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FD 35823
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Office of Proceedings
May 19, 2014
Part of
Public Record

May 19, 2014

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



RE: FD 35811, East Broad Top Connecting Railroad, LLC – Operation Exemption – East Broad Top Railroad Preservation Association

RE: FD 35823, East Broad Top Railroad Preservation Association – Acquisition and Operation Exemption – Kovalchick Salvage Corporation

Dear Ms. Brown:

On behalf of the East Broad Top Connecting Railroad, LLC, and the East Broad Top Railroad Preservation Association, applicants, I am writing in connection with the above-captioned proceedings.

On March 20, 2014, pursuant to 49 CFR§1150.31 I filed a copy of a verified notice of exemption in FD 35811, for East Broad Top Connecting Railroad, LLC (“EBTCR”) to operate over certain railroad trackage currently owned by the East Broad Top Railroad Preservation Association (“EBTRPA”). Subsequently, the Board’s staff requested that EBTCR submit a copy of the Operating Agreement entered into between EBTCR and EBTRPA. On March 27, 2014, the Board served a decision holding this proceeding in abeyance until the applicants furnished a copy of that agreement. I am attaching to this letter a copy of that Agreement and am also e-filing that agreement. I will e-file copies of signature

FILED
May 19, 2014

SURFACE
TRANSPORTATION BOARD
Strasburger & Price, LLP

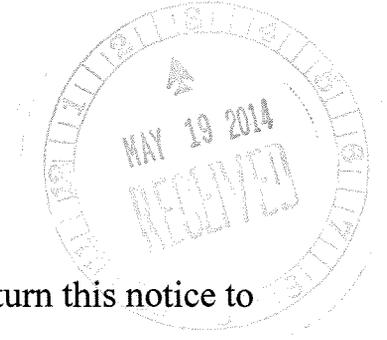
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Strasburger
ATTORNEYS AT LAW

Ms. Cynthia T. Brown
May 19, 2014
Page 2



pages of that Agreement as soon as they are executed. Please return this notice to the active docket for consideration.

In FD 35823, pursuant to 49 CFR§1150.31 I am filing an original and 10 copies of a notice of exemption for EBTRPA to acquire from Kovalchick Salvage Corporation (“KOV”) the rail properties that are the subject of the operation filing in FD 35811. As the enclosed notice explains in more detail, EBTRPA acquired those properties from KOV without realizing that Board approval was required for that transaction. Accordingly, the applicants are submitting the filing in FD 35823 to correct that deficiency. Once that exemption is effective, EBTRPA desires to consummate the transaction that is the subject of FD 35823: to commence operations over the subject trackage.

I am also tendering a copy of the filing in FD 35823 on a computer disk as well as a filing fee check in the amount of \$1900.

Please contact me if you have any questions about these matters.

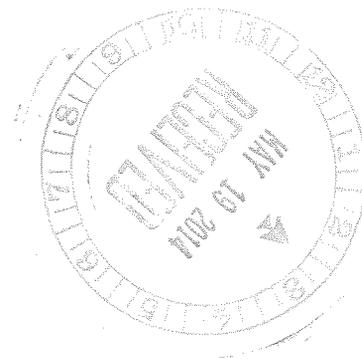
Sincerely yours,

A handwritten signature in black ink, appearing to read "John D. Heffner".

John D. Heffner

cc: Mr. Larry Salone

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FD 35823

**EAST BROAD TOP RAILROAD PRESERVATION ASSOCIATION
- ACQUISITION AND OPERATION EXEMPTION -
KOVALCHICK SALVAGE CORPORATION**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10901 and 49 CFR §1150.31**

Submitted By:

John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Counsel for Applicant

Dated: May 19, 2014

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35823

**EAST BROAD TOP RAILROAD PRESERVATION ASSOCIATION
- ACQUISITION AND OPERATION EXEMPTION -
KOVALCHICK SALVAGE CORPORATION**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10901 and 49 CFR §1150.31**

East Broad Top Railroad Preservation Association, (“EBTRPA”), a noncarrier, files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (“the Board”) to acquire and operate a line of railroad. The trackage that is the subject of this notice of consists of two segments totaling 4.1 miles. The first segment formerly known as Consolidated Rail Corporation’s Mount Union Industrial Track¹ extends about 1.4 miles between Railroad Mile Post 0.2, being immediately west of the point of switch at Railroad Station 4085+96 at the junction with Norfolk Southern Railway Company (“NSR”) at Mt. Union, PA and the end

¹ This line shall be referred to as the MUIT. This line was the subject of an abandonment filed by Consolidated Rail Corporation (“Conrail”). *See, Consolidated Rail Corporation—Abandonment—In Huntingdon County, Pennsylvania, Docket AB-167 (Sub-No. 1175), STB served April 10, 1997.* There is an unresolved .2 mile discrepancy between the description of the line in Conrail’s abandonment filing and the information in applicant’s possession. NSR will operate over this trackage to interchange with EBTRPA’s tenant carrier, East Broad Top Connecting Railroad, LLC (“EBTCR”).

of track at Mile Post 1.4 at Railroad Station 4025+00. The second segment referred to as the original East Broad Top Main Line (EBT) extends 2.7 miles from its connection with the MUIT at its Mile Post 1.1, MUIT Railroad Station 4038+39, being EBT Mile Post 1.5, EBT Railroad Station 77+57 to EBT Mile Post 4.4.² Both segments were formerly owned by Kovalchick Salvage Corporation (“KOVC”). Although the MUIT is an “active” line of railroad subject to the Board’s jurisdiction, no common carrier freight service has been provided over it for some period of time. No common carrier rail service has been provided over the EBT in many, many years.

INFORMATION REQUIRED BY 49 CFR §1150.33

Name and Address of Applicant 49 CFR §1150.33(a)
East Broad Top Railroad Preservation Association
P.O. Box 585
Dubois, PA 15801

Applicant's Representative 49 CFR §1150.33(b)
John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Statement of Agreement 49 CFR §1150.33(c)

EBTPA acquired the subject trackage pursuant to an agreement with KOVC back in 2013.

² See footnote 1 regarding the mileage discrepancy.

Operator of the Property 49 CFR §1150.33(d)

As noted above, EBTRPA has the common carrier obligation to perform service over the MUIT; however, no service has been performed since Conrail obtained authority to abandon it in 1997. No common carrier freight rail service has been provided over the EBT in many, many years.

Brief Summary of Transaction 49 CFR §1150.33(e)

EBTRPA is a Pennsylvania nonprofit corporation that has been conducting an intrastate excursion passenger service over the EBT including both the 2.7 mile segment that is the subject of this notice as well as the narrow gauge segment. When EBTRPA acquired the subject trackage from KOVC, it did not realize that these acquisitions required authority from the Board. KOVC had previously purchased the MUIT from Consolidated Rail Corporation through an offer of financial assistance.³ While no common carrier freight service is currently performed over the MUIT, EBTRPA will be entering into an operating agreement with a newly formed Class III common carrier, EBTCR, which expects to provide common carrier rail service over it.⁴ EBTCR will also provide common carrier

³ That acquisition was authorized by the Board in a decision served on April 10, 1997. *See*, footnote 1, *supra*.

⁴ EBTCR filed a verified notice of exemption to operate over the Line pursuant to an exemption filed in FD 35811 on March 20, 2014. That notice is being held in abeyance pending the filing by EBTCR of a copy of its operating agreement with EBTRPA.

freight rail service over the 2.7 miles of the EBT as soon as that trackage is converted to handle standard gauge railroad cars.⁵

Once the undersigned counsel began to prepare the aforementioned operating agreement, it became apparent that EBTRPA had inadvertently failed to obtain authority for its prior acquisition of the subject trackage from KOVC. Accordingly, and pursuant to Board precedent, EBTRPA acting in good faith now seeks authority for that acquisition. *Cf, The New Brunswick Railway Company Continuance- in-Control Exemption-Maine Northern Railway Company, FD 35520, STB served Sept. 26, 2011* (where the Board exempted a previously unauthorized railroad control transaction and the applicant acted in good faith in seeking after-the-fact authorization upon learning of the need for authority) and *David W. Wulfson-Control Exemption-Clarendon & Pittsford R.R., FD 33607* (STB served Aug. 20, 1998)(also approving a previously unauthorized control transaction where the petitioners acted in good faith).

EBTRPA does not anticipate that its existing narrow gauge excursion passenger operations will have any impact on EBTCR's ability to provide rail freight service.

Other information required

⁵ This segment will actually be a "dual gauge" line capable of handling standard and narrow gauge railroad cars. The narrow gauge cars will be excursion railroad equipment operating over the narrow gauge portion of the railroad as well. No common carrier railroad service has been or will be provided over the narrow gauge portion of the railroad.

(1) The name and address of the party transferring the subject property:

No physical property will be transferred as a result of this filing; only a leasehold interest and operating rights will be granted to EBTCR

Kovalchick Corp.
1060 Wayne Ave,
Indiana, PA 15701

(2)The proposed time schedule for consummation of the transaction:

N.A. EBTRPA inadvertently consummated this transaction and now wishes to obtain authorization for that acquisition.

The mileposts of the subject property, including any branch lines:

- (1) The MUIT: 1.4 miles of track extending from Railroad Mile Post 0.2, being immediately west of the point of switch at Railroad Station 4085+96 at the junction with NSR at Mt. Union, PA, to the end of track at Mile Post 1.4 at Railroad Station 4025+00; and
- (2) The EBT extending 2.7 miles from its connection with the MUIT at its Mile Post 1.1, MUIT Railroad Station 4038+39, being EBT Mile Post 1.5, EBT Railroad Station 77+57 to EBT Mile Post 4.4.

The total route miles to be operated:

About 4.1 miles of railroad.

Map 49 CFR §1150.33(f)

A map depicting the railroad trackage to be leased and operated is attached as Exhibit A.

Certificate of Carrier Classification 49 CFR §1150.33(g)

EBTRPA certifies that with this transaction its projected annual revenues will be less than \$5,000,000 annually. A certificate complying with the provisions of 49 CFR §1150.33(g) is attached as Exhibit B to this notice.

Transactions Imposing Interchange Commitments 49 CFR §1150.33(h)

N.A. The Line's only physical connection with NSR is at MP 0.2. There are no other connections with common carrier railroads and there is no agreement containing any provision imposing interchange commitments or restricting EBTRPA's ability to interchange traffic with other carriers.

Labor Protection

Labor protective conditions are not generally imposed on transactions under 49 U.S.C. §10901 and there is no basis for doing so here.

Caption Summary 49 CFR §1150.34

A caption summary in the prescribed form is attached as Exhibit C to this Notice.

Environmental and Historic Preservation Data 49 CFR §1105

Pursuant to 49 CFR §1105.6(c) (2), the proposed transaction is exempt from environmental review under 49 CFR §1105(c) (2) (i), because the actions proposed

herein will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 49 CFR §1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Respectfully submitted,



Counsel for Applicant

John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Dated: May 19, 2014

EXHIBIT A

Exhibit B

Certification

I, Larry Salone, certify that I am President (state position) of _____ (name of carrier) and that applicant's projected revenues will not exceed \$5 million annually and will not result in the applicant becoming a Class I or Class II carrier under the provisions of 49 CFR 1201(1-1).

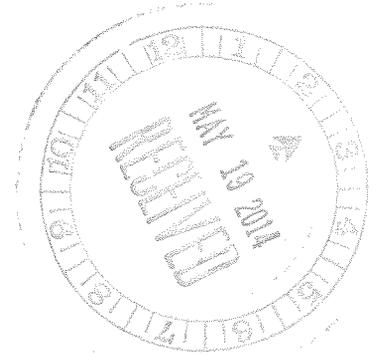
Dated: May 4th, 2014

Signature

A handwritten signature in cursive script, appearing to read "Larry Salone", is written over a horizontal line.

EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FD 35823

**EAST BROAD TOP RAILROAD PRESERVATION ASSOCIATION
- ACQUISITION AND OPERATION EXEMPTION -
KOVALCHICK SALVAGE CORPORATION**

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Mile Post 1.5, EBT Railroad Station 77+57 to EBT Mile Post 4.4. Both segments were formerly owned by Kovalchick Salvage Corporation (“KOVC”). Although the MUIT is an “active” line of railroad subject to the Board’s jurisdiction, no common carrier freight service has been provided over it for some period of time. No common carrier rail service has been provided over the EBT in many, many years.

Once this notice becomes effective, EBTCR will provide all common carrier railroad service over the Line connecting with and interchanging traffic with NSR at milepost 0.2.

EBTCR certifies that its projected annual revenues as a result of this transaction would not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

If the verified 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 effectiveness of the exemption. Petitions for stay must be filed no later than June 11, 2014 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD 35823, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D.

Heffner, Esq., Strasburger & Price, 1025 Connecticut Ave., N.W. – Suite 717,
Washington, D.C. 20036, Telephone: (202) 742-8607, counsel for EBTCR.

Board decisions and notices are available on our website at

WWW.STB.DOT.GOV.

Decided:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

VERIFICATION

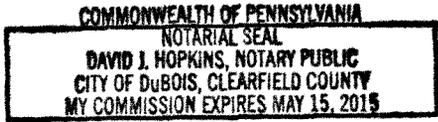
STATE OF Pennsylvania)
CITY OF Du Bois)

CARRY SALAVE being duly sworn according to law, hereby deposes and states that (s)he holds the position _____ applicant/petitioner, is authorized to make this Verification, had 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.

[Signature]

Subscribed to and sworn to before me, a Notary Public, in and for the County clearfield in the State _____ this _____ day of December 2013

[Signature]
Notary Public



My Commission expires: