

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

218135



FINANCE DOCKET NO. 34962

YOUNGSTOWN & SOUTHEASTERN RAILWAY COMPANY
- SUBLEASE AND OPERATION EXEMPTION -
LINES OF EASTERN STATES RAILROAD, LLC

ENTERED
Office of Proceedings
NOV 22 2006
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Public Record

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NOV 22 2006

SURFACE
TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION
OF
YOUNGSTOWN & SOUTHEASTERN RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1150.31

Respectfully Submitted by

John D. Heffner
John D. heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

Its Attorney

Dated: November 22, 2006

FILED

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FINANCE DOCKET NO. 34962

YOUNGSTOWN & SOUTHEASTERN RAILWAY COMPANY
- SUBLEASE AND OPERATION EXEMPTION -
LINES OF EASTERN STATES RAILROAD, LLC

VERIFIED NOTICE OF EXEMPTION
OF
YOUNGSTOWN & SOUTHEASTERN RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1150.3

Pursuant to 49 C.F.R. § 1150.31, et seq., the Youngstown & Southeastern Railway Company ("Y&S"), a non-carrier, hereby files this Verified Notice of Exemption to sublease and operate as a common carrier in its own right a series of interconnected railroad lines that Eastern States Railroad, LLC ("ESR"), another non-carrier will be acquiring by lease, purchase and assignment. The lines that Y&S will be subleasing and/or operating total 38.7 miles and are described in more detail in the verified notice of exemption filed concurrently by ESR in Finance Docket No. 34934. They include the former Youngstown & Southern Line that runs from Milepost 35.7 in Darlington, PA, to

Milepost 0.0 in Youngstown, OH,¹ that was formerly operated by Central Columbiana & Pennsylvania Railway, Inc. ("CQPA") and is currently owned by Columbiana County Port Authority ("CCPA"). In addition, at Youngstown, Y&S will operate as ESR's agent and in ESR's name rather than in its own right permanent assignments to ESR 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").² All of this trackage is shown on

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.

² The Youngstown area trackage includes rights granted by the following agreements:

(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.

Exhibit A, attached and incorporated herein, and is in Columbiana and Mahoning Counties, Ohio, and Beaver County, Pennsylvania. Based on projected revenues for the Y&S, 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, Y&S 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:

Youngstown & Southeastern Railway Company
c/o Indiana Boxcar Corporation
916 Vine Street
Connersville, IN 47331

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

(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 CCPA 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 CCPA.

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.

Y&S' representative to whom correspondence regarding this transaction should be sent is as follows:

John D. Heffner
John D. Heffner PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

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

Y&S has executed an agreement with ESR to sublease and operate as a common carrier in its own right the portion of the line between Milepost 35.7 in Darlington, PA, and Milepost 0.0 in Youngstown, OH. In addition, Y&S will operate as ESR's agent and in ESR's name the 3 miles of trackage running east of Youngstown that are the subject of permanent assignments to ESR of CQPA's and CCPA's operating rights and which will facilitate the interchange of traffic with both NS and CSX.

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

As discussed above, ESR will be acquiring the subject rail lines by purchase, lease and assignment of operating rights and will retain a residual common carrier obligation as to the segment between Milepost 35.7 at Darlington, PA, and Milepost 0.0 at Youngstown, OH. Once ESR acquires these lines and rights, it will sublease rights on this segment to Y&S, a subsidiary of Indiana Boxcar, Inc.

For the lines in Youngstown east of Milepost 0.0 that are described on page 2 herein and include the lines described in footnote 2, 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). Because it is unclear whether or not Y&S requires STB authority to provide service as ESR's agent and in ESR's name rather than as a common carrier in its own right, Y&S includes its operation of this segment in its exemption request out of an abundance of caution.

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 Agreement³ allowing Y&S to commence operations on November 29, 2006.

Pursuant to its sublease and operating agreement with ESR, Y&S shall become a common carrier by rail on a line between 0.0 in Youngstown, OH, and Milepost 35.7 in Darlington, PA, a total

³ If ESR fails to consummate the lease purchase transaction, Y&S will seek discontinuance authority (or an exemption) if requested by ESR.

of approximately 35.7 miles. In addition, in Youngstown, Y&S shall operate trackage there as an agent and in the name of ESR.

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

Map: 49 C.F.R. § 1150.33(f)

A map showing the tracks that are the subject of this exemption is 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 Y&S upon consummation of this transaction will 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

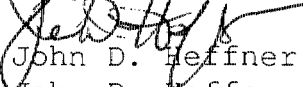
Under C.F.R. § 1105.6(c)(2), Y&S' proposed operation of the tracks as described herein is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4)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

Under 49 C.F.R. § 1105.8(b)(1), Y&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


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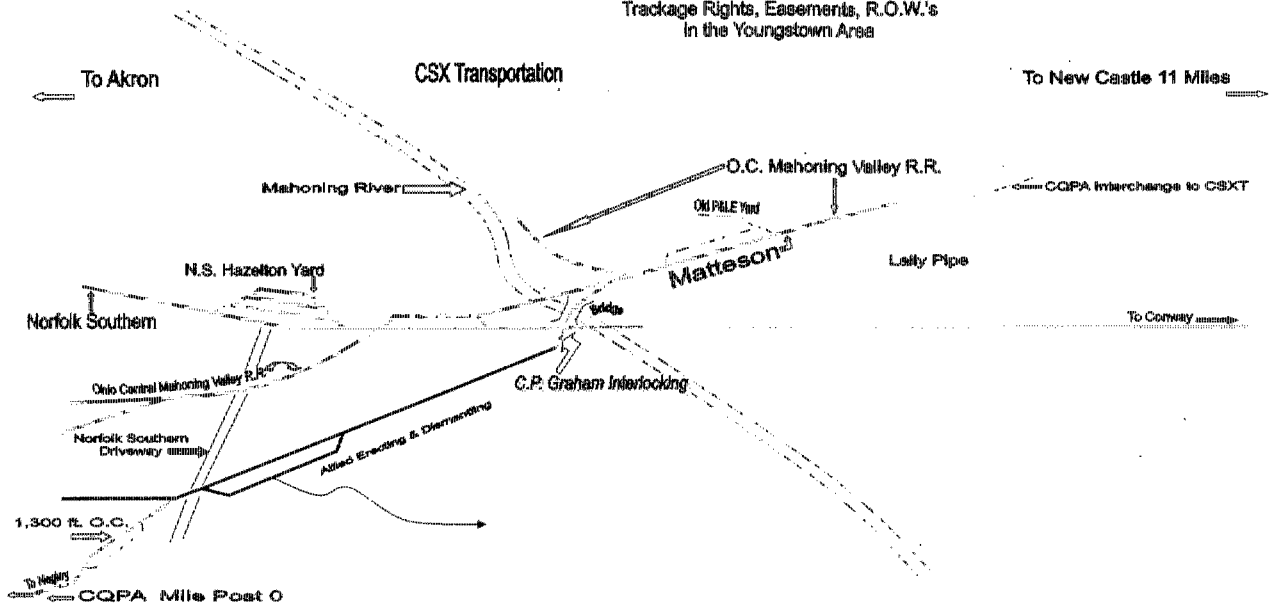
Its Attorney

Dated: November 22, 2006

EXHIBIT A

Youngstown Southern D.B.A. CQPA

Trackage Rights, Easements, R.O.W.'s
in the Youngstown Area



ROUTE MAP

of the
**Line from Darlington, PA
to Youngstown, OH**

Formerly known
As the
**Youngstown
& Southern Railway**



EXHIBIT B

CERTIFICATION

I, R. Powell Felix, as president of the Youngstown & Southeastern Railroad Company, Incorporated ("YSRR") hereby certify under penalty of perjury that annual railroad operating revenues of YSRR, in the aggregate, will not exceed \$5,000,000, and that YSRR will be a Class III rail carrier as set forth at 49 CFR 1201 (1-1) (a). Further, I certify that I am qualified and authorized to make this certification on behalf of YSRR.

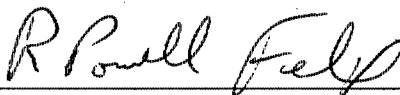

Signature

EXHIBIT C

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34962

YOUNGSTOWN & SOUTHEASTERN RAILWAY COMPANY - SUBLEASE AND OPERATION EXEMPTION - LINES OF EASTERN STATES RAILROAD, LLC

The YOUNGSTOWN & SOUTHEASTERN RAILWAY COMPANY ("Y&S") a non-carrier, has filed a Verified Notice of Exemption to sublease and operate as a common carrier in its own right a series of interconnected railroad lines that Eastern States Railroad, LLC ("ESR"), another non-carrier will be acquiring by lease, purchase and assignment. The lines that Y&S will be subleasing and/or operating total 38.7 miles and are described in more detail in the verified notice of exemption filed concurrently by ESR in Finance Docket No. 34934. They include the former Youngstown & Southern Line that runs from Milepost 35.7 in Darlington, PA, to Milepost 0.0 in Youngstown, OH, that was formerly operated by Central Columbiana & Pennsylvania Railway, Inc. ("CQPA") and is currently owned by Columbiana

County Port Authority ("CCPA"). In addition, at Youngstown, Y&S will operate as ESR's agent and in ESR's name rather than in its own right permanent assignments to ESR 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").

The line over which Y&S shall become a common carrier runs between 0.0 in Youngstown, OH, and Milepost 35.7 in Darlington, PA, a total of approximately 35.7 miles. The additional trackage east of Youngstown that Y&S will operate as an agent and in the name of ESR rather than in its own right totals approximately 3.0 miles. The total route miles that are the subject of this exemption are approximately 38.7 miles.

Y&S intends to commence operations on November 29, 2006.

Comments must be filed with the Board and served on:

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

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 Indiana)
CITY OF Fayette) SS

R. Powell Felix, being duly sworn according to law, hereby
deposes and states that (s)he is authorized to make the Verification, has
read the foregoing document, and knows the facts asserted therein are true
and accurate as stated, to the best of (her)his knowledge, information and
belief.

R Powell Felix

Subscribed and sworn to before me, a Notary Public, in and for the City of
Connersville in the State of Indiana, this 17th day of November, 2006

Sharon Z. Tyler
Notary Public

My Commission expires:

