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November 29, 2012

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, N.W., Room 1034
Washington, D.C. 20423-0001

FILED **FEE RECEIVED**
NOV 30 2012 NOV 30 2012
SURFACE TRANSPORTATION BOARD **SURFACE TRANSPORTATION BOARD**

Re: Finance Docket Number 35702
Landisville Railroad, LLC

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the Verified Notice of Exemption of Landisville Railroad, LLC pursuant to 49 C.F.R. §1150.31 dated November 29, 2012. A check in the amount of \$1,800.00 representing the appropriate fee for this filing is also enclosed.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance in this matter.

Sincerely,


David C. Dillon

Enclosures

ENTERED
Office of Proceedings
NOV 30 2012
Part of
Public Record

233437



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Landisville Railroad, LLC)
a Pennsylvania Limited Liability Corporation) Finance Docket Number: FD 35702

**VERIFIED NOTICES OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

FEE RECEIVED

By: David C. Dillon
Dillon & Nash, Ltd.
111 West Washington Street
Suite 1023
Chicago, Illinois 60602
(312) 782-9025

Landisville Railroad, LLC

NOV 30 2012

**SURFACE
TRANSPORTATION BOARD**

*Attorney for Applicant
in Finance Docket No. 35702*

Applicant in Finance Docket No. FD 35702

DATE FILED: November 29, 2012

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**SURFACE
TRANSPORTATION BOARD**

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**Part of
Public Record**

THE LANDISVILLE RAILROAD, LLC TRACKAGE IS A LINE OF RAILROAD THAT QUALIFIES FOR THE CLASS EXEMPTION FROM 49 U.S.C. § 10901, RATHER THAN TRACK EXCEPTED FROM BOARD ACQUISITION AND OPERATION AUTHORITY UNDER § 10906

BERR acquired the East Chicago Transload Facility in October 2012. The trackage is used in conjunction with interchanging tank cars to and from the Indiana Harbor Belt Railroad Company, which cars will contain petroleum and related products for transloading into tank trucks and also into outbound tank cars for post-transload outbound shipment and for transloading into trucks for final delivery.

It is intended that the initial level of operation will consist of one, 110 car unit train per week, with anticipated increase to three unit trains per week. It is intended to expand this business by seeking additional customers.

There are currently 7,065 linear feet of track located on the East Chicago Transload Facility, all of which will be managed and operated by BERR. Landisville Railroad employees will operate, under the BERR-Landisville Operating Agreement, BERR's equipment consisting of track mobiles, locomotives, and tank cars under the direction and management of BERR. Landisville employees will be appropriately trained and licensed as railroad conductors, and track mobile operators and/or locomotive engineers. These operations will be conducted under a site specific code of operating rules prepared to NORAC requirements.

In those circumstances, the East Chicago Transload Facility trackage, as operated by Buckeye East Chicago Railroad, L.L.C. and its contractor, Landisville Railroad, LLC, is properly considered to be a line of railroad under 49 U.S.C. § 10901 pursuant to the Board's tenant-use test, rather than spur, switching or side tracks excepted from Board authority over

their acquisition and operation by virtue of 49 U.S.C. § 10906. The tenant-use test is described in the Board's decision denying reconsideration in *Effingham Railroad Company - Petition for Declaratory Order - Construction at Effingham, IL*, STB Docket No. 41986 and embraced proceedings, 1998 STB LEXIS 253, decision served September 18, 1998; *aff'd sub nom. United Transp. Union v. Surface Transportation Board.*, 183 F.3d 606 (7th Cir. 1999). The applicant, LVR, is in final negotiations of an Operating Agreement to operate on BERR trackage. As owner, the determination under the tenant-use test would be equally applicable to an operator of an acquired property.

In that case, as here pertinent, Agracel Corporation transloaded beer from rail to truck at a warehouse that it operated in an industrial park at Effingham, IL. Agracel owned approximately 206 feet of right-of-way and track that extended between its warehouse and trackage owned and operated by Conrail. Previously, Conrail had operated over the Agracel trackage to provide service to Agracel. It was proposed that Effingham Railroad Company (ERRC), a non-carrier, substitute for Conrail as provider of the rail service over the Agracel trackage. ERRC filed a notice of exemption under 49 C.F.R. § 1150.31 for its operation over that trackage. The United Transportation Union (UTU) contended that the Board lacked authority over the proposed operation because Agracel trackage is spur, switching or side track excepted from Board operation authority under 49 U.S.C. § 10906.

In finding that the Agracel trackage was a line of railroad under 49 U.S.C. § 10901, the Board said (1998 STB LEXIS 253, at 8-9 (emphasis in original)):

...(I)n those cases where a tenant railroad's intended use of a track segment is different from the use made by the railroad owning the track, we have determined that the tenant's use, rather than the character of the trackage itself, is controlling with regard to its own operations, subject to consideration of the purpose and effect of the construction under *Texas & Pacific* (citations omitted).

In the initial notice, even under its new approach, ERRC became the operator of a line of track connecting Conrail to the site of the industrial park. Conrail clearly had operated this short track segment as an exempt siding or spur. However, because it was ERRC's initial railroad operation, this track segment became ERRC's entire line of railroad and was not, as to ERRC, a siding or spur. This small piece of trackage initiated ERRC's service from a connection or interchange point with Conrail to a shipper's facility within the industrial park. Thus ERRC's becoming the operator was the proper subject of the initial notice of exemption and was not statutorily exempt under section 10906.

It is apparent from the Board's decision in that case that the tenant-use test also applies when a new rail carrier is using trackage which it owns rather than leases, and when the prior use of the track was by a third-party carrier rather than by the shipper-owner of the trackage. In upholding the Board's decision in that case, the reviewing court held that it was reasonable for the Board to classify the trackage by virtue of the tenant's use. *United Transp. Union vs. Surface Transportation Bd.*, *supra*. 193 F.3d at 614. *Accord: Chicago Rail Link LLC - Lease & Oper. - Union Pacific R.R. Co.*, 2 S.T.B. 534 (1997), *aff'd sub nom. United Transp. Union - Illinois v. Surface Transp.*, 169 F.3d 474 (7th Cir. 1999). Use by a newly formed railroad of its own newly acquired tracks is akin to the uses described in the above-cited cases as that of a railroad-operator of a subject trackage. The fact that for the present, BERR has elected to have railroad operating employees (licensed conductors and locomotive engineers) does not alter the fact that BERR's use of the subject trackage is consistent with the decisions in *Effingham*, *supra*. and related cases.

Inasmuch as the subject transaction is BERR's initial railroad acquisition, and the East Chicago Transload Facility trackage will constitute the entire line of railroad of BERR, it follows that the East Chicago Transload Facility trackage is a line of railroad under 49 U.S.C. § 10901, rather than spur, switching or side tracks excepted from Board acquisition and operation

authority by virtue of 49 U.S.C. § 10906. As one of the operators of the subject trackage, Landisville is in the position of operating a line of railroad.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

The full name and address of the applicant;

The full name and address of the applicant in Finance Docket Number 35702 is Landisville Railroad, LLC, 4910 Simpson Ferry Road, Mechanicsburg, PA, 17050.

The name, address, and telephone number of the representative of the applicant who should receive correspondence;

LVR representative is David C. Dillon, Dillon & Nash, Ltd., 111 West Washington Street, Suite 1023, Chicago, Illinois, 60602, 312-782-9025.

A statement that an agreement has been reached or details when an agreement will be reached;

An agreement between Buckeye East Chicago Railroad, LLC and Landisville Railroad concerning the operation of the East Chicago Transload Facility trackage and transload facilities has been entered into. A copy of the Railcar Switching and Transloading Service Agreement is attached hereto.

(d) The operator of the property;

BERR will be the managing operator of the property. LVR operating employees will operate equipment owned by BERR, under BERR's direction.

(e) A brief summary of the proposed transaction, including:

(a) The name and address of the railroad transferring the subject property,

The above entity in Finance Docket Number 35702 is Landisville Railroad, LLC, 4910 Simpson Ferry Road, Mechanicsburg, PA, 17050.

(b) The proposed time schedule for consummation of the transaction,

The operating agreement and operation was entered into on November 1, 2012.

(c) *The mile-posts of the subject property, including any branch lines, and*

The East Chicago Transload Facility trackage is not described by milepost numbers.

That trackage is described and depicted in Appendix 1-A and 1-B attached to this Notice.

(d) *The total route miles being acquired;*

A total of approximately 7,065 feet/1.34 miles of trackage is to be operated under an operating agreement.

(f) *A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States:*

The required map is attached to this Notice as Appendix 1-B.

(g) *A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.*

The required certificate is attached to this Notice as Appendix 2.

CAPTION SUMMARY

A caption summary required by 49 C.F.R. § 1150.34 for Finance Docket Number FD 35702 is attached to this Notice as Appendix 3.

ENVIRONMENTAL AND HISTORIC REPORT

The proposed acquisition and operation do not require environmental and historic reporting. See 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1).

LABOR PROTECTION

Pursuant to 49 U.S.C. § 10901(c), labor protection requirements do not apply to this transaction.

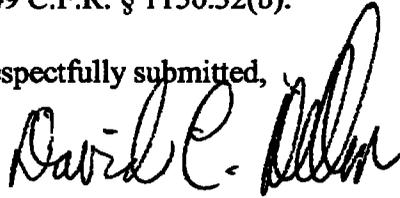
VERIFICATION

The verification is attached to this Notice as Appendix 4.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 30 days of the filing of this Notice, the Director of the Board's Office of Proceedings should publish notices in the Federal Register of the filing of notices of exemption in Finance Docket No. 35702. See 49 C.F.R. § 1150.32(b).

Respectfully submitted,



Landisville Railroad, LLC

By: David C. Dillon
Dillon & Nash, Ltd.
111 West Washington Street
Suite 1023
Chicago, Illinois 60602
(312) 782-9025

*Attorney for Applicant
in Finance Docket No. FD 35702*

Applicant in Finance Docket No. FD 35702

DATE FILED: November 29, 2012

Finance Docket Number: FD 35702

Appendix 1-A

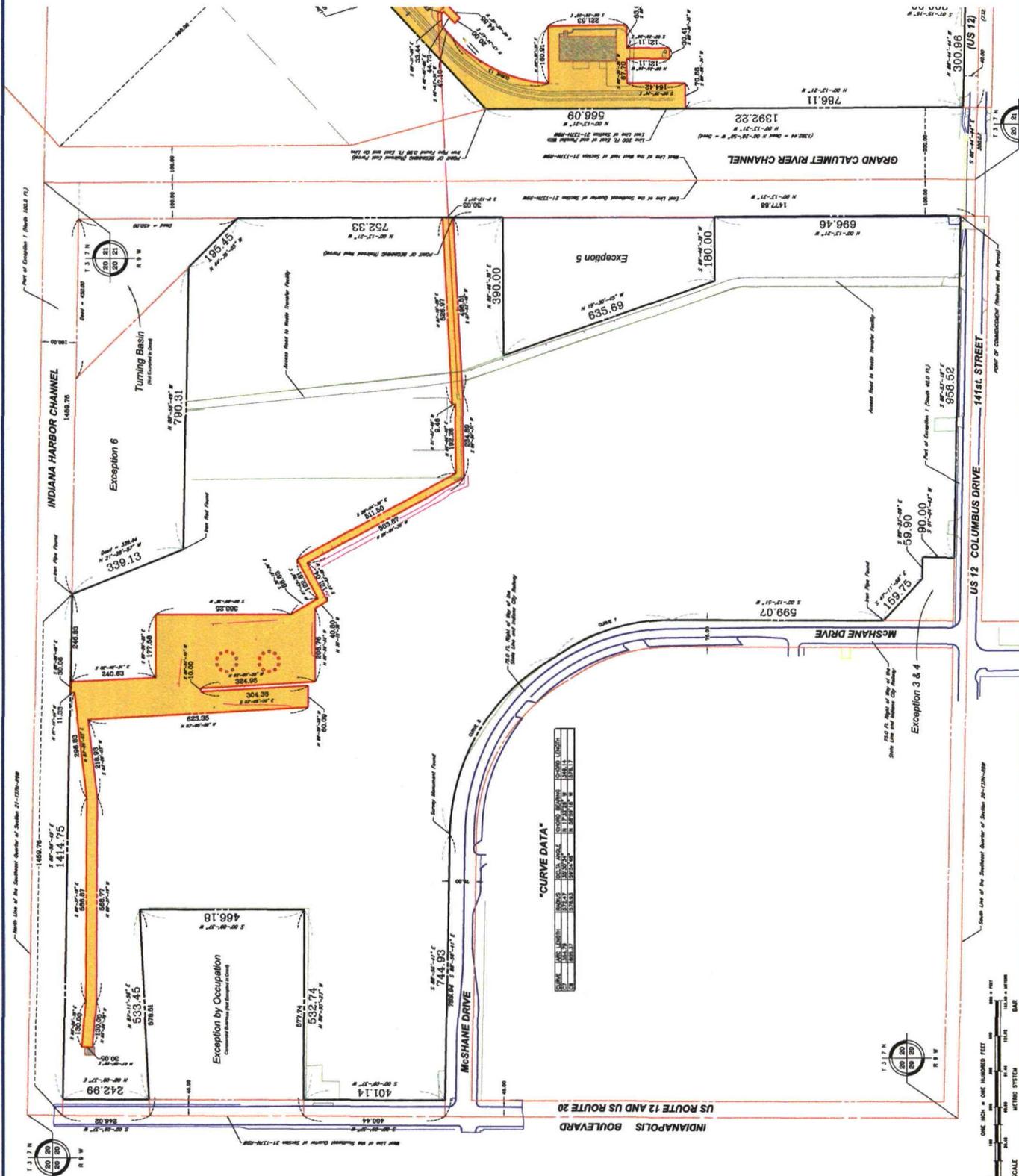
**LENGTH OF LANDISVILLE RAILROAD, LLC
EAST CHICAGO TRANSLOAD FACILITY**

Total Track: 7,065 linear feet = 1.34 miles of track

PLAT OF SURVEY
 Prepared by
MARCHESE AND SONS, Inc.
 land - marine - construction surveys
 1000 N. W. 10th Street
 Fort Lauderdale, FL 33304
 Phone: (954) 584-3888
 Fax: (954) 584-3888

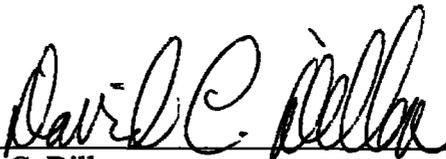


SHEET: 2 OF 2
 METRIC: NONE
 ADDRESS: 1000 N. W. 10th STREET
 CITY: FORT LAUDERDALE, FLORIDA
 COUNTY: DADE COUNTY, FLORIDA
 SCALE: ONE INCH = ONE HUNDRED FEET
 ORDER NO.: 12-15650
 ORDERED BY: MR. MARGIE LYNCH
 FOR: BUCKEYE PARTNERS, LLC
 CONVEYANCE: ALL RIGHTS RESERVED BY SAME AND, AT THE TIME OF THIS SURVEY, THE SURVEYOR HAS BEEN ADVISED BY THE CLIENT THAT THE SURVEYED PROPERTY IS SUBJECT TO A DEED OF TRUST, THE TERMS OF WHICH REQUIRE THAT THE SURVEYOR OBTAIN A RELEASE FROM THE LENDER PRIOR TO THE RECORDING OF THIS PLAT. THE SURVEYOR HAS OBTAINED SUCH A RELEASE FROM THE LENDER AND HAS ADVISED THE CLIENT OF THE SAME. THE CLIENT HAS ADVISED THE SURVEYOR THAT THE SURVEYED PROPERTY IS SUBJECT TO A DEED OF TRUST, THE TERMS OF WHICH REQUIRE THAT THE SURVEYOR OBTAIN A RELEASE FROM THE LENDER PRIOR TO THE RECORDING OF THIS PLAT. THE SURVEYOR HAS OBTAINED SUCH A RELEASE FROM THE LENDER AND HAS ADVISED THE CLIENT OF THE SAME.



CERTIFICATION UNDER 49 C.F.R. § 1150.33(g)

Landisville Railroad, LLC hereby certifies under 49 C.F.R. § 1150.33(g),
that the projected revenues from the acquisition and operation proposed in this matter do not
exceed those that would qualify it as a Class III rail carrier.



David C. Dillon
*Authorized Representative of
Landisville Railroad, LLC*

SUBSCRIBED AND SWORN TO before
me this 29th of November, 2012.



Notary Public



CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. FD 35702

**LANDISVILLE RAILROAD, LLC
- ACQUISITION EXEMPTION -
RAIL LINE OF BUCKEYE EAST CHICAGO RAILROAD, L.L.C.
AT EAST CHICAGO TRANSLOAD FACILITY, EAST CHICAGO, INDIANA**

Landisville Railroad, LLC (LVR), has filed a Notice of Exemption to operate from Buckeye East Chicago Railroad, approximately 1.34 miles of right-of-way and trackage at Buckeye East Chicago Railroad, L.L.C.'s East Chicago Transload Facility in East Chicago, Indiana. Comments must be filed with the Board and be served on LVR's representative, David C. Dillon, Dillon & Nash, Ltd., 111 W. Washington Street, Suite 1023, Chicago, IL, 60602, (312) 782-9025.

This Notice is filed under 49 C.F.R. § 1150.31. If the 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.

By the Board

(Seal)

**Cynthia T. Brown,
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board**

VERIFICATION

STATE OF ILLINOIS)
)
COUNTY OF COOK)

David C. Dillon, being duly sworn, states that he is an attorney for Landisville Railroad, LLC; that he is familiar with the factual allegations made in the foregoing Notice of Exemption on behalf of LVR; and that such allegations are true as stated.



David C. Dillon, Attorney for
Landisville Railroad, LLC

SUBSCRIBED AND SWORN to before
me this 29th day of November, 2012.



Notary Public

