

218124

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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MYLES L. TOBIN
(312) 252-1502
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November 21, 2006

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

FEE RECEIVED

NOV 22 2006

**SURFACE
TRANSPORTATION BOARD**



Re: **Finance Docket No. 34934
Eastern States Railroad, LLC—Exemption for Purchase of Lease,
Agreement to Acquire the Leased Line, and Assignments of Operating
Rights—Central Columbiana & Pennsylvania Railway, Inc. and
Columbiana County Port Authority**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Eastern States Railroad, LLC pursuant to 49 C.F.R. § 1150.31**, dated November 21, 2006. A check in the amount of \$1,500, representing the appropriate fee for this filing, and a computer diskette containing the text of the Notice and the *Federal Register* caption summary in MS Word 2000 format are attached.

One extra copy of the Notice and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,


Myles L. Tobin

Attorney for Eastern States Railroad, LLC

Enclosures.

cc: Mr. Richard L. Cox
Mr. Todd Pickard
Mr. John Heffner
Mr. Tracy Drake
Mr. Harry A. Light

FILED
NOV 22 2006
**SURFACE
TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
NOV 22 2006
Part of
Public Record

FLETCHER & SIPPEL LLC

Mr. James F. Dowden

Mr. James E. Smith

Mr. Lance R. Miller

Mr. Geoffrey B. Treece

Allied Erecting and Dismantling Company, Inc.

Matteson Equipment Company

Mr. William H. Johnson, Norfolk Southern Railway Company, Three Commercial Place,
Norfolk, Virginia 23510

Attn: Joint Facilities Dept., CSX Transportation, Inc., 500 Water Street, 15th Floor,
Jacksonville, Florida 32202

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34934

EASTERN STATES RAILROAD, LLC
—EXEMPTION FOR PURCHASE OF LEASE, AGREEMENT
TO ACQUIRE LEASED LINE, AND ASSIGNMENTS OF OPERATING RIGHTS—
CENTRAL COLUMBIANA & PENNSYLVANIA RAILWAY, INC.
AND
COLUMBIANA COUNTY PORT AUTHORITY

FEE RECEIVED

NOV 22 2006

SURFACE
TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION
OF
EASTERN STATES RAILROAD, LLC
PURSUANT TO 49 C.E.R. § 1150.31

ENTERED
Office of Proceedings

NOV 22 2006

Part of
Public Record

FILED

NOV 22 2006

SURFACE
TRANSPORTATION BOARD

Myles L. Tobin
Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

ATTORNEYS FOR
EASTERN STATES RAILROAD, LLC

Dated: November 21, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34934

EASTERN STATES RAILROAD, LLC
—EXEMPTION FOR PURCHASE OF LEASE, AGREEMENT
TO ACQUIRE LEASED LINE, AND ASSIGNMENTS OF OPERATING RIGHTS—
CENTRAL COLUMBIANA & PENNSYLVANIA RAILWAY, INC.
AND
COLUMBIANA COUNTY PORT AUTHORITY

**VERIFIED NOTICE OF EXEMPTION
OF
EASTERN STATES RAILROAD, LLC
PURSUANT TO 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31, *et seq.*, Eastern States Railroad, LLC (“ESR”), a non-carrier, hereby files this Verified Notice of Exemption to purchase operating and lease rights (which lease, as amended, includes an agreement on the part of ESR to acquire the leased line) in a bankruptcy proceeding, receive permanent assignments of operating rights on continuous segments of lines connected to the leased line, and pending closing on the purchase of the operating and lease rights and on the permanent assignment of operating rights, receive an interim assignment of operating rights on all these lines pursuant to an Interim Operating Agreement, so that ESR can become a common carrier and commence operations prior to closing of the purchase transaction.

Specifically, ESR will be purchasing operating and lease rights, which lease as amended includes an agreement to acquire the leased line on specified terms. The line is the former Youngstown & Southern Line and runs from Milepost 35.7 in Darlington, Pennsylvania to

Milepost 0.0 in Youngstown, Ohio,¹ which was formerly operated by Central Columbiana & Pennsylvania Railway, Inc. ("CQPA") and is owned by Columbiana County Port Authority ("CCPA"). In addition, at Youngstown, ESR will receive permanent assignments of CQPA's and CCPA's operating rights running east of Milepost 0.0 in Youngstown which, in combination with other rights ESR has obtained, will, inter alia, facilitate interchange with Norfolk Southern Railway Company ("NS") and CSX Transportation, Inc. ("CSX"). Pending the closing of the lease and operating rights purchase and of the permanent assignments, ESR has entered into an Interim Operating Agreement with the Trustee of the CQPA for an interim assignment of operating rights on all the lines described herein so that it may become a common carrier and commence operations. All of this trackage is shown on Exhibit A, attached and incorporated herein, and is in Columbiana and Mahoning Counties, Ohio, and Beaver County, Pennsylvania. Based on projected revenues for the ESR, it expects to become and remain a Class III rail carrier after consummation of the transaction proposed herein.

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

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

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

¹ Currently, the Ohio & Pennsylvania Railroad Company operates over this line pursuant to an Interim Operating Agreement with the Trustee of CQPA in the CQPA bankruptcy proceeding, presently pending in the U.S. Bankruptcy Court for the Eastern District of Arkansas in Case No. 04-BK-16887T (the "CQPA Bankruptcy Proceeding"). Ohio & Pennsylvania received interim operating authority from the STB in Finance Docket No. 34632, The Ohio and Pennsylvania Railroad—Acquisition and Operation Exemption—Rail Lines of Columbiana County Port Authority in Mahoning and Columbiana Counties, OH, and Beaver County, PA, decision served December 21, 2004. Pursuant to an order of the Bankruptcy Court in the CQPA Bankruptcy Proceeding, the Ohio & Pennsylvania Interim Operating Agreement will terminate upon the effective date of this Notice of Exemption.

Eastern States Railroad, LLC
C/O Total Waste Logistics, LLC
7131 Akron Canfield Road
Canfield, Ohio 44406

Applicant's Representative: 49 C.F.R. § 1150.33(b)

ESR's representative to whom correspondence regarding this transaction should be sent is as follows:

Myles L. Tobin
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

CQPA, through the Trustee in the CQPA Bankruptcy and pursuant to an order of the Bankruptcy Court in the CQPA Bankruptcy Proceeding, has agreed to sell its operating and lease rights on CCPA as set forth in an agreement dated April 6, 2000, as amended ("CCPA Agreement") to ESR. As part of this purchase of lease and operating rights, ESR has entered into an agreement with CCPA to amend the CCPA Agreement so that, subject to certain specified pre-conditions, ESR agrees to acquire the line from Milepost 0.0 in Youngstown to Milepost 35.7 in Darlington. In addition, as part of the transaction with ESR, CQPA, through the Trustee, and CCPA are also assigning to ESR all agreements and operating rights necessary or useful to enable ESR to operate from milepost 0.0 to interchanges with NS and CSX in Youngstown which agreements and operating rights are made part of this exemption including, without limitation, the following agreements and operating rights:²

² On motion of the Trustee in the CQPA Bankruptcy with notice thereof given to all relevant parties, on November 15, 2006, the Bankruptcy Court ordered that CQPA, through its Trustee, is authorized and directed to assign its rights under the CCPA Agreement and all operating agreements including, but not limited to, the

(A) Overhead Trackage Rights Agreement dated May 7, 2001 between Ohio & Pennsylvania Railroad Company (which, together with its parent and all affiliates, "OHPA") and CQPA.

(B) Letter Agreement dated November 30, 2001 between OHPA, CQPA and CCPA.

(C) Interchange Agreement dated July 23, 2002, as amended and in effect, among CSX, OHPA and CQPA and Interline Service Agreement, effective date April 1, 2004, between CSX and CQPA.

(D) Land Lease dated August 8, 2003 between CSX and CQPA.

(E) Interchange Agreement dated May 1, 2001, and Interline Service Agreement, effective date October 5, 2004 between CQPA and NS.

(F) Easements granted by Allied Erecting & Dismantling Company, Inc. ("Allied") to The Pittsburgh and Lake Erie Railroad Company ("PLE") by agreements dated June 3, 1992, and November 10, 1993, and easements retained by PLE in deeds dated June 3, 1992, and November 10, 1993, from PLE to Allied (collectively, the "Allied Easements"), which Allied Easements were conveyed by Youngstown and Southern Railway Company (successor-in-interest to PLE) to Railroad Ventures, Inc. ("RVI") by deed dated November 8, 1996, and by RVI to CCPA by deed dated January 23, 2001, and were included in the rights granted to CQPA in the CCPA Agreement, including rights over the C.P. Graham Interlocking, and which collective rights were also conferred on CCPA by order of the Bankruptcy Court dated March 28, 2002 in In re: Pittsburgh & Lake Erie Properties, Inc., Case No. 96-406 (MFW).

(G) Operating Rights Agreement between Matteson Equipment Company (Matteson) and CQPA.

agreements listed on (A) through (G) on pages 3-4 herein to ESR.

Also, ESR has entered into a further agreement with Matteson dated July 14, 2006 (Matteson Agreement) for operation on certain tracks as shown in Exhibit A, and this agreement is being made a part of this Exemption.

Prior to closing on the lease and operating rights purchase and on the permanent assignment of the agreements and operating rights as described herein, ESR will receive an interim assignment of all these rights and agreements pursuant to an Interim Operating Agreement with the Bankruptcy Trustee so that it can become a common carrier and commence operations while progressing to the closing.

Operation of the Property: 49 C.F.R. § 1150.33(d)

ESR will be a common carrier on the tracks between Milepost 35.7 at Darlington, Pennsylvania and Milepost 0.0 at Youngstown, Ohio. Once ESR acquires these rights, it will sublease rights on this segment to the Youngstown & Southeastern Railroad Company, Inc. ("Y&S"), a subsidiary of Indiana Boxcar, Inc.

Y&S will be filing the appropriate Notice of Exemption for the right to operate between Milepost 35.7 and Milepost 0.0. Y&S shall then be the operator on the line and have common carrier status, but ESR will retain its common carrier status on the line between Milepost 0.0 and Milepost 35.7.

For the lines in Youngstown east of Milepost 0.0 that are described on pages 3-5 herein and include the lines described in items (A) through (G) and the Matteson Agreement, ESR shall be the common carrier, but Y&S shall operate on the lines solely as an agent of and in the name of ESR (See, decisions in combined Finance Docket Nos. 34145, Bulkmatic Railroad Corporation—Acquisition and Operation Exemption—Bulkmatic Transport Company, and

34179, ~~Bulkmatic Railroad Corporation—Operation Exemption—Bulkmatic Transport Company~~, served November 19, 2002 and May 15, 2003).

Summary of the Transaction: 49 C.F.R. § 1150.33(e)

ESR intends to obtain the interim assignment of all these rights and agreements described herein pursuant to an Interim Operating Agreement and commence operations on November 29, 2006.

CQPA's address is:
C/O Richard L. Cox, Trustee
835 Central, Suite 510
Hot Springs, Arizona 71901

CCPA's address is:
1250 St. George St.
East Liverpool, Ohio 43920

Pursuant to the agreements already described herein, ESR shall become a common carrier by rail on a line between 0.0 in Youngstown, Ohio and Milepost 35.7 in Darlington, Pennsylvania, a total of approximately 35.7 miles. In addition, in Youngstown, by virtue of purchase and assignment of operating rights and exercise of existing rights, ESR shall become a common carrier by rail on trackage east of Milepost 0.0 in Youngstown on tracks and/or property owned, starting at Milepost 0.0 and heading east through Youngstown, by OHPA, then by Allied Erecting & Dismantling, over the C. P. Graham Interlocking with NS, then by OHPA again as the tracks cross the Mahoning River, then by Matteson Equipment Company, and finally again by OHPA to a point of connection with CSX and on property leased from CSX.³ The operating rights through Youngstown east of Milepost 0.0 facilitate, among other things, interchange with CSX and NS. The length of these operating rights east of Milepost 0.0 in Youngstown is approximately 3 miles.

The total route miles that are the subject of this exemption are approximately 38.7 miles.

³ OHPA is part of the Ohio Central Railroad System.

Map: 49 C.F.R. § 1150.33(f)

Maps showing the tracks that are the subject of this exemption are attached as Exhibit A to this notice.

Certificate of Compliance: 49 C.F.R. § 1150.33(g)

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.33(g) is attached as Exhibit B to this notice.

Advance Notice: 49 C.F.R. § 1150.32(e)

The projected annual operating revenue of ESR upon consummation of this transaction does not exceed \$5 million, and, accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable to this transaction. See Exhibit B hereto.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under C.F.R. § 1105.6(c)(2), ESR's proposed operation of the tracks as described herein is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), ESR's exemption herein is also exempt from historic preservation reporting requirements. The proposed transactions are for the purpose of continued rail operations. Further, Surface Transportation Board approval is required to discontinue or abandon any service, 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. § 1150.44

A caption summary in appropriate form is attached as Exhibit C to this notice.

