

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**ELLIS & EASTERN COMPANY
– ACQUISITION AND OPERATION EXEMPTION –
E & ER COMPANY**

STB FINANCE DOCKET NO. 36118

**NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41**



243026

ENTERED
Office of Proceedings
May 8, 2017
Part of
Public Record

Pursuant to 49 C.F.R. § 1150.41, et. seq., Ellis & Eastern Company (“Ellis”), a Class III rail carrier, hereby files this Notice of Exemption from 49 U.S.C. § 10902 to acquire the interests of E & ER Company (“E&ER”), a non-carrier, and operate the rail line described below (“Subject Line”).

INFORMATION REQUIRED BY 49 C.F.R. § 1150.43

a) The full name and address of the Class III rail carrier applicant:

Ellis & Eastern Company, 1500 North Sweetman Place, Sioux Falls, SD 57107

b) The name, address, and telephone number of the representative of the applicant who should receive correspondence:

John E. Taylor, Taylor Law Firm, LLC, 4820 East 57th Street, Suite B, Sioux Falls, SD 57108, (605) 906-0000, john.taylor@taylorlawsd.com

c) A statement that an agreement has been reached:

Ellis and E&ER have reached an agreement whereby Ellis will acquire the interests of E&ER in and to the Subject Line.

d) The operator of the property:

Ellis will own and operate the Subject Line.

FILED
May 8, 2017
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
May 8, 2017
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e) *Brief summary of the proposed transaction:*

Ellis, a Class III rail carrier, and E&ER, a non-carrier, have reached an agreement whereby Ellis will acquire the trackage, right-of-way and real property interests of the abandoned Subject Line owned by E&ER.¹

1) *The name and address of the railroad transferring the subject property to the Class III rail carrier applicant:*

E & ER Company, PO Box 84140, Sioux Falls, SD 57118

2) *The proposed time schedule for consummation of the transaction:*

The proposed acquisition and operation will not be consummated before this Notice of Exemption becomes effective.

3) *The mileposts of the subject property:*

The Subject Line extends from the approximate railroad milepost 41.4 near Manley, Minnesota to the Ellis line origin and connecting point, in or near Brandon, South Dakota at milepost 49.0.²

4) *The total route miles being acquired:*

¹ In connection with this proceeding, Ellis has filed a separate notice of exemption, pursuant to 49 C.F.R. § 1150.41. See, STB Finance Docket No. 36119, Ellis & Eastern Company – Operation Exemption – Buffalo Ridge Regional Railroad Authority. Ellis seeks to lease a 41.44 mile railroad between Agate and Manley, Minnesota owned by a governmental entity and common-carrier, the Buffalo Ridge Regional Railroad Authority (“BRRRA”).

² Historically, the Subject Line, BRRRA line and BNSF Railway Company (“BNSF”) line shared an interchange diamond at approximate milepost 41.4. The diamond was removed prior to E&ER’s acquisition of the Subject Line, and replaced with a siding and switch between the BNSF line and BRRRA line, severing the Subject Line. The Subject line begins approximately 100 yards west of the historical point of interchange. There are no plans to reinstall the interchange diamond; Ellis rail traffic interchanges with BNSF at Corson, SD. See attached Exhibit A, Map of Subject Line.

The Subject Line is an approximately 7.6-mile rail line situated within Rock County, Minnesota and Minnehaha County, South Dakota.³

- f) *A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states;*

A map of the Subject Line is attached hereto as Exhibit A.

- g) *A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under § 1150.45;*

The required certificate is contained in the Verification of Mr. John E. Taylor, attorney for Ellis, which is attached to this Notice as Exhibit B.

- h) *Interchange Commitments:*

The acquisition of the Subject Line does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier.

CAPTION SUMMARY

The caption summary required by 49 C.F.R. § 1150.44 is attached as Exhibit C.

ENVIRONMENTAL AND HISTORIC MATTERS:

By virtue of 49 C.F.R. § 1105.6(c)(1) and 49 C.F.R. § 1105.8(b)(2), no environmental or historic reporting is required in conjunction with the proposed acquisition and operation.

LABOR PROTECTION

By virtue of 49 U.S.C. § 10902(c), no labor protective conditions are to be imposed in conjunction with this notice.

³ The Subject Line is in poor repair and in need of rehabilitation. It has not operated since sometime before 1994 when E&ER Company acquired the Subject Line from the then-defunct Buffalo Ridge Regional Railroad, Inc.

ANNUAL REVENUES

The certificate required by 49 C.F.R. § 1150.42(e), (annual revenues will not exceed \$5 million), is contained in Exhibit B attached to this Notice.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 16 days after the filing of this Notice, the Director of the Board's Office of Proceedings should arrange for publication of notice of the filing of this Notice in the *Federal Register*.

Respectfully submitted,

Ellis & Eastern Company
1500 North Sweetman Place
Sioux Falls, SD 57107

APPLICANT



John E. Taylor
Taylor Law Firm, LLC
4820 East 57th Street, Suite B
Sioux Falls, SD 57108
(605) 906-0000
john.taylor@taylorlawsd.com

Attorneys for:

ELLIS & EASTERN COMPANY

Dated: May 2, 2017

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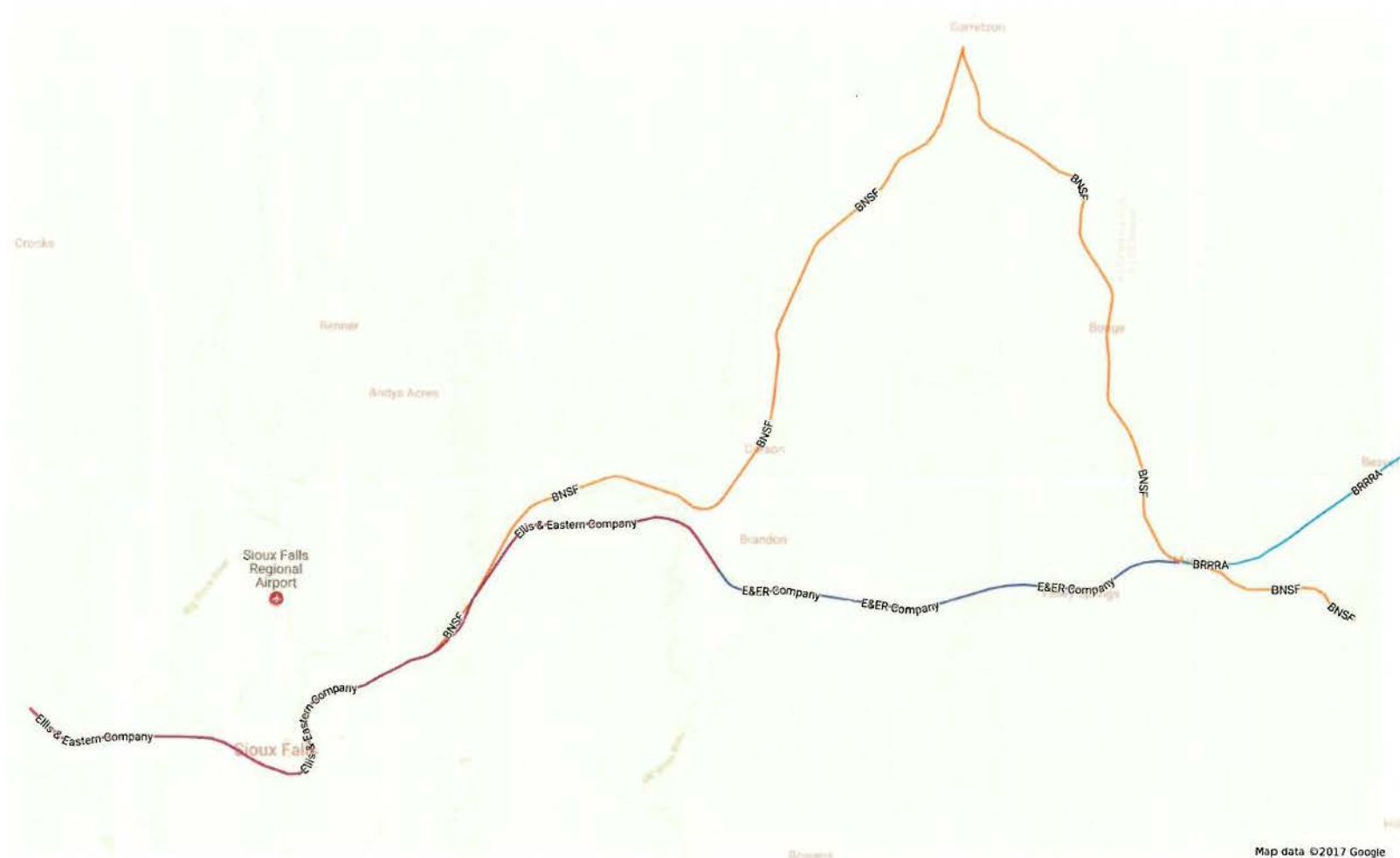
EXHIBIT A

MAP OF SUBJECT LINE

EXHIBIT A Rail Line Map FD 36118

Ellis & Eastern - E&ER Company -
BRRRA Rail Map

- Ellis & Eastern Company
- E&ER Company
- BRRRA
- BNSF
- Union Pacific



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EXHIBIT B

VERIFICATION

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VERIFICATION

JOHN E. TAYLOR, being duly sworn, states that he is an attorney for Ellis & Eastern Company, ("Ellis"); that he has read the foregoing Notice of Exemption under 49 C.F.R. § 1150.41 being filed by Ellis; that the projected annual revenue of the rail line being acquired by Ellis, together with Ellis's annual revenues, do not exceed \$5 million; that Ellis's projected revenues as a result of the proposed acquisition will not result in the creation of a Class I or Class II rail carrier; that the proposed acquisition does not involve any interchange commitment as defined in 49 C.F.R. § 1150.43(h); and that all allegations of fact contained in Ellis's Notice of Exemption are true and correct.


JOHN E. TAYLOR

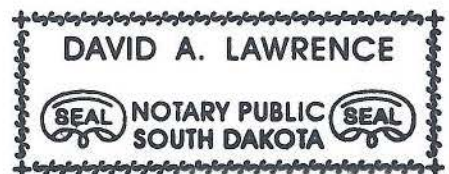
STATE OF SOUTH DAKOTA)
COUNTY OF MINNEHAHA :SS)

On May 2, 2017, before me, the undersigned officer, personally appeared John E. Taylor, known to me or satisfactorily proven to be the person whose name is subscribed as attorney in fact for Ellis & Eastern Company, and acknowledged that he executed the same as the act of his principal for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/24/2020



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EXHIBIT C

CAPTION SUMMARY

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CAPTION SUMMARY

Ellis & Eastern Company, a Class III rail carrier, has filed a Notice of Exemption to acquire the interest of E & ER Company, a non-carrier, in and to an approximately 7.6-mile rail line situated in Rock County, Minnesota and Minnehaha County, South Dakota, extending from approximate railroad milepost 41.4 in or near Manley, Minnesota to approximate railroad milepost 49.0 in or near Brandon, South Dakota.

Comments must be filed with the Surface Transportation Board and served on John E. Taylor, Taylor Law Firm, LLC, 4820 East 57th Street, Suite B, Sioux Falls, SD 57108.

This proceeding is related to Ellis & Eastern Company – Operation Exemption – Buffalo Ridge Regional Railroad Authority, Finance Docket No. 36119, wherein Ellis & Eastern Company seeks to lease operating rights to a 41.44-mile railroad between Agate and Manley, Minnesota owned by the Buffalo Ridge Regional Railroad Authority.

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*. 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.

Dated:

By the Board,