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ENTERED
Office of Proceedings
April 25, 2019
Part of
Public Record

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April 24, 2019

VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024



Re: **Docket No. FD 36283**
Allegheny Valley Railroad Company -- Temporary Trackage
Rights Exemption -- Norfolk Southern Railway Company

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption of Allegheny Valley Railroad Company Pursuant to 49 C.F.R. § 1180.2(d)(8)**, dated April 24, 2019. A check in the amount of \$1,300.00, representing the appropriate fee for this filing, is attached.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Allegheny Valley
Railroad Company

TJL:tl

Enclosures

FEE RECEIVED
April 25, 2019
SURFACE
TRANSPORTATION BOARD

FILED
April 25, 2019
SURFACE
TRANSPORTATION BOARD

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36283

ALLEGHENY VALLEY RAILROAD COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY



**VERIFIED NOTICE OF EXEMPTION OF
ALLEGHENY VALLEY RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(8)**

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1508

**ATTORNEY FOR ALLEGHENY VALLEY
RAILROAD COMPANY**

Dated: April 24, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36283

ALLEGHENY VALLEY RAILROAD COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY



**VERIFIED NOTICE OF EXEMPTION OF
ALLEGHENY VALLEY RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(8)**

Allegheny Valley Railroad Company (“AVR”), a Class III rail carrier, hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(8) for its acquisition of temporary overhead trackage rights over a 3.8-mile line of railroad of Norfolk Southern Railway Company (“NS”) in Pittsburgh, Pennsylvania. The proposed temporary trackage rights will accommodate AVR’s detour operations over the NS line while the second phase of a trestle rehabilitation project is conducted on a nearby AVR rail line. Similar temporary trackage rights were authorized by the Board in 2016 in connection with the first phase of the trestle rehabilitation. *Allegheny Valley Railroad Company -- Temporary Trackage Rights Exemption -- Norfolk Southern Railway Company*, Docket No. FD 36015 (STB served May 6, 2016) (“*AVR 2016 Detour*”). The currently-proposed temporary trackage rights will expire 125 days after becoming effective, and no later than November 30, 2019.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), AVR submits the following information:

Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

AVR is a Class III common carrier by rail which owns or operates approximately 77 miles of rail line in southwestern Pennsylvania. AVR began operations in 1995, and acquired additional lines via lease in 2001 and 2003. *Allegheny Valley Railroad Company -- Acquisition and Operation Exemption -- Lines of Consolidated Rail Corporation*, Docket No. FD 32783 (ICC served Nov. 17, 1995); *Allegheny Valley Railroad Company -- Lease, Operation and Trackage Rights Exemption -- Lines of CSX Transportation, Inc.*, Docket No. FD 34431 (STB served Nov. 26, 2003); *Allegheny Valley Railroad Company -- Lease and Operation Exemption -- Line of CSX Transportation, Inc.*, Docket No. FD 34095 (STB served Sep. 27, 2001).¹ AVR is a wholly-owned subsidiary of Carload Express, Inc., a non-carrier holding company which also controls three other Class III rail carriers operating in Pennsylvania, Ohio, Maryland, Delaware and Virginia. *See Carload Express, Inc. -- Continuance in Control Exemption -- Delmarva Central Railroad Company*, Docket No. FD 36072 (STB served Dec. 2, 2016).

Operations between AVR's P&W Subdivision and Allegheny Subdivision are conducted via a connection near 33rd Street in Pittsburgh that includes a significant trestle structure. The second phase of a trestle rehabilitation project will require that the connection be removed from service for several months this summer. As was the case during the first phase of the trestle rehabilitation project in 2016, *see AVR 2016 Detour*, NS has agreed to the temporary detour of AVR's trains over a nearby NS line to maintain connectivity between AVR's rail lines while the AVR trestle is out of service.

¹ AVR has recently sought agency authorization to acquire several of the rail lines that it currently leases from CSX Transportation, Inc. *Allegheny Valley Railroad Company -- Acquisition Exemption -- Lines of CSX Transportation, Inc.*, Docket No. FD 36282 (notice of exemption filed April 15, 2019). That pending transaction does not involve or affect the temporary trackage rights proposed in this proceeding.

