

# ALSTON & BIRD LLP

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232 552

JUL 13 2012

David M. Williamson

Direct Dial: 202-239-3223

Email: max.williamson@alston.com

July 13, 2012

## VIA HAND DELIVERY

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20024

**FEE RECEIVED**  
JUL 13 2012  
**SURFACE  
TRANSPORTATION BOARD**

**ENTERED**  
**Office of Proceedings**  
JUL 13 2012  
**Part of  
Public Record**

Re: **Finance Docket No. 35648**  
**Penn-Ohio Transportation, LLC—Exemption for Purchase of Lease,  
Assignments of Operating Rights, and Acquisition of Leased Line —  
Eastern States Railroad, LLC and Columbiana County Port  
Authority**

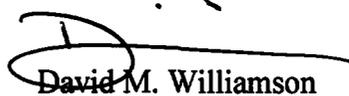
Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Penn-Ohio Transportation, LLC pursuant to 49 C.F.R. § 1152.31**, dated July 13, 2012. A check in the amount of \$1,800.00, representing the appropriate fee for this filing, is enclosed.

One extra copy of the Notice and this letter also are enclosed. I would request that you date-stamp those items to reflect your 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,



David M. Williamson  
Attorney for Penn-Ohio Transportation, LLC

**FILED**  
JUL 13 2012  
**SURFACE  
TRANSPORTATION BOARD**

Enclosure

BEFORE THE  
SURFACE TRANSPORTATION BOARD

**FEE RECEIVED**

JUL 13 2012

FINANCE DOCKET NO. 35648

**SURFACE  
TRANSPORTATION BOARD**

PENN-OHIO TRANSPORTATION, LLC  
—EXEMPTION FOR PURCHASE OF LEASE,  
ASSIGNMENTS OF OPERATING RIGHTS, AND ACQUISITION OF LEASED LINE—  
EASTERN STATES RAILROAD, LLC  
AND  
COLUMBIANA COUNTY PORT AUTHORITY

**FILED**

JUL 13 2012

**SURFACE  
TRANSPORTATION BOARD**

**ENTERED  
Office of Proceedings**

JUL 13 2012

**Part of  
Public Record**

**VERIFIED NOTICE OF EXEMPTION  
OF  
PENN-OHIO TRANSPORTATION, LLC  
PURSUANT TO 49 C.F.R. § 1150.31**

ALSTON & BIRD, LLP  
The Atlantic Building  
950 F Street  
Washington, DC 20004  
Attention: David M. Williamson, Esq.  
Telephone: (202) 239-3223  
E-mail: max.williamson@alston.com

**ATTORNEYS FOR  
PENN-OHIO TRANSPORTATION, LLC**

Dated: July 13, 2012

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35648

PENN-OHIO TRANSPORTATION, LLC  
—EXEMPTION FOR PURCHASE OF LEASE,  
ASSIGNMENTS OF OPERATING RIGHTS AND ACQUISITION OF LEASED LINE—  
EASTERN STATES RAILROAD, LLC  
AND  
COLUMBIANA COUNTY PORT AUTHORITY

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**VERIFIED NOTICE OF EXEMPTION  
OF  
PENN-OHIO TRANSPORTATION, LLC  
PURSUANT TO 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31, *et seq.*, Penn-Ohio Transportation, LLC (“Penn-Ohio”), a non-carrier, hereby files this Verified Notice of Exemption to (1) purchase the operating and lease rights on a line running from Youngstown, Ohio to Darlington, Pennsylvania (which lease includes an agreement to acquire the leased line) of Eastern States Railroad, LLC (“ESRR”), (2) receive permanent assignments of operating rights on continuous segments of lines connected to the leased line, (3) purchase the leased line and all operating rights thereon from Columbiana County Port Authority (“CCPA”).

