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ENTERED
Office of Proceedings
April 16, 2024
Part of
Public Record

April 16, 2024

Via E-Filing

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-
0001

Re: East Ohio Valley Railway LLC – Lease and Operation Exemption
Containing Interchange Commitment –Norfolk Southern Railway
Company, FD 36766

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding is a Verified Notice of Exemption (the “Notice”) filed on behalf of East Ohio Valley Railway LLC, a Class III rail carrier, pursuant to 49 CFR §1150.41. The required filing fee of \$2,200.00 has been paid on pay.gov. If you have any questions regarding this filing, please feel free to contact me or Lauren Edwards at ledwards@mullinslawgroup.net or 202-663-7826. Thank you for your assistance with this matter.

Respectfully submitted,

/s/ *William A. Mullins*

William A. Mullins
Attorney for East Ohio Valley Railway LLC

FEE RECEIVED
April 16, 2024
Surface
Transportation Board

FILED
April 16, 2024
Surface
Transportation Board

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36766

**EAST OHIO VALLEY RAILWAY LLC—LEASE AND OPERATION EXEMPTION
CONTAINING INTERCHANGE COMMITMENT—NORFOLK SOUTHERN
RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41**

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**William A. Mullins
Lauren Lee Edwards
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(202) 663-7823**

Attorneys for East Ohio Valley Railway LLC

Dated: April 16, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36766

**EAST OHIO VALLEY RAILWAY LLC—LEASE AND OPERATION EXEMPTION
CONTAINING INTERCHANGE COMMITMENT—NORFOLK SOUTHERN
RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41**

East Ohio Valley Railway LLC (“EOVR”), an existing Class III railroad common carrier,¹ hereby files this Verified Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart E, Exempt Transactions Under 49 U.S.C. 10902 for Class III Rail Carriers with the Surface Transportation Board (“STB” or “Board”) to lease (the “Lease Agreement”) and operate a line of railroad from Norfolk Southern Railway Company (“NSR” or “Norfolk Southern”). The trackage that is the subject of this notice constitutes about 16.5 miles between RO 44.0 near Bellaire, OH and RO 60.5 near Powhatan Point, Ohio (the “River Line”) and 1.78 miles between OP 0.0 and OP 1.78 near Powhatan Point, Ohio (the “Captina Branch”) (collectively, the two segments constitute the “Line”). Once this notice becomes effective, EOVR will be the exclusive provider of common carrier railroad service over the Line and will connect and interchange only with NSR.

¹ See East Ohio Valley Railway LLC – Acquisition and Operation Exemption – Ohio River Partners Shareholder LLC, FD 36682 (STB served Mar. 31, 2023) (granting EOVR’s acquisition and operation of rail line from Ohio River Partners Shareholder LLC upon which EOVR became a Class III rail carrier).

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

SPECIFIC INFORMATION REQUIRED BY THE REGULATIONS

49 C.F.R. § 1150.43 specifies certain information that must be included in every Verified Notice of Exemption filed pursuant to 49 C.F.R. § 1150.41. The required information is provided below, preceded by the subsection of the Board's regulations to which it is responsive.

Full name and address of Class III rail carrier applicant: 49 CFR §1150.43(a)

East Ohio Valley Railway LLC
385 E Waterfront Drive, Suite 101
Homestead, PA 15120

Applicant's Representatives: 49 CFR §1150.43(b)

William A. Mullins
Mullins Law Group
2401 Pennsylvania Ave., NW, Ste. 300
Washington, DC 20037
Telephone: (202) 663-7823
E-mail: wmullins@mullinslawgroup.net

Statement that an agreement has been reached or details about when an agreement will be reached: 49 CFR §1150.43(c)

EOVR & NSR have reached an agreement pursuant to which NSR will lease and grant operating rights for the Line. EOVR expects the transaction will be signed next week.

Operator of the property: 49 C.F.R. §1150.43(d)

EOVR will be the operator of the Line. EOVR will interchange with NSR at NSR's Mingo Junction Terminal in Mingo Junction, OH between MP RO23 +/- and MP RO 21.

Brief summary of the proposed transaction: 49 C.F.R. §1150.43(e)

EOVR has reached a lease agreement with NSR to take over operation of NSR's 16.5 miles of track between RO 44.0 near Bellaire, OH and RO 60.5 near Powhatan Point, Ohio and 1.78 miles of track between OP 0.0 and OP 1.78 near Powhatan Point, Ohio.

Name And Address Of Party Transferring Property: 49 C.F.R. §1150.43(e)(1) –

Norfolk Southern Railway Company
650 West Peachtree St NW
Atlanta, GA 30308

Proposed Time Schedule: 49 C.F.R. §1150.43(e)(2)

EOVR anticipates that the subject rail line lease and operation transaction will be consummated on or after May 16, 2024 (more than 30 days after EOVR files this notice of exemption to allow for a coordinated turnover).

Mileposts and Description: 49 C.F.R. §1150.43(e)(3) & (4)

EOVR seeks to lease and operate 16.5 miles between RO 44.0 near Bellaire, OH and RO 60.5 near Powhatan Point, Ohio and 1.78 miles between OP 0.0 and OP 1.78 near Powhatan Point, Ohio. The Line is shown in Exhibit A:

Map: 49 CFR §1150.43(f)

A Map showing the Line and surrounding area is attached as Exhibit A to this Notice.

Certificate of compliance: 49 CFR §1150.43(g)

EOVR has certified that EOVR's projected annual rail revenues resulting from the consummation of the proposed transaction will not exceed \$5 million annually and will not result in EOVR becoming a Class I or Class II carrier. Certification of compliance with the provisions of 49 CFR 1150.43(g) is attached as Exhibit B to this Notice.

Interchange commitments: 49 CFR §1150.43(h)

The NSR Line that EOVR will lease does not physically connect to any other carrier and NSR will be the exclusive interchange partner for EOVR. Nevertheless, the Lease Agreement does include a provision through a per-car penalty that would limit EOVR's ability to interchange with a third-party carrier if that ever became physically possible.

- (i) The affected interchange point for the interchange commitment is NSR's Mingo Junction Terminal in Mingo Junction, OH.
- (ii) The confidential version of the Lease Agreement is being filed with the Board by separate cover, under 49 C.F.R. § 1104.14(a). See Exhibit D
- (iii) The following shippers or consignees ("Shippers") located on the Line are currently using the Line to ship or receive freight or have so used the Line in the last two years:

American Heavy Plate, Certified Flux Solutions LLC, Long Ridge Energy, and Carbo Ceramics

- (iv) The aggregate number of carloads the Shippers originated or terminated within the last two years is being filed by separate cover, under 49 C.F.R. § 1104.14(a).

This information is confidential and is being filed under seal. See Exhibit D.

- (v) No third-party railroad can physically interchange with the Line.
- (vi) An estimate of the difference between the lease price with and without the interchange commitment is being filed by separate cover, under 49 C.F.R. § 1104.14(a).

This information is confidential and is being filed under seal. See Exhibit D.

- (vii) The case caption of this Verified Notice of Exemption identifies the existence of an interchange commitment.

Advance Notice (Posting): 49 CFR §1150.42(e)

The proposed transaction will not result in the creation of a carrier with projected annual operating revenues exceeding \$5 million, and, accordingly, the advance notice requirement of

49 CFR §1150.42(e) is not applicable to this transaction. See Exhibit B.

Environmental and Historic Preservation Information: 49 CFR §1105

Under 49 CFR §1105.6(c)(2), EOVR's proposed lease and operation of the Line is exempt from environmental reporting requirements because the proposed lease and operation will not result in significant changes in carrier operations (i.e., changes that exceed the thresholds established in 49 CFR §1105.7(e)(4) or (5)). Accordingly, this action will not significantly affect either the quality of the human environment or energy conservation.

Under 49 CFR §1105.8(b)(1), EOVR's proposed lease and operation of the Line also is exempt from historic preservation reporting requirements. Further STB approval would be necessary for NSR to discontinue or abandon the Line and there are no plans to dispose of or alter properties subject to STB jurisdiction that is 50 years or older.

Caption Summary: 49 CFR §1150.44

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

Respectfully submitted,

/s/ William A. Mullins

William A. Mullins
Mullins Law Group
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
(202) 663-7820

Attorney for East Ohio Valley Railway LLC

April 16, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

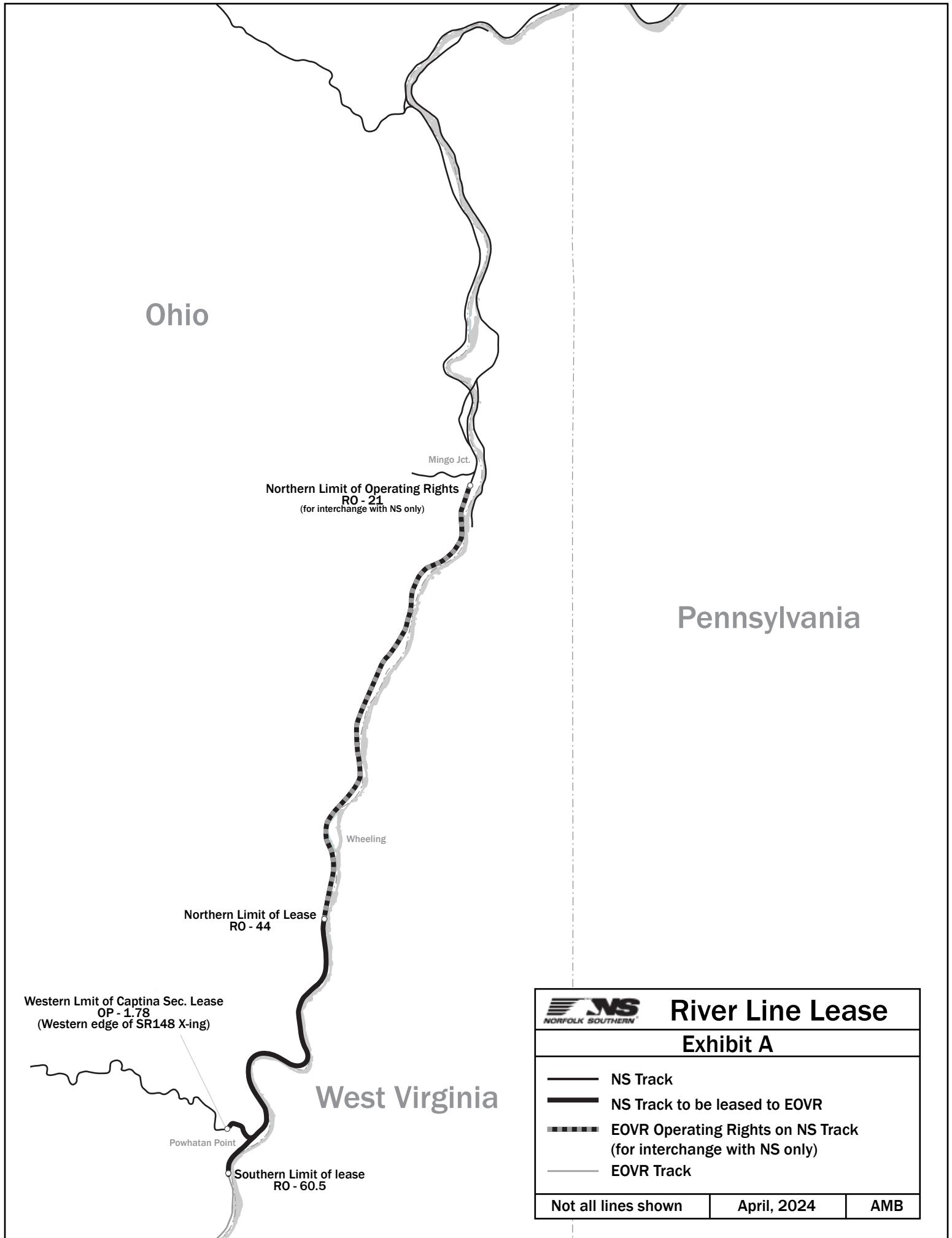
Finance Docket No. 36766

**EAST OHIO VALLEY RAILWAY LLC—LEASE AND OPERATION EXEMPTION
CONTAINING INTERCHANGE COMMITMENT—NORFOLK SOUTHERN RAILWAY
COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41**

EXHIBIT A

MAP



Ohio

Pennsylvania

West Virginia

Northern Limit of Operating Rights
RO - 21
(for interchange with NS only)

Mingo Jct.

Wheeling

Northern Limit of Lease
RO - 44

Western Limit of Captina Sec. Lease
OP - 1.78
(Western edge of SR148 X-ing)

Powhatan Point

Southern Limit of lease
RO - 60.5



River Line Lease

Exhibit A

- NS Track
- NS Track to be leased to EOVR
- EOVR Operating Rights on NS Track
(for interchange with NS only)
- EOVR Track

Not all lines shown

April, 2024

AMB

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36766

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EXHIBIT B

49 CFR §1150.33(g) – CERTIFICATIONS

CERTIFICATION

I, Matthew J. Fearing, being duly sworn, state that I am Corporate Secretary of East Ohio Valley Railway LLC and that I am an officer duly authorized to execute, verify and file this Verified Notice of Exemption. I have knowledge of the matters contained herein, and the statements made herein are true and correct to the best of my knowledge, information and belief.

I hereby certify (on behalf of EOVR) under 49 C.F.R. § 1150.33(g), that EOVR's projected annual rail revenues resulting from the consummation of the proposed transaction will not exceed \$5 million annually and will not result in EOVR becoming a Class I or Class II carrier.

I also certify that the proposed lease and operation of the Line does involve a provision in the form of a per-car penalty that may limit future interchange with a third-party connecting carrier and further certify that the shippers that currently use or have used the line in question within the last two years have been provided notice of the proposed transaction and the existence of the interchange commitment.



Matthew J. Fearing
Corporate Secretary
East Ohio Valley Railway LLC

April 15, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36766

**EAST OHIO VALLEY RAILWAY LLC—LEASE AND OPERATION EXEMPTION
CONTAINING INTERCHANGE COMMITMENT—NORFOLK SOUTHERN RAILWAY
COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41**

EXHIBIT C

49 CFR §1150.44 – CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FD 36766

– LEASE AND OPERATION EXEMPTION

CONTAINING INTERCHANGE COMMITMENT –

East Ohio Valley Railway LLC (“EOVR”), a Class III common carrier, has filed a Verified Notice of Exemption to exclusively lease and operate from Norfolk Southern Railway Company (“NSR”) approximately 16.5 miles of track between RO 44.0 near Bellaire, OH and RO 60.5 near Powhatan Point, Ohio (the “River Line”) and 1.78 miles of track between OP 0.0 and OP 1.78 near Powhatan Point, Ohio (the “Captina Branch”) (collectively, the “Line”). Upon consummation of the transaction, EOVR will be the exclusive lessee and operator of the Line. EOVR’s projected annual rail operating revenues from the operation of the Line will not exceed \$5 million, and, accordingly, the advance notice requirement of 49 CFR §1150.42(e) is not applicable to this transaction. EOVR anticipates that the subject rail line acquisition transaction will be consummated on or after May 16, 2024.

All pleadings or comments relating to this transaction must be filed with the Surface Transportation Board, 395 E Street, SW, Washington, DC 20523-0001. In addition, a copy of each pleading must be served on EOVR’s representative, William A. Mullins, Mullins Law Group PLLC, 2401 Pennsylvania Avenue, N.W., Suite 300, Washington, DC 20037.

The notice is filed under 49 CR §1150.41. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding 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. Stay petitions must be filed at least seven days before the exemption becomes effective.

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EXHIBIT D

**INFORMATION PROVIDED UNDER SEPARATE COVER
UNDER 49 C.F.R. § 1104.14(A)**

PURSUANT TO 49 C.F.R. § 1150.43(h) AND 49 C.F.R. § 1104.14(a), THE LEASE
AGREEMENT AND OTHER CONFIDENTIAL INFORMATION HAVE BEEN FILED
UNDER SEAL BY SEPARATE COVER