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DJD# 0102137001

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February 21, 2003

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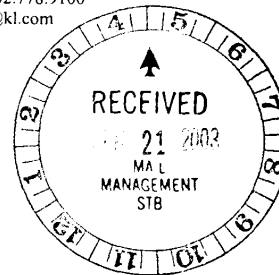
**SURFACE
TRANSPORTATION BOARD**

Tracie D. Spear
202.778.9390
Fax: 202.778.9100
tspear@kl.com

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

207283



**Re: Finance Docket No. 34293, Metro-North Commuter
Railroad Company – Sublease and Operation Exemption
– Line of Norfolk Southern Railway Company and
Pennsylvania Lines LLC**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Metro-North Commuter Railroad Company**. A check in the amount of \$1,300.00, representing the appropriate fee for the Notice of Exemption, is enclosed.

Should any questions arise regarding these filings, please feel free to contact me. Thank you for your assistance in this matter.

Respectfully submitted,

**ENTERED
Office of Proceedings**

FEB 24 2003

**Part of
Public Record**

Tracie D. Spear
Attorney for Metro-North Commuter
Railroad Company

Enclosures

**ENTERED
Office of Proceedings**

FEB 24 2003

**Part of
Public Record**

ENTERED
Office of Proceedings

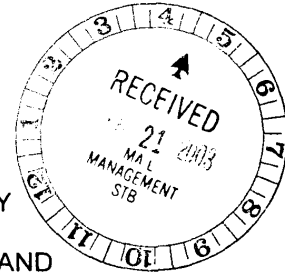
BEFORE THE
SURFACE TRANSPORTATION BOARD

FEB 24 2003

Part of
Public Record

FINANCE DOCKET NO. 34293

METRO-NORTH COMMUTER RAILROAD COMPANY
-- SUBLEASE AND OPERATION EXEMPTION --
LINE OF NORFOLK SOUTHERN RAILWAY COMPANY AND
PENNSYLVANIA LINES LLC



VERIFIED NOTICE OF EXEMPTION
OF
METRO-NORTH COMMUTER RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1150.32

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Richard K. Bernard, Esq.
Vice President and General Counsel
Metro-North Commuter Railroad Company
347 Madison Avenue
New York, NY 10017

Kevin M. Sheys, Esq.
Edward J. Fishman, Esq.
Tracie D. Spear, Esq.
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue, N.W. --
2nd Floor
Washington, DC 20036-1800
(202) 778-9000

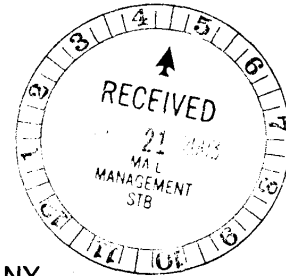
ATTORNEYS FOR METRO-NORTH
COMMUTER RAILROAD COMPANY

Dated: February 21, 2003

FILED
FEB 21 2003
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34293



ENTERED
Office of Proceedings
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Public Record

METRO-NORTH COMMUTER RAILROAD COMPANY
-- SUBLEASE AND OPERATION EXEMPTION --
LINE OF NORFOLK SOUTHERN RAILWAY COMPANY AND
PENNSYLVANIA LINES LLC

FEE RECEIVED
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TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION
OF
METRO-NORTH COMMUTER RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1150.32

Pursuant to 49 C.F.R. § 1150.31 et seq., Metro-North Commuter Railroad Company ("Metro-North"), a public benefit corporation of the State of New York,¹ hereby files this Notice of Exemption to sublease and operate a rail line currently owned by Pennsylvania Lines LLC ("PRR") and leased and operated by Norfolk Southern Railway Company ("NSR") in Orange and Rockland Counties, New York (the "Subject Line").² The total distance of the Subject Line is approximately 66.5 route miles. Based on projected revenues for the Subject Line, Metro-North does not expect to become a Class III rail carrier after consummation of the transaction proposed herein.

¹ Metro-North is a subsidiary of Metropolitan Transportation Authority. Metro-North is not a carrier subject to STB jurisdiction because it is a local governmental authority that provides mass transportation. See 49 U.S.C. § 10501(c).

² The Subject Line is a continuous line of railroad between Suffern and Port Jervis, NY that is sometimes referred to as the Port Jervis Line.

In accordance with the requirements of 49 C.F.R. § 1150.33, Metro-North submits the following information:

ADVANCE NOTICE: **49 C.F.R. § 1150.32(e)**

The projected annual freight revenue of Metro-North will not exceed \$5 million. Accordingly, the requirements of 49 C.F.R. § 1150.32(e) do not apply to this transaction. Nonetheless, on October 24, 2002, NSR gave notice to the employees on the Subject Line and to the national offices of the labor unions with employees on the Subject Line. The transaction proposed herein will not become effective before February 28, 2003, which is more than 60 days after such notice was given.

NAME AND ADDRESS OF APPLICANT: **49 C.F.R. § 1150.33(a)**

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

Metro-North Commuter Railroad Company
347 Madison Avenue
New York, NY 10017

APPLICANT'S REPRESENTATIVE: **49 C.F.R. § 1150.33(b)**

Metro-North's representative to whom correspondence regarding this transaction should be addressed is as follows:

Kevin M. Sheys, Esq.
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue, N.W. - 2nd Floor
Washington, DC 20036-1800
(202) 778-9290

STATEMENT CONCERNING AGREEMENT: 49 C.F.R. § 1150.33(c)

Metro-North, NSR and PRR will enter into a Sublease and a separate Operations Agreement providing for Metro-North's sublease and operation of the Subject Line.³ The Sublease and Operations Agreement also will govern NSR's retention of exclusive, irrevocable, perpetual freight operating rights on the Subject Line.

Metro-North provides mass transportation for commuters in seven counties in the State of New York as well as in two counties in the State of Connecticut. Since implementation of the Northeast Rail Services Act, Metro-North has provided rail passenger service over the Subject Line under a Trackage Rights Agreement among, *inter alia*, Metro-North, MTA and Consolidated Rail Corporation ("Conrail"), dated January 1, 1983 ("1983 Trackage Rights Agreement").⁴ The 1983 Trackage Rights Agreement would have expired by its terms on December 31, 1997, but was extended under two renewal agreements. The Sublease and Operations Agreement will replace the 1983 Trackage Rights Agreement.

³ PRR will consent and be a party to the Sublease and Operations Agreement only for purposes of those Articles in which it assumes stated obligations or reserves certain rights.

⁴ Norfolk Southern Corporation ("NSC"), parent to NSR, entered into a Transaction Agreement (the "Conrail Transaction Agreement") among NSC and CSX Transportation, Inc. ("CSXT"), a wholly-owned subsidiary of CSX Corporation ("CSX"); NSR; Conrail Inc. ("CRR"); Conrail, a wholly-owned subsidiary of CRR; and CRR Holdings LLC, pursuant to which CSX and NSC indirectly acquired all the outstanding capital stock of CRR. STB Finance Docket No. 33388, CSX Transportation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - - Control and Operating Leases/Agreements - - Conrail, Inc. and Consolidated Rail Corporation, (STB served July 23, 1998). Pursuant to the Conrail Transaction Agreement, certain Conrail assets, including the Subject Line, were allocated to PRR, a wholly-owned subsidiary of Conrail. These Conrail assets are leased and operated by NSR under the terms of an allocated assets operating agreement between PRR and NSR, effective as of June 1, 1999.

OPERATION OF THE PROPERTY: 49 C.F.R. § 1150.33(d)

Metro-North will operate rail passenger service on the Subject Line. NSR will continue to operate freight rail service on the Subject Line.

SUMMARY OF THE TRANSACTION: 49 C.F.R. § 1150.33(e)

Pursuant to a Sublease and Operations Agreement to be entered into between Metro-North, NSR and PRR, Metro-North will sublease and operate the following segments of rail line: 1) between approximately Milepost JS-31.3 at Suffern, NY and approximately Milepost JS-76.6 at CP-Howells, NY; and 2) between approximately Milepost SR-68.7 (equals JS-76.6) at CP-Howells, NY and approximately Milepost SR-89.9 at Port Jervis, NY. The total distance of the Subject Line is approximately 66.5 route miles, within the counties of Orange and Rockland, New York. The Subject Line is owned by PRR and currently operated by NSR. NSR will retain the exclusive, irrevocable and perpetual right to provide freight rail service on the Subject Line. The Sublease will replace a trackage rights agreement under which Metro-North currently provides passenger service over the Line. NSR will retain the exclusive right to provide freight service over the Line.

The parties do not intend to consummate the transaction until February 28, 2003, which is more than seven days after the filing of this Notice of Exemption.

The name and address of the railroad sub-lessor of the Subject Line is as follows:

Norfolk Southern Railway Company

Three Commercial Place
Norfolk, VA 23510

Metro-North will file shortly a Motion to Dismiss this Notice of Exemption, in order to obtain a jurisdictional determination regarding Metro-North's common carrier status on the Subject Line.⁵

MAP: 49 C.F.R. § 1150.33(f)

A map indicating the area served by the Subject Line, including origins, termini, stations, cities and counties, is attached as Exhibit A to this Notice.

CERTIFICATION OF CLASS III STATUS: 49 C.F.R. § 1150.33(g)

The projected annual revenues of Metro-North as a result of this transaction will not result in the creation of a Class I or Class II rail carrier. A certificate complying with the provisions of 49 C.F.R. § 1150.33(g) is attached as Exhibit B to this Notice.

ENVIRONMENTAL/HISTORIC PRESERVATION DATA: 49 C.F.R. PART 1105

Under 49 C.F.R. § 1105.06(c)(2), the proposed sublease of the Subject Line by Metro-North is exempt from environmental reporting requirements. Metro-North's sublease of the Subject Line will not result in significant changes in carrier operations (i.e. changes that exceed the thresholds in 49 C.F.R. § 1105.7(e)(4) or (5)).

Under 49 C.F.R. § 1105.8(b)(1), the proposed sublease of the Subject Line by Metro-North also is exempt from historic preservation reporting requirements. Metro North's sublease of the line is for the purpose of operating

⁵ See State of Maine, Department of Transportation -- Acquisition and Operation Exemption -- Maine Central Railroad Company, 8 I.C.C. 2d 835 (1991).

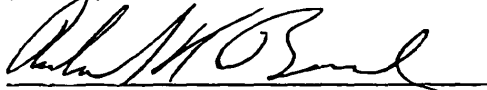
rail passenger service. Further STB approval is required to discontinue or abandon any freight rail service on the Subject Line, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

CAPTION SUMMARY: 49 C.F.R. § 1150.34

A caption summary in the appropriate form is attached as Exhibit D to this Notice of Exemption.

Respectfully submitted,

By:



Richard K. Bernard, Esq.
Vice President and General Counsel
Metro-North Commuter Railroad Company
347 Madison Avenue
New York, NY 10017

Kevin M. Sheys, Esq.
Edward J. Fishman, Esq.
Tracie D. Spear, Esq.
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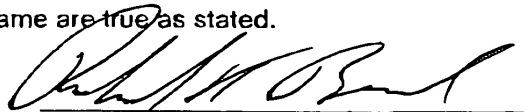
**ATTORNEYS FOR METRO-NORTH
COMMUTER RAILROAD COMPANY**

Dated: February 21, 2003

VERIFICATION

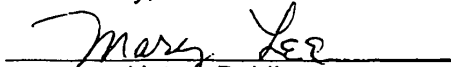
State of New York)
) ss:
County of New York)

Richard K. Bernard, being duly sworn, deposes and says that he is the Vice President and General Counsel of the Metro-North Commuter 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.



Richard K. Bernard

SUBSCRIBED AND SWORN TO
before me this 24 day
of February, 2003.


Notary Public

My Commission expires: 4/4/06

MARY LEE
Notary Public, State of New York
No. 41-4825381
Qualified in Westchester County
Commission Expires 4/4/06

EXHIBIT A

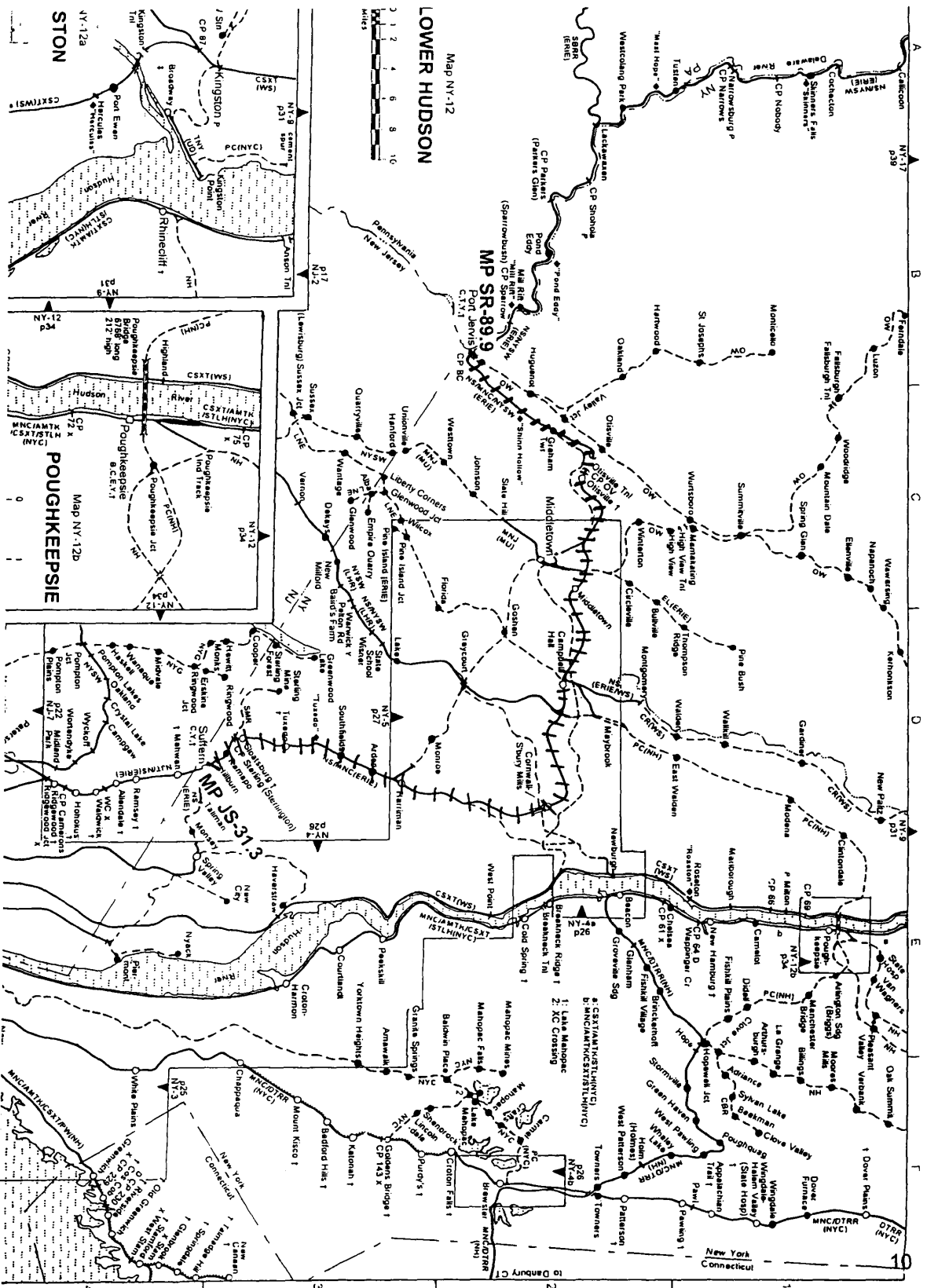
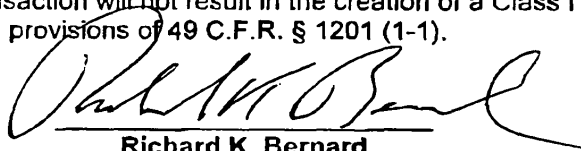


EXHIBIT B

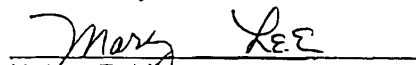
CERTIFICATION

Richard K. Bernard, being duly sworn, certifies that the projected revenues of the Metro-North Commuter Railroad Company upon consummation of the proposed transaction will not result in the creation of a Class I or Class II rail carrier under the provisions of 49 C.F.R. § 1201 (1-1).



Richard K. Bernard
Vice President and General Counsel

SUBSCRIBED AND SWORN TO
before me this 21 day
of February, 2003.


Notary Public

My Commission expires: 4/4/06

MARY LEE
Notary Public, State of New York
No. 41-4925381
Qualified in Westchester County
Commission Expires 4/4/06

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34293

METRO-NORTH COMMUTER RAILROAD COMPANY
-- SUBLEASE AND OPERATION EXEMPTION --
LINE OF NORFOLK SOUTHERN RAILWAY COMPANY AND
PENNSYLVANIA LINES LLC

Pursuant to 49 C.F.R. § 1150.31 et seq., Metro-North Commuter Railroad Company ("Metro-North"), a subsidiary of the Metropolitan Transportation Authority of the State of New York ("MTA"), has filed a Verified Notice of Exemption to sublease from Norfolk Southern Railway Company ("NSR") a rail line owned by Pennsylvania Lines LLC ("PRR") and leased and operated by NSR between approximately Milepost JS-31.3 at Suffern, NY and approximately Milepost JS-76.6 at CP-Howells, NY, and between approximately Milepost SR-68.7 (equals JS-76.6) at CP-Howells, NY and approximately Milepost SR-89.9 at Port Jervis, NY (collectively referred to as the "Subject Line"). The total distance of the Subject Line is approximately 66.5 miles in length, and traverses Orange and Rockland Counties, New York.

Metro-North shortly will file in this docket a motion to dismiss its Notice of Exemption. Metro-North is utilizing this procedure to obtain a jurisdictional determination regarding its prospective common carrier status with respect to the Subject Line. See State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad Company, 8 I.C.C.2d 835 (1991).

Comments must be filed with the Board and served on Metro-North's representative: Kevin M. Sheys, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, N.W., 2nd Floor, Washington, DC 20036-1800, (202) 778-9000.

This Notice is filed under 49 C.F.R. Section 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Date: _____, 2003

By the Board

Vernon A. Williams

Secretary