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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
December 31, 2012
Part of
Public Record

STB Finance Docket No. 35711

**KM RAILWAYS, LLC –
ACQUISITION AND OPERATION EXEMPTION –
LINE OF RAILROAD IN COOK COUNTY, IL**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41**

David H. Coburn
STEP TOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
dcoburn@step toe.com
202-429-8063

Attorney for KM Railways, LLC

Dated: December 31, 2012

**FEE RECEIVED
December 31, 2012
SURFACE
TRANSPORTATION BOARD**

**FILED
December 31, 2012
SURFACE
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STB Finance Docket No. 35711

**KM RAILWAYS, LLC –
ACQUISITION AND OPERATION EXEMPTION –
LINE OF RAILROAD IN COOK COUNTY, IL**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41**

Pursuant to the regulations of this Board at 49 C.F.R. § 1150.41, KM Railways, LLC (“KMR” or “Applicant”), a Class III rail carrier and Delaware limited liability company, files this Verified Notice of Exemption from requirements of 49 U.S.C. § 10902, to acquire and operate 9,350 feet of rail track in Cook County, Illinois. Based on projected revenues on the acquired track, KMR expects to remain a Class III rail carrier after it initiates common carrier operations on the acquired track.

KMR is indirectly owned by Koch Industries, Inc. (“Koch”). Koch has authorization from the Board to control KMR and three other railroads. See *Koch Industries, Inc. – Continuance in Control Exemption – KM Railways, LLC*, STB Finance Docket No. 35320 (served Dec. 4, 2009).¹ KMR is a rail common carrier which owns (in addition to the track

¹ On December 27, 2012, Koch filed a Notice of Exemption with the STB to control a fifth railroad, the Texas South-Eastern Railroad Company, Inc., which it plans to acquire. See *Koch Industries, Inc. – Acquisition of Control Exemption – Texas South-Eastern Railroad*

described here) approximately 2.5 miles of track in Mississippi. *See KM Railways, LLC -- Acquisition Exemption – Old Augusta Railroad, LLC*, STB Finance Docket No. 35321 (Dec. 4, 2009). That Mississippi track is operated as common carrier track by another Koch-controlled railroad affiliate, the Old Augusta Railroad, which leases the track from KMR. *See Old Augusta Railroad, LLC -- Lease and Operation Exemption – KM Railways, LLC*, STB Finance Docket No. 35319 (Dec. 4, 2009). The Mississippi operation is entirely unrelated to the transaction described here.

In accordance with the requirements of the Board’s rules, KMR submits the following information:

Name and Address of Applicant: 49 C.F.R. 1143(a)

The full name and address of the rail carrier applicant is as follows:

KM Railways, LLC
4111 East 37th Street North
Wichita, KS 67220

Applicant’s Representative: 49 C.F.R. 1143(b)

Any questions concerning this Notice should be sent to KMR’s representative at the following address:

David H. Coburn
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
dcoburn@steptoe.com
202-429-8063

Company, STB Finance Docket No. 35708 (Dec. 27, 2012). That transaction is unrelated to the transaction described here.

Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)

KMR, together with an affiliated Koch-owned entity, KCBX Terminals Company (“KCBX”), entered into an Asset Purchase Agreement (“APA”) on December 20, 2012 with non-carrier sellers DTE Chicago Fuels Terminal, LLC and DTE Coal Services, Inc.² Under the terms of the APA, KMR has acquired certain track and related rail facilities in Chicago, Cook County, IL which it intends to use to serve the various shippers that will utilize the KCBX South Terminal, a transload facility acquired in the same transaction, as well as any other shippers that may reasonably request service. The property acquired by KMR includes 9,350 feet of track, which connects with a Norfolk Southern Railway Company (“NS”) line.³ An aerial photo depicting the KMR-acquired track that is the subject of this Notice is attached as Exhibit A.

While the regulatory status of current operations on the track is not known to KMR, KMR intends to initiate common carrier rail service on that track after the effectiveness of this Notice and following the completion of on-going improvements to the track and related facilities. The track will be used by KMR to transport coal, petcoke, aggregate and other products to/from the KCBX South Terminal. KMR may also negotiate switching arrangements with IHB under which KMR will operate trains to/from the facility over the track that KMR has purchased.

² Prior to its acquisition several years ago by the immediate past owners, KMR believes that the track was apparently operated by the Calumet Transload and Railroad, LLC. *See* F.D. No. 34639, *Calumet Transload and Railroad, LLC – Lease and Operation Exemption – Rail line of Calumet Transfer, LLC* (January 21, 2005).

³ KMR and/or affiliates plan to attain rights through a lease to operate over an additional approximately 12,300 feet of track which links the KMR-owned track that is the subject of this Notice to the NS mainline and thus provides rail system access for the KMR line and the KCBX South Terminal. At the time such plans reach fruition, appropriate filings with respect to any lease and operation over such track will be submitted to the Board.

Operation of the Property: 49 C.F.R. § 1150.43(d)

KMR will operate the acquired track, as described in this Notice, following the effectiveness of this Notice and completion of improvements to the track.⁴

Summary of the Transaction: 49 C.F.R. § 1150.43(e)

The transaction is described above. The sellers of the rail assets that are the subject of this Notice are non-carriers DTE Chicago Fuels Terminal, LLC and DTE Coal Services, Inc. KMR intends to hold out rail service subject to the jurisdiction of the Board as a common carrier on reasonable request to the KCBX South Terminal and to the users of that Terminal and other shippers that may locate on the line. KMR will initiate this service following the effectiveness of this Notice and following completion of certain improvements being made to the track and facilities, on or after January 31, 2013. The 9,350 feet of track that KMR will be operating does not have mile-posts. The track is depicted on the attached aerial photograph.

Maps of Subject Property: 49 C.F.R. § 1150.43(f)

An aerial photograph of the rail line is attached hereto as Exhibit A to this Notice. The acquired line is shown in blue.

Class III Revenue Certification: 49 C.F.R. § 1150.43(g)

The projected annual revenue of KMR as a result of this transaction will not exceed the annual revenue of a Class III railroad, and will not result in the creation of a Class II or Class I rail carrier that would require processing under 49 C.F.R. § 1150.45. A certification is attached hereto as Exhibit B.

Interchange Commitments: 49 C.F.R. § 1150.43(h)

The track that is described in this Notice is not the subject of any provision or agreement

⁴ The Indiana Harbor Belt Railway (“IHB”) may also utilize the track under arrangements to be negotiated.

that would limit future interchange with a third-party connecting carrier.

Historic Preservation:

KMR's acquisition of 9,350 feet of rail trackage from the sellers is exempt from historic preservation reporting requirements under the Board's regulations at 49 CFR § 1105.8(b)(1) as it constitutes a sale of property for continued rail operations, STB approval will be required for any abandonment and there are no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older.

Environmental Impacts:

The proposed transaction will not result in any changes in carrier operations in the reasonably foreseeable future. Accordingly, no environmental documentation is required under the criteria of 49 C.F.R. § 1105.6(c)(2) because the proposed transaction will result in the continuation of rail service on existing tracks and will not cause any immediate or reasonably foreseeable operating changes that exceed the thresholds in 49 C.F.R. § 1105.7(e)(4) or (5).

Caption Summary: 49 C.F.R. § 1105.44

A caption summary of the proposed transaction suitable for publication in the Federal Register is attached hereto as Exhibit C.

Respectfully submitted,

A handwritten signature in black ink that reads "David H. Coburn / KPD". The signature is written over a horizontal line.

David H. Coburn
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
dcoburn@steptoe.com
202-429-8063

Attorney for KM Railways, LLC

December 31, 2012

VERIFICATION

State of Kansas)

County of Sedgwick)

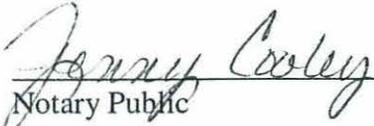
Daniel J. Murray, being duly sworn, deposes and says that he is the President of KM Railways, LLC; that he has read the foregoing Notice of Exemption, that he has personal knowledge of the facts asserted therein, and that he certifies the same are true as stated.

Executed on December 28, 2012


KM Railways, LLC

SUBSCRIBED AND SWORN TO

Before me this 28th day of December, 2012


Notary Public

My commission expires: 2/24/2013

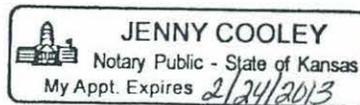


EXHIBIT A

AERIAL PHOTOGRAPH OF COOK COUNTY LINE

ACQUIRED BY KM RAILWAYS, LLC



CALUMET RIVER

TOTAL KMR TRACK LENGTH: ~9350 FEET

NS Track (Red)

NORFOLK SOUTHERN MAINLINE 125' RIGHT OF WAY

LEGEND:

- KMR Track
- Existing Track
- RR ROW



LOCATION	CHICAGO, ILLINOIS		
TITLE	KMR Railways, LLC - Terminal		
OPERATING DIVISION	NS	Division	RAILPORT
PROJECT NO.	KMR-1212-02		

EXHIBIT B

CERTIFICATION

CERTIFICATION

Daniel J. Murray, President of KM Railways, LLC, being duly sworn certifies that the projected revenues for KM Railways, LLC upon consummation of the proposed transaction will not result in creation of a Class I or Class II rail carrier and the projected annual revenue will not exceed \$34.7 million.



KM Railways, LLC

Dated: December 28, 2012

EXHIBIT C

CAPTION SUMMARY FOR NOTICE OF

EXEMPTION

Surface Transportation Board

Notice of Exemption

STB Finance Docket No. 35711

KM RAILWAYS, LLC—ACQUISITION AND OPERATION EXEMPTION – LINE OF
RAILROAD IN COOK COUNTY, IL

KM Railways, LLC (“KMR”), a Class III short line railroad, has filed a Verified Notice of Exemption under 49 C.F.R. § 1150.41 *et seq.* to acquire from DTE Chicago Fuels Terminal, LLC and DTE Coal Services, Inc., and operate, 9,350 feet of railroad track in Chicago, Cook County, IL.

The track will be used to serve a transload terminal acquired by an affiliated entity, KCBX Terminals Company, and connects with the tracks of the Norfolk Southern Railway Company. The track will be operated by KMR as common carrier track. KMR intends to initiate operations on the track subject to Board jurisdiction on or after January 31, 2013, following the effectiveness of this Notice and the completion of improvements to the track.

An original and ten (10) copies of all pleadings and comments in this proceeding, STB Finance Docket No. 35711, must be filed with the Surface Transportation Board, Chief, Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423. In addition, a copy must be served on KMR’s representative: David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Ave., Washington, DC 20036, (202) 429-8063.

This Notice is filed under 49 C.F.R. § 1150.41. 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. However, the filing of a petition to revoke will not automatically stay the transaction.

Decided: _____

By the Board, Rachel D. Campbell, Office of Proceedings

Cynthia Brown

Chief, Section of Administration, Office of Proceedings