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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35104]

East Penn Railroad, LLC—Operation Exemption—Kutztown Transportation Authority

East Penn Railroad, LLC (ESPN), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate a 4.12-mile rail line owned by Kutztown Transportation Authority (KTA), a municipal authority organized under the Pennsylvania Municipal Authorities Act of 1954. The line is located between milepost 0.17 at Topton, PA, and milepost 4.29 at Kutztown, PA.

ESPN advises that its predecessors, Penn Eastern Rail Lines, Inc. (PERL), and East Penn Railway, Inc. (EPRY), had entered into an agreement with KTA dated July 25, 2005, to replace the previous lease agreement for the line, but had failed to obtain prior approval for the new agreement. However, ESPN indicates that it or one of its predecessors has been the operator on the line for over 10 years.¹

¹ The subject line was acquired by PERL and was formerly leased and operated by EPRY. See Penn Eastern Rail Lines, Inc.—Acquisition and Operation Exemption—Lines of Lancaster Northern Railway, Inc., Chester Valley Railway, Inc., East Penn Railways, Inc., and Bristol Industrial Terminal Railway, Inc., STB Finance Docket No. 33512 (STB served Dec. 1, 1997). Also, Mr. John C. Nolan, an individual, controlled EPRY and obtained authority to control PERL. See John C. Nolan—Control Exemption—Penn Eastern Rail Lines, Inc., STB Finance Docket No. 34223 (STB served July 22, 2002). Mr. Nolan merged PERL and EPRY into ESPN. See John C. Nolan, Penn Eastern Rail Lines, Inc., and East Penn Railways, Inc.—Corporate Family Transaction Exemption, STB Finance Docket No. 35056 (STB served July 13, 2007).

ESPN certifies that its projected annual revenues as a result of the transaction will not exceed \$5 million and will not result in the creation of a Class II or Class I carrier. The earliest this transaction could have been consummated was on or after the December 27, 2007 effective date of the exemption (30 days after the exemption was filed).

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. Petitions for stay must be filed no later than December 20, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35104, must be filed with the Surface Transportation Board, 395 E Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005.

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According to ESPN, Mr. Nolan subsequently sold ESPN to Regional Rail, LLC, a noncarrier, which does not control any other rail carriers.

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Decided: December 7, 2007.

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

Vernon A. Williams

Secretary