

248556

ENTERED
Office of Proceedings
October 4, 2019
Part of
Public Record

John F. McHugh
Attorney at Law
233 Broadway, Suite 2320
New York, NY 10279

Office: 212-483-0875

Fax: 212-483-0876

October 4, 2019

Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423

Re: Perry County Railroad LLC, Operating Exemption, Uniontown Alabama
Verified Notice of Exemption and Caption Summary
Docket No. ~~FD 36296~~ FD 36361

Dear Ms. Brown:

This is a re-filing of this client's Notice of Exemption. The last was rejected due to lack of or confusing information.

Enclosed please find a check for the filing fee of \$2,000.

Thank you for your assistance. If you have any questions, please contact me.

Very truly yours

John F. McHugh

Enclosures.

FILED
October 4, 2019
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
October 4, 2019
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36361

PERRY COUNTY RAILROAD LLC

OPERATING EXEMPTION, UNIONTOWN, ALABAMA

VERIFIED NOTICE OF EXEMPTION

PERRY COUNTY RAILROAD, LLC. (“PCR”) is an LLC organized under the laws of the State of Alabama. PCR, a non-carrier, files A Notice of Exemption under 49 USC Section 10901 to exempt its agreement with Howling Coyote, LLC. and Perry County Associates, LLC, (hereinafter, “Owners”) and to operate common carrier rail service on the railroad facilities on their land, The Perry County Industrial Park, in Perry County, Alabama. This transaction involves a three track yard, lead track and tail track including 20,700 feet (3.92) miles of track which is currently used to receive rail cars of material bound to the Owners, the single customer in the Park. Currently cars are delivered onto

the property by Norfolk Southern. They are switched by Owners for materials handling which activity is being assumed by PCR. However, the property is designated as the Perry County Industrial Park and Owners seek to retain an authorized rail carrier so that car handing service can be offered to any tenants who decide to locate facilities within the park. Owners would like to be able to advertise that availability. The land and rail facilities have been leased to PCR by Owners and PCR will commence its service when this exemption becomes effective. Norfolk Southern will continue to service the facility. At this time no interchange agreement has been negotiated as car shifting service on the site is and will be billed separately under Rule 11. Pursuant to 49 CFR Section 1150.31, petitioner seeks to be designated as a common carrier so that it can offer rail service to all entities which may seek to locate facilities within this industrial park.

NOTICE

Pursuant to 49 C.F.R. Section 1150.33, PCR provides the following information:

(a) the full name of the applicant is Perry County Railroad, LLC (hereinafter “PCR”) 390 North Broadway, Suite 130, Jericho, New York 11753.

(b) the name and address of the representative of PCR who should receive correspondence is John F. McHugh, Esq. 233 Broadway, Suite 2320, New York, N.Y. 10279, 212-483-0875.

(c) Perry County Associates, and Howling Coyote, LLC., jointly Owners, have leased 20,700 feet (3.92) miles of track being a three-track yard, including its lead and tail tracks lying on the Owners’ property, between the property line of the Norfolk Southern Railroad, which is 1,050 feet from the points of its switch, and the end of track to PCR. This yard is a non-common carrier spur via which Norfolk Southern currently delivers and picks up cars for the landfill now operating on the site. The railroad to be operated by PCR runs about 7,700 feet southwest from the Norfolk Southern property line to the end of track. It is being leased to PCR for the purpose of continuing services presently

provided by Owners but extending services to the public, particularly other potential tenants of the industrial park. The Board has licensing authority pursuant to 49 U.S.C. 10901, See: *United Transp. Union-Illinois Legislative Bd. v. Surface Transp. Bd.*, 183 F. 3d 606. 613 (7th Cir. 1999).

(d) The operator of the line will be PCR.

(e) The exemption seeks authority to operate a rail common carrier, utilizing the existing trackage, within an industrial park.

1. The rail facilities were not previously owned by a railroad.

The entity transferring the operation to PCR is Perry County Associates, LLC, address of 622 Tayloe Road, Uniontown, Alabama, a non-carrier. There are no paper barriers in any agreement related to this transaction.

2. The lease will go into effect as soon as this exemption becomes effective.

3. There are no mileposts on the property. The connecting switch is located 1400' West of Mile Post 218 on the Marion Junction to Demopolis branch of the former Southern Railway, now Norfolk Southern. or 600' West of the Norfolk Southern Railroad Tayloe Rd. grade crossing, and the line extends 8,700 feet southwest from that switch. The first 1,050 feet are on Norfolk Sothern's property and are not included in this notice. The line is entirely within unincorporated Perry County, east of the City of Uniontown, in central Alabama.

4. The longest track to be operated is approximately 1.65 miles. As stated above, it runs from the Norfolk Southern property line, through a three-track yard to the end of tail track.

f. Map of the facility.

The photograph on the following page is a summary overview of the entire railroad. A detailed map can be found in Exhibits 1 and 1A.



The photograph above shows the switch into the Norfolk Southern main track in the small yellow circle. This can be seen in detail in the included map. Ex. A. Norfolk Southern owns the track from its switch to the Owner's property line or 1,050 feet. This Notice applies only to the tracks on Owners' land.

Blue line is Tayloe Road

Grey line is the internal access road for the Perry County Industrial Park and the landfill

Orange line, Perry County Railroad main track

The yellow line is the Norfolk Southern line

which extends 1.050 feet from the points of its switch to the Owners' property line.

This property is located in southwestern Perry County. While it is anticipated that sidings will need to be added to serve shippers who may wish to locate in the industrial park, no such siding will extend beyond the limits of the park. Thus, no further authority is needed to serve new customers (see: Swanson Rail Transfer, LP-Declaratory Order -Swanson Rail Yard Terminal, Docket No. FD 35424).

The attached survey of the entire Industrial Park shows that the line is entirely on the land owned by Perry County Associates, and Howling Coyote, LLC., which jointly leased the line to PCR to serve their facilities and any future tenants of their Industrial Park.

g. PCR certifies that projected revenue will not exceed that of a Class III carrier.

h. PCR certifies that the acquisition of this rail facilities lease did not involve any limit on future interchange with any third party connecting carriers. The railroad in issue is owned by Perry County

Associates, a non-carrier, which is served by Norfolk Southern (NS). No change in that agreement is contemplated. PCR anticipates that future non-Owners' traffic will move via Rule 11.

As this transaction involves only a Class III carrier, labor protection is inapplicable pursuant to 49 U.S.C. §11326(c).

This transaction does not come within 49 CFR 1105.6(b)(4). Board approval will be required to dispose of or alter any facilities which are 50 years old or older. Thus, no environmental or historic documentation is required. See 49 C.F.R. Section 1105.6(c)(1)(i); 49 C.F.R. section 1105.8(b)(1).

Pursuant to 49 CFR Section 1150.31 notice is not required as the sole customer currently served by the line, Perry County Associates, L L C is a party to the lease here in issue.

Caption Summary

Submitted herewith is the caption summary required by 49 C.F.R. Section 1150.44.

Conclusion

By reason of the above, PCR requests that the Board issue a notice permitting PCR to commence common carrier operations at any time after thirty days of the filing of this Notice of Exemption.

Dated: New York, NY
October 4, 2019

Respectfully Submitted,

John F. McHugh, Esq
Attorney for Perry County Railroad,
LLC
233 Broadway, Suite 2320
New York, NY 10279
212-483-0875
jfmchughpc@aol.com

VERIFICATION

John F. McHugh declares pursuant to 28 U.S.C. 1746 that he is the attorney for Perry County Railroad, LLC. and is authorized to make this declaration, and knows the representations hereinabove made in this Notice of Exemption are correct from his own knowledge and/or that he believes the information provided by his client to be correct based upon the information known.

Dated, New York, NY
October 4, 2019

/s/ John F. McHugh

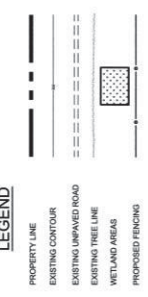
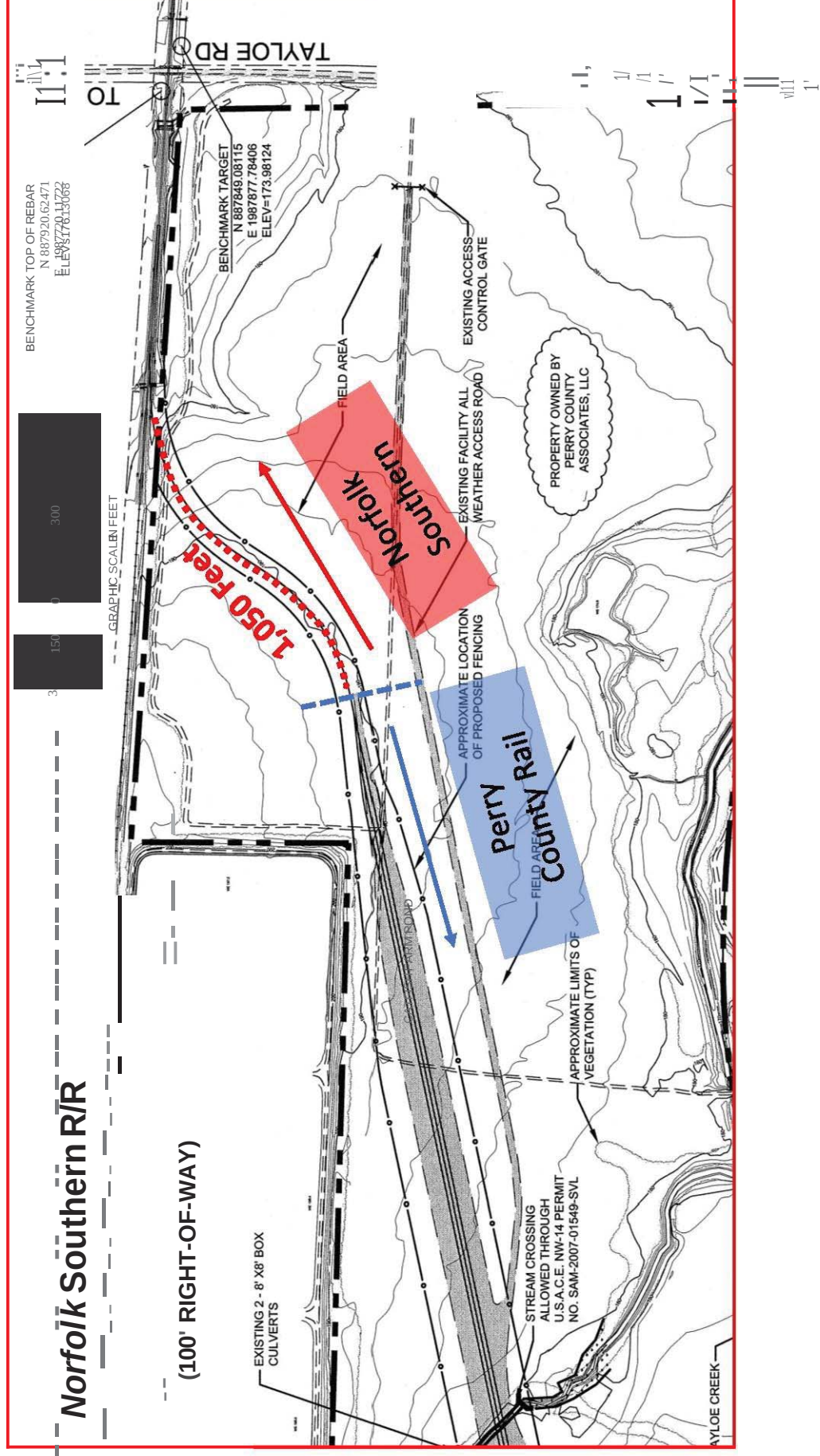
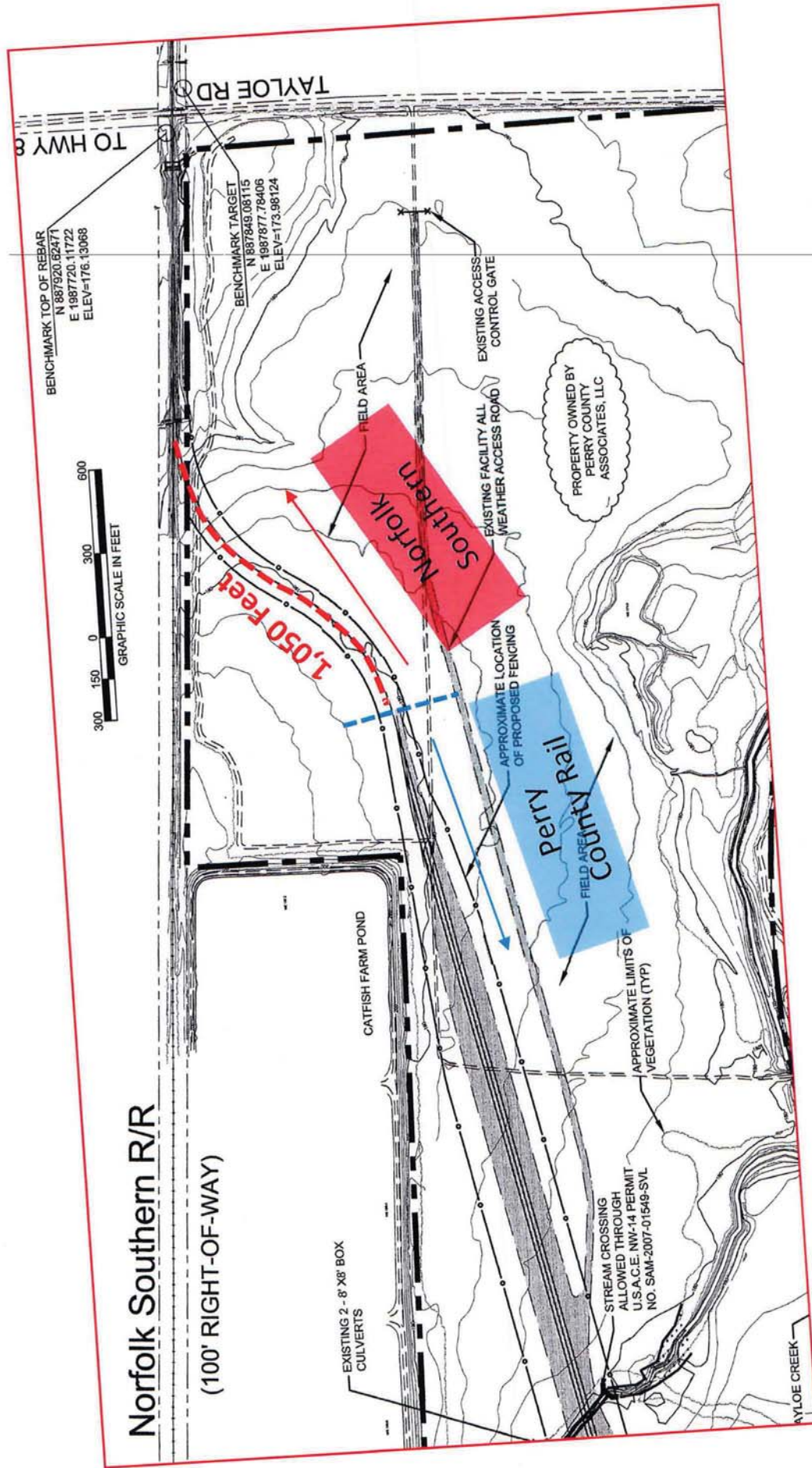


Exhibit:1A





**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36361

PERRY COUNTY RAILROAD LLC

OPERATING EXEMPTION, UNIONTOWN, ALABAMA

VERIFIED NOTICE OF EXEMPTION

PERRY COUNTY RAILROAD, LLC. (“PCR”), organized under the laws of the State of Alabama, a non-carrier, has filed a Notice of Exemption under 49 USC Section 10901 to exempt its agreement with Howling Coyote, LLC. and Perry County Associates, LLC and to operate common carrier rail service on the railroad facilities on their land in unincorporated Perry County, Alabama. This transaction involves a three track yard, including its lead and tail tracks, all together 20,700 feet (3.92) miles of track which is currently used to receive rail cars of material bound to Owners’ landfill. Currently, cars are delivered onto the property by Norfolk Southern. They are switched by Owners for material handling. The Owners’ property is designated as the Perry

Cunty Industrial Park and Owners seek to retain a rail carrier to take over its on-site rail operations and to serve any tenants who decide to locate facilities within the Perry County Industrial Park. Owners have leased the rail facilities on their land to PCR to start service on the date this exemption becomes effective. It is expected that Norfolk Southern will continue to service the facility. At this time, no interchange agreement has been negotiated as switching service on the site is and will be billed separately from line haul transportation services under Rule 11. Pursuant to 49 CFR Section 1150.31, petitioner seeks to be designated a common carrier so that it can offer rail service to all entities which may seek to locate facilities within the Perry County Industrial Park.

Comments must be filed with the Surface Transportation Board, 395 E St. SW, Washington, DC 20423 and served on petitioner's representative, John F. McHugh, Esq. 233 Broadway, Suite 2320, New York, N.Y. 10279, 212-483-0875.

This notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information the exemption is void ab initio. The filing of a petition to revoke will not automatically stay the transaction.

Dated, New York, N.Y.
October 4, 2019

John F. McHugh
233 Broadway, Suite 2320
New York, N.Y. 10279
212-483-0875