Respectfully submitted,

By: 

Myles L. Tobin

Michael J. Barron, Jr.

Fletcher & Sippel LLC

29 North Wacker Drive, Suite 920

Chicago, Illinois 60606-2832

(312) 252-1500

**ATTORNEYS FOR EASTERN STATES
RAILROAD, LLC**

Dated: November 21, 2006

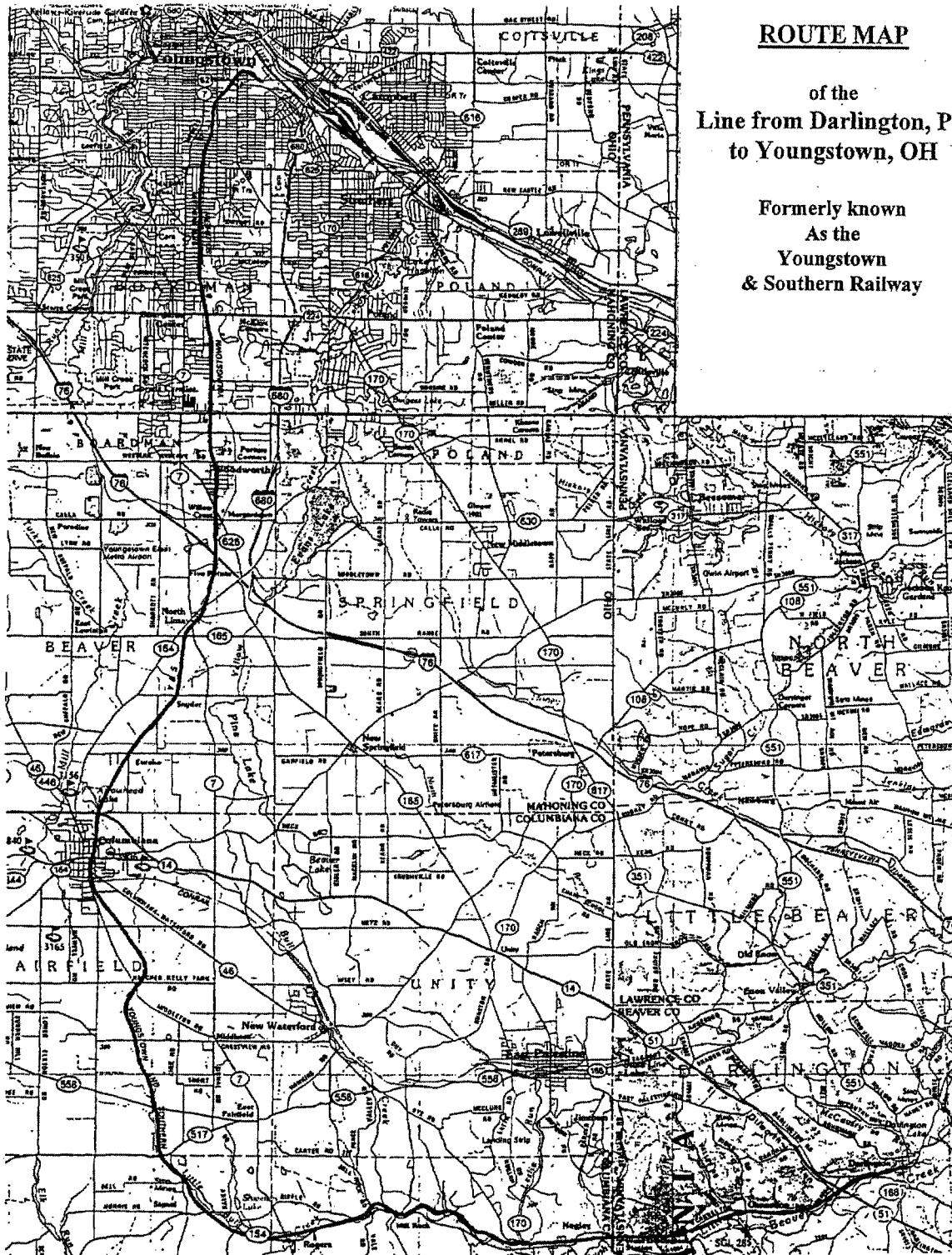
EXHIBIT A

Page 1 of 2

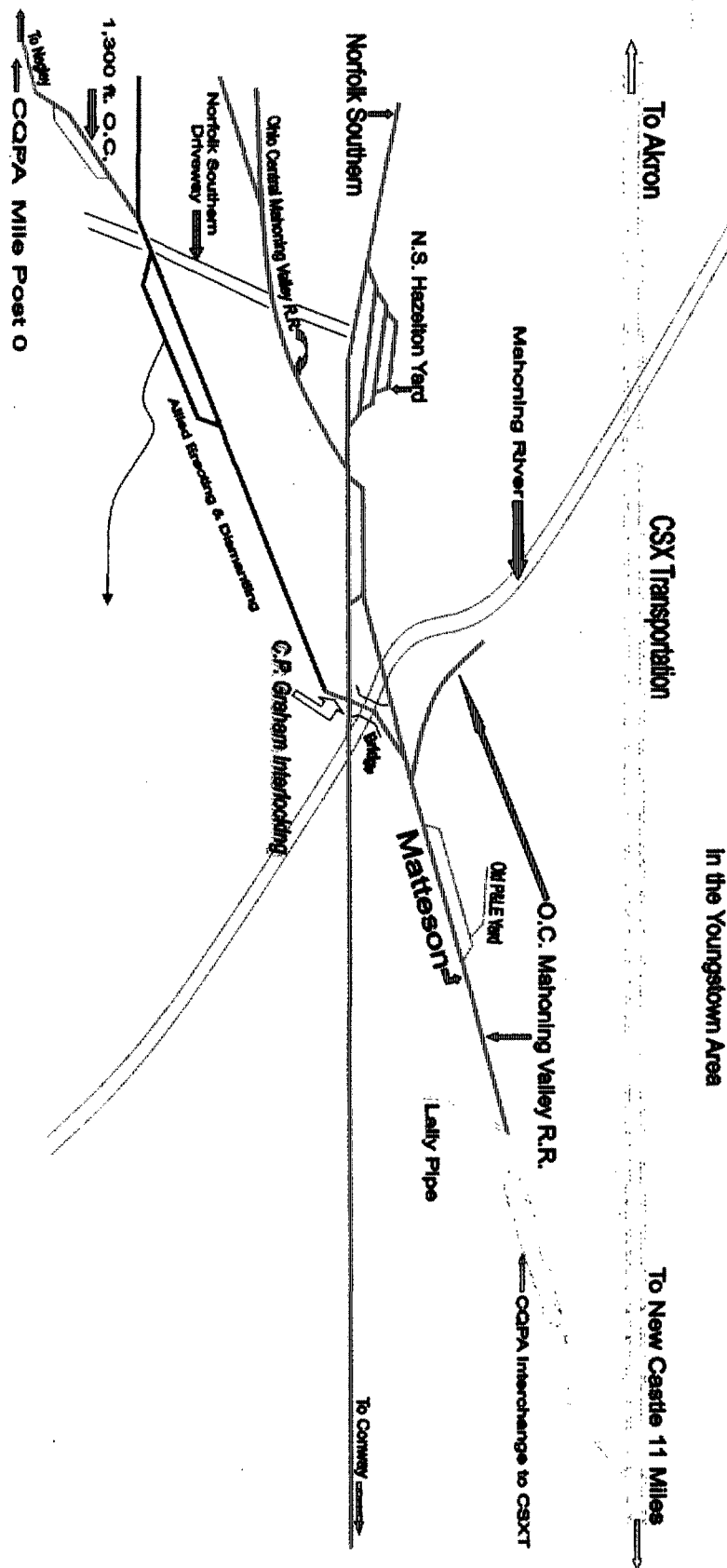
ROUTE MAP

of the
Line from Darlington, PA
to Youngstown, OH

Formerly known
As the
Youngstown
& Southern Railway



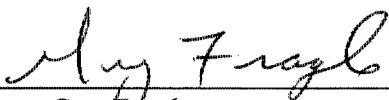
Youngstown Southern D.B.A. CQPA
 Trackage Rights, Easements, R.O.W.'s
 in the Youngstown Area



CERTIFICATION

State of Ohio)
)
County of Mahoning) ss:

Guy Fragle, being duly sworn, hereby certifies that the projected annual rail revenue of Eastern States Railroad, LLC does not exceed \$5 million and will not result in the creation of a Class II or Class I carrier under the provisions of 49 C.F.R. § 1201(1-1).



Guy Fragle
Managing Director
Eastern States Railroad, LLC

SUBSCRIBED AND SWORN TO
before me this 17th day
of November, 2006



Notary Public

My Commission expires:

JOHN D. VIGLIO
NOTARY PUBLIC, STATE OF OHIO
COMM. EXP. FEB. 27, 2007

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34934

**EASTERN STATES RAILROAD, LLC
—EXEMPTION FOR PURCHASE OF LEASE, AGREEMENT
TO ACQUIRE LEASED LINE, AND ASSIGNMENTS OF OPERATING RIGHTS—
CENTRAL COLUMBIANA & PENNSYLVANIA RAILWAY, INC.
AND
COLUMBIANA COUNTY PORT AUTHORITY**

EASTERN STATES RAILROAD, LLC (“ESR”) a non-carrier, has filed a Verified Notice of Exemption to purchase from Central Columbiana & Pennsylvania Railway, Inc. (“CQPA”), through its Bankruptcy Trustee, CQPA’s operating and lease rights on Columbiana County Port Authority (“CCPA”) as set forth in an agreement dated April 6, 2000, as amended (“CCPA Agreement”). As part of this purchase of operating and lease rights, ESR has entered into an agreement with CCPA which amends the CCPA Agreement so that, subject to certain specified pre-conditions, ESR agrees to acquire the leased line which runs from Milepost 0.0 in Youngstown to Milepost 35.7 in Darlington. In addition, as part of the transaction with ESR, CQPA, through the Trustee, and CCPA are also assigning to ESR all agreements and operating rights necessary or useful to enable ESR to operate from milepost 0.0 to interchanges with NS and CSX in Youngstown, which agreements and operating rights are made part of this exemption including, without limitation, the following agreements and operating rights:

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(G) Operating Rights Agreement between Matteson Equipment Company (Matteson) and CQPA.

Also, ESR has entered into a further agreement with Matteson dated July 14, 2006 for operation on certain tracks as shown in Exhibit A, and this agreement is being made a part of this Exemption.

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The line over which ESR shall become a common carrier runs between 0.0 in Youngstown, Ohio and Milepost 35.7 in Darlington, Pennsylvania, a total of approximately 35.7 miles. In addition, in Youngstown, by virtue of assignment of operating rights and exercise of existing rights, ESR shall become a common carrier by rail on trackage east of Milepost 0.0 in Youngstown on tracks and/or property owned, starting at Milepost 0.0 and heading east through Youngstown, by OHPA, then by Allied Erecting & Dismantling, over the C. P. Graham Interlocking with NS, then by OHPA again as the tracks cross the Mahoning River, then by Matteson Equipment Company, and finally again by OHPA to a point of connection with CSX and on property leased from CSX.¹ The operating rights through Youngstown east of Milepost 0.0 facilitate, among other things, interchange with CSX and NS. The length of these operating rights east of Milepost 0.0 in Youngstown is approximately 3 miles.

The total route miles that are the subject of this exemption are approximately 38.7 miles.

¹ OHPA is part of the Ohio Central Railroad System.

ESR intends to obtain the interim assignment of all these rights and agreements described herein pursuant to an Interim Operating Agreement and to commence operations on November 29, 2006.

Comments must be filed with the Board and served on:

Myles L. Tobin
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

This Notice is filed under 49 C.F.R. § 1150.31. If this Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: _____, 2006

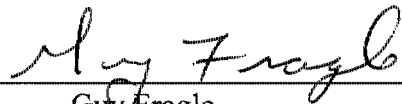
By the Board

Vernon A. Williams
Secretary

VERIFICATION

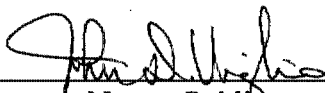
State of Ohio)
)
County of Mahoning) ss:

Guy Fragle, being duly sworn, deposes and says that he is Managing Director of Eastern States Railroad, LLC, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Guy Fragle
Managing Director
Eastern States Railroad, LLC

SUBSCRIBED AND SWORN TO
before me this 17th day
of November, 2006



Notary Public

My Commission expires:

JOHN D. VIGLIO
NOTARY PUBLIC, STATE OF OHIO
COMM. EXP. FEB. 27, 2007