

Karl Morell & Associates
440 1st Street, NW, Suite 440
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karlm@karlmorell.com



January 6, 2020

300240

BY HAND DELIVERY

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
January 6, 2020
Part of
Public Record

Re: Finance Docket No. 36374, East Penn Railroad, L.L.C. -
Lease Exemption Containing Interchange Commitment--
Norfolk Southern Railway Company

Dear Ms. Brown:

Attached for filing are the original and ten copies of a Verified Notice of Exemption pursuant to 49 C.F.R 1150.41 and a check covering the \$2,100 filing fee.

If you have any questions, please contact me.

Sincerely yours,

Karl Morell

Enclosures

FILED
January 6, 2020
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
January 6, 2020
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36374



EAST PENN RAILROAD, L.L.C.
--LEASE EXEMPTION CONTAINING INTERCHANGE COMMITMENT--
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41, Et Seq.

KARL MORELL
Karl Morell & Associates
Suite 440
440 1st Street, N.W.
Washington, D.C. 20001
(202) 595-9045

Attorney for:
EAST PENN RAILROAD, L.L.C.

Dated: January 6, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 36374

EAST PENN RAILROAD, L.L.C.
--LEASE EXEMPTION CONTAINING INTERCHANGE COMMITMENT--
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41, Et Seq.

East Penn Railroad, L.L.C. ("ESPN"), a Class III rail carrier, files this Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart E--Exempt Transactions Under 49 U.S.C. 10902, to permit ESPN to continue to lease rail lines from Norfolk Southern Railway Company ("NSR").

In support of this Notice of Exemption, ESPN submits the following information as required by 49 C.F.R. § 1150.43:

(a) Full name and address of applicant:

East Penn Railroad, L.L.C.
505 S. Broad Street
Kennett Square, PA 19348

(b) Applicant's Representative:

Karl Morell
Karl Morell & Associates
Suite 440
440 1st Street, N.W.
Washington, DC 20001
(202) 595-9045

(c) Statement of Agreement:

ESPN entered into a Lease Agreement with NSR in 2011. *See Finance Docket No. 35533, East Penn Railroad, L.L.C. – Lease and Operation Exemption – Norfolk Southern Railway Company* (not printed), served July 15, 2011. ESPN recently entered into Lease Amendment No. 1 with NSR (“Amended Agreement”) which, among other things, extended the term of the lease to July 31, 2026.

(d) The operator of the property:

ESPN will continue to be the operator on the involved rail lines.

(e) Summary of proposed transaction:

- (1) The name and address of the entity leasing the subject property is:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

- (2) The involved transaction is expected to be consummated on or shortly after the effective date of this notice of exemption.
- (3) The rail lines that will continue to be leased from NSR are: (1) the York Industrial Track located between Mileposts YR 7.50 and YR 12.31 (“York Track”) (4.81 miles in length); and (2) the Wye Track that connects the York Track to NSR’s line between Mileposts YR 12.31 and YR 12.70 (“Wye Track”)(0.39 miles in length). The York Track and Why Track are located in York, Pennsylvania.
- (4) The length of the lines is approximately 5.2 miles.

(f) A map of the rail lines being leased is attached as Exhibit A.

(g) ESPN hereby certifies that ESPN's projected revenues as a result of this transaction will not result in ESPN becoming a Class II or Class I rail carrier. ESPN further certifies that its projected annual rail freight revenues from operation of the leased lines, when combined with ESPN's other projected revenues from current rail freight operations, will not exceed \$5 million. Consequently, the requirements of 49 C.F.R. § 1150.42(e) do not apply to this transaction.

(h)(i) The Lease Agreement between NSR and ESPN contains a provision that will enable ESPN to reduce its lease payments by receiving a credit for each car interchanged with NSR. NSR initially proposed a fixed rental payment with no option to reduce the rent. ESPN requested the lease credit option in order to provide it with an opportunity to earn lower rental payment so that ESPN will be able to invest in improvements on the leased lines to increase traffic levels. The affected interchange point is York, PA.

(ii) Ten copies of the Amended Agreement are being filed with the Board under 49 C.F.R. §§ 1104.14(a) and 1150.43(h)(1)(ii).

(iii) York Container, Penn Perlite, and Kloeckner.

(iv) Information being filed under Section 1104.14(a).

(v) ESPN hereby certifies that ESPN has provided notice of the proposed transaction and interchange commitment to the shippers identified in paragraph (iii).

(vi) York Railway.

(vii) Information being filed under Section 1104.14(a).

A caption summary, as required by 49 C.F.R. § 1150.44, is attached.

ENVIRONMENTAL AND HISTORIC IMPACTS

ESPN is leasing the lines from NSR for continued rail operations. Further Surface Transportation Board ("Board") approval is required for ESPN to discontinue any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

ESPN's lease will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of these lines to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the lines; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. ESPN's lease of the rail lines will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,

A handwritten signature in cursive script that reads "Karl Morell". The signature is written in dark ink and is positioned above a horizontal line.

KARL MORELL
Karl Morell & Associates
Suite 440
440 1st Street, N.W.
Washington, DC 20001
(202) 595-9045

Attorney for:
EAST PENN
RAILROAD, L.L.C.

Dated: January 6, 2020

EXHIBIT A

MAP

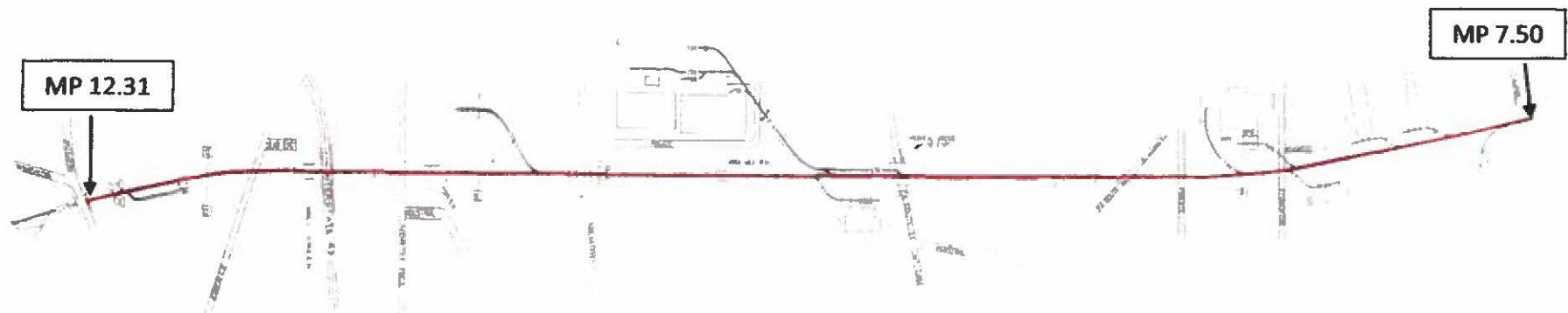
ATTACHMENT A

Description of the Line

All of the right of way and adjacent real property located between the following endpoints, including but not limited to sidings, sidetracks, yards or facilities presently owned by NSR that are accessed via the right of way:

————— - Indicates ESPN Leased "Wye Track"

Description	Milepost Limits	Segment Length (miles)
York IT	YR 7.50 – YR 12.31	4.81
	Total Miles:	4.81



SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 36374

EAST PENN RAILROAD, L.L.C.

**--LEASE EXEMPTION CONTAINING INTERCHANGE COMMITMENT--
NORFOLK SOUTHERN RAILWAY COMPANY**

East Penn Railroad, L.L.C. ("ESPN"), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to continue to lease from the Norfolk Southern Railway Company ("NSR") the following rail lines: (1) the York Industrial Track located between Mileposts YR 7.50 and YR 12.31 ("York Track") (4.81 miles in length); and (2) the Wye Track that connects the York Track to NSR's line between Mileposts YR 12.31 and YR 12.70 ("Wye Track") (0.39 miles in length). The York Track and Why Track are located in York, Pennsylvania.

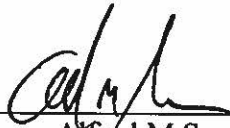
Comments must be filed with the Board and served on Karl Morell, Karl Morell & Associates, Suite 440, 440 1st Street, N.W., Washington, DC 20001, (202) 595-9045.

This notice is filed under 49 C.F.R. 1150.41. If the notice contains false or misleading information, the exemption is void ab initio. The filing of a petition to revoke will not automatically stay the transaction.

VERIFICATION

STATE OF PENNSYLVANIA)
)
COUNTY OF CHESTER) ss.

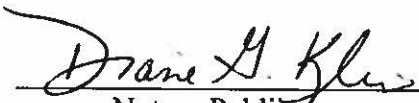
I, Alfred M Sauer, being duly sworn depose and state that I am President of the East Penn Railroad, L.L.C., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.



Alfred M Sauer

SUBSCRIBED AND SWORN TO before me this 23rd day of December, 2019, in the County of Chester, State of Pennsylvania.

My Commission Expires: Sept. 3, 2020



Notary Public

