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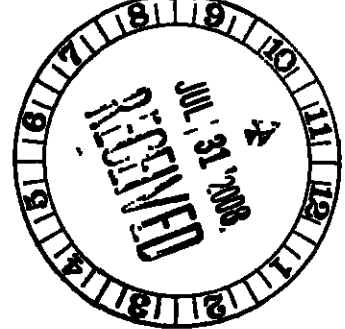
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KARI MORILL

July 31, 2008

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BY HAND DELIVERY

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street S W
Washington, DC 20423

FILED
JUL 31 2008
SURFACE
TRANSPORTATION BOARD

Re: STB Docket No. AB-1020X, East Penn Railroad, LLC – Abandonment
Exemption – In Berks and Montgomery Counties, Pennsylvania

Dear Acting Secretary Quinlan

Attached for filing are the original and ten copies of a Petition for Exemption
under 49 U.S.C. § 10502. Also attached is a check covering the \$6,300 filing fee.

Please time and date stamp the extra copy of the Petition and return it with our
messenger.

If you have any questions, please call me.

Sincerely,

Karl Morell

Enclosures

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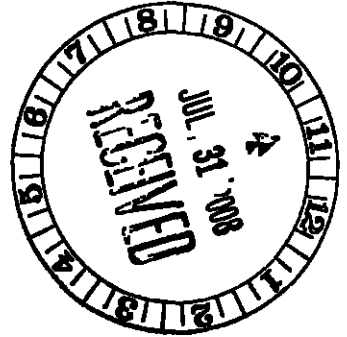
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO AB-1020X

EAST PENN RAILROAD, LLC
--ABANDONMENT EXEMPTION--
IN BERKS AND MONTGOMERY COUNTIES, PA

PETITION FOR EXEMPTION



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Attorney for:
East Penn Railroad, LLC

Dated: July 31, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1020X

**EAST PENN RAILROAD, LLC
--ABANDONMENT EXEMPTION--
IN BERKS AND MONTGOMERY COUNTIES, PA**

PETITION FOR EXEMPTION

East Penn Railroad, LLC ("ESPN") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, ESPN's abandonment of the 8.6-mile rail line located in Berks and Montgomery Counties, Pennsylvania.

PROPOSED TRANSACTION

ESPN proposes to abandon its rail line located between milepost 0.0, at Pottstown, and milepost 8.6, at Boyertown, in Berks and Montgomery Counties, Pennsylvania (the "Line"). The Line traverses U.S. Postal Service Zip Codes 19464 and 19512. A map of the Line is attached as Exhibit A.

Based on information in ESPN's possession, the Line does not contain any federally granted right-of-way. Any documentation in ESPN's possession will be made available to those requesting it.

STATEMENT OF FACTS

The Line was owned and operated by the Reading Company ("Reading") for decades. In 1971, the Reading declared bankruptcy and was finally merged into the Consolidated Rail

Corporation ("Conrail") in April 1976. Conrail continued to operate the Line for several years until Conrail designated the Line for abandonment. In 1982, the Pennsylvania Department of Transportation ("PennDOT") acquired the Line from Conrail and leased the Line to Anthracite Railway. In 1990, PennDOT transferred the lease to the Blue Mountain and Reading Railroad. In 1995, PennDOT transferred the lease to the East Penn Railway.

One of ESPN's predecessors, Penn Eastern Rail Lines, Inc. ("PERL"), was assigned the lease of the Line in 1997. 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. In 2001, Berks County acquired the Line from PennDOT. In July 2003, PERL acquired the Line from Berks County, but failed to obtain acquisition authority from the Surface Transportation Board ("Board" or "STB"). In July 2007, PERL and an affiliate railroad, East Penn Railways, Inc., were merged 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. Shortly thereafter the membership units in ESPN were sold to Regional Rail, LLC, a non-carrier. Upon learning that ESPN's predecessor had failed to obtain approval for the acquisition, ESPN immediately filed for such authority. See STB Finance Docket No. 35089, *East Penn Railroad, LLC – Acquisition Exemption – Berks County, PA* (not printed), served November 1, 2007.

In 2004, the Line was damaged and taken out of service for nearly 6 months due to a truck that destroyed a low clearance bridge that prevented access to the two active users of the Line. ESPN's predecessor completed the repair of the bridge by April 2005, at a cost of about \$120,000, and resumed service on the Line. ESPN has been unable to develop any new rail

traffic moving to or from the Line and the revenues generated by the two users have been woefully inadequate to cover the cost of operations. In fact, the total freight revenues received since April 2005 do not even cover the cost of repairing the bridge and the ensuing litigation. Moreover, neither of the users of the Line has made any commitments for their continued use of the Line to ESPN.

The only traffic that has moved over the Line since it was acquired from Berks County has been inbound shipments of plastic pellets that are transloaded for delivery to Drug Plastic & Glass Company, Inc. ("Drug Plastic") and occasional outbound shipments of containerized hazardous waste transloaded from truck to rail for Cabot Corporation ("Cabot"). Both Drug Plastic and Cabot are located off rail in the Boyertown area, and their shipments are transloaded between rail cars and trucks on ESPN property in Boyertown, Pennsylvania. As previously noted, the Line was out of service due to the destroyed bridge between September 2004 and March 2005. During that time, all of the traffic destined to Drug Plastic was transloaded on ESPN at a location 8 miles away in Pottstown, Pennsylvania, or handled via truck from one of many rail to truck transload facilities located in Philadelphia, Reading, and/or Allentown, Pennsylvania. If the proposed abandonment is granted by the Board, most, if not all, of the traffic currently handled by ESPN will likely shift to another ESPN line located 10 miles away in Pennsburg, Pennsylvania, or to one of many rail to truck transload facilities located in Philadelphia, Reading, and/or Allentown, Pennsylvania.

As the following table illustrates, in the three-year period ending 2007, ESPN handled an average of 92 cars and generated an average of \$52,290 in gross revenues from traffic moving to and from the Line.

<u>YEAR</u>	<u>ANNUAL CARLOADS</u>	<u>GROSS REVENUES</u>
2005	95 ¹	\$51,511
2006	93 ²	\$51,834
2007	89 ³	\$53,526

In 2007, service to the users of the Line was provided an average of two days a week. ESPN utilized a two-man crew which was stationed in Reinholds, PA. Service was usually provided on Tuesdays and Thursdays, depending on the needs of the users and interchange deliveries from Norfolk Southern Railway Company ("NS"). The crew gathered empty and loaded cars in the ESPN yard in Boyertown, PA and operated south with the empty and/or loaded cars to the NS connection in Pottstown for interchange. At Pottstown, the crew runs around the outbound cars to shove them to the NS, and pulls any inbound loads and/or empties for Boyertown. The crew then returns the length of the Line to Boyertown to spot these cars where the user(s) can access them for transloading their commodities from railcar to truck. Due to the unpredictable schedule for inbound deliveries, many times the crew operates to interchange with empties, and must return to Boyertown without any inbound cars. On the operating days, the crew works full time on the Line.

Trains on the Line are powered by one SW-900M locomotive, which is stationed and utilized exclusively on the Line.

REVENUE AND COST DATA FOR 2007

During 2007, ESPN generated the following revenues on the Line

Revenue

Freight Originating and/or

¹ In 2005, Drug Plastic received 84 carloads and Cabot shipped 11 carloads

² In 2006, Drug Plastic received 93 carloads and Cabot did not make any shipments

³ In 2007, Drug Plastic received 82 carloads and Cabot shipped 7 carloads

Terminating On-Branch	\$53,526
Bridge Traffic	0
Other Income	<u>29,400</u>
Total Revenues	\$82,926

On-Branch Avoidable Costs

ESPN's on-branch avoidable costs for 2007 were as follows

a Maintenance-of-Way and Structures	\$55,900
b Maintenance of Equipment	14,572
c Transportation	35,149
d General & Administrative	44,881
e Deadheading, Taxi and Hotel	3,733
f Overhead Movement	0
g Freight Car Costs (other than return)	0
h. Return on Value – Locomotives	7,052
i Return on Value – Freight Cars	0
j. Revenue Taxes	0
k. Property Taxes	<u>1,969</u>
Total Avoidable costs	\$163,256
Avoidable (Loss) or Profit	(\$80,330)

REVENUES

The identified freight revenues generated by ESPN in 2007 were all from traffic transloaded to or from railcars on the Line. The Line is stub-ended and, therefore, not capable of handling overhead traffic. In 2007, ESPN generated \$29,400 in other income, mainly from switching and car storage services provided to Drug Plastic, along with leases along the Line.

AVOIDABLE COSTS

Lines b through k under On-Branch Costs represent the actual on-branch costs incurred by ESPN (and its predecessor companies) in operating the Line during 2007. ESPN is utilizing normalized maintenance costs for Maintenance-of-Way and Structure costs (line a).

Maintenance-of-way and Structure costs (line a) equal \$55,900 and are based on normalized maintenance levels necessary to maintain the Line in Class 1 operating conditions. The Board and its predecessor have long recognized the appropriateness of considering normalized maintenance costs in instances of deferred maintenance. See *Chicago and North Western Transp Co – Abandonment*, 366 I C C 373, 377 (1982) (“Normalized maintenance is the amount needed for economic and efficient operation over the long term. *** We have, in the past, applied normalized maintenance calculations to actual maintenance figures and found that costs for normalized maintenance when compared to actual maintenance expenditures are indicative of deferred maintenance and are to be given consideration in determining whether or not the public convenience and necessity permit abandonment of a line”).

The normalized maintenance costs of \$6,500 per mile being utilized by ESPN are conservative and based on the per-mile maintenance costs accepted by the Board and its predecessor in other abandonment proceedings. For example, the Board and its predecessor found as reasonable per-mile normalized maintenance costs of \$10,943 in STB Docket No. AB-33 (Sub-No. 156), *Union Pacific Railroad Company – Abandonment – In Harris, Fort Bend, Austin, Wharton and Colorado Counties, TX* (not printed), served November 8, 2000; \$6,957 in STB Docket No. AB-564 *Camas Prairie Railnet, Inc – Abandonment – In Lewis, Nez Perce, and Idaho Counties, ID* (not printed), served September 13, 2000; \$6,029 in STB Docket No. AB-441 (Sub-No. 2X), *SWKR Operating Co – Abandonment Exemption in Cochise County, AZ* (not printed), served February 14, 1997, slip op. at 5 (“We know from extensive experience that \$6,000 per mile/per year is a reasonable figure for maintenance by a Class III railroad.”).⁴

⁴ The Board made that finding in 1997. Since then, rail line maintenance costs have risen significantly and the price of steel has skyrocketed.

Maintenance of Equipment costs (line b) are derived from the system-wide average annual costs incurred by ESPN to maintain each unit of its locomotive fleet (\$11,433 per locomotive⁵) multiplied by the number of locomotives utilized to perform service on the Line (1) [$\$11,433 \times 1 = \$11,433$]. During 2007, the locomotive used on the Line incurred a depreciation expense of \$3,139.⁶ Since the locomotive is assigned exclusively to the Line, 100 percent of the total depreciation expense of \$3,139 is attributable to the Line.

Transportation costs (line c) include wages and fringe benefits associated with the freight operations on the Line, and locomotive fuel and lube oil costs. The total wage and fringe benefits costs of \$31,832 are derived by adding the average system-wide wage cost per hour (\$15) and the average hourly cost of benefits per employee (\$4.13) multiplied by 2, for a two-man crew, [$\$15 + \$4.13 \times 2 = \$38.26$] which is then multiplied by 8 for an 8-hour day [$\$38.26 \times 8 = 306.08$] which is then multiplied by 104 which are the number of days the two-man crew operated over the Line in 2007 [$\$306.08 \times 104 = \$31,832$].⁷ Total locomotive fuel costs of \$3,188 are derived by multiplying the average system-wide cost of fuel per loaded car in 2007 [$\$35.82$] and the total number of loaded cars handled over the Line in 2007 [89].⁸ The total lube oil costs of \$129 are derived by multiplying the average system-wide cost of lube oil used per loaded car in 2007 [$\$1.45$] and the total number of loaded cars handled over the Line in 2007 [89].⁹

General and Administrative expenses (line d) include the actual electric expense [\$1,102] and the actual signal maintenance contractor expense [\$1,680] incurred on the Line in 2007.

⁵ Workpaper ("WP") 2

⁶ WP 2.

⁷ WP 2

⁸ WP 2

⁹ WP 2

Also included in General and Administrative expenses are telephone expenses, insurance costs, and office and general expenses prorated on a mileage basis to the Line. General and Administrative expenses do not include expenses that will not be avoided as a result of the abandonment such as salaries and benefits for office personnel.

Deadheading, Taxi and Hotel expenses (line e) of \$3,733 are derived by multiplying the average roundtrip highway miles between Reinholds, PA, and Boyertown [74] by the 2007 IRS mileage reimbursement rate [\$0.485] and then multiplying that amount by the number of trips to service the Line [104] during 2007 [$74 \times \$0.485 \times 104 = \$3,733$].

Because the Line is stub-ended, there are no costs associated with overhead movements (line f)

Because all of the equipment associated with freight movements via the Line are private cars for which ESPN pays no mileage or per diem, there were no Freight Car Costs (line g) in 2007.

In 2007, ESPN utilized one SW-900M locomotive on the Line. On January 1, 2007, that locomotive had an un-depreciated value of \$47,079. As previously noted, the locomotive is dedicated exclusively to the Line. Consequently, the return on value (line h) for the locomotive was \$7,052 [$\$47,079$ (total un-depreciated value of the locomotive) $\times 14.98\%$ (pre-tax cost of capital)]

Freight car cost-return on value (line i) was \$0, since the cars used on the Line were all foreign cars

There were no revenue taxes (line j) associated with ESPN's operations over the Line in 2007. While there were also no property taxes associated with ESPN's operations over the Line in 2007, ESPN's assessment by the Pennsylvania Public Utilities Commission ("PUC") has been

included in this category. In 2007, this expense of \$1,969 represents the pro-rata share of ESPN's PUC assessment attributable to its operations on the Line.

FORECAST YEAR OPERATIONS¹⁰

In 2007, ESPN handled 82 carloads of inbound plastic pellets and 7 carloads of outbound containerized hazardous waste, generating a total of \$53,526 in gross revenues

From January 1 through May 31, 2008, ESPN handled 29 inbound carloads of plastic pellets generating \$17,893.00 in gross revenues. No outbound traffic was tendered to ESPN during that time period. Based on the number of carloads and the commodities handled via the Line between January 1st and May 31st, ESPN estimates that the total carloads for the Forecast Year will be 70 and the total gross revenues will be \$43,190.00. Consequently, ESPN projects that it would generate the following revenues and incur the following costs on the Line in the Forecast Year

Revenue

Freight Originating and/or Terminating On-Branch	\$43,190
Bridge Traffic	0
Other Income	<u>21,000</u>
Total Revenues	\$64,190

On-Branch Avoidable Costs.

ESPN's projected on-branch avoidable costs for the Forecast Year are as follows.

a. Maintenance-of-Way and Structures	\$ 55,900
b. Maintenance of Equipment	14,915
c. Transportation	36,347
d. General & Administrative	25,559
e. Deadheading, Taxi and Hotel	4,502
f. Overhead Movement	0

¹⁰ Pursuant to 49 C.F.R. § 1152.2(h), the Forecast Year is the 12-month period beginning August 1, 2008

g Freight Car Costs (other than return)	0
h. Return on Value – Locomotives	6,582
i Return on Value – Freight Cars	0
j Revenue Taxes	0
k Property Taxes	<u>1,969</u>
Total Avoidable costs	\$145,774
Avoidable (Loss) or Profit:	(S81,584)

REVENUES

The identified freight revenues projected by ESPN in the Forecast Year were all from inbound movements of plastic pellets to Drug Plastic that are transloaded from railcars to trucks via the Line. The projections are based on the shipments tendered to ESPN by Drug Plastic during first five months of 2008. As previously noted, the Line is stub-ended and, therefore, not capable of handling overhead traffic. ESPN projects generating \$21,000 in other income, mainly from switching and car storage services provided to Drug Plastic, along with leases along the Line during the Forecast Year.

AVOIDABLE COSTS

ESPN is utilizing normalized maintenance costs, as explained above, for Maintenance-of-Way and Structure costs during the Forecast Year (line a).

Lines b through k under On-Branch Costs represent the projected costs for the Forecast Year based on the actual on-branch costs or the system-wide average per unit costs incurred by ESPN during 2007.

Maintenance of Equipment costs (line b) are derived from the system-wide average annual costs incurred by ESPN to maintain each unit of its locomotive fleet in 2007 (\$11,433 per locomotive) multiplied by the number of locomotives utilized to perform service on the Line (1),

and increased by an inflation factor of 3% [$\$11,433 \times 1 + 3\% = \$11,776$]¹¹ During the Forecast Year, the locomotive used on the Line is expected to incur a depreciation expense of \$3,139¹² Since the locomotive is assigned exclusively to the Line, 100% of the total depreciation expense of \$3,139 is attributable to the Line

Transportation costs (line c) include wages and fringe benefits associated with the freight operations on the Line, and locomotive fuel and lube oil costs The total wage and fringe benefits costs of \$32,781 are derived by multiplying the average system-wide cost per hour for a crew member incurred by ESPN in 2007 [\$19.13] multiplied by an inflation factor of 3 percent, then multiplied the number of crew members [2] and then multiplied by the number of hours per service day [8], multiplied by number of times the two-man crew is projected to operate over the Line in the Forecast Year [104].¹³ Total locomotive fuel costs of \$3,434 are derived by multiplying the average system-wide fuel cost per loaded car in the first five months of 2008 [\$49.05] and the total number of loaded cars projected to be handled over the Line in the Forecast Year [70]¹⁴ The total lube oil costs of \$132 are derived by multiplying the average system-wide cost of lube oil used per loaded car in the first five months of 2008 [1.88], and the total number of loaded cars projected to be handled over the Line in the Forecast Year [70]¹⁵

General and Administrative expenses (line d) include the electric and signal maintenance contractor expenses projected to be incurred on the Line during the Forecast Year The electric expense is derived by multiplying the actual expense incurred during 2007 [\$1,102] by an

¹¹ WP 4.

¹² WP 4.

¹³ Although ESPN is projecting a 21 percent decline in traffic, a two-man crew will still be needed two days a week to perform certain maintenance functions on the Line and due to the erratic movement of the inbound and outbound cars

¹⁴ WP 4

¹⁵ WP 4.

inflation factor of 3 percent ¹⁶ ESPN's signal maintenance costs on the Line have increased dramatically since 2007. The new contract increased the costs from \$35 per crossing to \$75 per crossing to meet FRA compliance. In addition, one signal is in need of repair. Also included in General and Administrative expenses are telephone expenses, insurance costs, and office and general expenses, prorated on a mileage basis to the Line. General and Administrative expenses do not include expenses that will not be avoided as a result of the abandonment such as salaries and benefits for office personnel.

Deadheading, Taxi and Hotel expenses (line e) of \$4,502 are derived by multiplying the average roundtrip highway miles between Reinholds, PA and Boyertown [74] by the 2008 IRS mileage reimbursement rate [0.585] by the projected number of trips to service the Line [104] during the Forecast Year.¹⁷

Because the Line is stub-ended, there are no costs associated with overhead movements (line f).

Because all of the equipment associated with freight movements on the Line are private cars, for which ESPN pays no mileage or per diem expenses, there were no Freight car costs (line g) forecasted.

In the Forecast Year, ESPN will continue to utilize one SW-900M locomotive on the Line. On June 1, 2008, this locomotive had an un-depreciated value of \$43,940. As previously noted, this locomotive is dedicated exclusively on the Line. Consequently, the return on value (line h) for this locomotive attributable to the Line in the Forecast Year is projected to be \$6,582 [$\$43,940$ (total un-depreciated value of the locomotive) $\times$ 14.98% (pre-tax cost of capital)].¹⁸

¹⁶ WP 4.

¹⁷ WP 4.

¹⁸ WP 4.

Freight car cost-return on value (line i) will be \$0, since the cars used on the Line will likely continue to be all foreign cars

There were no revenue taxes (line j) associated with ESPN's operations over the Line in 2007, and none are forecast. While there were also no property taxes associated with ESPN's operations over the Line in 2007, ESPN's assessment by the Pennsylvania Public Utilities Commission ("PUC") has been included in this category. The PUC assessments are expected to continue at the 2007 level, and this expense of \$1,969 represents the pro-rata share of ESPN's PUC assessment attributable to its operations on the Line.

OPPORTUNITY COSTS

Opportunity costs reflect the economic loss experienced by ESPN from forgoing a more profitable alternative use of the assets associated with the Line. Pursuant to *Abandonment Regulations – Costing*, 31 C.C.2d 340 (1987), the opportunity cost of road property is computed on an investment base equal to the sum of: (1) allowable working capital, (2) the net liquidation value ("NLV") of the Line; and (3) current income tax benefits (if any) resulting from abandonment.

The NLV of the track components of the Line is set forth in the following Table:

Net Liquidation Value Of The Line 8.6 Track Miles of Mainline¹⁹

Rail and Other Track Materials:

Relay 100 RG rail	670 Net Tons
Relay 90 AS rail	190 Net Tons
Reroll Rail	400 Net Tons
Scrap Rail	257 Net Tons
Scrap OTM	367 Net Tons

¹⁹ The Line also has .5 mile of siding and yard track.

Total Net Tonnage 1,884

Cross and Switch Ties:

#1 Grade Landscape Ties 6,000
#2 Grade Landscape Ties 5,800
#3 Grade Landscape Ties 5,900

NET SALVAGE VALUE **\$ 1,082,000²⁰**

The Line consists of 8.6 miles of main line track along with .5 mile of siding and yard tracks that can be salvaged. The track components consist of approximately 1,884 net tons of track and other track materials. The Line also has approximately 17,700 Cross and Switch Ties with resale value. ESPN invited 13 companies to bid the salvage value of the Line. ESPN has received 7 bids and has elected to accept the highest bid of \$1,082,000. The acceptance of that bid is subject only to the Board's offer of financial assistance procedures.

ESPN has recently sold one parcel of land adjacent to the Line for \$162,679 per acre. Nevertheless, for purposes of this filing, ESPN is conservatively utilizing an average per acre gross value of the real estate of \$18,821. The rail corridor is comprised of 64 acres, of which 95 percent, or 60.8 acres is held in fee. Accordingly, ESPN estimates the gross value of the real estate to be \$1,144,317. Adjusting the gross value by 13 percent to account for selling costs, holding costs/gains and a discount factor, produces a net real estate value of \$995,556.²¹

²⁰ The quantities, qualities and net salvage price are derived from the highest salvage bid received by ESPN.

²¹ The adjustment assumes a sell-off period of 2 years, 10 percent real estate commission, very limited holding costs, since the only holding costs will be the PUC assessment and the lease incomes offset those costs, and a modest discount factor. In STB Docket No. AB-492 (Sub-No. 2X), *Fillmore Western Railway Company – Abandonment Exemption – In Fillmore County, NE* (not printed), served October 31, 2001 (“*Fillmore*”), the Board adjusted the gross land value by approximately 13.6 percent. Since the property in *Fillmore* generated no income whereas the Line does, ESPN's use of a 13 percent adjustment to the gross land value is reasonable.

Consequently, the **Net Liquidation Value** of the Line equals \$2,077,556

VALUATION OF ROAD PROPERTIES:

a Working Capital	2,953 ²²
b Income Tax Consequences	0 ²³
c. Net Liquidation Value	2,077,556
d. Valuation of Property Before Holding Gain	2,080,509
Nominal Rate of Return	14.98%
Total Return on Value – Opportunity Cost:	\$311,660 ²⁴

SUBSIDY:

a Forecast Year Avoidable (Loss) or Profit from Operations	(\$81,584)
b Estimated Rehabilitation	\$0 ²⁵
c Total Return on Value – Opportunity Cost	<u>(\$311,660)</u>
Estimated Subsidy Payment	(\$393,244)

SUMMARY

In 2007, ESPN would have had an operating loss of \$80,330 from operations on the Line if a normalized level of maintenance had been performed. Moreover, ESPN incurred foregone opportunity costs of approximately \$311,660 for a total economic loss of approximately \$391,990 in 2007.

For the Forecast Year, ESPN projects operating losses of \$81,584.

²² On-branch Avoidable costs (\$81,584) less depreciation (\$3,139) and less Return on Value – Locomotive (\$6,582) = \$71,863 divided by 365 and times 15 = \$2,953

²³ ESPN is structured as a Limited Liability Company (LLC). As such, ESPN will not be subject to any taxes on capital gains realized by the sale of the track assets and underlying real estate.

²⁴ ESPN is not including any Holding Gains or Losses. Given the historically high prices for steel, it is more likely than not that the prices will decline rather than increase during the Forecast Year.

²⁵ On July 23, 2008, one of the bridges on the Line was damaged by a construction truck. Pursuant to the advice of a bridge inspector, the Line will need to be embargoed until the bridge is repaired. ESPN has ordered an inspection of the bridge and an estimate of the cost of repair.

In order for ESPN to cover its operating costs and earn its cost of capital, the shippers on the Line would have to make a subsidy payment of \$393,244 for the Forecast Year.

EXEMPTION REQUESTED

ESPN seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 in order for ESPN to abandon this underutilized 8.6-mile rail line.

Under 49 U.S.C. § 10502, the STB must exempt a transaction from regulation when it finds that

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101, and

(2) either

(a) the transaction is of limited scope, or

(b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the STB's predecessor to liberally use the expanded exemption authority under former Section 10505.

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation – Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp v United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application Of 49 U.S.C. § 10903 Is Not Necessary to Carry Out The Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. § 10101(2) and (7)]. *See, e.g., Norfolk & W. Ry. Co. – Abandonment Exemption – In Hamilton County, OH*, 3 S.T.B. 110 (1998), STB Docket No. AB-367 (Sub-No. 2X), *Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA* (not printed), served September 17, 1997 (“Georgia Central”). By abandoning the Line, ESPN will be able to avoid the out-of-pocket expenses and significant opportunity costs associated with retaining this underutilized Line. Granting the exemption will thus foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5) and (9). *See, e.g., STB Docket No. AB-318 (Sub-No. 4X), Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997; STB Docket No. AB-497 (Sub-No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997. ESPN will be able to rid itself of a line that has seen very low volumes of traffic for years.

ESPN's predecessor took a calculated risk in repairing the bridge without first obtaining traffic commitments from the two customers using the Line. ESPN cannot afford to continue experiencing the substantial operating losses associated with the Line without adversely affecting the operations on the remainder of its railroad. Consequently, ESPN seeks to abandon the Line so that it can utilize the salvage funds for debt repayment and to improve service on the remainder of ESPN's system. Other aspects of the rail transportation policy are not affected adversely. For example, competition and the continuation of a sound rail transportation system are not affected since the Line is currently being used by one transload customer who has no ongoing commitment to utilize ESPN and whose transload operations can be readily moved to alternative nearby sites.

B. This Transaction Is Of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume. See, e.g., Docket No. AB-347 (Sub-No. 1X), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL* (not printed), served January 16, 1992, Docket No. AB-6 (Sub No. 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993.

The proposed transaction is clearly of limited scope. ESPN is seeking to abandon an 8.6-mile line that traverses light industrial and residential areas with little demand for rail service in recent years. There is currently only one active rail customer using the Line and its use of the Line has been very limited in recent years. Moreover, all of the traffic moving over the Line has been intermodal and the transloading operations can be performed at any one of the numerous

transload sites in the area. The limited geographic area involved and the very limited use demonstrate the limited scope of the proposed abandonment. *See, e.g.*, Docket No. AB-397 (Sub-No. 3X), *Tulare Valley Railroad Company – Abandonment Exemption – In Tulare And Fresno Counties, CA* (not printed), served February 9, 1995.

C. This Transaction Will Not Result In An Abuse of Market Power

There is currently only one active rail customer using the Line and that customer has direct access to numerous nearby transload facilities to meet its transportation needs. Indeed, the consignor of that traffic is considering using the transload facilities on other railroads. Alternatively, ESPN has offered the customer the use of another ESPN transload location in Pennsburg, which is only 10 miles from Boyertown. The use of this alternate transload location has been offered by ESPN to the customer at a reduced rate, which will offset any increase in trucking costs that they may experience. Therefore, regulation is not necessary to protect shippers from an abuse of market power. *See, e.g.*, STB Docket No. AB-55 (Sub-No. 576) *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999; STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*.

All of the traffic moving over the Line in recent years has been intermodal. The communities along the Line have an adequate highway network capable of supporting motor carrier transportation. For example, Pottstown and Boyertown are connected by Pennsylvania Hwy 100 which runs essentially parallel to the Line. Transportation services are available from numerous motor carriers that serve the area, including the carriers that have been used in recent years to on-load and off-load the traffic moving over the Line.

Accordingly, the only active shipper today as well as the former shipper using the Line have more than adequate intermodal options available. Where, as here, few shippers utilize the rail line to be abandoned and they have adequate alternative transportation options available, there is no potential abuse of market power. *See* Docket No. AB-290 (Sub-No. 123X), *Norfolk Southern Railway Company – Abandonment Exemption – In Franklin, Marion, and Winston Counties, AL* (not printed), served May 3, 1995.

Moreover, the Board and its predecessor have consistently rejected speculation about future traffic as a sound basis for denying the abandonment of an otherwise unprofitable rail line. *See, e.g.*, STB Docket No. AB-433X, *Idaho Northern & Pacific Railroad Company – Abandonment Exemption – In Wallowa and Union Counties, OR* (not printed), served April 16, 1997 (“*Idaho Northern*”);²⁶ STB Docket No. 290 (Sub-No. 260X), *Tennessee Railway Company Abandonment Exemption – In Scott County, TN* (not printed), served June 17, 2005 (“*Tennessee*”);²⁷ STB Docket No. AB-6 (Sub-No. 370X), *Burlington Northern Railroad Company – Abandonment Exemption – Between Mesa and Basin City, Franklin County, WA* (not printed), served January 27, 1997. Docket No. AB-290 (Sub-No. 122X), *Norfolk and Western Railway Company – Abandonment Exemption – In Randolph, Macon, Adair, and Schuyler Counties, MO, and Davis, Appanoose, and Monroe Counties, IA* (not printed), served September 17, 1993; Docket No. AB-55 (Sub-No. 413X), *CSX Transportation, Inc. – Abandonment*

²⁶ In *Idaho Northern*, the Board granted the abandonment even though a lumber mill had projected a total of 2,102 outbound movements of lumber and wood chips. In granting the abandonment, the Board found the traffic projections speculative but also noted that the mill had been utilizing truck service to deliver the finished products.

²⁷ Citing *Idaho Northern*, the Board, in *Tennessee*, noted that under its precedent “mere speculation about future traffic is not a sound basis upon which to deny an abandonment.” *Tennessee*, slip op., at 4.

Exemption – In Webster County (not printed), served May 29, 1992. Also, a shipper “may not insist upon the maintenance of a burdensome line solely for its own benefit ” *Busboom Grain Company, Inc v ICC*, 856 F.2d 790, 795 (7th Cir 1988)

ENVIRONMENTAL AND HISTORIC REPORTS

The Environmental Report and the Historic Report containing the information required by 49 C.F.R. §§ 1105.07 and 1105.08 was filed with the Board on June 5, 2008. The Certificate of Service is attached as Exhibit C.

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as Exhibit B.

LABOR PROTECTION

The interests of railroad employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protection conditions in Oregon Short Line R. Co – Abandonment – Goshen, 360 I.C.C. 91 (1979)

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described in this Petition. Nor is STB regulation required to protect shippers from the abuse of market power. Moreover, this abandonment is of limited scope. Accordingly, ESPN respectfully urges the Board to grant the requested exemption.

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
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Dated July 31, 2008

EXHIBIT A

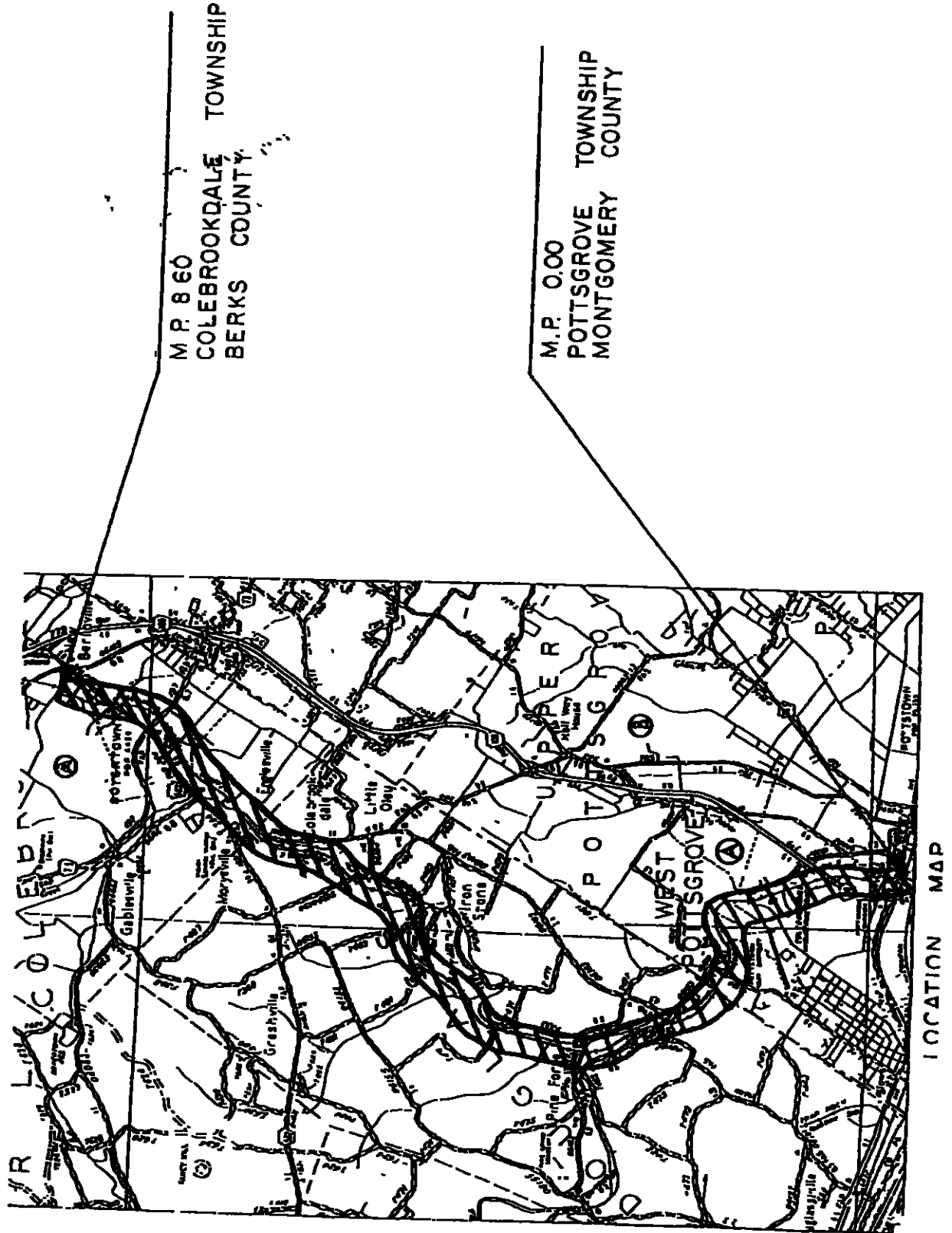


EXHIBIT B

SURFACE TRANSPORTATION BOARD

STB DOCKET NO AB-1020X

**EAST PENN RAILROAD, LLC
--ABANDONMENT EXEMPTION--
IN BERKS AND MONTGOMERY COUNTIES, PA**

On July 31, 2008, East Penn Railroad, LLC (ESPN) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provision of 49 U.S.C. 10903 for ESPN to abandon a line of railroad extending from railroad milepost 0 0, at Pottstown, to railroad milepost 8 6, at Boyertown, in Berks and Montgomery Counties, Pennsylvania (the "Line"). The Line traverses U.S. Postal Service Zip Codes 19464 and 19512. There are no stations on the line for which abandonment exemption was filed.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by November __, 2008).

Any offer of financial assistance under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,500. See 49 C.F.R. 1002.2(f)(25).

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any

request for a public use condition under 49 C.F.R. 1152.28 and any request for trail use/rail banking under 49 C.F.R. 1152.29 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register*. Each trail use request must be accompanied by a \$200 filing fee. See 49 C.F.R. 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-1000 (Sub-No. 1X) and must be sent to: (1) Office of the Secretary, Case Control Unit, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423, (2) Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 245-0230 or refer to the full abandonment or discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis at (202) 245-0295 [Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339].

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided _____ 2008

By the Board, David M. Konschnik, Director, Office of Proceedings

EXHIBIT C

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the Petition for Exemption in STB Docket No. AB-1020X was mailed via first class mail on July 31, 2008, to the following parties.

State Public Service Commission <i>Pennsylvania Department of Transportation</i> P O. Box 3441 Harrisburg, PA 17120 Military Traffic Management Command MTMCTEA ATTN Railroads for National Defense 720 Thimble Shoals Blvd., Suite 130 Newport News, VA 23606-2574	National Park Service <i>National Park Service</i> RTCA Program 1201 Eye Street, NW 9 th Floor Org Code 2240 Washington, DC 20005 National Park Service <i>National Park Service</i> RTCA Program U.S. Custom House 200 Chestnut Street, Fifth Floor Philadelphia, PA 19106 U.S. Department of Agriculture U S Department of Agriculture Chief of the Forest Service 4th Floor N W., Auditors' Building 14th St. and Independence Ave., S.W. Washington, DC 20250
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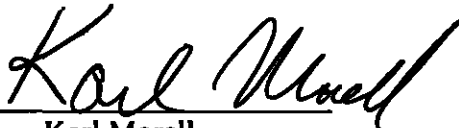
Dated July 31, 2008


Karl Morell

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in STB Docket No AB-1020X was published on June 27, 2008, in The Reading Eagle, a newspaper of general circulation in Berks County, Pennsylvania, and on June 26, 2008, in the Pottstown Mercury, a newspaper of general circulation in Montgomery County, Pennsylvania, as required by 49 C F R. § 1105.12

Dated: July 31, 2008


Karl Morell

**ENVIRONMENTAL REPORT
CERTIFICATE OF SERVICE**

Pursuant to the requirements of 49 C.F.R. § 1105.7, the undersigned hereby certifies that a copy of the Environmental Report in SIB Docket No. AB-1020X was mailed via first class mail on June 4, 2008, to the following parties

Pennsylvania Department of Transportation P.O. Box 3441 Harrisburg, PA 17120 Atlanta, Georgia 30334 Montgomery County Board of Commissioners One Montgomery Plaza Suite 800 Norristown, PA 19404 Berks County Board of Commissioners Services Center, 13th Floor 633 Court Street Reading, PA 19601 USDA Natural Resources Conservation Service Leesport Service Center 1238 County Welfare Road Leesport, PA 19533-9199 U S. Fish and Wildlife Service 300 West Gate Center Drive Hadley, MA 01035-9589 National Park Service RTCA Program 1201 Eye Street, NW, 9th Floor Org Code 2240 Washington, D.C 20005	National Park Service RTCA Program U S Custom House 200 Chestnut Street, Fifth Floor Philadelphia, PA 19106 Department of Environmental Protection P O. Box 2063 Harrisburg, PA 17105-2063 U.S. Environmental Protection Agency 1650 Arch Street Philadelphia, PA 19103 U S Army Corps of Engineer, Philadelphia District The Wanamaker Building 100 Penn Square East Philadelphia, PA 19107-3390 The National Geodetic Survey Department of Commerce/NOAA SSMC3 Station 9356 1315 East West Highway Silver Spring, MD 20910
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Dated July 31, 2008



Karl Morell

**HISTORIC REPORT
CERTIFICATE OF SERVICE**

Pursuant to the requirements of 49 C.F.R. § 1105.8(c), the undersigned hereby certifies that a copy of the Historic Report in STB Docket No. AB-1020X was mailed via first class mail on June 4, 2008, to the following party:

Pennsylvania Historical and Museum Commission
300 North Street
Harrisburg, PA 17120

Dated: July 31, 2008


Karl Morell

WORKPAPERS

East Penn Railroad LLC

Colebrookdale Line Abandonment Petition

Cost Data and Calculations

Base Year

2007

Item	Cost Component	Cost
a	Maintenance of Way and Structures	\$ 55,900
b	Maintenance of Equipment	\$ 14,572
c	Transportation	\$ 35,149
d	General & Administrative	\$ 44,881
e	Deadheading, Taxi & Hotel	\$ 3,733
f	Overhead Movement	\$ -
g	Freight Car Costs	\$ -
h	Return on Value - Locomotives	\$ 7,052
i	Return on Value - Freight Cars	\$ -
j	Revenue Taxes	\$ -
k	Property Taxes	\$ 1,969
Total Avoidable Costs		\$ 163,256
Avoidable (Loss) or Profit		\$ (80,330)

Cost Worksheet

Base Year

2007

Item	Cost Component	Total	Miles	Normalized Mile Per Mile
a	Maintenance of Way and Structures	\$ 55,900	86	6500
b	Maintenance of Equipment	\$ 14,572		
c	Transportation - Wages & Fringes	\$ 31,832	Crew Time	Wage & Fringe Per hour
d	Transportation - Fuel	\$ 3,188	8 \$	19 13
e	Transportation - Lube Oil	\$ 129		Employees
f	Transportation - Total	\$ 35,149		Trips Per Year
g	General & Administrative - Electric	\$ 1,102		2
h	General & Administrative - 2007	\$ 42,099	\$ 587,432 55	120
i	General & Administrative - Signal Mice	\$ 1,680		
j	General & Administrative	\$ 44,881		
k	Deadheading, Taxi & Hotel	\$ 3,733	Rounding Miles	Mileage Rate
l	Overhead Movement	\$ -	74	0.485
m	Freight Car Costs	\$ -		Employees
n	Return on Value - Locomotives	\$ 7,052		Trips Per Year
o	Return on Value - Freight Cars	\$ -		1
p	Revenue Taxes	\$ -		
q	Property Taxes	\$ 1,969	26250	120
r		-		9
s	Wages & Benefits		Years	Loco-Mech
t	Benefits = \$33/day per employee	\$ 4 13	4 13	4 13
u	Wages per hour	\$ 15 00	\$ 15 25	
v	Total Wages and Fringes per employee, per hour	\$ 19 13	\$ 19 38	
w			Total Active	Cost Per
x		2007 Totals	Locomotives	Active Loco
y	Locomotive Mechanical Wages & Fringes	\$ 44,341	13 \$	3,411
z	Loco Mize	104284	13 \$	8,022 \$
aa	Depreciation	3139		11,433
ab	Total Loco Mize Costs		\$ 3,139	
ac			\$ 14,572	
ad			Estimated 2007	
ae			Cost Per	
af			Total Loaded Rail	Loaded Rail
ag			Cars	Colebrookdale
ah		2007 Totals	Car	2007 Carloads
ai	Lube Oil 2007	6960	4809 \$	89 \$
aj	System Fuel Cost 2007	172248	4809 \$	89 \$
ak			Pretax Cost Of	Return on Value
al		Undepreciated	Capital	Loco
am	Return on Value - Locomotive	\$ 47,079	14.98%	1 \$
an				7,052

East Penn Railroad LLC

Colebrookdale Line Abandonment Petition

Cost Data and Calculations

Forecast Year August 2008 through July 2009

Item	Cost Component	Cost
a	Maintenance of Way and Structures	\$ 55,900 00
b	Maintenance of Equipment	\$ 14,915 00
c	Transportation	\$ 36,347 00
d	General & Administrative	\$ 25,559.00
e	Deadheading, Taxi & Hotel	\$ 4,502 00
f	Overhead Movement	\$ -
g	Freight Car Costs	\$ -
h	Return on Value - Locomotives	\$ 6,582 00
i	Return on Value - Freight Cars	\$ -
j	Revenue Taxes	\$ -
k	Property Taxes	\$ 1,969 00
Total Avoidable Costs		\$ 145,774.00
Avoidable (Loss) or Profit		\$ (81,584 00)

Cost Worksheet

Forecast Year	August 2008 through July 2009
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Item	Cost Component	Total	Miles	Normalized Mile Per Man
a	Maintenance of Way and Structures	\$ 55,900	86	6500
b	Maintenance of Equipment	\$ 14,915		
c	Transportation - Wages & Fringes	\$ 32,781		
d	Transportation - Fuel	\$ 3,434		
e	Transportation - Lube Oil	\$ 132		
f	Transportation - Total	\$ 36,347		
g	General & Administrative - Electric	\$ 1,135		
h	General & Administrative - Signal Mico	\$ 16,824		
i	General & Administrative	\$ 7,600		
j	General & Administrative	\$ 25,359		
k	Deadheading, Taxi & Hotel	\$ 4,502		
l	Overhead Movement	\$		
m	Freight Car Costs	\$		
n	Return on Value - Locomotives	\$ 6,582		
o	Return on Value - Freight Cars	\$		
p	Revenue Taxes	\$		
q	Property Taxes	\$ 1,969		
r	Wages & Benefits			
s	Benefits = \$33/day per employee plus 3% increase	\$ 4,25	\$ 4,25	
t	Wages per hour - 2007 cost plus 3%	\$ 15.45	\$ 15.75	
u	Total Wages and Fringes per employee, per hour	\$ 19.70	\$ 20.00	
v	Locomotive Mechanical Wages & Fringes	\$ 44,341		
w	Loco Mico (2007 cost plus 3%)	\$ 104,284		
x	Depreciation	\$ 3139		
y	Total Loco Mico Costs	\$ 14,915.00		
z	Lube Oil (Jan May 2008)	\$ 4,116		
aa	System Fuel Cost (Jan May 2008)	\$ 107,267		
ab	Return on Value - Locomotive	\$ 43,940		
ac	Return on Value - Locomotive	\$ 14,906		
ad	Return on Value - Locomotive	\$ 6,582		