightCar Short Line, Inc. does not exceed \$5 million and will not result in the creation of a Class II or Class I carrier under the provisions of 49 C.F.R. § 1201 (1-1).



Laurence M. Trusdell  
Vice President and Secretary

SUBSCRIBED AND SWORN TO  
before me this 13<sup>th</sup> day  
of September, 2010.



Notary Public

My Commission expires:



**SURFACE TRANSPORTATION BOARD**

**NOTICE OF EXEMPTION**

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**FINANCE DOCKET NO. 35423**

**FREIGHTCAR SHORT LINE, INC.  
-- ACQUISITION AND OPERATION EXEMPTION --  
LINE OF CORNHUSKER RAILWAYS, LLC**

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Comments must be filed with the Board and served on:

Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

This Notice is filed under 49 C.F.R. § 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.

Dated: September \_\_, 2010

By the Board, Rachel D. Campbell, Director, Office of Proceedings

**VERIFICATION**

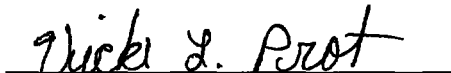
State of Illinois        )  
                              ) ss:  
County of Cook         )

Laurence M. Trusdell, being duly sworn, deposes and says that he is Vice President and Secretary of FreightCar Short Line, Inc., that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



\_\_\_\_\_  
Laurence M. Trusdell

SUBSCRIBED AND SWORN TO  
before me this 13<sup>th</sup> day  
of September, 2010.

  
\_\_\_\_\_  
Notary Public

My Commission expires:

