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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
October 23, 2012
Public Record

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

NOTICE OF SETTLEMENT AND WITHDRAWAL OF
PETITION TO REVOKE VERIFIED NOTICE OF EXEMPTION

Comes now, Columbiana County Port Authority (CCPA), by and through its undersigned counsel of record, and files this Notice of Settlement and Withdrawal of Petition to Revoke Verified Notice of Exemption filed by CCPA. Please be advised that a Settlement Agreement dated the 22nd day of October 2012, by and between Columbiana County Port Authority (“CCPA”), Tervita, LLC (“Tervita”), Penn-Ohio Transportation, LLC (“Penn-Ohio”), Total Waste Logistics, LLC (“TWL”), Live Earth Acquisition, LLC (“Live Earth”), and Eastern States Railroad, LLC (“ESRR”) has resolved all issues related to the above-captioned matter. A true copy of the Settlement Agreement is attached hereto.

A Notice of Withdrawal of Verified Notice of Exemption was previously filed by Penn-Ohio. This Notice also serves to withdraw the Petition to Revoke Exemption and Related Relief previously filed by CCPA. Because all issues have been resolved according to the terms and conditions expressly set forth in the Settlement Agreement, the Board is respectfully requested to accept the

withdrawal of the Verified Notice of Exemption and the Petition to Revoke
Exemption and Related Relief and to terminate all consideration of this matter.

Respectfully submitted,



Richard H. Streeter
Counsel for Columbiana Port Authority

Dated: October 23, 2012

CERTIFICATE OF SERVICE

I, Richard H. Streeter, do hereby certify that a true copy of the foregoing Notice of Settlement and Withdrawal of Petition to Revoke Verified Notice of Exemption was served via email this 23rd day of October, 2012, on the following named individuals:

David M. Williamson
Alston & Byrd, LLP
The Atlantic Building
950 F Street, N.W.
Washington, D.C. 20004
Max.williamson@alston.com
Counsel for Penn-Ohio transportation, LLC

Wan Collier
6140 Parkland Blvd., Suite 300
Mayfield Heights, Ohio 44124
wancollier@yahoo.com
Counsel for Eastern States Railroad, LLC

John Heffner
Strasburger & Price
1701 K Street, N.W.
Suite 640
Washington, D.C. 20006
Counsel for Youngstown & Southeastern Railway Company



Richard H. Streeter

SETTLEMENT AGREEMENT

This Settlement Agreement dated the 22nd day of October 2012, by and between Columbiana County Port Authority ("CCPA"), Tervita, LLC ("Tervita"), Penn-Ohio Transportation, LLC ("Penn-Ohio"), Total Waste Logistics, LLC ("TWL"), Live Earth Acquisition, LLC ("Live Earth"), and Eastern States Railroad, LLC ("ESRR").

WHEREAS, CCPA is the owner of certain assets of the former Youngstown & Southern Railroad, including the line of railroad that runs from milepost 0.0 in Youngstown, OH to milepost 35.7 in Darlington, PA ("the Line") and certain operating rights to approximately 3 miles of track running east of milepost 0.0, which are needed to facilitate interchange with Norfolk Southern Railway Company ("NSR") and CSX Transportation, Inc. ("CSXT");

WHEREAS, because CCPA does not operate the Line, operations over the Line have been conducted pursuant to the terms and conditions of a Track Lease and Operating Agreement ("Track Lease and Operating Agreement") dated April 6, 2000 and various amendments thereto. In December 2006, ESRR was authorized by the Surface Transportation Board to acquire the lease and operating rights to the Line from CCPA and a former operator. ESRR was also authorized to receive permanent assignment of operating rights to approximately 3 miles of track running east of milepost 0.0 ("the Operating Agreements"). In December 2006, ESRR was also authorized to sub-let the right to operate over the Line to Youngstown and Southeastern Railroad

Company ("YSRR"). Subsequently, all operations over the Line have been conducted by YSRR;

WHEREAS, Live Earth is the equity owner of ESRR, having acquired ownership from TWL;

WHEREAS, ESRR has failed to close on the acquisition pursuant to the terms and conditions of the Track Lease and Operating Agreement and various amendments thereto, including an Amendment dated June 26, 2008, whereby ESRR elected to purchase the track and other property from CCPA. As a result, ESRR has no ownership of the Line or of any of the operating agreements that are owned and controlled by CCPA;

WHEREAS, ESRR has heretofore notified CCPA that it would not close on the acquisition of the Line and Operating Agreements, CCPA has sought to sell the Line and Operating Agreements to another purchaser. On April 5, 2012, Tervita and CCPA executed a Letter of Intent to identify material terms in regard to the sale and purchase of the assets (the "Transaction") involved in the operation of the Line. Closing was initially scheduled to occur no later than July 16, 2012. Pursuant to the Letter of Intent, Tervita paid \$150,000.00 in earnest money (the "Earnest Money") subject to the condition that Tervita would have the right to terminate the transaction and be refunded any earnest money without penalty should Tervita discover, during due diligence, any significant environmental liabilities associated with the assets;

WHEREAS, Because CCPA had no knowledge concerning environmental conditions along the Line, it advised Tervita to consult with YSRR regarding any potential environmental concerns during the course of its due diligence;

WHEREAS, on July 11, 2012, Tervita released a Phase One Environmental Site Assessment on Youngstown and Southeastern Railroad Company (Phase I ESA) examining various areas of environmental concern along the Line;

WHEREAS, on July 13, 2012, with CCPA's concurrence, Penn-Ohio, as the assignee of Tervita's rights, filed a Verified Notice of Exemption with the Surface Transportation Board. The Verified Notice contains the following representations:

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 operating rights mentioned at (2) were identified at page 3 and 4 of Penn-Ohio's Verified Notice as follows:

(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;

WHEREAS, on July 11, 2012, CCPA and Tervita agreed to defer closing on the Transaction only to August 8, 2012.

WHEREAS, on July 27, 2012, the STB authorized the consummation of the above-described transaction on or after August 12, 2012;

WHEREAS, on August 3, 2012, Tervita informed CCPA that, on the basis of the findings of due diligence, it would not acquire the Line due to environmental concerns;

WHEREAS, on August 9, 2012, Tervita issued its Phase I ESA Addendum;

WHEREAS, following Tervita's announcement that it would not acquire the Line, CCPA determined that it would seek a new buyer to acquire and operate the Line and the related Operating Agreements described above. In order to address the issue of the alleged environmental concerns, CCPA retained Tetra Tech in early August to conduct an independent environmental assessment of the Line that focus on concerns identified in Tervita's Phase I ESA Addendum, dated August 9, 2012. On October 1, Tetra Tech issued its Phase II Environmental Site Assessments report, which CCPA contends raised questions as to whether Tervita's Phase I Environmental Site Assessment and Addendum warranted termination of the transaction.

WHEREAS, in late August, consistent with the terms and conditions of the Track Lease and Operating Agreement, CCPA's outside counsel contacted ESRR to request the delivery to CCPA of all Operating Agreements related to the 3 miles of track that lie to the east of milepost 0.0 and the points of interchange with CSXT and NSR;

WHEREAS, on September 11, 2012, CCPA informed Tervita that CCPA intended to sell the Line so that rail service would be provided to Tervita and all other shippers on the Line. CCPA also advised Tervita that in order to be able to sell the Line, it would be necessary for ESRR to deliver all Operating Agreements over the 3 miles of track back to CCPA pursuant to the terms and conditions of the Track Lease and Operating Agreement;

WHEREAS, on September 13, 2012, CCPA filed a Petition to Revoke Exemption and Related Relief with the Surface Transportation Board and requested the Board to find that the Verified Exemption was void *ab initio*;

WHEREAS, on October 3, 2012, Penn-Ohio filed a Notice of Withdrawal of Verified Notice of Exemption in which it states that “Tervita retains contract rights relating to the purchase of ESRR stock and is considering whether or not to exercise those rights in order to ensure that viable rail service will continue on the Line”;

WHEREAS, Tervita and ESRR are parties to that Asset Purchase Agreement (the “Asset Purchase Agreement”) dated as of June 13, 2012, whereby Tervita agreed to purchase substantially all of the assets of ESRR, including but not limited to the contracts, agreements, leases, or rights held by ESRR in connection with the operation of the Line listed on Exhibit A attached hereto (the “ESRR Contracts”);

WHEREAS, pursuant to an October 10, 2012 letter from CCPA to ESRR, CCPA contends that ESRR is in default under the Track Lease and Operating Agreement;

WHEREAS, CCPA contends that ESRR and Tervita by failing to acquire the Line have forfeited any rights to the Operating Agreements related to the 3 miles of track between milepost 0.0 and the points of interchange with CSXT and NSR;

WHEREAS, CCPA contends that Tervita has not identified any significant environmental liabilities associated with the assets defined in the Letter of Intent and has forfeited the earnest money of \$150,000;

WHEREAS, Tervita contends that the environmental reports indicate significant environmental liabilities associated with the Line and the railroad property which were sufficient for the return of the Earnest Money under the April 5, 2012 Letter of Intent;

WHEREAS, CCPA, Tervita, Penn-Ohio, TWL, Live Earth and ESRR wish to settle all claims, whether stated or unstated, known or unknown, and to resolve all differences between them, including without limitation all claims relating to the Transaction, the Earnest Money, the Track Lease and Operating Agreement, and the Asset Purchase Agreement, as further detailed and subject to the provisions below.

NOW THEREFORE, in consideration for the mutual promises and covenants in this Settlement Agreement and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CCPA, Tervita, Penn-Ohio, TWL, Live Earth, and ESRR agree as follows:

1. In consideration of CCPA's return of \$100,000.00 of the Earnest Money to Tervita, and CCPA retaining \$50,000 of the Earnest Money, and
2. In consideration of the payment to CCPA of \$10,000.00 by ESRR;
3. Tervita and Penn-Ohio agree to relinquish all claims to the Line and to the Operating Agreements identified at page 3 and 4 of Penn-Ohio's Verified Notice and to release ESRR from any and all contractual agreements

with Tervita, Penn-Ohio or any other subsidiary of Tervita that relate to the Line, the Asset Purchase Agreement or ESRR Contracts.

4. ESRR and CCPA agree to the mutual termination of the Track Lease and Operating Agreement and all Amendments thereto and neither party shall have any further obligations or rights under such agreement. In particular, it is agreed that all accrued obligations of ESRR under the Track Lease and Operating Agreement are hereby released and waived and the provisions of Section 14.03 of the Track Lease and Operating Agreement shall have no future force and effect. ESRR further agrees to assign all of its rights in the ESRR Contracts to CCPA.

5. Tervita and ESRR (with the consent of Live Earth, which is hereby given) agree to terminate the Asset Purchase Agreement (as such term is defined herein) between them, and neither party shall have any further rights or obligations thereunder.

6. In consideration of the foregoing commitments, CCPA shall use its commercially reasonable efforts to sell the Line and all related operating agreements to a financially viable purchaser that will continue rail operations providing service to all shippers over the Line and the 3 miles of track between milepost 0.0 and the points of interchange with CSXT and NSR.

7. CCPA further commits to provide, through lease of operating rights, to provide rail service on the Line until such time as a purchaser assumes operating responsibilities.

8. Effective as of the date hereof (the "Effective Date"), CCPA, on its own behalf and on behalf of its directors, shareholders, members, officers, agents, representatives, affiliates, subsidiaries, successors and assigns (collectively the "CCPA Releasing Parties") irrevocably, unconditionally, voluntarily, knowingly, fully, finally, and completely forever releases, waives, remises and discharges (i) ESRR, TWL, Live Earth and each of their officers, directors, managers, members, shareholders, agents, representatives, affiliates, subsidiaries, successors and assigns (collectively the "ESRR Released Parties"), and (ii) Tervita and Penn Ohio and each of their officers, directors, managers, members, shareholders, agents, representatives, affiliates, subsidiaries, successors and assigns (collectively the "Tervita Released Parties" and, together with the ESRR Released Parties, the "Released Parties"), from any and all claims, financial obligations, claims for relief, demands, actions, damages and causes of action of any kind or description whatsoever, whether arising out of contract, tort, statute, treaty or otherwise, in law or in equity, which any of the CCPA Releasing Parties now have, has had or may have and which is known or unknown to such CCPA Releasing Party as of the Effective Date, against any of the Released Parties arising prior to the Effective Date from, connected with, or in any way growing out of, directly or indirectly, the Track Lease and Operating Agreement, the Transaction and Earnest Money, the Line, the Operating Agreements, the Asset Purchase Agreement, and the ESRR Contracts.

9. Effective as of the Effective Date, Tervita and Penn-Ohio, on their own behalf and on behalf of their directors, shareholders, members, officers,

agents, representatives, affiliates, subsidiaries, successors and assigns (collectively the "Tervita Releasing Parties") irrevocably, unconditionally, voluntarily, knowingly, fully, finally, and completely forever releases, waives, remises and discharges (i) the ESRR Released Parties, and (ii) CCPA and each of its officers, directors, managers, members, shareholders, agents, representatives, affiliates, subsidiaries, successors and assigns (collectively the "CCPA Released Parties" and, together with the ESRR Released Parties, the "CCPA/ESRR Released Parties"), from any and all claims, financial obligations, claims for relief, demands, actions, damages and causes of action of any kind or description whatsoever, whether arising out of contract, tort, statute, treaty or otherwise, in law or in equity, which any of the Tervita Releasing Parties now have, has had or may have and which is known or unknown to such Tervita Releasing Party as of the Effective Date, against any of the CCPA/ESRR Released Parties arising prior to the Effective Date from, connected with, or in any way growing out of, directly or indirectly, the Track Lease and Operating Agreement, the Transaction and Earnest Money, the Line, the Operating Agreements, the Asset Purchase Agreement, and the ESRR Contracts.

10. Effective as of the Effective Date, ESRR, Live Earth, and TWL, on each party's own behalf and on behalf of its directors, shareholders, members, officers, agents, representatives, affiliates, subsidiaries, successors and assigns (collectively the "ESRR Releasing Parties") irrevocably, unconditionally, voluntarily, knowingly, fully, finally, and completely forever releases, waives, remises and discharges (i) the CCPA Released Parties, and (ii) the Tervita

Released Parties (CCPA Released Parties and the Tervita Released Parties shall be known as the “CCPA/Tervita Released Parties”), from any and all claims, financial obligations, claims for relief, demands, actions, damages and causes of action of any kind or description whatsoever, whether arising out of contract, tort, statute, treaty or otherwise, in law or in equity, which any of the ESRR Releasing Parties now have, has had or may have and which is known or unknown to such ESRR Releasing Parties as of the Effective Date, against any of the CCPA/Tervita Released Parties arising prior to the Effective Date from, connected with, or in any way growing out of, directly or indirectly, the Track Lease and Operating Agreement, the Transaction and Earnest Money, the Line, the Operating Agreements, the Asset Purchase Agreement, and the ESRR Contracts.

11. For avoidance of doubt, each party hereto shall retain the right to enforce the rights, undertakings and commitments under this Settlement Agreement and such rights as each party may have with respect to that certain June 13, 2012 asset purchase agreement between Live Earth and Tervita regarding the Penn-Ohio Landfill.

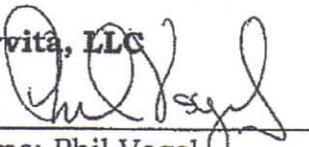
12. CCPA will file this Settlement Agreement with the Surface Transportation Board and will not oppose Penn-Ohio’s pending Notice of Withdrawal of Verified Notice of Exemption. In addition, following the execution of this Settlement Agreement by all parties and receipt of all funds due it under this Settlement Agreement, CCPA will withdraw its September 13, 2012 Petition to Revoke.

13. This Settlement Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto.

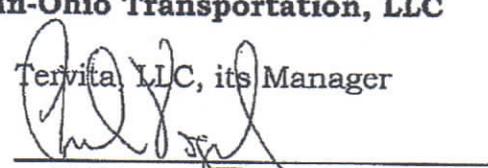
14. No party to this Settlement Agreement shall make any other public statement relating to the subject of this Settlement Agreement without the written consent of each other party, and no party shall make any disparaging statement either publicly or privately to any third party with respect to any other party to this Settlement Agreement.

15. THIS SETTLEMENT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO, EXCLUSIVE OF THE CONFLICT OF LAW PROVISIONS THEREOF.

16. This Settlement Agreement has been entered into in compromise of claims, without any admission or acknowledgement of liability on the part of any parties hereto.

Tervita, LLC
By: 
Name: Phil Vogel
Title: President

Columbiana County Port Authority
By: _____
Name: Tracy Drake
Title: CEO

Penn-Ohio Transportation, LLC
By: Tervita, LLC, its Manager
By: 
Name: Phil Vogel
Title: President

Eastern States Railroad, LLC
By: Live Earth Acquisitions, LLC, its Manager
By: _____
Name: Daniel J. Clark
Title: President

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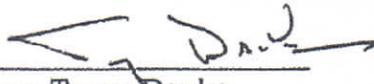
By: _____
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Title: President

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By: Tervita, LLC, its Manager

By: _____
Name: Phil Vogel
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Columbiana County Port Authority

By: 
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Title: CEO

Eastern States Railroad, LLC

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Title: President

Penn-Ohio Transportation, LLC

By: Tervita, LLC, its Manager

By: _____
Name: Phil Vogel
Title: President

Columbiana County Port Authority

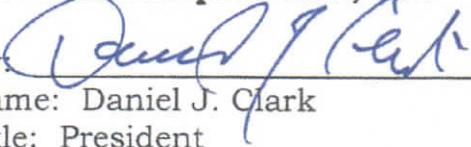
By: _____
Name: Tracy Drake
Title: CEO

Eastern States Railroad, LLC

By: Live Earth Acquisitions, LLC, its Manager

By: 
Name: Daniel J. Clark
Title: President

Live Earth Acquisitions, LLC

By: 
Name: Daniel J. Clark
Title: President

Total Waste Logistics, LLC

By: _____
Name: Guy Fragel
Title: President

Live Earth Acquisitions, LLC

By: _____
Name: Daniel J. Clark
Title: President

Total Waste Logistics, LLC

By: *Guy Fragle*
Name: Guy Fragle
Title: President

Asset Purchase Agreement, dated August 8, 2006, between Central Columbiana & Pennsylvania Railway, Inc. and Eastern States Railroad, LLC, and any related bill of sale;

Overhead Trackage Rights Agreement, dated May 7, 2001, between Central Columbiana & Pennsylvania Railway, Inc. and Ohio & Pennsylvania Railroad Company;

Letter Agreement, dated November 30, 2001, between Central Columbiana & Pennsylvania Railway, Inc. and Ohio & Pennsylvania Railroad Company;

Lease Agreement, dated December 21, 1949, between the Pennsylvania Railroad Co. and Youngstown & Southern Railway Co.; Interline Service Agreement, dated March 29, 2004, between Central Columbiana & Pennsylvania Railway, Inc. and CSX Transportation Inc.;

Trackage Rights Agreement, dated July 14, 2006, between Matteson Equipment Co. and Eastern States Railroad, LLC;

Sublease and Agency Agreement, dated November 13, 2006, between Youngstown & Southeastern Railroad Co. and Eastern States Railroad, LLC;

Interchange Agreement, dated July 23, 2002, among CSX Transportation, Inc. and Central Columbiana & Pennsylvania Railway, Inc. and Ohio & Pennsylvania Railroad Company, as amended April 1, 2004;

Interchange Agreement, dated May 1, 2001, and Interline Agreement, effective October 5, 2004, between Norfolk Southern Railway Company and Central Columbiana & Pennsylvania Railway, Inc.

Land Lease, dated August 8, 2003, between CSX Transportation, Inc. and Central Columbiana & Pennsylvania Railway, Inc.;

Easements granted by Allied Erecting & Dismantling Co. to Pittsburgh & Lake Erie Railroad Co. by agreements dated June 3, 1992, and November 10, 1993, and easements retained by Pittsburgh & Lake Erie Railroad Co. in deeds dated June 3, 1992, and November 10, 1993, from Pittsburgh & Lake Erie Railroad Co. to Allied Erecting & Dismantling Co., which easements were conveyed by Youngstown and Southern Railway Co. (as successor to Pittsburgh & Lake Erie Railroad Co.) to Railroad Ventures, Inc. by deed dated November 8, 1996, and by Railroad Ventures, Inc. to Columbiana County Port Authority by deed dated January 23, 2001, and included in the rights granted to Central Columbiana & Pennsylvania Railway, Inc. by that

certain Track Lease and Operating Agreement, dated April 6, 2000, between Columbiana County Port Authority and Central Columbiana & Pennsylvania Railway Corp., as amended;

Easement Agreement, dated September, 1993, between Allied Erecting and Dismantling Company, Inc. and Pittsburgh & Lake Erie Properties, Inc.;

Track Lease and Operating Agreement, dated April 6, 2000, between Columbiana County Port Authority and Central Columbiana & Pennsylvania Railway Corp., as amended November 20, 2003, as further amended September 29, 2006, as further amended June 26, 2008 (including option rights); and

Trackage Rights Agreement, of uncertain date, between Matteson Construction and Central Columbiana & Pennsylvania Railway Corp. referenced in that certain Asset Purchase Agreement, dated August 8, 2006, between Central Columbiana & Pennsylvania Railway, Inc. and Eastern States Railroad, LLC.

(2) All tangible personal property and equipment owned or used by Seller in connection with the operation of the Railroad;

(3) All documentation containing knowledge, know-how, licenses, procedures, creations, methods, designs, drawings, and other information used by Seller in connection with the operation of the Railroad;

(4) All goodwill and such existing agreements with customers of Seller as Purchaser, in its sole discretion, determines to accept and assume;

(5) All tradenames, trademarks, servicemarks, brand names, brand marks, and other intellectual property rights of or relating to the Railroad;

(6) All causes of action, rights of recovery, rights of setoff and rights of recoupment; and

(7) All insurance claims with respect to the Railroad related to occurrences after the date of this Agreement.