

BEFORE THE
SURFACE TRANSPORTATION BOARD

235663

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March 20, 2014
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FD 35811

EAST BROAD TOP CONNECTING RAILROAD
- OPERATION EXEMPTION -
EAST BROAD TOP RAILROAD PRESERVATION ASSOCIATION

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

FILED
March 20, 2014
Surface Transportation Board

Dated: March 20, 2014

FEE RECEIVED
March 20, 2014
Surface Transportation Board

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East Broad Top Connecting Railroad, ("EBTCR"), 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 lease and operate a line of railroad. The trackage that is the subject of this notice extends about 4.1 miles; consisting of the Mount Union Industrial Track (MUIT) between approximately 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 ("the Line") and the end of track at Mile Post 1.4 at Railroad Station 4025+00; and the original East Broad Top Main Line (EBT) 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; and extending to EBT Mile Post 4.4. The Line is currently owned by the East Broad Top Preservation Association ("EBTPA"). 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 0.0.

INFORMATION REQUIRED BY 49 CFR §1150.33

Name and Address of Applicant 49 CFR §1150.33(a)
East Broad Top Connecting Railroad
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)

EBTCR and EBTPA are negotiating an agreement and expect to have one executed within the next 30 days.

Operator of the Property 49 CFR §1150.33(d)

As noted above, EBTCR will provide all common carrier rail operations over the Line.

Brief Summary of Transaction 49 CFR §1150.33(e)

EBTCR is a newly established class III short line railroad and noncarrier formed for the purpose of providing common carrier railroad service over the Line. Currently no common carrier freight service is performed over the Line. EBTPA

has conducted excursion passenger operations over the Line; however, that service is currently suspended. Applicant anticipates that about half of its traffic will be empty railroad cars moving to or from a car repair shop that EBTCR is establishing on the Line and that the other half of its traffic will be freight moving to or from customers that EBTCR hopes to attract to the Line through its marketing efforts. EBTCR does not anticipate that the existing tourist passenger operations conducted by EBTPA will have any impact on its ability to provide rail freight service.

Section 1150.31(a) of the Board's rules pertaining to short line railroad acquisition and operation transactions provides, "except as indicated below, this exemption applies to *all* [emphasis supplied] acquisitions and operations under section 10901." Board precedent allows the restoration or provision of common carrier freight rail service over private trackage outside its jurisdiction acquired or owned by museums or other parties. *See, e.g., Dubois County Railroad Corporation-Lease and Operation Exemption-Indiana Railway Museum, Inc.*, FD 33671, STB served Nov. 24, 1998, and *Fremont Northwestern Railroad Company-Lease and Operation Exemption-Rail Line of the Eastern Nebraska Chapter National Railway Historical Society*, FD 34383, STB served August 8, 2003. As with other exemptions involving the conversion to and common carrier operation of what had previously been private trackage, the key to the Board's assumption of

jurisdiction is whether the putative carrier will be "holding out" to serve the public at large which EBTCR will do.

Other information required

(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

East Broad Top Railroad Preservation Association
P.O. Box 585
DuBois, PA 15801

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

EBTCR wishes to consummate this transaction 30 days from the date of this notice, probably in late April 2014

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

MP 0.2 of the Mount Union Industrial Track at the junction with NSR at Mt. Union, PA, and the end of the Line at MP 4.4 of the original East Broad Top Railroad main line.

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)

EBTCR 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 Exhibitji to this notice.

Transactions Imposing Interchange Commitments 49 CFR §1150.33(h)

N.A. The Line's only physical connection is with NSR at MP 0.2. Neither the lease and operation agreement nor the NSR interchange agreement contain any provision imposing interchange commitments or restricting EBTCR'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_Q 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,

A handwritten signature in black ink, appearing to read 'J. Heffner', with a long horizontal flourish extending to the right.

Counsel for Applicant

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

Dated: March 20, 2014

EXHIBIT A

EBT
Connecting
RR

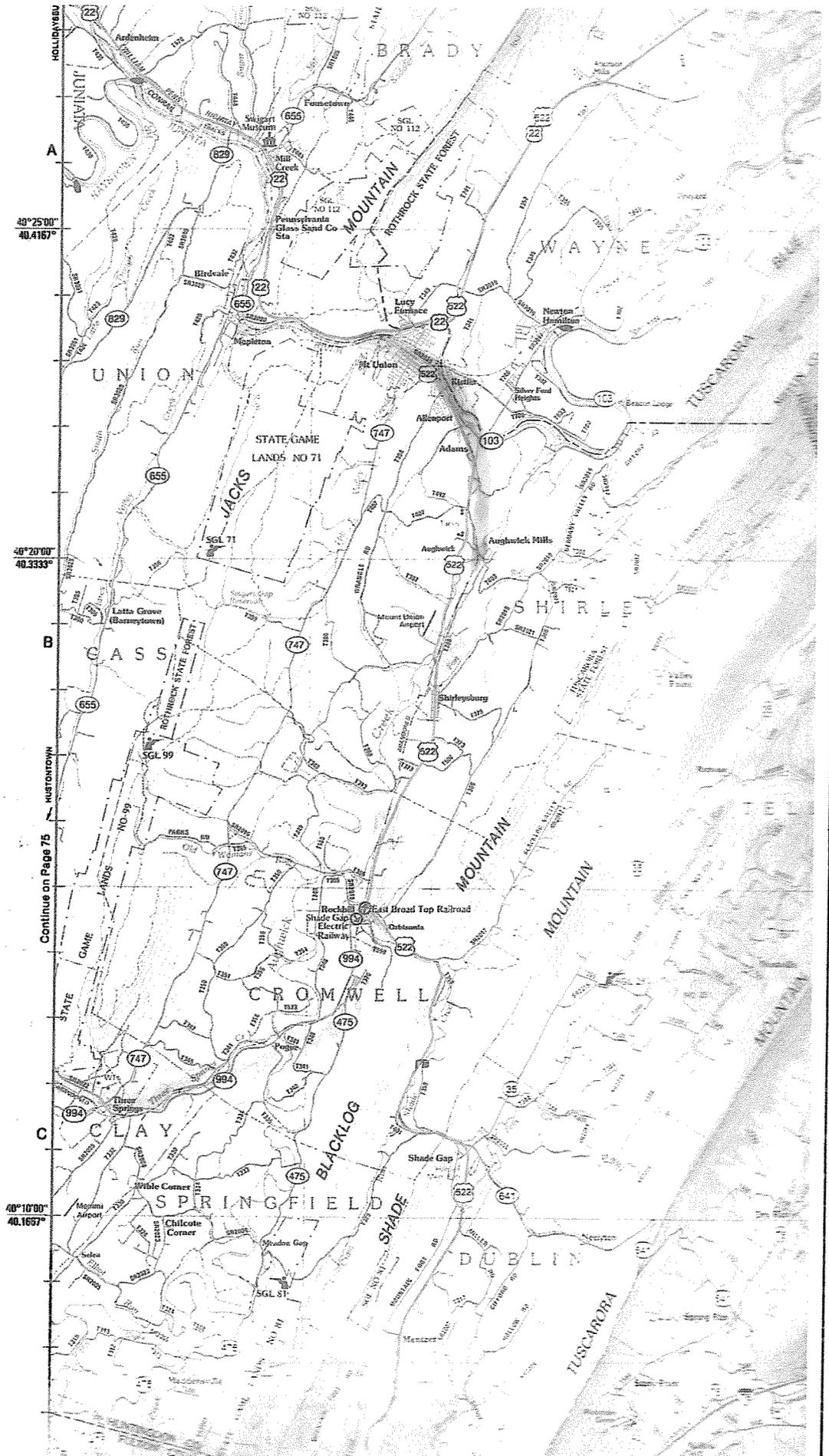


EXHIBIT B

Exhibit B

Certification

I, Larry Salone, certify that I am President (state position) of East Broad Top Connectory RR (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: 2013

Signature



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

EXHIBIT C

EXHIBIT C

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Preservation Association ("EBTPA"). 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 April 12, 2014 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD 35811, 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)

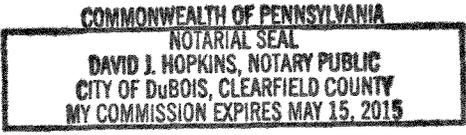
CITY OF Du Bois)

LARRY 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: