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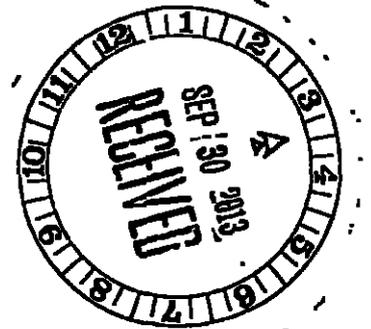
September 30, 2013

JOHN D HEFFNER
Direct Phone 202-742-8807
Direct Fax 202-742-8897
john.heffner@strasburger.com

VIA COURIER

Ms. Cynthia T. Brown
Surface Transportation Board
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

FILED
SEP 30 2013
SURFACE
TRANSPORTATION BOARD



RE: FD 35774, Youngstown & Southeastern Railway Company-Operation Exemption-Mule Sidetracks, L.L.C.

Dear Ms. Brown:

I am enclosing on behalf of the Youngstown & Southeastern Railway Company, a verified notice of exemption under 49 CFR §1150.41 for operation of a line of railroad. I am also submitting a Word copy of this filing on a computer disk along with a filing fee check for \$1900.

Please date stamp and return one copy of this filing.

Sincerely yours,

John D. Heffner

ENTERED
Office of Proceedings

SEP 30 2013

Part of
Public Record

FEE RECEIVED
SEP 30 2013
SURFACE
TRANSPORTATION BOARD

Enclosure

cc: Mr. Powell Felix
Richard Streeter, Esq.

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Strasburger & Price, LLP

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Austin | Collin County | Dallas | Houston | San Antonio | New York, N.Y. | Washington, D.C. | Menlo City - Strasburger & Price, SC

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**FD 35774
YOUNGSTOWN & SOUTHEASTERN RAILWAY COMPANY
—OPERATION EXEMPTION—
MULE SIDETRACKS, L.L.C.**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10902 and 49 CFR §1150.41**

Submitted By:

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Counsel for Petitioner

Dated: September 30, 2013

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**FD 35774
YOUNGSTOWN & SOUTHEASTERN RAILWAY COMPANY
—OPERATION EXEMPTION—
MULE SIDETRACKS, L.L.C.**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10902 and 49 CFR §1150.41**

Youngstown & Southeastern Railway Company (“Y&SR”), an existing Class III railroad common carrier, files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (“the Board”) to continue to operate a line of railroad. The trackage that is the subject of this notice known as the Youngstown & Southern Line extends 35.7 miles between MP 0.0 in Youngstown, OH, and MP 35.7 in Darlington, PA (“the Line”). The Line is currently owned by the Columbiana County Port Authority (“CCPA”) and has been operated under a lease by the applicant here, Y&SR, from CCPA.¹ As a result of a related transaction filed on

¹ *Youngstown & Southeastern Railway Company-Lease and Operation Exemption-Lines of Eastern States Railroad, LLC*. FD 34992, STB served December 21, 2006. Originally, Eastern States Railroad, LLC (“ESR”), was to have acquired the Line and related operating, lease, and easement rights from the CCPA which had been leasing them to ESR with Y&SR as its tenant. However, ESR never consummated that acquisition with the result that CCPA continues to own the Line and the rights.

September 27, 2013, by Mule Sidetracks, L.L.C. ("MSLLC") in FD 35773,² ownership of the Line will be transferred from CCPA to MSLLC. While MSLLC will have a residual common carrier obligation as a result of its acquisition, Y&SR will continue to be the serving carrier pursuant to a new operating agreement. Additionally, this notice covers operations over approximately three (3) miles of rights over contiguous track segments that are being permanently assigned to MSLLC, running east of MP 0.0 and connecting to the Line, and that, *inter alia*, facilitate interchange with Norfolk Southern Railway Company ("NSR") and CSX Transportation, Inc. ("CSXT"). All of this trackage is shown on Exhibit A, attached and incorporated herein, and is in Columbiana and Mahoning Counties, Ohio, and Beaver County, Pennsylvania. Y&SR will operate over those rights in the name of and as an agent of MSLLC. Once this notice becomes effective, Y&SR will provide all common carrier railroad service over the Line and the three additional contiguous miles of rights.

INFORMATION REQUIRED BY 49 CFR §1150.43

<u>Name and Address of Applicant</u>	49 CFR §1150.43(a)
Youngstown & Southeastern Railway Company c/o Indiana Boxcar Company 916 Vine Street, Connersville, IN 47331	

² Docketed as *Mule Sidetracks, L L C—Exemption For Purchase of Line of Railroad And Assignment of Operating Rights—Columbiana County Port Authority.*

Applicant's Representative

49 CFR §1150.43(b)

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Statement of Agreement

49 CFR §1150.43(c)

Y&SR and MSLLC have executed an agreement dated September 26, 2013, for operation of the Line.

