

LAW OFFICES
FRITZ R. KAHN, P.C.
EIGHTH FLOOR
1920 N STREET, N.W.
WASHINGTON, D.C. 20036-1801

FILED

DEC 20 2002

**SURFACE
TRANSPORTATION BOARD**

(202) 263-4152
FAX (202) 331-8330
e-mail: xiccgc@worldnet.att.net

ORIGINAL



December 20, 2002

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

206901

FEE RECEIVED

DEC 20 2002

**SURFACE
TRANSPORTATION BOARD**

Dear Secretary Williams:

Enclosed for filing in STB Finance Docket No. 34300, Jeffrey L. Sutch and Leonard J. Smolsky-Notice of Exemption-Intra-Corporate Family Transaction, are the original and ten copies of the Verified Notice of Exemption of Jeffrey L. Sutch and Leonard J. Smolsky.

A check of SMS Rail Service, Inc., for \$1,300.00 in payment of the filing fee is attached.

Additional copies of this letter and of the Notice are enclosed for you to stamp to acknowledge your receipt of them

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,

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Office of Proceedings

DEC 20 2002

Part of
Public Record

Fritz R. Kahn
Fritz R. Kahn

enc.

cc: Mr. Richard Petrone

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ORIGINAL

STB Finance Docket No. 34300

JEFFREY L. SUTCH and LEONARD J. SMOLSKY
- NOTICE OF EXEMPTION -
INTRA-CORPORATE FAMILY TRANSACTION



VERIFIED NOTICE OF EXEMPTION
OF
JEFFREY L. SUTCH and LEONARD J. SMOLSKY

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**SURFACE
TRANSPORTATION BOARD**

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Attorney for

JEFFREY L. SUTCH and
LEONARD J. SMOLSKY

Dated: December 20, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423



STB Finance Docket No. 34300

JEFFREY L. SUTCH and LEONARD J. SMOLSKY
- NOTICE OF EXEMPTION -
INTRA-CORPORATE FAMILY TRANSACTION

VERIFIED NOTICE OF EXEMPTION
OF
JEFFREY L. SUTCH and LEONARD J. SMOLSKY

Applicants, Jeffrey L. Sutch and Leonard J. Smolsky, pursuant to 49 C.F.R. 1180.2(d)(3) and 49 C.F.R. 1180.4(g), give notice of the proposed merger of Penn-Jersey Lines, Inc. ("PJRL") into SMS Rail Service, Inc., ("SLRS"), both of which railroads they control, and in support thereof Applicants state, as follows:

1. Names, addresses and telephone numbers of Applicants:

Jeffrey L. Sutch
P. O. Box 711
Bridgeport, NJ 08014
Tel.: (856) 467-4800

Leonard J. Smolsky
P. O. Box 711
Bridgeport, NJ 08014
Tel.: (856) 467-4800

2. Name, address and telephone number of Applicants' counsel:

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

3. Time schedule:

The proposed merger is to be effective December 31, 2002.

4. Purpose of the proposed transaction:

PJRL is a Class III railroad subject to the jurisdiction of the Board, pursuant to the Notice of Exemption in STB Finance Docket No. 33414, Penn-Jersey Rail Lines Inc.-Acquisition and Operations Exemption-WMI Properties, Inc., served June 24, 1997. SLRS is a Class III railroad subject to the jurisdiction of the Board, pursuant to the Notice of Exemption in Finance Docket No. 32494, SMS Rail Service, Inc.-Lease and Operate Exemption-Pureland Association, Inc., served May 26, 1994. Messrs. Sutch and Smolsky were authorized to maintain their control of both railroads, pursuant to the Notice of Exemption in STB Finance Docket No. 33415, Jeffrey L. Sutch and Leonard J. Smolsky-Continuance in Control Exemption-Penn-Jersey Rail Lines, Inc., served June 24, 1997. Messrs. Sutch and Smolsky propose to merge PJRL into SLRS by year's end. The transaction will eliminate the administrative expense of maintaining two separate organizations, thus reducing the operating costs of each. The merger will permit the consolidation of the railroads' equipment, their locomotives and cars, thus resulting in improved service to the shippers served by the two railroads. Finally, the merged company will be financially stronger, thereby able to secure financing upon more favorable terms than the separate companies could. These efficiencies and economies to be achieved through the merger will aid

the surviving railroad to promulgate reasonable rates and render adequate service, and, accordingly, the proposed merger will insure to the benefit of the public, as well as of Applicants.

5. States in which railroads' lines are located:

PJRL's lines are in Pennsylvania; SLRS' in New Jersey.

6. Maps

Maps showing the lines of PJRL and SLRS are attached.

7. Agreements

There are no agreements between the parties. Documents will be filed with appropriate offices in Pennsylvania and New Jersey to effect the merger.

8. Employee protection

Since the proposed transaction involves only Class III railroads, no employee protective conditions need be attached, pursuant to 49 U.S.C. 11326(c).

9. Environmental certification

Since the proposed transaction will be consummated pursuant to the class exemption of 1180.2(d)(3) and will result in no significant changes in railroad operations, no environmental documentation is required, pursuant to 49 C.F.R. 1105.6(c)(2). Similarly, since the proposed transaction will not result in the disposition or alteration of properties which are 50 years old or older, no historic report is required, pursuant to 49 C.F.R. 1105.8(b).

10. Competitive certification

The proposed transaction, within a corporate family, will result in no adverse changes in service levels, significant operational changes or change in the competitive balance with carriers outside the corporate family.

Respectfully submitted,

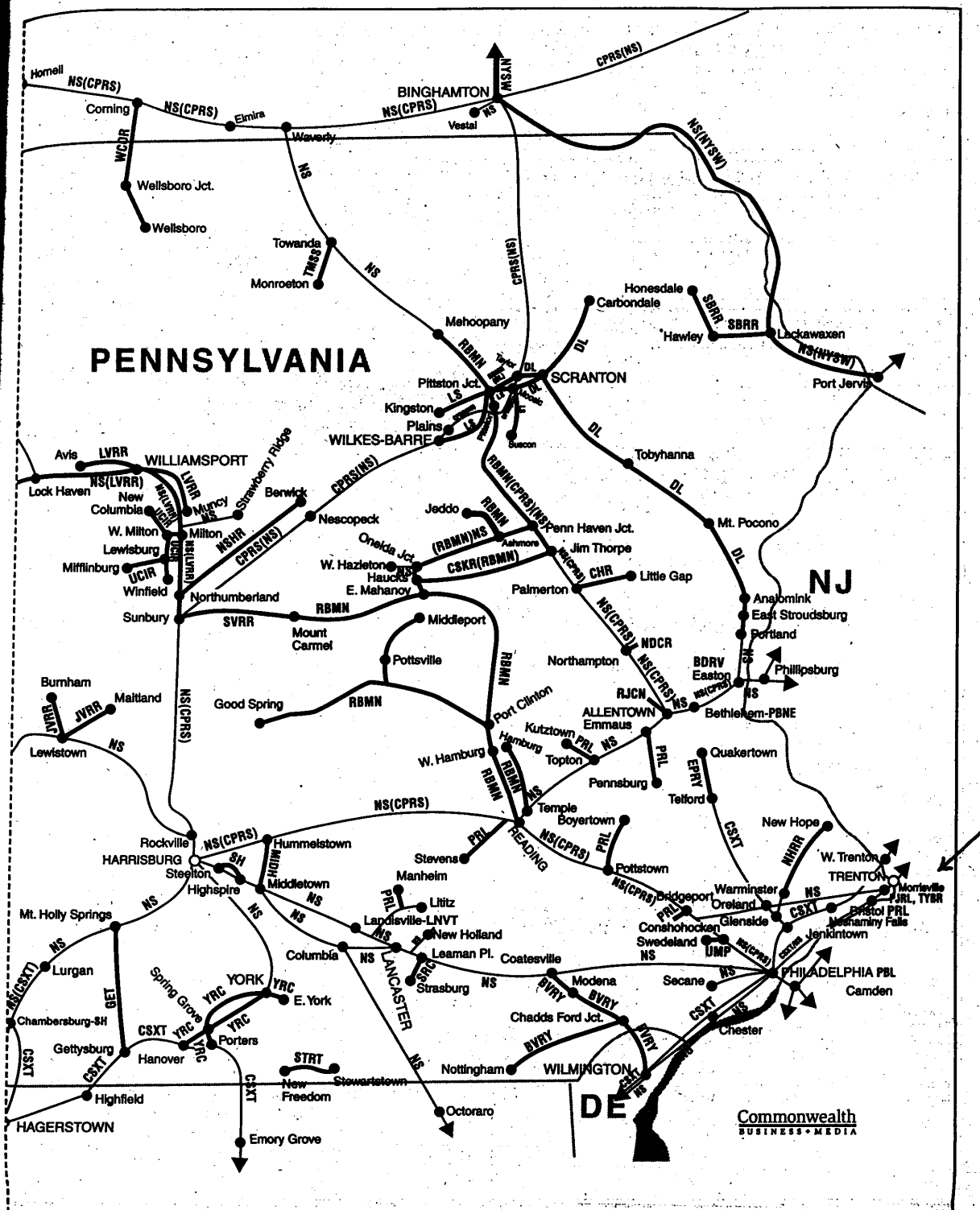
JEFFREY L. SUTCH and
LEONARD J. SMOLSKY

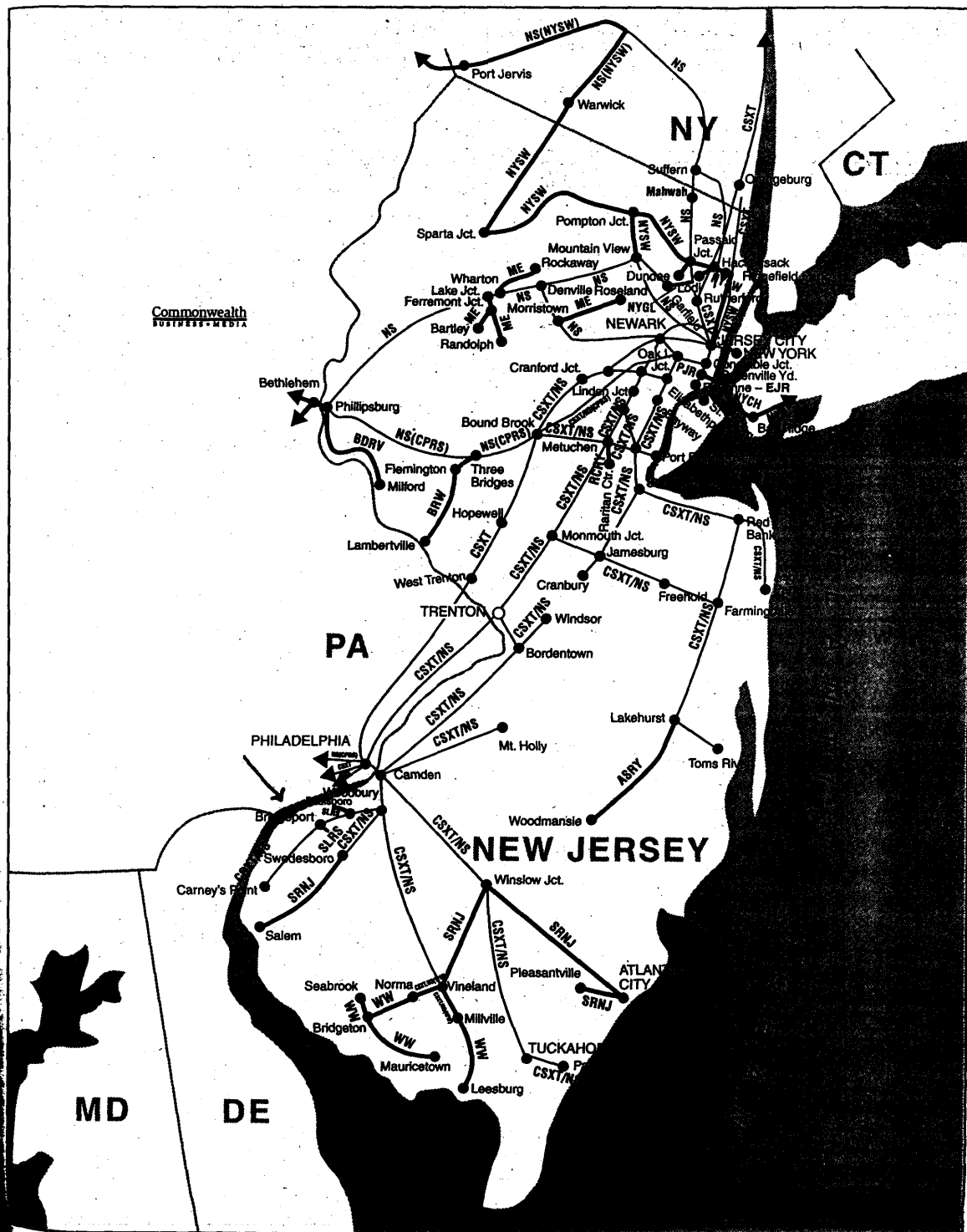
By their attorney,

A handwritten signature in cursive script, appearing to read "Fritz R. Kahn".

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Dated: December 20 , 2002

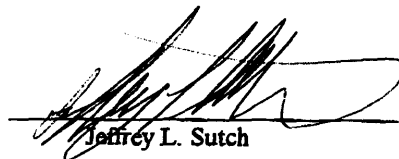
REGION 6
PA

REGION 5
NJ

VERIFICATION

I, Jeffrey L. Sutch, one of the stockholders of Penn-Jersey Rail Lines, Inc., and SMS Rail Service, Inc., declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Notice of Exemption and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of myself, Penn-Jersey Rail Lines, Inc., and SMS Rail Service, Inc. . I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

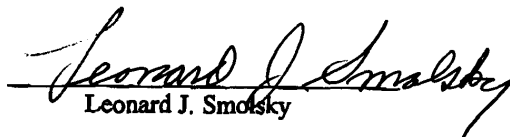
Dated at Bridgeport, NJ, this 19th day of December 2002.


Jeffrey L. Sutch

VERIFICATION

I, Leonard J. Smolsky, one of the stockholders of Penn-Jersey Rail Lines, Inc., and SMS Rail Service, Inc., declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Notice of Exemption and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of myself, Penn-Jersey Rail Lines, Inc., and SMS Rail Service, Inc. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Bridgeport, NJ, this 19th day of December 2002


Leonard J. Smolsky