The line is the former Youngstown & Southern Line and runs from Milepost 0.0 in Youngstown, Ohio to Milepost 35.7 in Darlington, Pennsylvania (the “Youngstown-Darlington Line”). The Youngstown-Darlington Line is owned by CCPA, is leased to ESRR, and is currently operated by the Youngstown & Southeastern Railway Company. Formerly, the line was operated by Central Columbiana & Pennsylvania Railway, Inc. (“CQPA”). Specifically, Penn-Ohio will be purchasing operating and lease rights from ESRR, which lease, as amended,

includes an agreement to acquire the Youngstown-Darlington Line on specified terms, and will purchase from CCPA the Youngstown-Darlington Line itself, as well as operating rights held by CCPA, if any. In addition, at Youngstown, Penn-Ohio will receive permanent assignments of ESRR's and CCPA's operating rights running east of Milepost 0.0 which will, *inter alia*, facilitate interchange with Norfolk Southern Railway Company ("NS") and CSX Transportation, Inc. ("CSXT"). 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 Penn-Ohio, 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, Penn-Ohio 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:

Penn-Ohio Transportation, LLC  
363 N. Sam Houston Pkwy E. Suite 300  
Houston, TX 77060  
Attention: Enrique Proano  
Telephone: (832) 399-4510  
E-mail: [eproano@tervita.com](mailto:eproano@tervita.com)

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

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

Alston & Bird, LLP  
The Atlantic Building  
950 F Street  
Washington, DC 20004  
Attention: David M. Williamson, Esq.  
Telephone: (202) 239-3223  
E-mail: [max.williamson@alston.com](mailto:max.williamson@alston.com)

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

ESRR has agreed to sell its operating and lease rights on the Youngstown-Darlington Line, as set forth in a Purchase Agreement dated June 13, 2012, to Penn-Ohio. Penn-Ohio is also in the process of entering into a separate agreement with CCPA to acquire the Youngstown-Darlington Line. In addition, as part of the transaction with Penn-Ohio, ESRR and CCPA are also assigning to Penn-Ohio all agreements and operating rights necessary or useful to enable Penn-Ohio to operate from milepost 0.0 to interchanges with NS and CSXT in Youngstown, which agreements and operating rights are made part of this exemption including, without limitation, the following agreements and operating rights:

(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, to which ESRR is successor;

(B) Letter Agreement dated November 30, 2001 between OHPA, CQPA and CCPA, to which ESRR is successor;

(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, to which ESRR is successor;

(D) Land Lease dated August 8, 2003 between CSX and CQPA, to which ESRR is successor;

(E) Interchange Agreement dated May 1, 2001, and Interline Service Agreement, effective date October 5, 2004 between CQPA and NS, to which ESRR is successor;

(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 by CCPA, 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), and to which ESRR is successor; and

(G) Operating Rights Agreement between Matteson Equipment Company (“Matteson”) and CQPA, to which ESRR is successor; and Operating Rights Agreement between ESRR and Matteson dated July 14, 2006.

If it is deemed that any consent to such assignments is necessary from the underlying trackage owners, Penn-Ohio will seek such consent.

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

Penn-Ohio will be a common carrier on the Youngstown-Darlington Line. Once Penn-Ohio acquires the Line, it intends to continue operations with the current operator or lease the Line to an operator which will file the appropriate Notice of Exemption at the Board and become a common carrier on the Line. Penn-Ohio will retain residual common carrier status on the Youngstown-Darlington Line.

For the lines in Youngstown east of Milepost 0.0 that are described herein, including the lines described in items (A) through (G) above, Penn-Ohio shall be the common carrier, but the third party carrier shall operate on the lines solely as an agent of and in the name of Penn-Ohio. (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)**

Penn-Ohio intends to obtain all these rights and agreements described herein pursuant to Purchase Agreements with ESRR and CCPA, respectively, and commence operations on August 12, 2012.

Penn-Ohio's address is:  
Penn-Ohio Transportation, LLC  
363 N. Sam Houston Pkwy E. Suite 300  
Houston, TX 77060  
Attention: Enrique Proano  
Telephone: (832) 399-4510  
E-mail: eproano@tervita.com

CCPA's address is:  
Columbiana County Port Authority  
1250 St. George Street  
East Liverpool, Ohio 43920

ESRR's address is:  
Eastern States Railroad, LLC  
c/o Live Earth Acquisition, LLC  
6140 Parkland Boulevard, Suite 300  
Mayfield Heights, Ohio 44124

Pursuant to the agreements already described herein, Penn-Ohio 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, Penn-Ohio shall become a common carrier by rail on trackage 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 CSXT and on property leased from CSXT. 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.

**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 Penn-Ohio 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 49 C.F.R. § 1105.6(c)(2), Penn-Ohio's proposed lease, acquisition and 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), Penn-Ohio'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:   
\_\_\_\_\_  
David M. Williamson  
Alston & Bird, LLP  
The Atlantic Building  
950 F Street  
Washington, DC 20004  
Telephone: (202) 239-3223  
E-mail: [max.williamson@alston.com](mailto:max.williamson@alston.com)

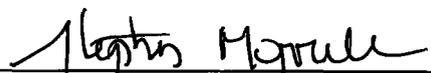
*Attorney for Penn-Ohio Transportation, LLC*

Dated: July 13, 2012

**VERIFICATION**

State of Texas                    )  
  )  
County of Harris                )        ss:

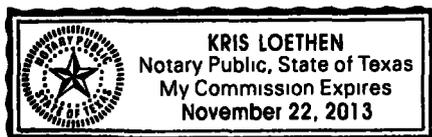
Stephen Morrell, being duly sworn, deposes and says that he is Vice-President - Finance of Tervita, LLC which is the Managing Member of Penn-Ohio Transportation, LLC, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.

  
\_\_\_\_\_  
Name: Stephen Morrell  
Title: Vice-President - Finance, Tervita, LLC  
Managing Member  
Penn-Ohio Transportation, LLC

SUBSCRIBED AND SWORN TO  
before me this 12 day  
of July, 2012

  
\_\_\_\_\_  
Notary Public

My Commission expires: Nov. 22, 2012



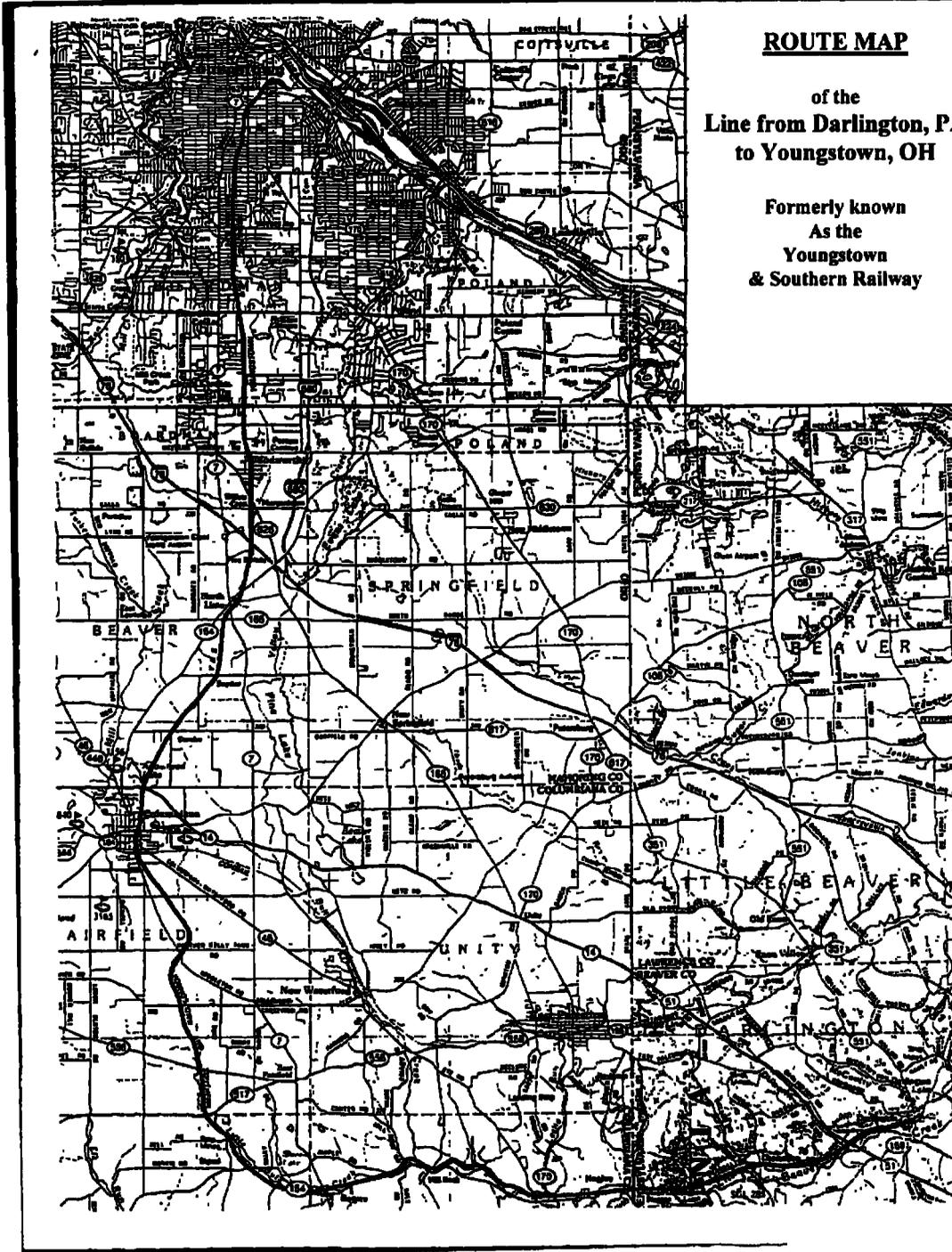
**EXHIBIT A**

Page 1 of 2

**ROUTE MAP**

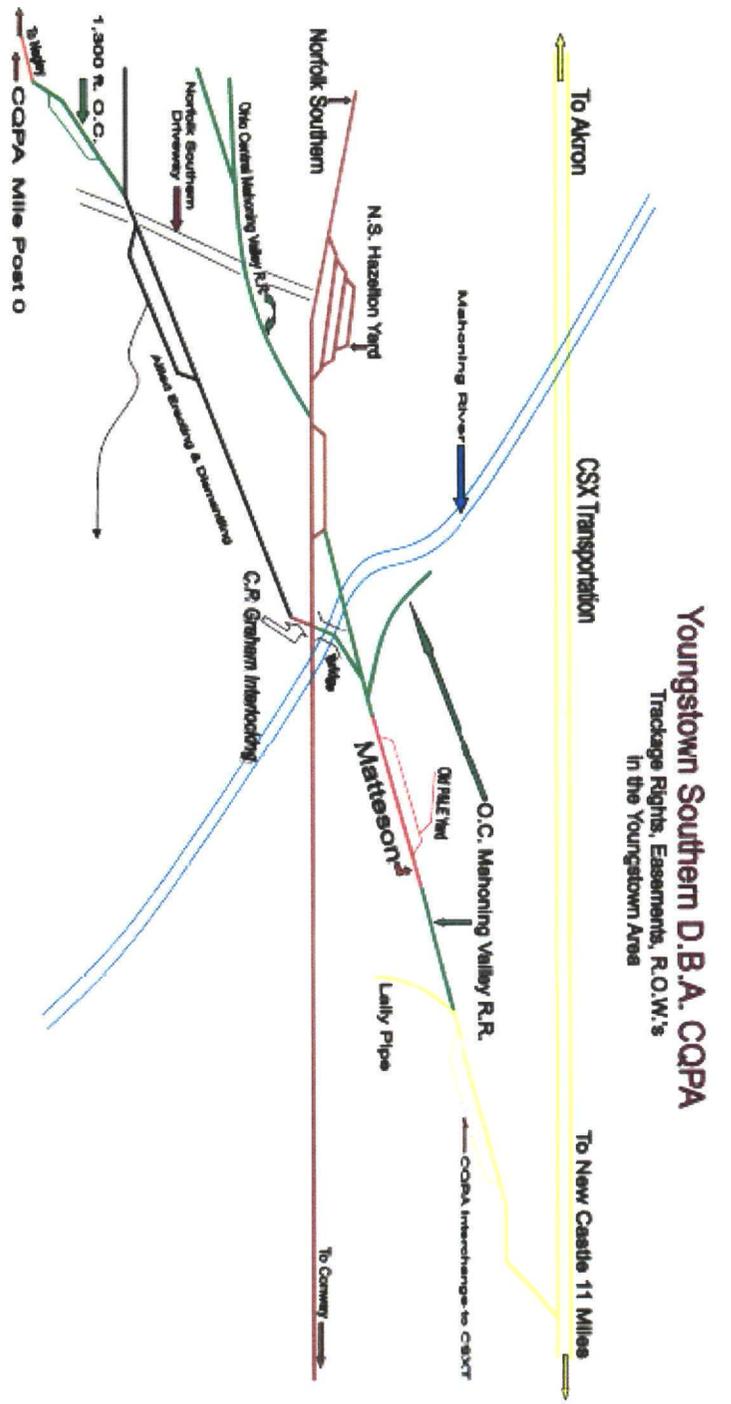
of the  
**Line from Darlington, PA  
to Youngstown, OH**

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



**EXHIBIT A**

Page 2 of 2

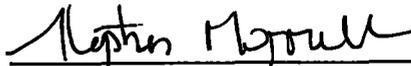


**Youngstown Southern D.B.A. COPA**  
Trackage Rights, Easements, R.O.W.'s  
in the Youngstown Area

**CERTIFICATION**

State of Texas                    )  
  )  
County of Harris                )        ss:

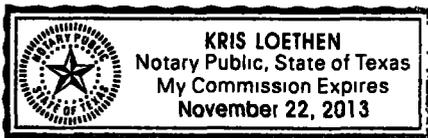
Stephen Morrell, being duly sworn, hereby certifies that the projected annual rail revenue of Penn-Ohio Transportation, LLC does not exceed \$5 million and will not result in the creation of a Class II or Class I carrier under the provisions of 49 C.F.R. § 1201(1-1).

  
\_\_\_\_\_  
Name: Stephen Morrell  
Title: Vice-President - Finance, Tervita, LLC  
          Managing Member  
          Penn-Ohio Transportation, LLC

SUBSCRIBED AND SWORN TO  
before me this 12 day  
of July, 2012

  
\_\_\_\_\_  
Notary Public

My Commission expires: Nov. 22, 2013



**SURFACE TRANSPORTATION BOARD**

**NOTICE OF EXEMPTION**

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**FINANCE DOCKET NO. 35648**

**PENN-OHIO TRANSPORTATION, LLC  
—EXEMPTION FOR PURCHASE OF LEASE,  
ASSIGNMENTS OF OPERATING RIGHTS, AND ACQUISITION OF LEASED LINE—  
EASTERN STATES RAILROAD, LLC  
AND  
COLUMBIANA COUNTY PORT AUTHORITY**

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PENN-OHIO TRANSPORTATION, LLC (“Penn-Ohio”) a non-carrier, has filed a Verified Notice of Exemption to purchase from Eastern States Railroad, LLC (“ESRR”), ESRR’s operating and lease rights on a rail line owned by Columbiana County Port Authority (“CCPA”). Penn-Ohio also will be entering into a purchase agreement with CCPA pursuant to which Penn-Ohio will acquire the leased line which runs from Milepost 0.0 in Youngstown, Ohio to Milepost 35.7 in Darlington, Pennsylvania. In addition, as part of the transaction, ESRR and CCPA are also assigning to Penn-Ohio all agreements and operating rights necessary or useful to enable Penn-Ohio 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:

(A) Overhead Trackage Rights Agreement dated May 7, 2001 between Ohio & Pennsylvania Railroad Company (which, together with its parent and all affiliates, “OHPA”) and Central Columbiana & Pennsylvania Railway, Inc. (“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 rights granted to CQPA by CCPA, 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 Agreements between Matteson Equipment Company, CQPA and ESRR.

The line over which Penn-Ohio shall become a common carrier runs between Milepost 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, Penn-Ohio shall become a common carrier by rail on trackage 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. 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.

Penn-Ohio intends to purchase all these rights and agreements described herein pursuant to Purchase and Assignment Agreements with ESRR and CCPA , respectively, and to commence operations on August 13, 2012.

Comments must be filed with the Board and served on:

David M. Williamson  
Alston & Bird, LLP  
The Atlantic Building  
950 F Street  
Washington, DC 20004  
Telephone: (202) 239-3223

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: \_\_\_\_\_, 2012

By the Board

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings