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BEFORE THE
SURFACE TRANSPORTATION BOARD
STB DOCKET NO. FD 35572

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Public Record

**PENNSYLVANIA & SOUTHERN RAILWAY, LLC
- ACQUISITION, LEASE AND OPERATION EXEMPTION -
CSX TRANSPORTATION, INC.**

**SUPPLEMENT TO
VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902**

(This filing includes a color map.)

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Dated: December 6, 2011

Attorneys for
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On November 21, 2011, Pennsylvania & Southern Railway LLC (“PSCC”) filed a Verified Notice pursuant to 49 C.F.R. §1150.41 to exempt from regulation under 49 U.S.C. §10902 its acquisition from CSX Transportation, Inc. (“CSXT”) of the improvements comprising the 2.5-mile line of railroad between Milepost BAV 22.4 and Milepost BAV 24.9 (the “2.5-mile Segment”), and its lease of the improvements comprising the 1.95-mile connecting line of railroad between Milepost BAV 24.9 and Milepost BAV 26.85 (the “1.95-mile Segment”) (together, the “Rail Line”) near Chambersburg, Franklin County, Pennsylvania. Based on discussions with the Board’s staff, PSCC is filing this Supplement to clarify certain aspects of the proposed transaction and the Board authority sought pursuant to the Verified Notice. A copy of the most recent draft of the transaction agreement between CSXT and PSCC (the “Agreement”) will be submitted to the Board as a “Highly Confidential” document.¹ (Certain terms of the Agreement are still being negotiated; however, the structure and the major terms have been agreed upon.) Since the Verified Notice was filed, the parties have agreed to

¹ PSCC is also submitting a Motion for a Protective to protect the confidentiality of the Agreement.

defer the proposed closing date, and commencement of operations by PSCC, until February 3, 2012. (Agreement, §7.2)

There are three parts to the proposed acquisition, lease and operation transaction between PSCC and CSXT. Attached as Exhibit A-1 is a color version of the map attached to the Verified Notice.

(1) Between Milepost BAV 24.9 and Milepost BAV 26.85. PSCC proposes to purchase the tracks, ties and other track materials comprising the 2.5-mile Segment. Agreement, 4th WHEREAS clause. §1.3. Exhibit B (Bill of Sale). The 2.5-mile Segment is stub-ended and runs from the Chambersburg Yard to the current end of the line (CSXT having previously abandoned the line beyond Milepost BAV 24.9). *See* Map attached as Exhibit A-1. Because the 2.5-mile Segment would have limited future use for CSXT if PSCC were not able to develop business on the segment, CSXT does not wish to retain any common carrier obligation with respect to the segment, and will transfer its full common carrier obligation to PSCC together with the tracks, ties and other track materials. Agreement, 4th WHEREAS, §27.1 (requiring CSXT to obtain STB authority to operate if PSCC wants to abandon, and CSXT wants to repurchase and operate, the 2.5-mile Segment). To reduce the cost to PSCC, CSXT proposes to lease the underlying property to PSCC. In situations with the same structure, the Board and the Interstate Commerce Commission have both found that the full common carrier obligation was transferred to the purchaser of the rail line, and that CSXT did not have any residual common carrier obligation. *See Alabama & Florida Railway Co., Inc. – Abandonment Exemption – in Geneva, Coffee and Covington Counties, AL*, STB Docket No. 1073X (served August 4, 2011), notice at 3, n.4;² *Seminole Gulf Railway, L.P. – Abandonment Exemption – In*

² More recently, in the same proceeding, the Board rejected a request for the issuance of a notice of interim trail use because *Alabama & Florida Railway*, as the abandoning carrier, was

Lee County, FL, ICC Docket No. 400 (Sub-No. 2X)(served December 22, 1994), 1994 ICC LEXIS 278 at *9-*13.

(2) Between Milepost BAV 22.4 and Milepost BAV 24.9. The 1.95-mile Segment connects CSXT's main line connections with the Chambersburg Yard and with PSCC's existing operations. See Map attached as Exhibit A-1. Accordingly, CSXT wishes to retain residual common carrier obligations with respect to the 1.95-mile Segment, and the transaction has been structured so that PSCC will lease the tracks and underlying property. It is well established that a Class III carrier can lease and operate an additional rail line pursuant to the provisions of 49 U.S.C. §10902. See, e.g., *East Penn Railroad, LLC – Lease and Operation Exemption – Norfolk Southern Railway Company*, STB Docket No. FD 35533 (served July 12, 2011). See also, *UTU-Illinois Legislative Bd v. STB*, 169 F.3d 474 (7th Cir. 1999).

(3) Chambersburg Yard. As part of the transaction, PSCC proposes to lease the tracks and underlying property comprising The Chambersburg Yard. The Yard is adjacent to the Rail Line at approximately Milepost BAV 24.9. It contains approximately 12,000 feet of track, but the tracks are not part of the Rail Line. The Yard is used primarily for the staging of cars and the interchange of traffic between PSCC and CSXT with respect to traffic moving to and from PSCC's adjacent lines at the Cumberland Valley Business Park and Letterkenny Army Depot. See track diagram from the existing interchange agreement attached as Exhibit B-1, and Google Satellite photo of the yard attached as Exhibit C-1. As with many rail yards throughout the country, the Yard is located adjacent to the main line, in this case the 1.95-mile Segment, and its use is incidental to operations over the main line. Additionally, the Yard tracks are not the

not agreeable to negotiating a trail use agreement. It was determined that it was irrelevant that CSXT as the landowner was willing to negotiate. *Alabama & Florida Railway Co., Inc. – Abandonment Exemption – in Geneva, Coffee and Covington Counties, AL*, STB Docket No. 1073X (served September 7, 2011), slip op. at 2-3.

sole tracks to be operated by PSCC. The Yard tracks are excepted tracks within the purview of 49 U.S.C. §10906, and the acquisition (by lease) and operation of the tracks are not subject to the Board's authority.³

Based on the supplemental information provided above, PSCC requests that the Board proceed with the processing of its Verified Notice of Exemption within the time frames of 49 C.F.R. 1150.42(b).

Respectfully submitted.


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Dated: December 6, 2011

Attorneys for
Pennsylvania & Southern Railway, LLC

³ Section 10906 specifically provides that rail carriers such as PSCC and CSXT can enter into joint arrangements with respect to such tracks without the approval of the Board. "[n]otwithstanding ... subchapter II of chapter 113 of this title [49]."

VERIFICATION

I, Eyal Shapira, President of Pennsylvania & Southern Railway, LLC verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

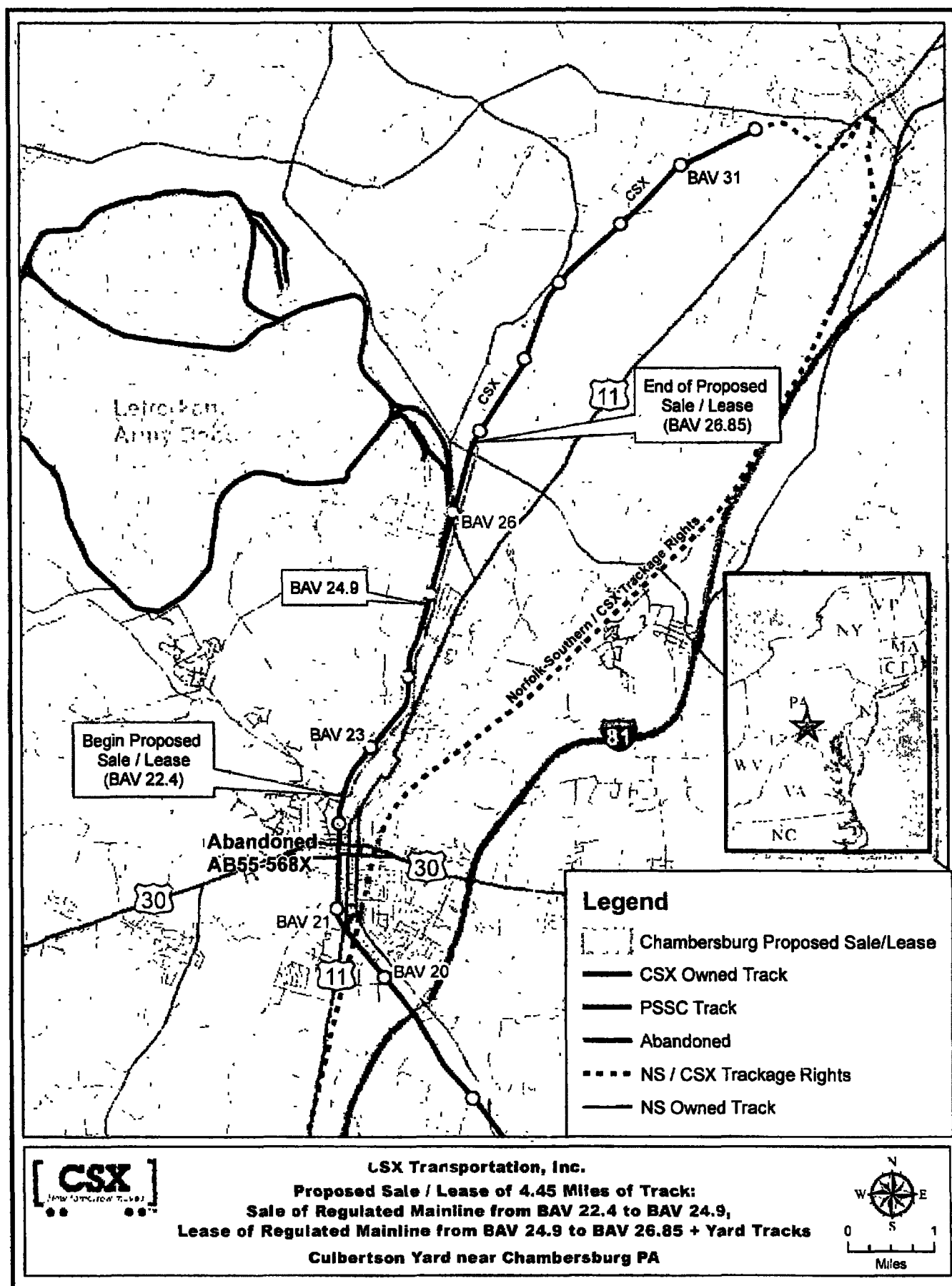
Executed on December 6th, 2011.



Eyal Shapira

EXHIBIT A-1

COLOR MAP



LSX Transportation, Inc.
Proposed Sale / Lease of 4.45 Miles of Track:
Sale of Regulated Mainline from BAV 22.4 to BAV 24.9,
Lease of Regulated Mainline from BAV 24.9 to BAV 26.85 + Yard Tracks
Culbertson Yard near Chambersburg PA

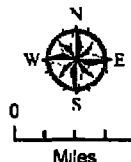


EXHIBIT B-1

TRACK DIAGRAM

EXHIBIT A

EXHIBIT A
Subject Trackage in Chambersburg, PA
(Not to Scale)

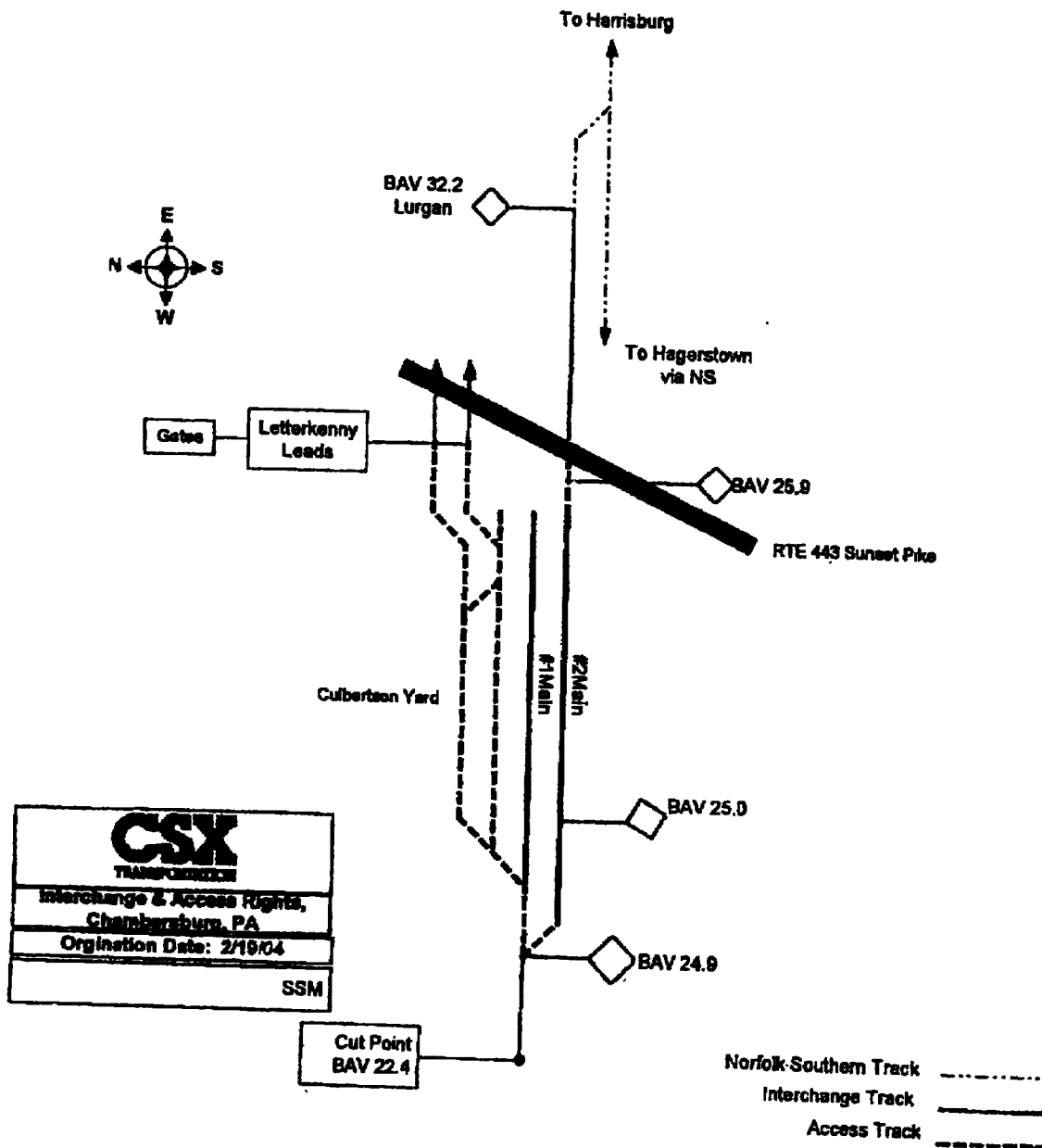


EXHIBIT C-1

GOOGLE SATELLITE PHOTO

