

BALL JANIK LLP

A T T O R N E Y S

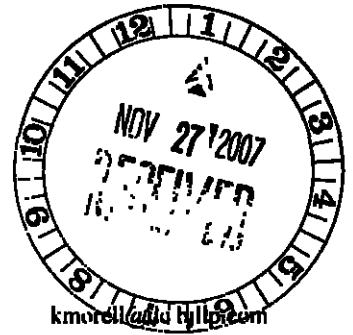
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KARL MORELL



November 27, 2007

BY HAND DELIVERY

The Honorable Vernon Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

220817

FILED

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**SURFACE
TRANSPORTATION BOARD**

Re: STB Finance Docket No. 35104, East Penn Railroad, LLC --
Operation Exemption – Kutztown Transportation Authority

Dear Secretary Williams:

Attached for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 1150.41 and a check covering the \$1,600 filing fee. Also enclosed is a Disc containing the Notice and Summary.

Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger

If you have any questions, please contact me.

Sincerely yours,

Karl Morell

FEE RECEIVED

NOV 27 2007

**SURFACE
TRANSPORTATION BOARD**

Enclosures

220817

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 35104

EAST PENN RAILROAD, LLC
--OPERATION EXEMPTION--
KUTZTOWN TRANSPORTATION AUTHORITY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41, Et Seq.

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Office of Proceedings
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Part of
Public Record

KARL MORELL
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
EAST PENN RAILROAD, LLC

Dated: November 27, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35104

**EAST PENN RAILROAD, LLC
--OPERATION EXEMPTION--
KUTZTOWN TRANSPORTATION AUTHORITY**

**VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41, Et Seq.**

East Penn Railroad, LLC ("ESPN"), a Class III rail carrier, files this Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart E--Exempt Transactions Under 49 U.S.C. 10902, to permit ESPN to operate a 4.12-mile rail line owned by the Kutztown Transportation Authority, a municipal authority organized under the Pennsylvania Municipal Authorities Act of 1954 ("KTA").

In support of this Notice of Exemption, ESPN submits the following information as required by 49 C.F.R. § 1150.43:

(a) Full name and address of applicant:

East Penn Railroad, LLC
505 S. Broad Street
Kennett Square, PA

(b) Applicant's Representative.

Karl Morell
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, DC 20005
(202) 638-3307

(c) Statement of Agreement:

ESPN's predecessors entered into an agreement with KTA for the operation of the rail line.

(d) The operator of the property:

ESPN and one of its predecessors have been the operator on the line for over 10 years.

(e) Summary of proposed transaction:

Penn Eastern Rail Lines, Inc. ("PERL") acquired (by purchase of certain rail lines and assignment of certain leases on other rail lines) approximately 45.24 miles of rail lines, including the lease operation of the 4.12-mile line between Topton, PA and Kutztown, PA ("Kutztown Branch") that was formerly leased and operated by East Penn Railways, Inc. See STB Finance Docket No. 33512, *Penn Eastern Rail Lines, Inc. – Acquisition and Operation Exemption – Lines of Lancaster Northern Railway, Inc., Chester Valley Railway, Inc., East Penn Railways, Inc., and Bristol Industrial Terminal Railway, Inc.* (not printed), served December 1, 1997. Subsequently, John C. Nolan ("Mr. Nolan"), an individual that controlled East Penn Railway, Inc. ("EPRI"), a Class III railroad, obtained authority to control PERL. See STB Finance Docket No. 34223, *John C. Nolan – Control Exemption*

– *Penn Eastern Rail Lines, Inc* (not printed); served July 22, 2002. Mr. Nolan merged PERL and EPRY into ESPN. See STB Finance Docket No. 35056, *John C. Nolan, Penn Eastern Rail Lines, Inc , and East Penn Railways, Inc. – Corporate Family Transaction Exemption* (not printed), served July 13, 2007. Recently, Mr Nolan sold his membership units in ESPN to Regional Rail, LLC, a non-carrier that does not control any other railroads. In conducting due diligence, it came to the attention of the new owner of ESPN that ESPN's predecessors, PERL and EPRY, had entered into an Agreement for Operation of Railroad Line with KTA to replace the previous lease agreement for the Kutztown Branch, but failed to obtain prior approval for the new agreement.

- (1) The name and address of the entity that entered into the operating agreement with ESPN for the subject property is:

Kutztown Transportation Authority
45 Railroad Street
Kutztown, PA 19530-1112

- (2) The Agreement for Operation of Railroad Line is dated July 25, 2005.
- (3) The rail line over which ESPN's predecessors acquired operating authority is located between Milepost 0.17, at Topton, PA, and Milepost 4.29, at Kutztown, PA.
- (4) The length of the rail line is 4.12 miles.
- (f) A map of the rail line is attached as Exhibit 1.
- (g) ESPN hereby certifies that ESPN's revenues as a result of this transaction will not result in ESPN becoming a Class II or Class I rail carrier.

ESPN further certifies that the projected annual revenue of ESPN will not exceed \$5 million as a result of this transaction. Accordingly, the requirements of 49 C.F.R. § 1150.42(e) do not apply to this transaction.

A caption summary, as required by 49 C.F.R. § 1150.44, is attached

ENVIRONMENTAL AND HISTORIC IMPACTS

ESPN's predecessors acquired operating authority over the rail line for continued rail operations. Further Board approval is required for ESPN to discontinue any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

ESPN's predecessors leased and operated the rail line prior to entering into an operating agreement with the owner of the line. The continued operation of the line pursuant to the operating agreement will not result in any changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. The continued operation of the rail line will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

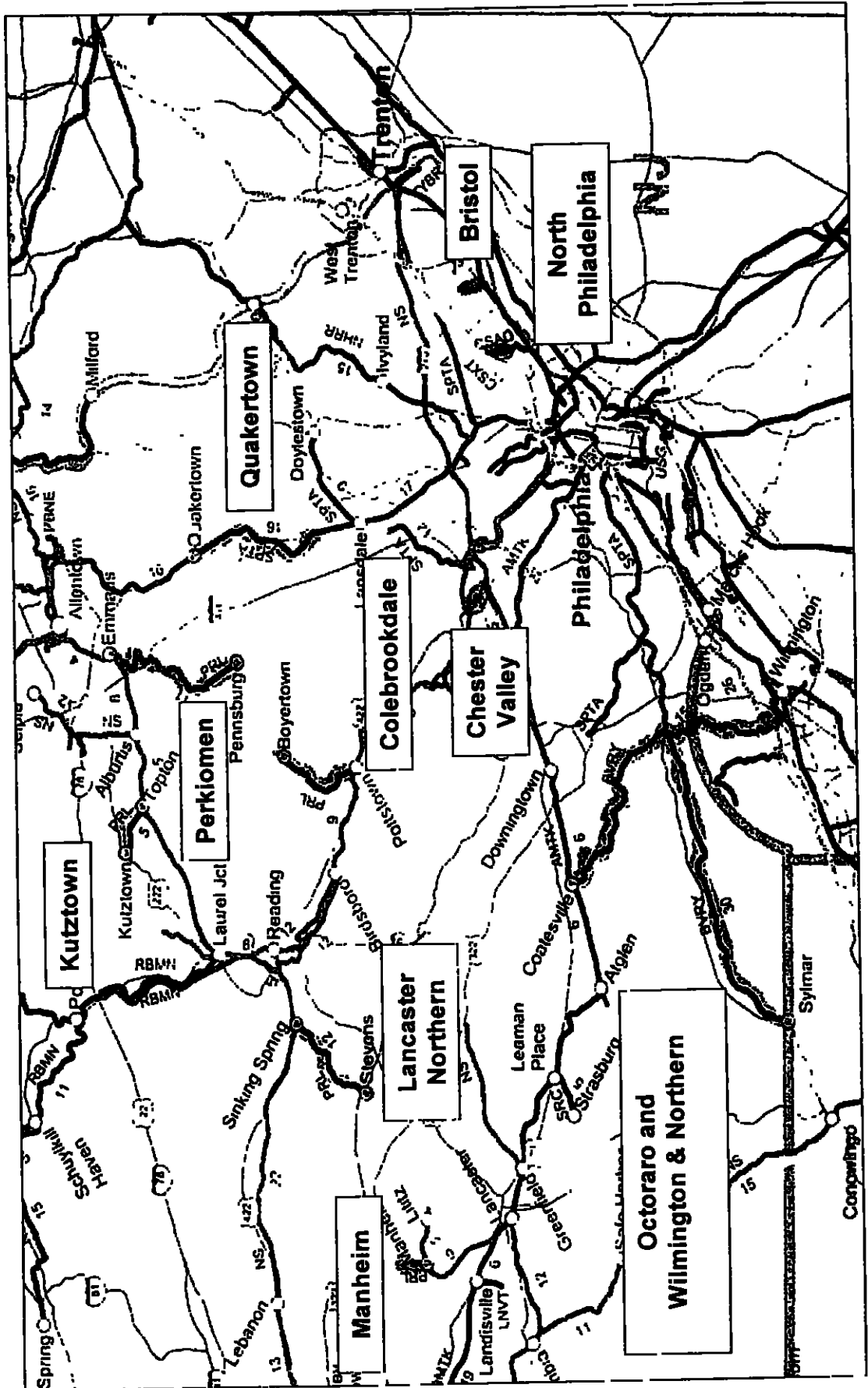
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karl Morell", written over a horizontal line.

KARL MORELL
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, DC 20005
(202) 638-3307

Attorneys for:
EAST PENN RAILROAD, LLC

Dated: November 27, 2007



SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35104

**EAST PENN RAILROAD, LLC
--OPERATION EXEMPTION--
KUTZTOWN TRANSPORTATION AUTHORITY**

East Penn Railroad, LLC, a Class III rail carrier, has filed a notice of exemption to operate the rail line owned by Kutztown Transportation Authority located between Milepost 0.17, at Tipton, PA. and Milepost 4.29. at Kutztown, PA

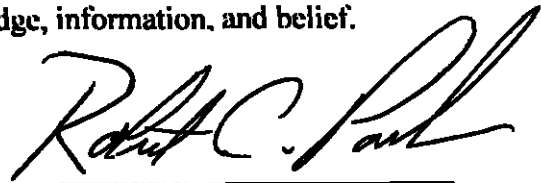
Comments must be filed with the Board and served on Karl Morell, Of Counsel, BALL JANIK LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005, (202) 638-3307.

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. The filing of a petition to revoke will not automatically stay the transaction.

VERIFICATION

STATE OF DELAWARE)
)
COUNTY OF NEW CASTLE) ss.

I, Robert C. Parker, being duly sworn depose and state that I am President and Chief Executive Officer of the East Penn Railroad, LLC, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.



Robert C. Parker

SUBSCRIBED AND SWORN TO before me this 18 day of November, 2007, in the County of New Castle, State of Delaware.

My Commission Expires: August 1, 2009

Tahnaya D. McCurdy-Peebles
Notary Public

