

SERVICE DATE – JUNE 8, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1320X

GROWTH RESOURCES OF WELLSBORO FOUNDATION—
ABANDONMENT EXEMPTION—IN TIOGA COUNTY, PA.

Decided: June 8, 2022

Growth Resources of Wellsboro Foundation (GROW) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exemption Abandonments to abandon an approximately 3.191-mile rail line, between milepost 0.624 and milepost 3.815, in Wellsboro, Tioga County, Pa. (the Line). Because the proposed abandonment raises several issues, this proceeding, including environmental review, will be held in abeyance and GROW will be directed to supplement its verified notice.

In 1993, GROW acquired from Consolidated Rail Corporation (Conrail) 35.5 miles of rail line, between Wellsboro, Pa., and Corning, N.Y., specifically: (1) the Corning Secondary between milepost 74.7, in the Township of Erwin, N.Y., and milepost 106.15, in the Township of Delmar, Pa., near Wellsboro Junction, Pa.; and (2) the Wellsboro Industrial Track between milepost 0.0, near Wellsboro Junction, and milepost 3.9, in the Township of Charleston, Pa. See Growth Res. of Wellsboro Found.—Acquis. & Operation Exemption—Consol. Rail Corp., FD 32213 (ICC served Jan. 21, 1993). In that proceeding, Wellsboro & Corning Railroad Co. (W&C) acquired operating rights over the lines that were acquired by GROW. Based on the mileposts and description of the Wellsboro Industrial Track, it appears that the Line is part of the Wellsboro Industrial Track that GROW acquired, and over which W&C acquired operating rights, in 1993. Compare (Verified Notice 1 & Ex. A) with Growth Res. of Wellsboro Found. Verified Notice of Exemption 1 & Ex. A, Growth Res. of Wellsboro Found.—Acquis. & Operation Exemption—Consol. Rail Corp., FD 32213.¹

In 2012, Wellsboro & Corning Railroad, LLC, acquired from W&C “approximately 35.5 miles of rail line between milepost 109.90 at Wellsboro, Pa., and milepost 74.70 at Erwin, N.Y., in Tioga County, Pa., and Steuben County, N.Y.” Wellsboro & Corning R.R.—Acquis. & Operation Exemption—Wellsboro & Corning R.R., FD 35595, slip op. at 1 (STB served Feb. 22, 2012). The line in that proceeding appears to be the same lines that GROW acquired in FD 32213, based on the line description and maps submitted with the verified notice of exemption. Compare Wellsboro & Corning R.R., LLC Verified Notice of Exemption 4 & Ex. C, Feb. 6, 2012, Wellsboro & Corning R.R.—Acquis. & Operation Exemption—Wellsboro &

¹ For reference, a copy of the verified notice of exemption in Docket No. FD 32213 is appended to this decision.

Corning R.R., FD 35595 with Growth Res. of Wellsboro Found. Verified Notice of Exemption 1 & Ex. A, Growth Res. of Wellsboro Found.—Acquis. & Operation Exemption—Consol. Rail Corp., FD 32213. However, it is unclear what property interest Wellsboro & Corning Railroad, LLC, could have acquired from W&C, in light of the property interests conveyed in FD 32213.²

In light of the authority granted in the past proceedings described above, GROW will be directed to clarify the ownership of the Line that it now seeks to abandon. GROW should further clarify whether W&C or W&C's successor still has operating rights over the Line and, if so, whether W&C or its successor intends to seek authority to discontinue service over the Line in conjunction with GROW's proposed abandonment. See, e.g., N. Coast R.R. Auth.—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., AB 1305X, slip op. at 4 n.6 (STB served May 20, 2022) (abandonment may not be consummated until all operating authority on the line has been terminated).

Lastly, based on the Wellsboro Industrial Track mileposts and the description of the Line provided by GROW, it appears that the proposed abandonment may result in a stranded segment between milepost 3.815³ and milepost 3.9. GROW will be directed to explain whether the proposed abandonment would leave this portion of the Line stranded and, if so, how that would affect GROW's entitlement to the abandonment exemption it seeks. See, e.g., Elk River R.R.—Aban. Exemption—in Kanawha & Clay Cntys., W. Va., AB 1314X, slip op. at 3-4 (STB served Mar. 25, 2022) (rejecting verified notice of exemption because it would have resulted in a stranded segment).

This proceeding, including the environmental review, will be held in abeyance, to allow GROW to file a supplement addressing the issues identified above. GROW will be directed to submit its supplement by June 28, 2022.

It is ordered:

1. This proceeding, including the environmental review, is held in abeyance.
2. GROW shall submit a supplement to its verified notice, as described above, by June 28, 2022.
3. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

² Moreover, GROW states that it acquired the Line in 2012, (Verified Notice 3), notwithstanding representations in the Environmental Report that GROW acquired the Line after Conrail ceased operations in 1992, (Verified Notice 60).

³ GROW references “milepost 3.815” in its verified notice of exemption, but the map in Exhibit A labels the southern endpoint of the Line at “milepost 3.185.” GROW should clarify this discrepancy and submit a corrected map, if necessary.

RUBIN QUINN MOSS & PATTERSON, P. C.

ATTORNEYS AT LAW

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510 WALNUT STREET

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OF COUNSEL
MALCOLM L. LAZIN
ALAN KAHN
NICHOLAS J. SCAFIDI
GOFF & RUBIN

DIRECT DIAL NUMBER
931-0670

December 18, 1992

Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
12th and Constitution Avenues
Washington, DC 20423

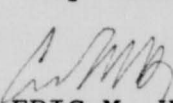
RE: Finance Docket No. 32213
Verified Notice of Growth Resources
of Wellsboro Foundation and
Wellsboro and Corning Railroad Company
for Exemption From Regulation Under
49 U.S.C. §10901 Pursuant to
49 C.F.R. §1150.31

Dear Mr. Strickland:

I am enclosing for filing the original and ten (10) copies of the above-referenced Verified Notice. Two checks totaling \$1,500 are also enclosed to cover the cost of the filing fee.

Please time stamp the extra copy of this letter and return it to me in the enclosed self-addressed envelope provided for your convenience.

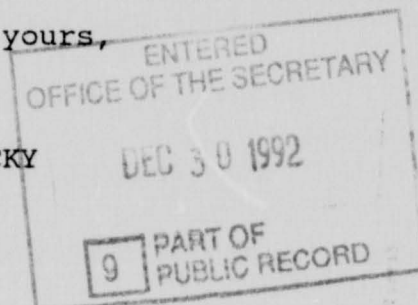
Very truly yours,


ERIC M. HOCKY

EMH/s

Enclosures

cc: Ms. Mary Worthington
Richard R. Wilson, Esquire
Charles E. Mechem, Esquire
VIA FEDERAL EXPRESS



DEC 21 1992

INTERSTATE
COMMERCE COMMISSION

2-357F059

BEFORE THE
INTERSTATE COMMERCE COMMISSION
FINANCE DOCKET NO. 32213

VERIFIED NOTICE
OF
GROWTH RESOURCES OF WELLSBORO FOUNDATION
AND
WELLSBORO AND CORNING RAILROAD COMPANY
FOR EXEMPTION FROM REGULATION
UNDER 49 U.S.C. §10901
PURSUANT TO
49 C.F.R. §1150.31

FILED

DEC 21 1992

INTERSTATE
COMMERCE COMMISSION

DEC 21 3 59 PM '92
NOTICE OF EXEMPTION UNIT

ERIC M. HOCKY
RUBIN QUINN MOSS & PATTERSON, P.C.
1800 Penn Mutual Tower
510 Walnut Street
Philadelphia, PA 19106
(215) 925-8300

Attorney for Applicants

DATED: December 18, 1992

BEFORE THE
INTERSTATE COMMERCE COMMISSION
FINANCE DOCKET NO. 32213

VERIFIED NOTICE
OF
GROWTH RESOURCES OF WELLSBORO FOUNDATION
AND
WELLSBORO AND CORNING RAILROAD COMPANY
FOR EXEMPTION FROM REGULATION
UNDER 49 U.S.C. §10901
PURSUANT TO
49 C.F.R. §1150.31

This Verified Notice is filed pursuant to 49 C.F.R. §1150.31 by Growth Resources of Wellsboro Foundation ("GROW"), a noncarrier and a Pennsylvania industrial development corporation, and Wellsboro and Corning Railroad Company ("W&C"), a new corporation organized to operate the lines being acquired by GROW (collectively, "Applicants"), to exempt from regulation under 49 U.S.C. §10901 GROW's acquisition and W&C's operation of lines of railroad (the "Acquired Lines") now owned by Consolidated Rail Corporation ("Conrail") extending generally between Wellsboro, PA, and Corning, NY, a total distance of 35.35 miles, and described on Exhibit A hereto. The exemption also embraces, pursuant to 49 C.F.R. §1150.31(a)(4), incidental trackage rights to be granted by Conrail to permit traffic on the Acquired Lines to be interchanged with Delaware & Hudson Railway Company ("D&H") at Gang Mills Yard, Corning, NY. Such rights are also described on Exhibit A.

This Verified Notice is related to the Notice of Richard D. Robey at Finance Docket No. 32214 for exemption from 49 U.S.C. §11343 with respect to his continuance in control of W&C.

In accordance with 49 C.F.R. §1150.33, Applicants hereby state as follows:

(a) The full name and address of Applicants are: Growth Resources of Wellsboro Foundation, P.O. Box 502, One Charles Street, Wellsboro, Pennsylvania 16901; and Wellsboro and Corning Railroad Company, 356 Priestley Avenue, Northumberland, Pennsylvania 17857.

(b) The names, addresses and telephone numbers of the representatives of Applicants who should receive correspondence are: Eric M. Hocky, Esquire, Rubin Quinn Moss & Patterson, P.C., 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, Pennsylvania 19106, (215) 925-8300, counsel for GROW; and Richard R. Wilson, Esquire, Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, Pennsylvania 15219, (412) 471-1800, counsel for W&C.

(c) A Purchase and Sale Agreement between Conrail and GROW and an Operating Agreement between GROW and W&C will be executed by the parties prior to the closing of the purchase and the commencement of operations which are expected to occur on or before December 31, 1992, but after the effective date of this Notice.

(d) The present operator of the property is Conrail. W&C expects to commence operations on or before December 31, 1992, but after the effective date of this Notice.

(e) Brief Summary of the Proposed Transaction:

(1) The railroad transferring the subject property is Consolidated Rail Corporation, 2001 Market Street, P.O. Box 41419, Philadelphia, PA 19101-1419.

(2) GROW expects to acquire the lines from Conrail after the effective date of this Notice, and after the effective date of the exemption for continuance in control sought in Finance Docket No. 32214.

(3) and (4) The mileage of the subject rail lines, all of which are now operated by Conrail, is as stated on Exhibit A. The total route miles being acquired are 35.35 miles. Applicants are also acquiring incidental trackage rights over an additional 0.7 miles as described on Exhibit A.

(f) Attached as Exhibit B to this Notice of Exemption is a map of the rail lines to be acquired by GROW and operated by W&C.

(g) Applicants certify that the projected revenues for the line in question will not exceed those that would qualify for Class III carrier status.

Pursuant to 49 C.F.R. §1105.6(c), no environmental documentation is required because this proceeding involves authority for acquisition and operation under 49 U.S.C. §10901 which will not exceed the thresholds established in 49 C.F.R. §1105.7(c)(4) or (5).

No historic report is required because the transaction involves the transfer of lines for the purpose of continued rail

operations and further ICC approval is required to abandon any service. Applicants have no plans to dispose of or alter properties subject to ICC jurisdiction that are 50 years old or older.

Applicants will preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. §470, is achieved.

The caption summary required by 49 C.F.R. §1150.34 is attached hereto as Exhibit C.

Respectfully submitted,



ERIC M. HOCKY
RUBIN QUINN MOSS & PATTERSON, P.C.
1800 Penn Mutual Tower
510 Walnut Street
Philadelphia, PA 19106
(215) 925-8300

Attorneys for Applicants

DATED: December 18, 1992

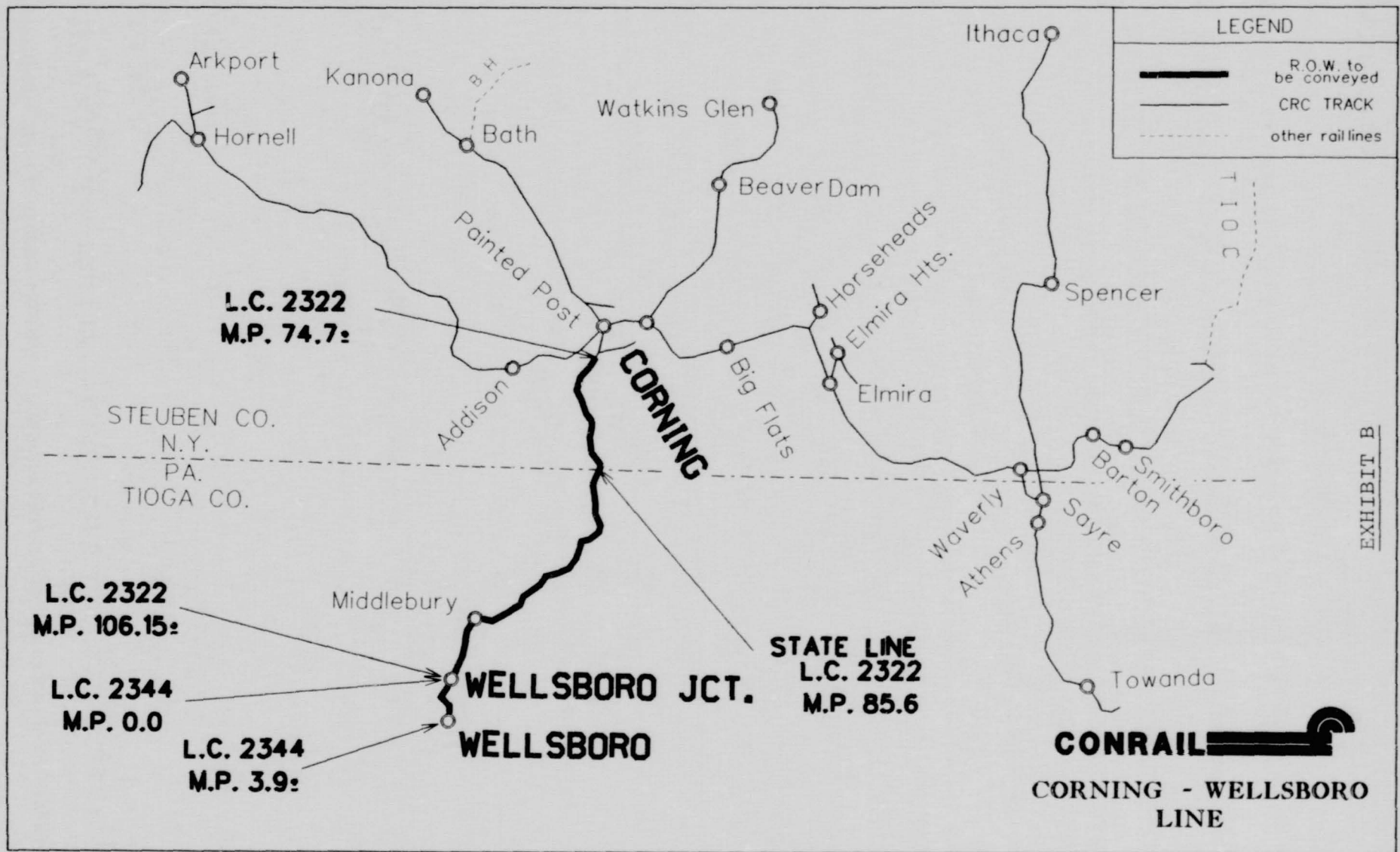
**DESCRIPTION OF
WELLSBORO AND CORNING RAILROAD COMPANY
LINES TO BE ACQUIRED**

- Corning Secondary between a point in the Township of Erwin, New York (M.P. 74.7) and a point in the Township of Delmar, Pennsylvania, near Wellsboro Junction (M.P. 106.15), USRA Line Code 2322;
- Wellsboro Industrial Track between a point near Wellsboro Junction, Pennsylvania (M.P. 0.0) and a point in the Township of Charleston, Pennsylvania (M.P. 3.9), USRA Line Code 2344.

TRACKAGE RIGHTS

- Between Erwin, New York (Line Code 2322, M.P. 74.7) and the connection with Conrail's West Wye Track (M.P. 74.5+) and continuing westerly to Conrail's Gang Mills Yard, Gang Mills, NY, a total distance of approximately one-half (0.5) mile, together with various lead tracks and yard tracks within Gang Mills Yard as designated by Conrail.

EXHIBIT A



GANG MILLS NY

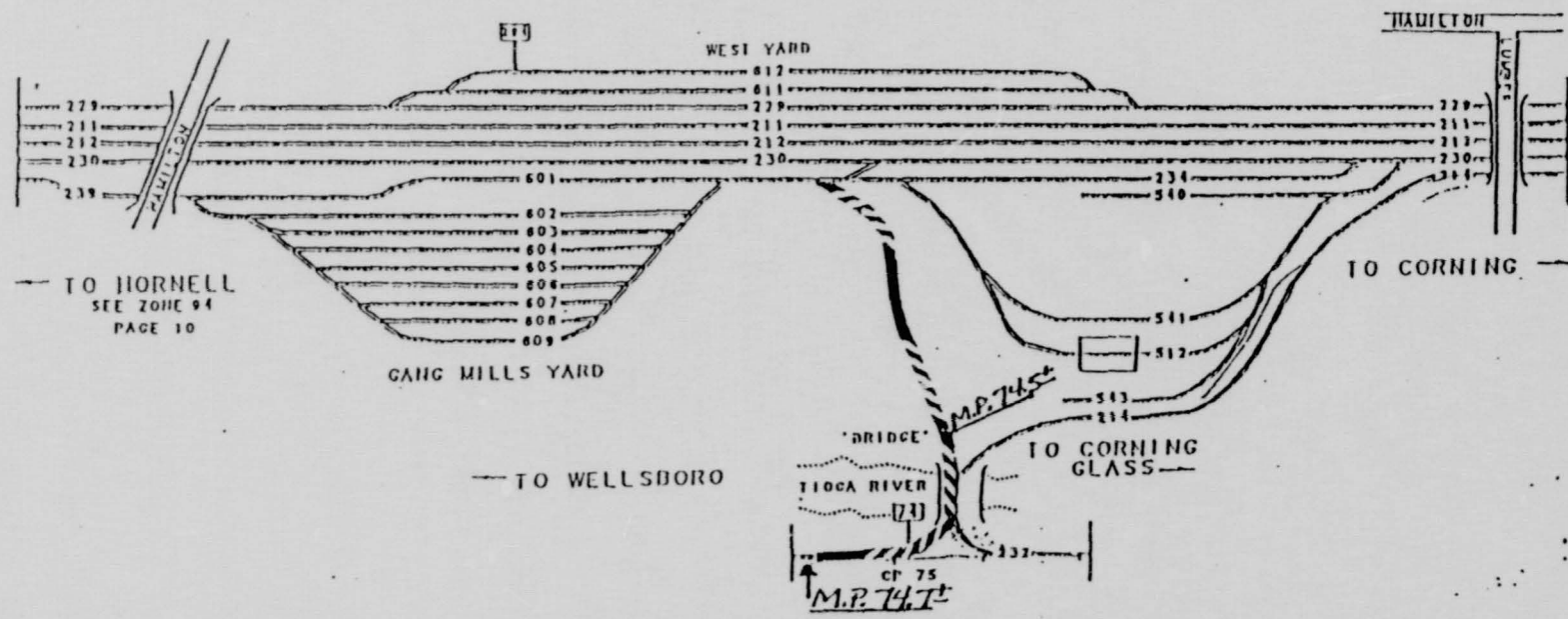


EXHIBIT B

SCALE	NONE	DRAWN BY	JCD
DATE	DEC. 11, 1992	REVISED	
TRACKAGE AGREEMENT			
WCRR TRACKAGE RIGHTS OVER CONRAIL'S CORNING SECONDARY AND WEST LINE TRACKS TO GANG MILLS YARD, GANG MILLS, NY, FOR INTERCHANGE WITH THE D&H RAILWAY CO.			

INTERSTATE COMMERCE COMMISSION

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 32213

GROWTH RESOURCES OF WELLSBORO FOUNDATION
AND
WELLSBORO AND CORNING RAILROAD COMPANY
ACQUISITION AND OPERATION EXEMPTION--
RAIL LINES OF CONSOLIDATED RAIL CORPORATION

Growth Resources of Wellsboro Foundation ("GROW"), a noncarrier, and Wellsboro and Corning Railroad Company ("W&C"), also a noncarrier, have filed a Notice of Exemption for GROW to acquire and W&C to operate lines of railroad now owned and operated by Consolidated Rail Corporation ("Conrail") between a point in the Township of Erwin, New York (M.P. 74.7), and a point near Wellsboro Junction in the Township of Delmar, Pennsylvania (M.P. 106.15); and the Wellsboro Industrial Track between a point near Wellsboro Junction, Pennsylvania (M.P. 0.0), and a point in the Township of Delmar, Pennsylvania (M.P. 3.9), a total of 35.35 route miles. W&C is also acquiring incidental trackage rights from Conrail over approximately 0.7 miles between Erwin, New York (Line Code 2322, M.P. 74.7) and the connection with Conrail's West Wye Track (M.P. 74.5₊) and continuing westerly to Conrail's Gang Mills Yard, Gang Mills, NY, a total distance of approximately 0.5 miles, together with various lead tracks and yard tracks within Gang Mills Yard as designated by Conrail.

EXHIBIT C

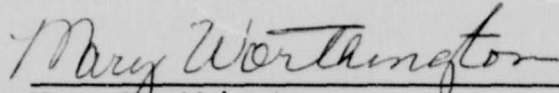
Comments must be filed with the Commission and served on Applicants' representatives, Eric M. Hocky, Esquire, Rubin Quinn Moss & Patterson, P.C., 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106, (215) 925-8300, counsel for GROW; and Richard R. Wilson, Esquire, Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, Pennsylvania 15219, (412) 471-1800, counsel for W&C.

This Notice is related to the Petition of Richard D. Robey at Finance Docket No. 32214 for Exemption under 49 U.S.C. §10505 from 49 U.S.C. §11343 with respect to his continuance in control of W&C.

The Notice is filed under 49 C.F.R. §1150.31. If the Notice contains false or misleading information, the exemption is void ab initio. A petition to revoke the exemption under 49 U.S.C. §10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

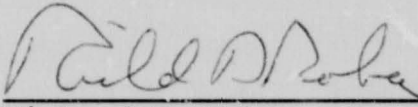
VERIFICATION

I, Mary Worthington, declare, under the penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Notice on behalf of Growth Resources of Wellsboro Foundation of which I am Executive Secretary. Executed on December 18 , 1992.


Mary Worthington

VERIFICATION

I, Richard D. Robey, declare, under the penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Notice on behalf of Wellsboro and Corning Railroad Company, of which I am President. Executed on December 18 , 1992.



Richard D. Robey