

BEFORE THE
SURFACE TRANSPORTATION BOARD

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June 29, 2022
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Public Record

NORTHERN ILLINOIS & WISCONSIN)
RAILWAY CORPORATION, d.b.a. NIWX) FINANCE DOCKET
CORPORATION -- CONTROL) NO. 36605
EXEMPTION -- WEST ERIE SHORT)
LINE, INC.)

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1180.2(d)(2)**

NORTHERN ILLINOIS & WISCONSIN
RAILWAY CORPORATION d.b.a.
NIWX CORPORATION
6521 Old State Road
Edinboro, PA 16412

Applicant

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
2230 Marston Lane
Flossmoor, IL 60422-1336
(708) 704-7679
mcfarland@aol.com

Attorney for Applicant

DATE FILED: June 29, 2022

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Pursuant to 49 C.F.R. § 1180.2(d)(2), NORTHERN ILLINOIS & WISCONSIN RAILWAY CORPORATION, d.b.a. NIWX CORPORATION (NIWX), a Class III rail carrier, hereby provides notice of its exemption from the prior approval requirements of 49 U.S.C. § 11324(a) for its acquisition of control of WEST ERIE SHORT LINE, INC. (WESL), a Class III rail carrier, from EFCO, Inc., d.b.a. Ajax/CECO/Erie Press (EFCO), a noncarrier.

The proposed exemption will not be consummated until at least the 30th day after this Verified Notice of Exemption is filed.

Pursuant to the requirements of 49 C.F.R. § 1180.4(g)(1)(a)(i), NIWX provides the following information.

1. 49 C.F.R. § 1180.6(a)(1)(i): *A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.*

The proposed transaction is acquisition of control of West Erie Short Line, Inc. (WESL) by Northern Illinois & Wisconsin Railway Corporation (NIWX). Both WESL and NIWX are Class III rail carriers. WESL is a rail carrier as a result of its acceptance of terms and conditions

of an Offer of Financial Assistance to acquire a license to operate a 0.95-mile rail line between Milepost Nos. 21.34 and 22.29 at Erie, PA. *See Bessemer and Lake Erie Railroad Company -- Abandonment and Discontinuance of Trackage Rights Exemption in Erie County, PA*, 1995 WL 507461 (ICC Docket No. AB-88 [Sub-No. 6], decision served August 29, 1995; *see, also, id.*, 1995 WL 68987, decision served February 21, 1995.

NIWX is a Class III rail carrier as a result of its indirect control of a rail carrier, i.e., Blackwell Northern Gateway Railroad Company (BNG) by virtue of its control of US Rail Partners, Ltd. (USRP) through stock ownership, and USRP's ownership of all of BNG's stock. *See, US Rail Partners, Ltd. and Blackwell Northern Gateway Railroad Company -- Continuance in Control Exemption -- Eastern Berks Gateway Railroad Company*, STB FD No. 35384, notice of exemption served July 15, 2010.

Applicant is Northern Illinois & Wisconsin Railway Corporation (NIWX), 6521 Old State Road, Edinboro, PA 16412, (630) 212-8660. Applicant's counsel is Thomas F. McFarland, Thomas F. McFarland, P.C., 2230 Marston Lane, Flossmoor, IL 60422-1336, (708) 704-7679, mcfarland@aol.com.

Acquisition of control of a carrier by a carrier requires Board approval under 49 U.S.C. § 11323(a)(4). An application for such approval is required by 49 U.S.C. § 11324(a). However, pursuant to 49 C.F.R. § 1180.2(d)(2), acquisition of such control is exempted from the prior approval requirements if:

- (i) the railroads would not connect with each other or any railroads in their corporate family;
- (ii) the acquisition is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and

(iii) the transaction does not involve a Class I rail carrier.

The proposed acquisition of control is exempt because it satisfies all of those criteria.

Pursuant to 49 C.F.R. § 1180.4(g)(i), a person so exempted is required to file a Verified Notice of such exemption providing required information. This is NIWX's Verified Notice of Exemption.

2. **49 C.F.R. § 1180.6(a)(1)(ii)**: The proposed time schedule for consummation of the proposed transaction.

The proposed transaction will not be consummated until at least the 30th day after this Verified Notice of Exemption is filed at the Board.

3. **49 C.F.R. § 1180.6(a)(1)(iii)**: *The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.*

The proposed acquisition of control seeks to improve rail service over WESL.

4. **49 C.F.R. § 1180.6(a)(5)**: *A list of the State(s) in which any part of the property of each applicant carrier is situated.*

Rail lines of carriers currently controlled by Applicant are located in Oklahoma and Kansas (Blackwell Northern Gateway Railroad Company). Rail lines of carriers affiliated with, but not controlled by applicant are located in Iowa (Davenport Industrial Railroad, LLC).

5. **49 C.F.R. § 1180.6(a)(6)**: *Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included.*

The required map is attached as Exhibit 1.

6. **49 C.F.R. § 1180.6(a)(7)(ii)**: *Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.*

The required copy of Stock Purchase Agreement is attached at Exhibit 2.

LABOR PROTECTION

Pursuant to 49 U.S.C. § 11326(c), no employee protective conditions may be imposed on this transaction between two Class III rail carriers. However, applicant is agreeable to imposition of the labor protective conditions imposed in *New York Dock Ry. -- Control -- Brooklyn Eastern Dist. Term*, 360 ICC 60 (1979).

VERIFICATION

The facts alleged in this Verified Notice are verified by Mr. John Howell, attached as Exhibit 3.

WHEREFORE, the Board should publish a notice in the *Federal Register* within 16 days after the filing of this Verified Notice.

Respectfully submitted,

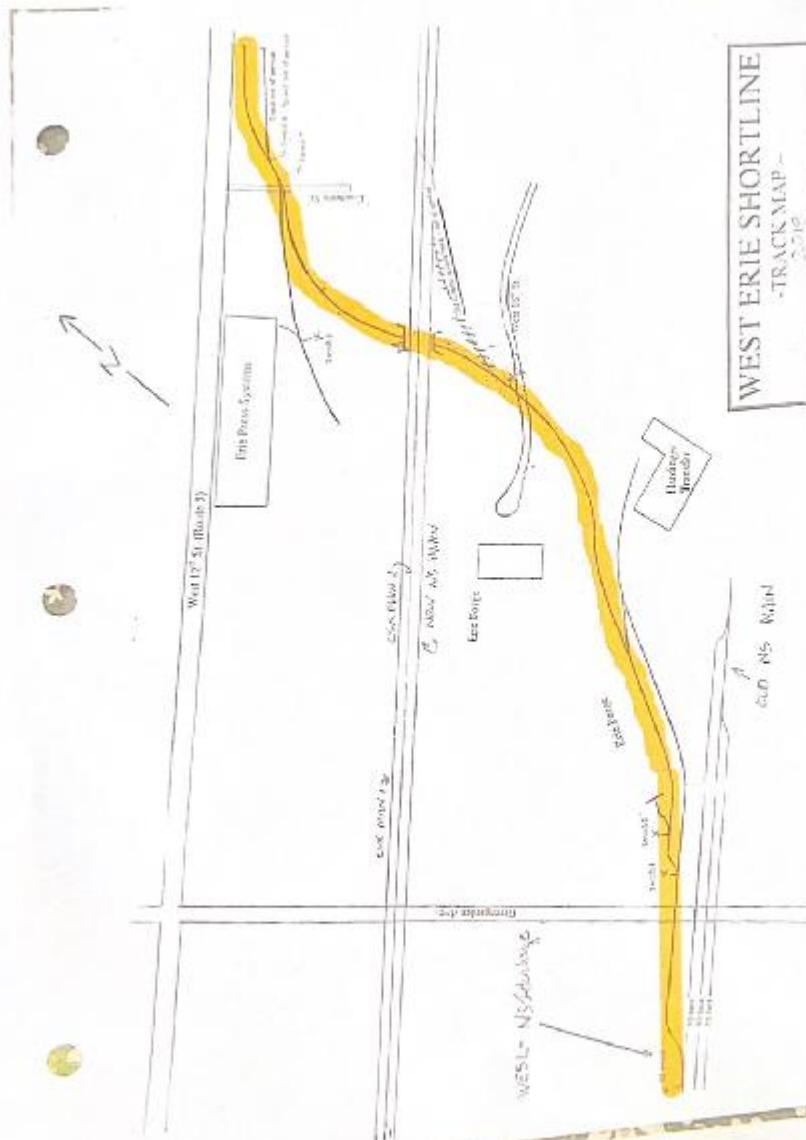
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Attorney for Applicant

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STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (SPA) is entered into as of June 29, 2022 between EFCO, Inc., doing business as Ajax/CECO/Erie Press (EFCO) and Northern Illinois & Wisconsin Railway Corporation, doing business as NIWX Corporation (NIWX) for purchase of all of the issued and outstanding stock of West Erie Short Line, Inc. (WESL), all of which is owned by EFCO.

WHEREAS, WESL is a common carrier by rail authorized by the Surface Transportation Board (STB) to provide rail service over 0.95 miles of rail line in Erie, Pennsylvania between railroad milepost nos: 21.34 and 22.29. *See Bessemer and Lake Erie Railroad Company -- Abandonment and Discontinuance of Trackage Rights in Erie, PA*, 1995 WL 507461 (ICC Docket No. AB 88 (Sub-No. 6), decision served August 29, 1995); and

WHEREAS, the rail service provided by WESL is performed pursuant to a License Agreement between WESL and Bessemer and Lake Erie Railroad Company (B&LE), who owns the land the under the 0.95-mile rail line, dated March 3, 1995; and

WHEREAS, EFCO owns all of the issued and outstanding capital stock of WESL; and

WHEREAS, NIWX desires to purchase all of that WESL stock; and

WHEREAS, EFCO is agreeable to sale of that stock to NIWX, but only in accordance with the terms and conditions set forth in this SPA.

NOW, THEREFORE, in consideration of the mutual representations, warranties, and covenants, set forth in this SPA, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. Purchase and Sale

Subject to the terms and conditions of this SPA, EFCO will sell and deliver to NIWX all of the issued and outstanding shares of WESL's capital stock, and NIWX will purchase and receive all of such shares free and clear of any and all liens.

2. Excluded Assets

The only excluded asset is the cash in WESL's bank.

3. **Excluded Liabilities**

There are no excluded liabilities.

4. **Purchase Price**

4.1 The purchase price shall be \$12,500 payable by a certified or bank check at closing.

4.2 As additional consideration and upon the WESL track being in operating condition, NIWX covenants WESL shall grant EFCO priority for any inbound or outbound railcar service on the rail line between Milepost Nos. 21.34 and 22.29 at Erie, Pennsylvania ("Priority Service") once rail car is delivered and in possession of WESL. This Priority Service covenant shall be binding upon the successors and assigns of NIWX. Any costs incurred for demurrage will be invoiced by EFCO to WESL for payment within thirty (30) days. This section No. 4.2 shall survive the Closing.

5. **Closing**

The closing shall be held on July 29, 2022.

6. **Items To Be Delivered By EFCO At Closing**

At closing, EFCO shall deliver the stock certificate(s) representing all of the share of WESL; all minute books, stock record books, corporate seal, and other stock records kept in the orderly course of business.

7. **Items To Be Delivered By NIWX At Closing**

At closing, NIWX shall deliver a certificate or bank check in the amount of \$12,500 payable to EFCO.

8. **Prorations**

The following items shall be ratably prorated as of the date of closing: Bessemer & Lake Erie ("B&LE") real property lease (\$1,054 per year), Perry Mill Supply track lease (\$101 per year), and B&LE license performance bond (\$1,500 per year).

9. **Signal Maintenance**

After closing, EFCO shall provide maintenance of signals on WESL's rail line, the cost of which plus 15 percent shall be paid by NIWX ("Maintenance"). These costs will be invoiced by EFCO to WESL for payment within thirty (30) days. Notwithstanding the foregoing Maintenance obligation of EFCO, in no event shall EFCO or its representatives or affiliates be liable to NIWX or any third party for any type of damages arising out of EFCO's performance of the Maintenance. This section No. 9 shall survive the Closing and

be reviewed 5 years after closing date for renewal. Annual reviews will occur thereafter if renewed.

10. Governmental Approval

NIWX shall obtain an exemption from the Surface Transportation Board (STB) authorizing its control of WESL in common with other rail carriers controlled by NIWX.

11. Governing Law

This SPA shall be governed by Pennsylvania law.

12. Warranty Regarding Liabilities

EFCO warrants that there are no liabilities of WESL that have not been disclosed to NIWX. NIWX hereby acknowledges it has reviewed the License Agreement between WESL and B&LE dated March 3, 1995 and is aware of its terms and the WESL duties or obligations contained therein.

13. Assets Of WESL At Closing

As of the closing, WESL shall have the following assets: License Agreement with Bessemer and Lake Erie Railroad Company dated March 3, 1995; the rail and track material between Milepost Nos. 21.34 and 22.29 in Erie, Pennsylvania, and one railroad flat car ("Rail Assets"). **EFCO makes no representation or warranty with respect to the Rail Assets and the Rail Assets are being sold AS IS WHERE IS.**

14. Limitation of Liability

15. Neither NIWX nor EFCO shall be liable to the other for any category of damages, whether direct or indirect, arising from or related to the sale of WESL to NIWX or this SPA.

WHEREFORE, EFCO and NIWX have signed this SPA intending to be bound.

EFCO, Inc.
doing business as Ajax/CECO/Erie
Press
by its authorized representative

Northern Illinois & Wisconsin
Railroad Corporation
doing business as NIWX
by its authorized representative

printed name: _____

printed name: _____

VERIFICATION

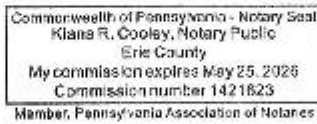
JOHN HOWELL, being duly sworn, states that he is familiar with the facts stated in the foregoing Verified Notice of Exemption; and that all of such facts are true and correct.


JOHN HOWELL

STATE OF PENNSYLVANIA)
) SS:
COUNTY OF ERIE)

SUBSCRIBED AND SWORN to
before me this 28 day
of June, 2022.


Notary Public



My Commission Expires: ~~6/1~~ 5/25/26