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SERVICE DATE – MAY 6, 2005

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34676]

Penn Eastern Holdings, Inc.–Control Exemption–East Penn Railways, Inc. and Penn Eastern Rail Lines, Inc.

Penn Eastern Holdings, Inc. (PEH), a newly established noncarrier holding company, has filed a verified notice of exemption to acquire control through stock ownership of East Penn Railways, Inc. (East Penn) and Penn Eastern Rail Lines, Inc. (Penn Eastern), both Class III rail carriers. East Penn and Penn Eastern are currently controlled by John C. Nolan, a noncarrier individual.<sup>1</sup> As a result of this transaction, John C. Nolan and Mark Rosner will control East Penn and Penn Eastern through PEH.<sup>2</sup>

PEH states that it proposes to consummate the transaction on or after April 20, 2005.

Concurrently, East Penn has filed verified notices of exemption: (1) in STB Finance Docket No. 34677, East Penn Railways, Inc. Acquisition Exemption–Southeastern Pennsylvania Transportation Authority, wherein East Penn seeks to acquire a segment of track,

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<sup>1</sup> See John C. Nolan–Control Exemption–Penn Eastern Rail Lines, Inc., STB Finance Docket No. 34223 (STB served July 22, 2002).

<sup>2</sup> By facsimile filed on April 15, 2005, PEH informed the Board that John C. Nolan will own 80% of the stock of PEH and Mark Rosner will own the remaining 20% of PEH's stock.

currently owned by the Southeastern Pennsylvania Transportation Authority and operated by East Penn pursuant to a modified rail certificate, known as the Octoraro Branch (or Line 142), extended approximately 27.51 miles between milepost 26.98 at Chadds Ford Junction, PA, and milepost 54.49 at the Pennsylvania/Maryland state line near Sylmar, MD;<sup>3</sup> (2) in STB Finance Docket No. 34678, East Penn Railways, Inc.–Acquisition and Operation Exemption–ISG Railways, Inc., wherein East Penn seeks to acquire from ISG Railways, Inc. and operate a line of railroad known as Line 907, extending between approximately milepost 12.66+- at the Delaware/Pennsylvania state line and milepost 29.72 at Modena, PA, a distance of 17.02 miles; and (3) in STB Finance Docket No. 34679, East Penn Railways, Inc.–Acquisition and Operation Exemption–Reading Company, wherein East Penn seeks to acquire from the Reading Company and operate a line of railroad known as Line 939, extending from the Pennsylvania/Delaware state line at approximately milepost 12.66+- to milepost 1.89, near Elsmere Junction, DE, a distance of approximately 10.77 miles.<sup>4</sup> According to PEH and East Penn, these lines connect with each other but not with the lines of Penn Eastern.

PEH states that: (1) the railroads will not connect with each other or any railroad in their corporate family; (2) the control transaction is not part of a series of anticipated

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<sup>3</sup> See East Penn Railways, Inc.–Modified Rail Certificate, STB Finance Docket No. 34618 (STB served Dec. 21, 2004).

<sup>4</sup> See Certificate of Designated Operator, Delaware Valley Railway Co., D-OP 59 (USRA Line No. 907/939) (ICC served Oct. 14, 1994).

transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval of requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c)), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

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 transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 34676, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on John D. Heffner, 1920 N Street, N.W. Suite 800, Washington, DC 20036.

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“WWW.STB.DOT.GOV.”

Decided: April 26, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary