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February 2, 2023

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W., Room 1034
Washington, DC 20006

Re: McKees Rocks Railroad LLC – Acquisition and Operation Exemption –
Pittsburgh, Allegheny & McKees Rocks Railroad Company, FD 36667

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding is a Verified Notice of Exemption under 49 C.F.R. §1150.31 filed on behalf of McKees Rocks Railroad LLC, a Delaware limited liability company. Pursuant to 49 C.F.R. § 1002.2(f)(11)(ii), the requisite filing fee in the amount of \$2,200.00 has been paid on pay.gov. If there are any questions about this matter, please contact me directly at (202) 663-7831 or by e-mail at czorbaugh@bakerandmiller.com. If I am unavailable, you may contact William A. Mullins at 202-663-7823 or via email at wmullins@bakerandmiller.com.

Sincerely,

/s/ *Crystal M. Zorbaugh*

Crystal M. Zorbaugh
Attorney for McKees Rocks Railroad LLC

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**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36667

**MCKEES ROCKS RAILROAD LLC – ACQUISITION AND OPERATION
EXEMPTION - PITTSBURGH, ALLEGHENY & MCKEES ROCKS RAILROAD
COMPANY**

VERIFIED NOTICE OF EXEMPTION

February 2, 2023

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****Filing Contains Color Map**

Attorneys for McKees Rocks Railroad LLC

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36667

**MCKEES ROCKS RAILROAD LLC – ACQUISITION AND OPERATION
EXEMPTION - PITTSBURGH, ALLEGHENY & MCKEES ROCKS RAILROAD
COMPANY**

VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 C.F.R. §1150.31, et. seq., McKees Rocks Railroad LLC, a Delaware limited liability company (“McKees Rocks”) and non-carrier,¹ hereby files this Verified Notice of Exemption (“Notice”) to acquire and operate certain assets owned by Pittsburgh, Allegheny & McKees Rocks Railroad Company (“PAM”) and its parent company,² specifically approximately 3.36 miles of mainline track³ and 10906-yard tracks and sidings⁴ at McKees Rocks, PA (the “Line”).⁵ The Line is located in Allegheny County, PA. McKees Rocks, with the support of its parent company, Suncap, is acquiring certain specified assets and will be working in unison to redevelop PAM’s former McKees Rocks, PA over the next several years. Because McKees

¹ Upon closing of the acquisition and regulatory approval by the STB, McKees Rocks will become the first railroad owned by McKees Rocks Railroad Investments LLC, which is owned by SunCap Property Group.

² PAM owns the trackage and PAM’s parent company, McKees Rocks Industrial Enterprises, Inc. (“MRIE”), own the real estate underlying the existing 10901 and 10906 trackage. Per the agreements, PAM has quitclaimed its interest, if any exists, in the real property

³ The mainline track does not have any mileposts.

⁴ While McKees Rocks is acquiring both 3.36 miles of 10901 trackage and 10906 yard tracks and sidings, the common carrier obligation McKees Rocks will acquire upon STB approval will only apply to PAM’s former 3.36 miles of 10901 trackage, and not any ancillary yard and sidings acquired by McKees Rocks, which are referenced for disclosure purposes only.

⁵ Per a decision from February 13, 1920, PAM was found to be a common carrier by the Interstate Commerce Commission (“ICC”). See Pittsburgh, Allegheny & McKees Rocks Railroad Company v. Director General, Pennsylvania Company, Et. Al., No. 10393, 57 I.C.C. (1920). A copy of the 1920 decision is attached as Exhibit 1.

Rocks and its parent company, SunCap Property Group, believe that a rail-served facility could potentially provide tremendous value to PAM's future lessees at the McKees, PA facility, McKees Rocks is seeking STB authority to acquire and preserve PAM's existing common carrier rights over the Line. Over the coming years, in redeveloping the facility, many but not all of the 10906 tracks acquired⁶ and accompanying buildings will be removed. As of today, McKees Rocks does not plan on operating the Line itself, but rather intends to contract with a third-party operator should future McKees, PA facility lessees request service. Regardless, given McKees Rocks is seeking to acquire an existing rail line, McKees Rocks is seeking STB approval for the transaction.⁷ In full disclosure, redevelopment of the McKees, PA facility is anticipated to take two to five years. While McKees Rocks believes it is likely future lessees will desire rail service, it is possible that rail service not be necessary. In that event, McKees Rocks will, as necessary, seek STB abandonment authority to terminate its common carrier obligation for the McKees Rock, PA facility.

⁶ Under 49 U.S.C. § 10906 "[t]he STB does not have authority . . . over the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or sidetracks." Such track is often referred to as excepted track or ancillary track. Although these tracks are not subject to the STB's licensing authority, until abandoned by the carrier, they are subject to the STB's exclusive jurisdiction for preemption purposes. See Tri-City R.R. – Petition for Declaratory Order, FD 36037, slip op. at 4 (S.T.B. served June 1, 2017). See also See Allied Indus. Dev. Corp. – Petition for Declaratory Order, FD 35477, at FN 6 (S.T.B. served Sept. 17, 2015) ("Allied") (explaining the "construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching or side tracks" is statutorily excepted from the entry and exit licensing requirements of 49 U.S.C. §§ 10901-10905, as well as the sales and acquisition licensing requirements of 49 U.S.C. §§ 11321-11326).

⁷ Under 49 U.S.C. § 10901 mainline track requires STB authority to construct, acquire, operate, discontinue (cease operations), and abandon under 49 U.S.C. § 10903 (permanently remove from the interstate rail network). See Allied (explaining that under the Interstate Commerce Act, the STB has exclusive jurisdiction over rail lines over which railroads provide point-to-point "common carrier" line-haul service to shippers (i.e., mainlines). See also Suffolk & S. R.R. LLC – Lease & Operation Exemption – Sills Road Realty, FD 35036, slip op. 1 (S.T.B. served Nov. 16, 2007) (explaining that [t]he federal government has licensed rail carrier entry and exit since 1920. Thus, the STB and its predecessor agency, the Interstate Commerce Commission ("ICC"), have long had exclusive jurisdiction and plenary authority over the construction, operation, and abandonment of mainlines. 49 U.S.C. §§ 10901, 10903).

REQUIRED INFORMATION

In support of this Notice, McKees Rocks submits the following information as required by 49 C.F.R. § 1150.32-1150.34:

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

McKees Rocks Railroad LLC
6101 Carnegie Blvd, Suite 180
Charlotte, NC 28209

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

William A. Mullins
Crystal M. Zorbaugh
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2401 Pennsylvania Ave., NW, Suite 300
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(c) **Statement Concerning Agreement: 49 C.F.R. §1150.33(c)**

McKees Rocks has reached an agreement in principle with PAM/MRIE to acquire and operate certain assets comprising the Line upon the effective date established by the Board ("Agreement"). A final version of the Agreement is expected to be executed upon STB approval.

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

Upon STB approval, McKees Rocks will become the operator of the Line.

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

McKees Rocks, a non-carrier, is filing this Notice to acquire and operate the specified assets comprising the Line owned by PAM/MRIE.

(1) Name and address of the railroad transferring the subject property:
Pittsburgh, Allegheny & McKees Rocks Railroad Company
149 Nichol Avenue
McKees Rocks, PA 15136

(2) Proposed schedule for consummation:

The involved transaction is expected to be consummated on or after the effective date of this Notice (30 days post-filing), which is anticipated to be March 4, 2023, or later.

(3) Mileposts of the subject property:

As noted in FN 3, the mainline track does not have any mileposts.

(4) Route miles being acquired:

The Line being acquired totals approximately 3.36 miles.

(f) **Map: 49 C.F.R. § 1150.33(f)**

A map of the Line being acquired is attached as Exhibit 2.

(g) **Certification of Revenues: 49 C.F.R. § 1150.33(g) and
Certification of Compliance with Employee and Labor Protections:
49 C.F.R. §1150.32(e)**

McKees Rocks certifies that its projected annual revenues resulting from the transaction will not exceed \$5 million, and McKees Rocks will not as a consequence of the transaction become a Class II or Class I rail carrier so as to require processing the foregoing notice of exemption under 49 C.F.R. § 1150.45. See Certification - Exhibit 3.

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

The Agreement does not contain any interchange commitments.

ENVIRONMENTAL AND HISTORIC IMPACTS

Under 49 C.F.R. § 1105.6(c)(2), the proposed transaction is exempt from environmental reporting requirements because 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).

Also, under 49 C.F.R. § 1105.8(b)(1), the proposed transaction is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Further Board approval would be required for McKees Rocks to abandon service. There are no plans to dispose of or alter properties subject to Board jurisdiction that is fifty years old or older.

CAPTION SUMMARY

A caption summary in the appropriate form (49 C.F.R. § 1150.34) is attached as Exhibit 4 to this Notice.

Respectfully submitted,

/s/ *Crystal M. Zorbaugh*

**William A. Mullins
Crystal M. Zorbaugh
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2401 Pennsylvania Ave., NW
Suite 300
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Tel: (202) 663-7820
Fax: (202) 663-7849**

Date: February 2, 2023

Attorneys for McKees Rocks Railroad LLC

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36667

**MCKEES ROCKS RAILROAD LLC – ACQUISITION AND OPERATION
EXEMPTION - PITTSBURGH, ALLEGHENY & MCKEES ROCKS RAILROAD
COMPANY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT 1

COPY OF THE 1920 ICC DECISION

INTERSTATE COMMERCE COMMISSION REPORTS.

No. 10393.

PITTSBURGH, ALLEGHENY & McKEES ROCKS
RAILROAD COMPANY

v.

DIRECTOR GENERAL, PENNSYLVANIA COMPANY, ET AL.

Submitted October 17, 1919. Decided February 13, 1920.

Pittsburgh, Allegheny & McKees Rocks Railroad Company found to be a common carrier which may lawfully participate in joint rates with other common carriers or have its charges on interstate shipments absorbed under proper tariff provision by the roads having the line haul. Its compensation should not be more than is reasonable.

Luther M. Walter, John S. Burchmore, W. W. Collin, jr., and Newel D. Belnap for complainant.

George Stuart Patterson, James Stillwell, A. P. Humburg, and C. J. Rixey, jr., for Director General of Railroads.

George Stuart Patterson for Pennsylvania Railroad Company; and *Frank M. Swacker* for Pittsburgh & West Virginia Railway Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, DANIELS, AND WOOLLEY.

By complaint filed on January 3, 1919, the Pittsburgh, Allegheny & McKees Rocks Railroad Company alleges in substance that it is a common carrier operating a terminal railway in the Pittsburgh district of Pennsylvania connecting with the lines of certain defendants; that for the transportation of freight in interstate commerce to or from points in the Pittsburgh district, including points or industries on complainant's line, defendants and their connections apply and charge a common or group rate; and that the compensation accorded to complainant by defendants out of the through rates is not and has not been adequate. Violations of section 1, 3, and 6 of the act to regulate commerce are alleged in general terms. Complainant prays that defendants be required to accord to it out of the Pittsburgh district rates on interstate shipments to and from points and industries on its line a reasonable division or allowance for the services performed by it; and that they be required to pay to complainant as reparation the difference between the division or allowance actually paid to it since May 1, 1916, and the amount which the Commission may find reasonable.

The position of defendants is in substance that complainant is not a common carrier but a plant facility, and is entitled to no relief.

The salient facts regarding complainant may be summarized as follows: It is a consolidated or merged company, organized September 25, 1899, under the laws of Pennsylvania, the merged companies being the North Shore Terminal Railroad Company, Pittsburgh & Allegheny Railroad Company, and McKees Rocks Railroad Company, all chartered under the laws of Pennsylvania as common carriers; was adjudged a common carrier by the Allegheny County Court in the course of certain tax litigation, this holding being sustained by the Supreme Court of Pennsylvania; complies with federal and state requirements applicable to common carriers; maintains an independent organization of 169 employees for performing its work; owns its right of way and a number of buildings, including its office and repair shop; assesses tariff charges on all cars handled, including demurrage in accordance with the national car-demurrage rules; pays its trainmen in accordance with the standards set for railroads under federal control; issues no bills of lading; and handles neither mail nor express. It is an associate member of the American Railroad Association and has membership in the Car Builders' Association and the Bureau of Explosives. On April 1, 1904, it became a member of the per diem rules agreement, but in August, 1905, one of its two rail divisions was eliminated from the agreement and on February 19, 1914, the other was suspended by the trunk lines pending determination of its status by the commission.

It was testified that complainant was under federal control until July 11, 1918, when it was advised by the United States Railroad Administration that it had been relinquished.

The investment in road is said to be \$538,284.43. This is the book value of the property as of December 31, 1918. The annual report of the carrier for 1918 states its total corporate surplus for the year as \$76,310.19, railway operating income as \$48,292.57, and its net income as \$26,941.56. No dividends were declared during the year. The total stock is \$95,000 and the funded debt unmatured is \$427,080.

Complainant has three divisions, the McKees Rocks, the Allegheny, and the river division. The first and second are at McKees Rocks and Allegheny, Pa., respectively, on opposite banks of the Ohio River and have no physical connection. The mileage is:

	Main track.	Yard track and sidings.	Total.
	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
McKees Rocks division.....	3.36	11.69	15.05
Allegheny division.....	.38	1.36	1.74
Total.....	3.74	13.05	16.79

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Apparently only track owned by complainant was included in this statement. Complainant also uses a short stretch of track belonging to the Pittsburgh & Lake Erie Railroad Company, hereinafter called the Lake Erie, at McKees Rocks and has trackage rights over portions of the track of the Baltimore & Ohio Railroad Company at Allegheny, including tracks leading to the Edith Furnace of the United States Steel Corporation.

The floating equipment of the river division consists of a steamboat, wharf boats, and several barges. The steamer is operated on regular schedule between Allegheny, McKees Rocks, and Bellevue, Pa., and is used by the public, carrying some 250,000 passengers a year under published tariff. Less-than-carload freight is also carried, the aggregate during the years 1913 to 1917, inclusive, being about 1,873 tons. This service is not in controversy and will not be further considered.

Eight locomotives and 165 freight cars are owned by complainant. It has offered, and has always been willing, to interchange its cars with the trunk lines at the per diem rate, but the offer was refused.

Complainant's road connects with those of the Pennsylvania and Baltimore & Ohio railroads at Allegheny, and with the Lake Erie and the Pittsburgh, Chartiers & Youghioghenny Railroad, owned by the Pennsylvania and the Lake Erie and hereinafter referred to as the Chartiers railroad, at McKees Rocks.

The principal industry served by complainant is the Pressed Steel Car Company, hereinafter called the car company, which has plants at Allegheny and McKees Rocks. Its president and four other persons are either officers or directors in both companies. It was stated that complainant's capital stock, except for directors' qualifying shares, is owned by the car company. The annual report for 1918 shows that of the 1,900 shares outstanding 860 were held by the car company, 920 by complainant's president, and the remaining 120 in blocks of 20 each by the six directors other than the president.

At McKees Rocks complainant also serves the Pennsylvania Malleable Company and the Central Car Wheel Company, subsidiaries of the car company; the Schoen plant of the Carnegie Steel Company, hereinafter designated the Schoen plant; and the Lefkovich Coal Company. It serves the Pittsburgh Forge & Iron Company at Allegheny, and by means of the Baltimore & Ohio tracks reaches the Edith furnace. An exhibit introduced by defendants shows on complainant's line, in addition to the foregoing, A. Badewski and P. Wall Manufacturing Company, and a witness for the Lake Erie testified that during 1918 that road turned over to complainant for delivery cars consigned to the Hine Chimney Company, Davis-Smith Company, and the Dravo Contracting Company. The location of the last three companies is not disclosed.

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Complainant has a team track at McKees Rocks and one at Allegheny. A map made an exhibit indicates that both are adjacent to public highways, but the extent of their use is not shown.

There is some evidence concerning fences surrounding the plants of the car company and a large part of complainant's tracks. Evidence on this subject is material only in so far as it bears upon the good faith of the offer to carry for the public and the ability of the public to accept such offer. No evidence of failure to perform its duties has been introduced, and it is testified by complainant's superintendent that the protection afforded by the fences adds to safety in operation, that complainant has never refused to carry freight for the public, and that the fences which inclose some of its tracks do not in any manner "impede its services or prevent it from performing its functions as a railroad."

The movements of cars in interchange, interplant, and intraplant hauls are traced in detail by witnesses, but for the purposes of this report it is sufficient to describe the switching service performed by complainant as follows: (a) between interchange points with trunk lines and points in the plant of the car company or its subsidiaries; (b) between such interchange points and the points at which cars are delivered to or received from independent industries or their industrial railroads; (c) hauling coal from tracks by the water front at Allegheny, where it is loaded into the cars from boats, to the Pittsburgh Forge & Iron Company; (d) between different plants served by complainant, as from the Schoen plant to a point within the car company's plant; and (e) between two points in the same plant.

In connection with (c) it was stated that the complainant sometimes takes the cars into the plant of the Pittsburgh Forge & Iron Company and spots them, and at others turns them over to the industrial railroad of that company, the Pennsylvania Western & Ohio River Connecting Railroad. In neither case is any division accorded that industrial line or allowance made to the industry, complainant deeming its compensation too small to divide.

Subdivisions (d) and (e) cover traffic moving wholly within the state of Pennsylvania. A separate charge is made for each such movement and, in the absence of any unjust discrimination or undue prejudice against interstate commerce or shippers, they need not be considered by this Commission. This proceeding has to do primarily with the interchange service, concerning which it was said by one of complainant's witnesses:

In interchange movement we pick up cars at point of interchange in train lots, bring them into our yard, classify them and in some instances weigh them before classifying them and then take those cars from the classification yard

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to the point of spotting. When the car is made empty it is pulled from the unloading point either to a point for reloading or sent out to the trunk line connection.

Complainant submits the following tabulation of interchange traffic for the years 1917 and 1918:

	Cars.		Tons.		Per cent tons.	
	1917	1918	1917	1918	1917	1918
LOADED CARS.						
Interchange account Pressed Steel Car Co., McKees Rocks.....	17,374	16,712	688,915	690,830	63.23	71.02
Interchange account same company, Allegheny.....	5,329	4,316	197,781	194,416	18.15	19.98
Interchange account all other industries.....	4,231	1,907	202,910	87,504	18.62	9.00
Total.....	26,934	22,935	1,089,606	972,750	100.00	100.00
NEW CARS.						
Interchange account Pressed Steel Car Co., McKees Rocks.....	6,741	3,609	147,978	78,336	59.65	64.82
Interchange account same company, Allegheny.....	4,610	1,851	100,111	42,509	40.35	35.18
Total.....	11,351	5,460	248,089	120,845	100.00	100.00

The figures for the car company include those for its subsidiaries. Another exhibit introduced by complainant shows that the tonnage and number of cars handled for the Carnegie Steel Company in 1917 and 1918 were the same as the figures for those years shown in the foregoing table as "Interchange account all other industries." This would indicate that during those years the only independent industry served in interchange service was the Schoen plant, apparently ignoring 44 loaded cars consigned to the Hine Chimney Company and others mentioned by a witness for defendants.

About 200 carloads of coal which moved to Allegheny by water were handled in 1918 for the Pittsburgh Forge & Iron Company.

Much of the record is devoted to a detailed recital of the negotiations for payment to complainant of a portion of the Pittsburgh district rates on interstate shipments in connection with which it performed a switching service. The outstanding features are that the trunk lines have not been willing to recognize complainant as a common carrier and that the latter has never been satisfied with the compensation accorded it.

The Wabash-Pittsburgh Terminal Railway was the first road to absorb complainant's charges, the absorption becoming effective on June 1, 1909. Its action was followed by the Buffalo, Rochester & Pittsburgh. The absorption was generally \$2.50 per car but different amounts were absorbed on some commodities, as \$1.60 per car on sand and \$2 on coal. These absorptions were canceled after the Commission made its report in the *Industrial Railways Case*, 29 I. C. C., 212, decided January 20, 1914.

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Effective May 8, 1916, the trunk lines filed tariffs providing for the absorption out of the current McKees Rocks rate of complainant's charges to the extent of 4.27 cents per ton, net or gross as rated, on carload-revenue shipments. That of the Lake Erie is typical and the pertinent provisions are set forth in the margin.¹ This latter tariff was canceled and superseded, effective June 15, 1916, by one containing the same rules except that the absorption was made 50 cents per car on new cars and 25 cents on cars repaired, or to be repaired. Similar changes were made by the other trunk lines except the Buffalo, Rochester & Pittsburgh and the Bessemer & Lake Erie. With a few minor changes these provisions are in effect to-day.

Complainant has steadily contended that the absorption of 4.27 cents is not compensatory and has sought to have it increased. Negotiations were had with representatives of the trunk lines and later with officials of the United States Railroad Administration. No portion of the increase in rates under General Order No. 28 of the Director General accrued to complainant.

At various times the trunk lines have offered to perform the switching and spotting service now done by complainant, and this offer was renewed at the hearing. The offer never progressed to the stage where the trunk lines performed the work, although it is testified for complainant that no obstacles were placed in their way. There seems to be no unanimity of opinion as to the ability of the trunk lines to perform all of the work now done by complainant, or as to the cost to the trunk lines. Apparently there would be interference unless the switching, including the interplant, was under one control, but the trunk lines have made no arrangements for a unified control. Complainant's superintendent testified that the interchange and spotting service could be performed by the trunk lines, the rest of the work being done by complainant, but that it would be more expensive than the present method and unsatisfactory to every one concerned. In 1916 a committee representing the trunk lines estimated that the cost of the service would be 4.27 cents per ton if performed by complainant and about 6 cents per ton if done by the

¹ On all carload revenue shipments, four and twenty-seven hundredths (4.27) cents per ton, net or gross as rated, governed by the same minimum weight, rules and regulations as apply to the through rate, will be allowed to the Pittsburgh, Allegheny & McKees Rocks Railroad Company out of the current McKees Rocks, Pa., rate.

On cars containing ten thousand (10,000) pounds or more of less carload revenue freight, four and twenty-seven hundredths (4.27) cents per ton, net or gross as rated, will be allowed to the Pittsburgh, Allegheny & McKees Rocks Railroad Company out of the current McKees Rocks, Pa., rate. The minimum allowance to the Pittsburgh, Allegheny & McKees Rocks Railroad Company on cars containing less than carload shipments will be computed on basis of 20,000 lbs.

Any charge of the Pittsburgh, Allegheny & McKees Rocks Railroad Company in excess of the allowances named above will be in addition to the current McKees Rocks, Pa., rate.

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trunk lines. In view of the conclusion hereinafter reached regarding complainant's status, it can not be held, in the absence of complainant's assent, that it is optional with the trunk lines to perform this service or have it done by complainant.

An anomalous situation exists with respect to interstate traffic moving over complainant's line between the Schoen plant and the interchange with the Chartiers railroad. Prior to January 1, 1917, the Chartiers railroad reached that plant over tracks laid by the Carnegie Steel Company on land leased by it. The lease expired and on December 31, 1916, the connection was broken. In order to continue its service to and from the Schoen plant, the Chartiers railroad entered into a contract with complainant whereby the latter agreed to act as its agent in performing this interchange service. The compensation under the contract was 4.27 cents per ton, net or gross as rated, subject to revision by agreement of the parties; and the duration was for one year, or until terminated upon six months' notice.

No readjustment of compensation was made and the contract was ended by complainant December 31, 1917, upon the required notice. For a short time the Chartiers railroad turned over to the Lake Erie cars consigned to the Schoen plant, but congestion in the yards of the latter carrier made the service unsatisfactory. On or about February 7, 1918, at the solicitation of the Carnegie Steel Company and the chairman of the Pittsburgh operating committee, and upon assurances from the latter that it would be fairly compensated, complainant resumed the service. Endeavors to agree upon the amount of the absorption met with little success. Complainant submitted to an accounting committee appointed to investigate the matter, figures indicating a cost of over 10 cents per ton. The committee recommended that 5.5 cents per ton be allowed, using the so-called plant-facility basis, although there was no affiliation between complainant and the Carnegie Steel Company. This amount was rejected by complainant and an arbitration committee was appointed which agreed upon a figure of 7.95 cents per ton. As the Schoen plant does its own spotting, the trunk line representative later insisted upon a deduction of 1.5 cents to be paid to the Schoen plant for performing that service. Complainant finally accepted 6.45 cents per ton.

It was agreed that there should be tariff authority for this absorption, but none was published, the interested trunk lines treating it as an "operating matter." Complainant's tariff provides a charge of 10 cents per ton, net or gross, as rated, on this interstate traffic to and from the Schoen plant, and the absorption tariff provides for an absorption of 4.27 cents out of the current McKees Rocks rate, which

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is the Pittsburgh district rate, any excess to be paid by the shipper in addition to the district rate. In practice complainant bills the Chartiers railroad for the full amount of its charge, 10 cents per ton, and receives payment at the rate of 6.45 cents per ton. At the time the agreement was made it was conceded to be unfair to charge the Carnegie Steel Company more than the district rate paid by other shippers. Defendants' witness who testified regarding this situation expressed the view that under private operation it would have been unlawful and would not have been allowed to continue. It is not explained how federal control warrants a departure from the published rates. If settlement has been made on the basis of the Pittsburgh district rates, the legal charges have not been paid or collected.

The figure of 4.27 cents per ton, adopted by the trunk lines as the cost of complainant's services in 1916, and used as the basis for the published absorption, was originally proposed by an operating committee appointed by the trunk lines, and was later accepted by an accounting committee appointed by the trunk lines to determine whether certain industrial roads were common carriers or plant facilities and report to a traffic committee the cost of service. Deciding factors in passing upon the status of a road were the number of industries served and the proportion of traffic handled for the controlling or affiliated industry. Complainant was deemed by the accounting committee to be a plant facility.

The formula upon which costs to a common carrier were computed included a number of items eliminated from the plant-facility basis and resulted in a materially higher figure than the latter.

For complainant it was testified that the figure of 4.27 cents was based on all tonnage, including new cars which average 22 tons in weight. At 4.27 cents per ton the estimated cost of moving these would be 93.94 cents, but the absorption, except in the case of the Buffalo, Rochester & Pittsburgh and the Bessemer & Lake Erie, is 50 cents on new cars and 25 cents on cars repaired or to be repaired.

A member of the trunk lines' accounting committee testified that if he were determining the present cost on the plant-facility basis, he would increase the earlier estimate by from 70 to 75 per cent.

Complainant introduced statements showing the cost of service and interest on the investment at 5 per cent for the years 1915 to 1918, inclusive. The figures in cents per ton are:

	1915	1916	1917	1918
Cost.....	6.22	6.59	9.037	13
Interest on investment.....	1.78	1.17	1.652	1.88
Total.....	8.00	7.76	10.689	14.88

57 I. C. C.

Subsequent to the hearing complainant was requested to explain why the data as to cost of service purported to show a separation between the cost of interchange service and intermill service on the engine-hour basis when it appeared that the apportionment was on a tonnage basis. On May 27, 1919, counsel for complainant replied:

It is not possible from the records to segregate the engine time as between interchange service and interplant or intraplant service * * * ; If the Commission can not accept our testimony as sufficient to establish the cost figures for which we contend, and is therefore unwilling to fix divisions of a reasonable amount, we ask that its decision shall not for that reason be withheld pending further hearings or investigations. All that we ask in that event is a formal adjudication of the status and rights of this company * * *.

McCHORD, *Commissioner*:

The above is the statement of facts prepared by the examiner, which we find to be substantially correct.

Under these facts we are of opinion and find that complainant is a common carrier, and that as such it may lawfully participate in joint rates with other common carriers or have its charges on interstate shipments absorbed under proper tariff provision by the roads having the line haul. Its compensation, whether in the form of divisions of the through rates or of switching absorptions must not be more than is reasonable and a specific and complete statement of the basis agreed upon must be filed with us immediately upon its adoption.

Complainant's cost figures indicate no attempt to segregate items of expense wholly chargeable to either interchange or intermill work, or any effort to differentiate between the cost of hauling carload freight and new cars. The "investment" is the book cost. Accrued depreciation has been deducted from investment in locomotives and cars, but investment in road is original cost.

We find that the estimated cost of 4.27 cents per ton was made on the erroneous assumption that complainant is merely a plant facility and excludes items of expense which may properly be considered; and that the present cost of service is materially in excess of 4.27 cents per ton on any basis.

The record does not show the value of the property devoted in whole or in part to the public use as distinguished from that devoted in whole or in part to the intraplant work; or, as to the former, make any allocation of expenses between interstate and intrastate commerce. No finding can be made as to the maximum division or absorption which may properly be accorded complainant out of the Pittsburgh district rates on interstate shipments hereafter made, and the same may be said regarding past shipments.

57 I. C. C.

As no basis for an award of reparation to complainant is shown, it is unnecessary to discuss the Commission's jurisdiction to make such an award.

An order dismissing the complaint in so far as it relates to the question of reparation will be entered.

WOOLLEY, *Commissioner*, dissents.

57 I. C. C.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

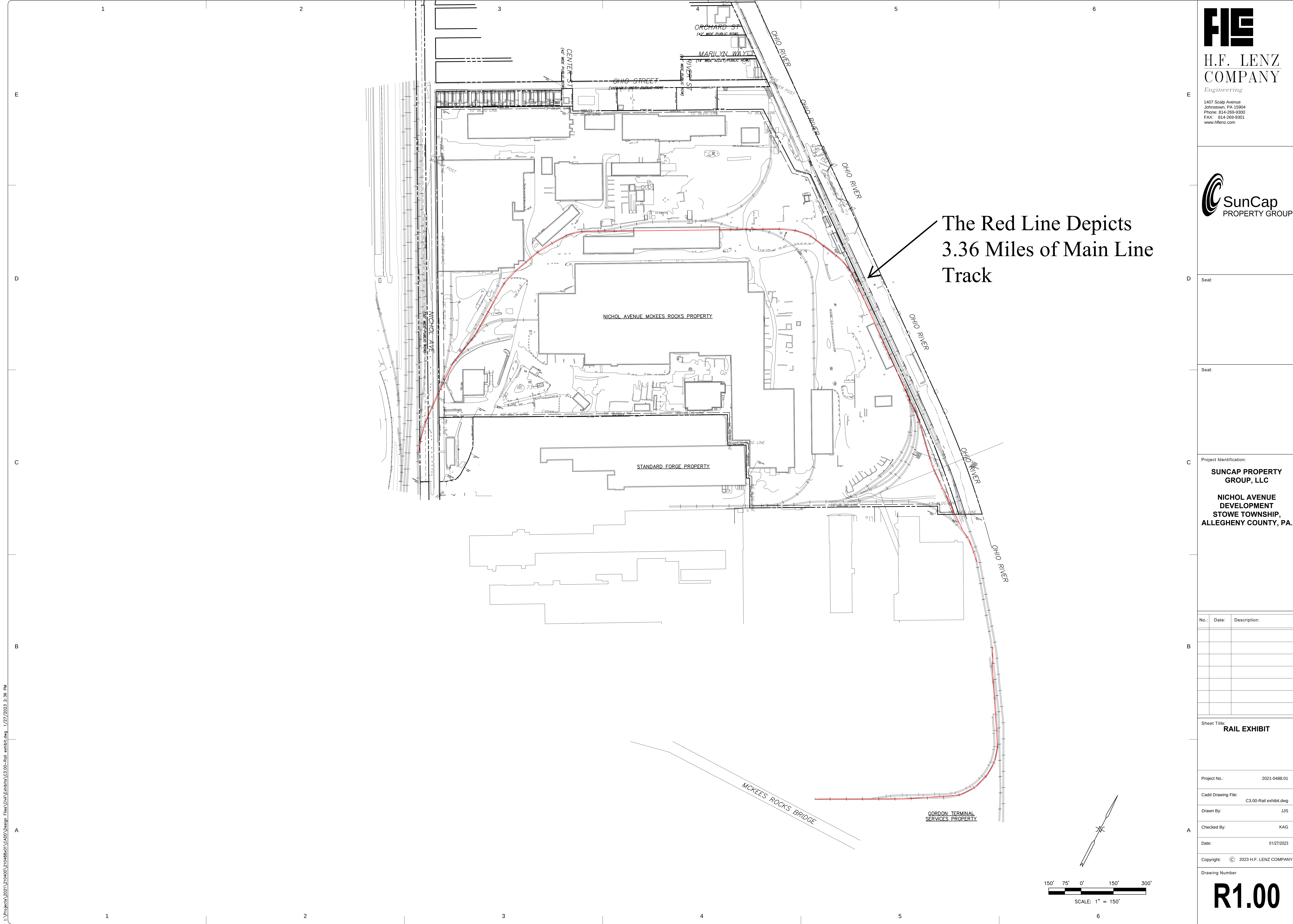
FD 36667

**MCKEES ROCKS RAILROAD LLC – ACQUISITION AND OPERATION
EXEMPTION - PITTSBURGH, ALLEGHENY & MCKEES ROCKS RAILROAD
COMPANY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT 2

MAP



The Red Line Depicts
3.36 Miles of Main Line
Track

H.F. LENZ
COMPANY

Engineering

1407 Scapp Avenue
Johnstown, PA 15904
Phone: 814-269-9300
FAX: 814-269-9301
www.hflenz.com

SunCap
PROPERTY GROUP

Seal:

Seal:

Project Identification:

SUNCAP PROPERTY GROUP, LLC

NICHOL AVENUE DEVELOPMENT
STOWE TOWNSHIP,
ALLEGHENY COUNTY, PA.

No.:	Date:	Description:

Sheet Title:

RAIL EXHIBIT

Project No.: 2021-0488.01

Cadd Drawing File: C3.00-Rail exhibit.dwg

Drawn By: JJS

Checked By: KAG

Date: 01/27/2023

Copyright: © 2023 H.F. LENZ COMPANY

Drawing Number

R1.00

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**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36667

**MCKEES ROCKS RAILROAD LLC – ACQUISITION AND OPERATION
EXEMPTION - PITTSBURGH, ALLEGHENY & MCKEES ROCKS RAILROAD
COMPANY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT 3

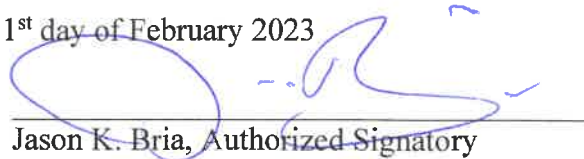
**MCKEES ROCKS RAILROAD LLC CERTIFICATION OF REVENUES 49 C.F.R. §
1150.33(g)**

CERTIFICATION OF REVENUES

Commonwealth of Pennsylvania	)	
	)	SS:
County of Allegheny	)	

I, Jason K. Bria of McKees Rocks Railroad LLC (“McKees Rocks”), hereby certify that the projected annual rail revenues of McKees Rocks will not exceed \$5 million, and will not as a consequence of the transaction result in McKees Rocks becoming a Class II or Class I rail carrier so as to require processing the foregoing notice of exemption under 49 C.F.R. § 1150.45.

Executed this 1st day of February 2023



Jason K. Bria, Authorized Signatory
McKees Rocks Railroad LLC

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36667

**MCKEES ROCKS RAILROAD LLC – ACQUISITION AND OPERATION
EXEMPTION - PITTSBURGH, ALLEGHENY & MCKEES ROCKS RAILROAD
COMPANY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT 4

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36667

MCKEES ROCKS RAILROAD LLC – ACQUISITION AND OPERATION EXEMPTION - PITTSBURGH, ALLEGHENY & MCKEES ROCKS RAILROAD COMPANY

McKees Rocks Railroad LLC (“McKees Rocks”) a non-carrier¹ has filed a Verified Notice of Exemption (“Notice”) to acquire and operate certain assets owned by Pittsburgh, Allegheny & McKees Rocks Railroad Company (“PAM”) and its parent company,² including approximately 3.36 miles of mainline track³ and 10906-yard tracks and sidings⁴ at McKees Rocks, PA (the “Line”).⁵ The Line is located in Allegheny County, PA. McKees Rocks expects to consummate this transaction and commence operation of the Line on or after the effective date of this Notice of Exemption.

Comments must be filed with the Board and served on McKees Rocks’ representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037, (202) 663-7820. This notice is filed under 49 C.F.R. § 1150.31, et. seq.

¹ Upon closing of the acquisition and regulatory approval by the STB, McKees Rocks will become the first railroad owned by McKees Rocks Railroad Investments LLC, which is owned by SunCap Property Group.

² PAM owns the trackage and PAM’s parent company, McKees Rocks Industrial Enterprises, Inc. (“MRIE”), own the real estate underlying the existing 10901 and 10906 trackage.

³ The mainline track does not have any mileposts.

⁴ While McKees Rocks is acquiring both 3.36 miles of 10901 trackage and 10906 yard tracks and sidings, the common carrier obligation McKees Rocks will acquire upon STB approval will only apply to PAM’s former 3.36 milers of 10901 trackage, and not any ancillary yard and sidings acquired by McKees Rocks, which are referenced for disclosure purposes only.

⁵ Per a decision from February 13, 1920, PAM was found to be a common carrier by the Interstate Commerce Commission (“ICC”). See Pittsburgh, Allegheny & McKees Rocks Railroad Company v. Director General, Pennsylvania Company, Et. Al., No. 10393, 57 I.C.C. (1920). A copy of the 1920 decision is attached as Exhibit 1.

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.

Decided: _____

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FD 36667

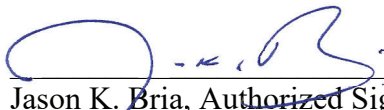
**MCKEES ROCKS RAILROAD LLC – ACQUISITION AND OPERATION
EXEMPTION - PITTSBURGH, ALLEGHENY & MCKEES ROCKS RAILROAD
COMPANY**

VERIFIED NOTICE OF EXEMPTION

VERIFICATION

Pursuant to 28 U.S.C. 1746, I, Jason K. Bria, Authorized Signatory for McKees Rocks Railroad LLC (“McKees Rocks”), declare under the penalty of perjury under the laws of the United States that I am authorized to make this verification on behalf of McKees Rocks and the foregoing verified notice of exemption is true and correct to the best of my knowledge and belief.

Executed this 2nd Day of January 2023



Jason K. Bria, Authorized Signatory
McKees Rocks Railroad LLC