Thus, pursuant to a written letter Agreement for Detour of Trains for Operating Convenience dated as of April 23, 2019, between NS and AVR, AVR proposes to acquire non-exclusive, temporary overhead trackage rights over NS's Pittsburgh Line between CP Bloom, milepost PT 351.6 +/-, and CP Home, milepost PT 347.8 +/-, in Pittsburgh, Pennsylvania, a distance of approximately 3.8 miles (the "Detour Route"). AVR will be limited to the operation of one train per day in each direction over the Detour Route. Pursuant to 49 C.F.R. § 1180.2(d)(8), and as provided in the agreement between NS and AVR, the temporary trackage rights authorized herein will automatically expire 125 days after becoming effective and no later than November 30, 2019. *See Railroad Consolidation Procedures*, 6 S.T.B. 910 (2003).

The full name and address of the applicant carrier herein is as follows:

Allegheny Valley Railroad Company
Building 1, Suite 100
519 Cedar Way
Oakmont, PA 15139
(412) 426-2800

Any questions concerning this Notice should be sent to AVR's representative at the following address:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1508

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

AVR intends to consummate the proposed temporary trackage rights on or shortly after May 25, 2019, the effective date of this notice of exemption. Rehabilitation work on AVR's trestle is expected to commence by the end of May.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The proposed temporary trackage rights will accommodate AVR's detour operations over NS, and thus permit continued rail service between several of AVR's rail lines while the AVR trestle reconstruction project is completed.

States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

AVR owns or operates rail property in the Commonwealth of Pennsylvania. NS owns and operates over rail property in the States of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia and in the District of Columbia.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map of the NS rail line over which AVR proposes to acquire temporary trackage rights is attached hereto as Exhibit 1.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A copy of the Agreement for Detour of Trains for Operating Convenience dated as of April 23, 2019, between NS and AVR, is attached hereto as Exhibit 2.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

As a condition to this exemption, AVR agrees to the employee protective conditions established in *Norfolk and Western Ry. Co. -- Trackage Rights -- BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc. -- Lease and Operate*, 360 I.C.C. 653 (1980). AVR's discontinuance of operations upon expiration of the temporary trackage rights on or before November 30, 2019 will be subject to the employee protective conditions established in

Oregon Short Line R. Co. -- Abandonment -- Goshen, 360 I.C.C. 91 (1979). See *Railroad Consolidation Procedures*, 7 S.T.B. 587 (2004).

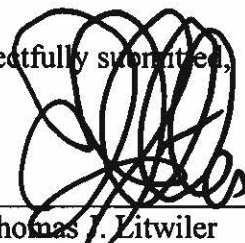
Caption Summary: 49 C.F.R. § 1180.4(g)(2)(i)

A caption summary of this transaction suitable for publication in the *Federal Register* is attached hereto as Exhibit 3.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of temporary trackage rights by AVR is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), AVR's proposed temporary trackage rights also are exempt from historic preservation reporting requirements.

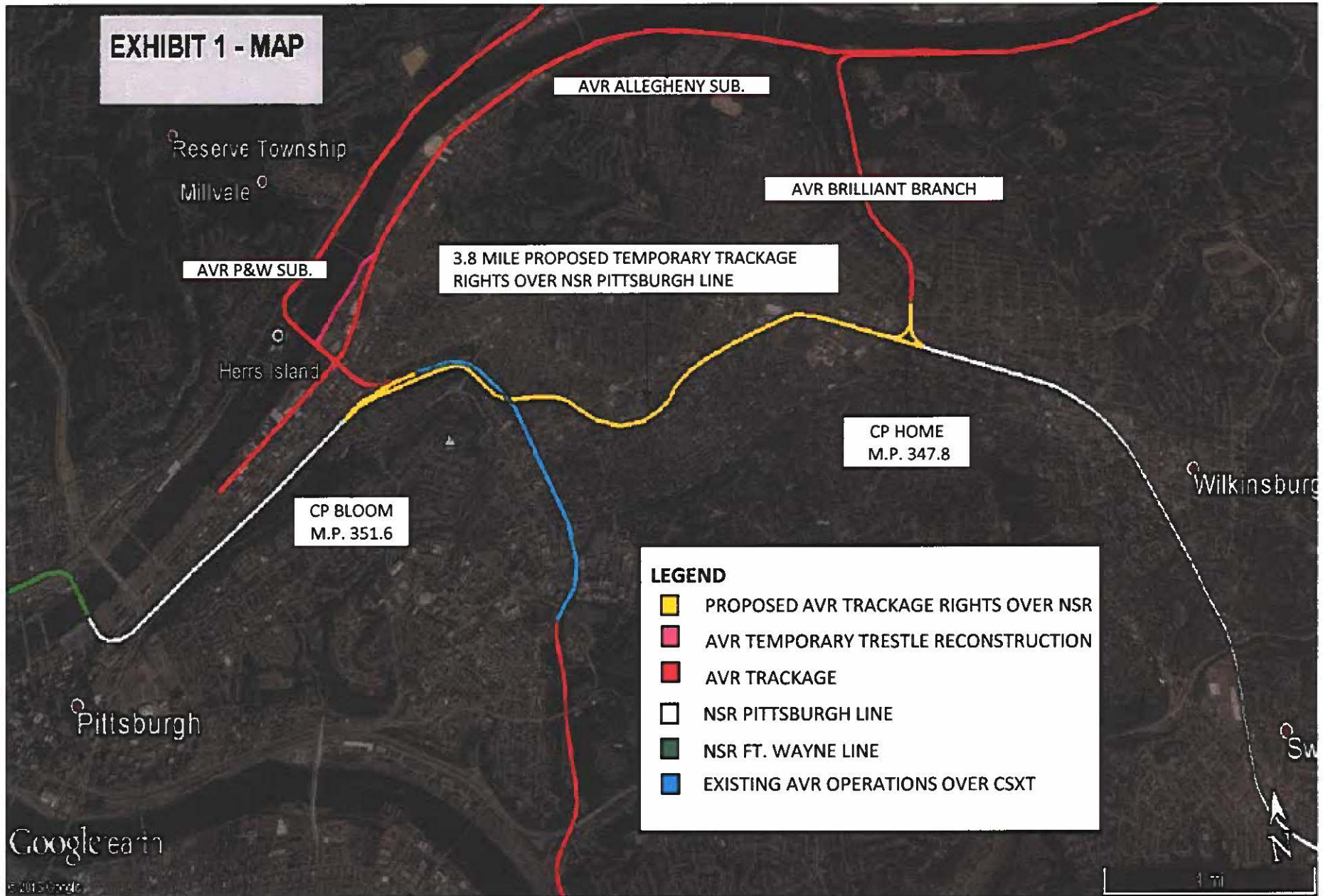
Respectfully submitted,

By: 

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEY FOR ALLEGHENY VALLEY
RAILROAD COMPANY**

Dated: April 24, 2019





Norfolk Southern Corporation
Network Planning & Optimization
1200 Peachtree Street NE
Atlanta, Georgia 30309

Randall W. Hunt
Senior Director Interline Services
O: (404) 529-1813
C: (412) 807-9085
F: (757) 823-5927
e-mail: rwhunt@nscorp.com

April 23, 2019

Mark A. Rosner, President
Allegheny Valley Railroad
Building 1, Suite 100
519 Cedar Way
Oakmont, PA 15139

RE: Agreement for Detour of Trains for Operating Convenience

Mr. Rosner:

This letter agreement (the "Agreement") concerns Allegheny Valley Railroad Company's ("AVR") request to detour its trains over Norfolk Southern Railway Company's ("NSR") Pittsburgh Line between CP Bloom, milepost PT 351.6+/-, and CP Home, milepost PT 347.8+/- (the "Detour Route"). The detour will take the form of AVR trains in the waybill and car hire account of AVR handled by AVR crews with AVR or AVR-leased locomotive power operating over the Detour Route (the "Convenience Detour").

NSR consents to the proposed Convenience Detour and hereby grants non-exclusive overhead temporary trackage rights to AVR subject to the following terms and conditions:

1. The Convenience Detour is being granted for the sole convenience of AVR to permit AVR to perform the second and final phase of trestle rehabilitation work on AVR's Allegheny Subdivision.
2. The Convenience Detour is granted for a period not to exceed One-Hundred-Twenty-Five (125) consecutive calendar days, commencing on the later of: i) May 12, 2019 or ii) the effective date of any required Surface Transportation Board ("STB") authorization or exemption of AVR's temporary trackage rights granted by this Agreement, but in no event commencing after July 28, 2019 (the "Detour Term").
3. During the Detour Term, AVR shall be limited to operation of One (1) train per day in each direction over the Detour Route.
4. AVR's use of the Detour Route during the Detour Term shall be for overhead/bridge movement of traffic between the named endpoints only, with AVR having no right to perform local service on the Detour Route whatsoever or to enter/exit the Detour Route at points other than CP Home or CP Bloom. AVR shall have no right to haul traffic in the waybill account of any other carrier over the Detour Route or to grant any third party access to the Detour Route.
5. At the direction and under the supervision of NSR's Pittsburgh Division Transportation Department, AVR shall arrange to have all necessary AVR employees qualified to operate over the Detour Route no later than seven days prior to commencement of the Detour Term. AVR shall solely bear all costs associated with qualification of AVR employees.

6. AVR shall provide its own cab-signal-equipped locomotive or arrange to lease a cab-signal-equipped locomotive from NSR no later than seven days prior to commencement of the Detour Term, and further agrees that no movement of trains or on-track equipment shall be permitted over the Detour Route under this Agreement without a cab-signal-equipped locomotive operating in the lead position in the direction of movement.
7. AVR must provide NSR no less than Three (3) hours advance notice prior to operation of a train over the Detour Route pursuant to this Agreement. NSR reserves the right, in its sole discretion, to decline any AVR request for operation of a train over the Detour Route pursuant to this Agreement.
8. AVR shall be responsible for and indemnify, defend, and save harmless NSR and its parent companies, subsidiaries, and affiliates, and each of their respective officers, agents, and employees (the "NSR Indemnified Parties") from and against any and all claims, demands, suits, judgments, penalties, costs, and liabilities (including environmental) for the loss of or damage to railcars or lading, the Detour Route, or any other loss, damage, injury to or death of the NSR Indemnified Parties, third parties, or their property on arising out of or on account of this Agreement and the operations performed hereunder, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its officers, agents, or employees.

9. INSURANCE

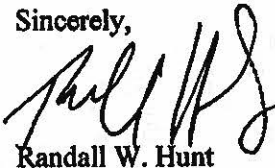
- a) AVR shall procure and maintain in effect during the life of this Agreement a policy or policies of insurance covering the liability to which it is or may be subject under Section 8 hereof. Such insurance shall provide minimum limits of Twenty-Five Million Dollars (\$25,000,000) per occurrence but may be subject to an annual aggregate limit of Twenty-Five Million Dollars (\$25,000,000) and a per occurrence deductible not in excess of
i. Said policy or policies shall name NSR as additional insured.
- b) If the insurance provided under this Section 9 takes the form of a Claims Made Policy, AVR agrees to purchase whatever supplemental coverage may be necessary to provide continuous coverage of its potential liability under this Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least five (5) years following the termination of this Agreement. AVR further agrees to immediately give written notice to the Director Risk Management, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510-2191, of any claim or notice of incident or notice of potential claim pertaining to this Agreement that is required to be reported to its liability insurance company.
- c) On or before any anniversary date of this Agreement which occurs more than one (1) year after its Commencement Date, NSR may require an increase in the amount of insurance coverage required by this Section 9, or changes in the terms and conditions of the policy or policies, provided the amount of the increase does not exceed an average of Two Million Dollars (\$2,000,000) for each year that this Agreement has been in effect. Further, the total insurance requirements shall not exceed Fifty-Five Million Dollars (\$55,000,000) for a period of twenty (20) years from the date of this Agreement. Nothing contained in the preceding sentence shall limit the right of either party to terminate this Agreement pursuant to Section 10.
- d) Every policy of insurance obtained by AVR pursuant to the requirements of this Section 9 shall contain provisions requiring that the insurance carriers give NSR at least thirty (30)

days' notice, in writing, of any proposed policy cancellation and of any material modification of the terms and conditions of the policy. The terms and conditions of each policy of insurance obtained by AVR to satisfy the requirements of this Section 9 will be subject to the approval of NSR.

- e) Within thirty (30) days of execution of this Agreement, AVR will furnish to the above referenced Director Risk Management an accurate copy of each policy of insurance obtained pursuant to the requirements of this Agreement. Compliance with this requirement will not relieve AVR of any other obligation under this Agreement and will in no way limit or modify AVR's obligation to provide the specific insurance coverage required by this Agreement. Evidence of subsequent renewal of such insurance or of any material change must be furnished to the above referenced Risk Manager as stipulated in Subsection (b) above.
10. No later than Forty-Five (45) days after the expiration of the Detour Term, AVR shall deliver to NSR a report of all trains operated over the Detour Route during the Detour Term. AVR shall concurrently remit payment to NSR in the amount of _____, regardless of the number of cars or locomotives operated in the train, operated over the Detour Route during the Detour Term. For the purposes of compensation under this Section 9, any locomotive unit, with or without attached cars, shall be deemed to be a train.
11. AVR shall seek the prior approval and authorization of the STB or other regulatory authority for its acquisition and termination of the temporary trackage rights as described in this Agreement. User, at its own cost and expense, will initiate and thereafter diligently pursue such approval and authorization or an exemption therefrom. Prior to making any submission to the STB, User shall present said submission to NSR for NSR's review and approval prior to filing, which approval shall not be unreasonably withheld or delayed.

This agreement has been furnished in duplicate. If you agree to the foregoing terms and conditions of the Convenience Detour, please so indicate by signing both original copies and returning one fully executed copy of this Agreement to my attention.

Sincerely,



Randall W. Hunt

**ACCEPTED BY ON BEHALF OF:
ALLEGHENY VALLEY RAILROAD COMPANY**

By:



Mark A. Rosner

Title:

President

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36283

ALLEGHENY VALLEY RAILROAD COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

Pursuant to a written agreement dated as of April 23, 2019, Norfolk Southern Railway Company ("NS") has agreed to grant non-exclusive, temporary overhead trackage rights to Allegheny Valley Railroad Company ("AVR") over NS's Pittsburgh Line between CP Bloom, milepost PT 351.6 +/-, and CP Home, milepost PT 347.8 +/-, in Pittsburgh, Pennsylvania, a distance of approximately 3.8 miles. The temporary trackage rights will provide AVR with a detour route between AVR line segments while an AVR trestle rehabilitation project is completed.

The proposed temporary trackage rights will be effective on or shortly after May 25, 2019. Pursuant to 49 C.F.R. § 1180.2(d)(8), the temporary trackage rights authorized herein will automatically expire by agreement of the parties 125 days after becoming effective and no later than November 30, 2019.

As a condition to this exemption, any employee affected by the temporary trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway -- Trackage Rights -- Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway -- Lease & Operate -- California Western Railroad*, 360 I.C.C. 653 (1980). Any employee affected by AVR's discontinuance of operations upon expiration of the temporary

trackage rights will be protected by the conditions imposed in *Oregon Short Line R. Co. -- Abandonment -- Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 C.F.R. § 1180.2(d)(8). If it 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 effectiveness of the exemption. Stay petitions must be filed by May 17, 2019 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36283, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

Board decisions and notices are available on our website at WWW.STB.GOV.

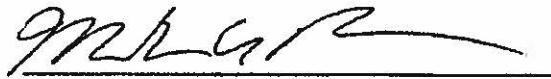
Decided: May __, 2019

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

VERIFICATION

Commonwealth of Pennsylvania)
)
County of Allegheny) SS:

Mark A. Rosner, being duly sworn, deposes and says that he is President of Allegheny Valley Railroad Company, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.

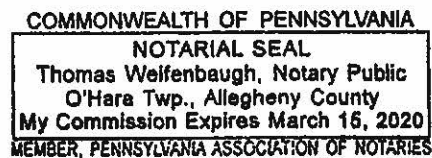


Mark A. Rosner

SUBSCRIBED AND SWORN TO
before me this 19 day
of April, 2019.



Notary Public



My Commission expires: *March 15, 2020*