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November 24, 2008

Ms. Victoria J. Rutson
Chief, Section of Environmental Analysis
Room 1106
395 E Street, SW
Washington, DC 20423-0001

Re: Finance Docket No. 35131, Vaughan Railroad Company -
Construction and Operation of a Line of Railroad - in Monongalia
County, West Virginia

Dear Ms. Rutson:

On June 6, 2008, Petitioner Vaughan Railroad Company (hereinafter "Vaughan") filed a petition with the Surface Transportation Board ("Board"), seeking an exemption from the prior approval requirements of 49 U.S.C. § 10901 for the construction and operation of a rail line, approximately five (5) miles in length, between a new coal mine currently under development in Monongalia County, West Virginia, and a connection with the Norfolk Southern Railway Company ("NS").

This letter is to request a waiver from the requirements of 49 C.F.R. § 1105.6(a). That section provides that "Environmental Impact Statements ["EIS"] will normally be prepared for rail construction proposals." Vaughan hereby submits that an Environmental Assessment ("EA") is adequate to assess the impact of the proposed line construction on the environment. In support of this request, Vaughan submits the following:

As you know, Vaughan's representatives met with you at your offices on October 2, 2007, during which time you outlined the environmental review that would be necessary for this project, including the need to coordinate with other agencies. Vaughan representatives discussed their proposed route for their proposed new rail

line, as well as possible alternative routes, and the results of their preliminary environmental analysis. Thereafter, the Board approved, and Vaughan retained, Dawkins Environmental Consultants ("Dawkins") to act as an independent third party consultant for this project. Since being approved, Dawkins has consulted with the Section of Environmental Analysis ("SEA") and is working under the direction and supervision of SEA in preparing the environmental document for this project.

On August 22, 2008, the SEA sent out agency consultation letters to various Federal and state agencies. Responses received to date have not identified any significant environmental issues with the proposed action.

On October 31, 2008, a site visit was undertaken and the proposed routes were physically inspected by Dawkins, Ken Blodgett of your staff, and representatives of Vaughan.

The Applicant is working with the Corps of Engineers to file and obtain a section 404 permit pursuant to the Clean Water Act. In connection with the review for a section 404 application, Vaughan has undertaken and will continue to undertake to minimize any potential impact on wetlands, floodplains and associated natural resources. Vaughan will coordinate with and abide by conditions determined by the Corps to be necessary. In addition, Vaughan has initiated the process to obtain a 404 permit and 401 certification, as applicable.

Preferred Route A (the southern route) for the proposed line is located within a limited and defined geographic region of Monongalia County, West Virginia. Proposed Route B is also in a limited and defined geographic area of Monongalia County, but briefly enters Greene County, Pennsylvania. Furthermore, the proposed operations on the line are limited in that the expected traffic on the line will be approximately twelve trains per day (six loaded and six empty) when the mine reaches maximum production.

Throughout the study of this project, Vaughan has undertaken to minimize the potential environmental impacts of the proposed construction on the area. Consultation letter responses and other available data confirms that there are no endangered species along the route. The U.S. Fish and Wildlife letter noted that the Indiana Bat, a threatened species, exists in the project area. A review of the Fish & Wildlife records reveals that the Indiana Bat has been recorded in Greene County but not in Monongalia County. Furthermore, an on-site assessment of the wetlands impact is ongoing and any such

impact will be negligible and/or mitigated so the impact is negligible. Further, pursuant to Section 106 of the Natural Resources Historic Preservation Act, a subcontractor will conduct a Phase I archaeological survey to ensure there are no prehistoric/historic archeological resources disturbed by the construction. Vaughan is prepared to participate and assist in the Section 106 process.

The number of public road crossings and residences potentially impacted are either minimal or have been minimized. All public road crossings will have grade separations. Vaughan is working with state authorities in West Virginia and Pennsylvania with respect to the appropriate protection to be installed at any private road crossings.

Vaughan believes that an EA, rather than an EIS, is the appropriate classification based upon the limited scope of the above-referenced project which entails approximately 5 miles of construction. An EA is sufficient in this proceeding under the standards of § 1105.6(d) because the proposed construction and operation of the new rail line is unlikely to have significant environmental impacts. Specifically, project information developed to date indicates that there are not likely to be any significant impacts to transportation systems, land use, energy, air quality, noise, safety, biological resources, surface or ground water resources, or cultural resources. Nor is it anticipated that there will be high or disproportionate impacts on minority or low-income populations based upon the review of existing demographic data for the region and site reconnaissance. An EA in this instance would be consistent with SEA's review of other construction cases of limited scope. *See, e.g., Entergy Arkansas — Construction and Operation Exemption — Between White Bluff and Pine Bluff AR*, F.D. No. 33782 (STB served Sept. 28, 2001); *Pemiscot County Port Authority - Construction Exemption - Pemiscot County, MO*, F.D. No. 34117 (STB served Aug. 26, 2003); *Burlington Northern and Santa Fe Ry Company - Construction and Operation Exemption - Merced County, CA*, F.D. No. 34305 (STB served Mar. 3, 2004). Furthermore, Vaughan acknowledges that the SEA can later require that an EIS be prepared if the EA does not result in a finding that the project will not have significant environmental impacts.

Vaughan will agree to mitigation activities proposed by the Fish and Wildlife Service for Indiana bats, including either limiting tree clearing activities to outside of the period between April 1 and November 14, or if clearing must occur during this window, Vaughan will follow appropriate netting procedures to confirm the absence or presence of the Indiana bat in the project area.

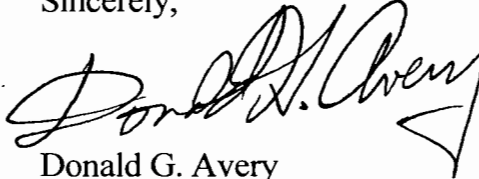
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Based upon the foregoing, Vaughan respectfully submits that there is adequate justification for a waiver of the Board's requirement of an EIS. In lieu thereof, Vaughan requests authorization to proceed with preparation of an EA for the proposed rail project.

If you have any questions regarding this request or need further information, please do not hesitate to call me at (202) 536-8353.

With best regards,

Sincerely,

A handwritten signature in black ink, appearing to read "Donald G. Avery". The signature is fluid and cursive, with a large, stylized initial "D".

Donald G. Avery
An attorney for the Vaughan Railroad Company

Cc: Ken Blodgett, STB/SEA
Ms. JoCarole Dawkins