Operator of the Property

49 CFR §1150.43(d)

As noted above, Y&SR will provide all common carrier rail operations over the Line and the three additional contiguous miles of rights.

Brief Summary of Transaction

49 CFR §1150.43(e)

Y&SR is a Class III short line railroad common carrier that was established in 2006 for the purpose of providing common carrier railroad service over the Line and the three contiguous miles of rights. The purpose of this notice is to allow Y&SR to continue its existing rail service over property being sold or assigned from CCPA to MSLLC. Y&SR's status will change from that of a sublessee from CCPA to a contractual operator for MSLLC.

As part of the transaction between CCPA and MSLLC, CCPA is assigning to MSLLC all of its interests in all agreements and operating rights necessary or useful to enable MSLLC to operate from milepost 0.0 to interchanges with NSR

and CSXT, a distance of approximately three (3) miles, which agreements and operating rights are made part of this exemption including, without limitation, the following agreements and operating rights:

(A) Overhead Trackage Rights Agreement dated May 7, 2001 between Ohio & Pennsylvania Railroad Company (which, together with its parent and all affiliates, "OHPA")³ and CQPA,⁴ to which CCPA is successor;

(B) Letter Agreement regarding yard operations dated November 30, 2001 between OHPA, CQPA and CCPA, to which CCPA is successor;

(C) Interchange Agreement dated July 23, 2002, as amended and in effect, among CSXT, OHPA and CQPA and Interline Service Agreement, effective date April 1, 2004, between CSXT and CQPA, to which CCPA is successor;

(D) Land Lease dated August 8, 2003 between CSXT and CQPA, which was assumed by CCPA, effective January 3, 2006;

(E) Interchange Agreement dated May 1, 2001, and Interline Service Agreement, effective date October 5, 2004 between CQPA and NSR, to which CCPA 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 CCPA is

³ Ohio & Pennsylvania Railroad Company.

⁴ Central Columbia & Pennsylvania Railroad, the Line's initial operator.

successor; and

(G) Operating Rights Agreement between Matteson Equipment Company ("Matteson") and CQPA, to which CCPA is successor; and Operating Rights Agreement between ESRR and Matteson dated July 14, 2006 to which CCPA is successor

For the three (3) miles of continuous track segments running east of milepost 0.0 in Youngstown that connect to the Line and that facilitate interchange with CSXT and NSR, MSLLC shall be the common carrier, but Y&SR shall operate on the lines solely as an agent of and in the name of MSLLC. (*See*, decisions in combined FD 34145, *Bulkmatic Railroad Corporation—Acquisition and Operation Exemption—Bulkmatic Transport Company*, and *Bulkmatic Railroad Corporation—Operation Exemption—Bulkmatic Transport Company*. STB served November 19, 2002 and May 15, 2003.)

Other information required

(1) The name and address of the party transferring the subject property:

No physical property will be transferred as a result of this filing; however, the new owner of the Line, MSLLC, will enter into a new operating agreement with the existing service provider, Y&SR.

Mule Sidetracks, L.L.C.
1515 Arapahoe Street, Tower 1
Suite 1600
Denver, CO 80202

(2) The proposed time schedule for consummation of the transaction:

Y&SR intends to consummate this transaction 30 days from the date of this notice, probably around November 1, 2013.

The mileposts of the subject property, including any branch lines:

The trackage that is the subject of this notice known as the Youngstown & Southern Line and extends 35.7 miles between MP 0.0 in Youngstown, OH, and MP 35.7 in Darlington, PA ("the Line") and the three additional contiguous miles of rights for which there are no mileposts.

The total route miles to be operated:

About 35.7 miles of railroad and the three additional contiguous miles of rights.

Map

49 CFR §1150.43(f)

A map depicting the railroad trackage to be operated is attached as Exhibit

A.

Certificate of Carrier Classification 49 CFR §1150.43(g)

Y&SR certifies that with this transaction its projected annual revenues will be less than \$5,000,000 annually. A certificate complying with the provisions of 49 CFR §1150.43(g) is attached as Exhibit B to this notice.

Transactions Imposing Interchange Commitments 49 CFR §1150.43(h)

This transaction does not involve any provision or agreement that may limit future interchange with a third-party connecting carrier.

Labor Protection

Labor protective conditions are not applicable to transactions under 49 U.S.C. §10902.

Caption Summary 49 CFR §1150.44

A caption summary in the prescribed form is attached as Exhibit C to this Notice.

Environmental and Historic Preservation Data 49 CFR §1105

Pursuant to 49 CFR §1105.6(c) (2), the proposed transaction is exempt from environmental review under 49 CFR §1105(c) (2) (i), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 49 CFR §1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Respectfully submitted,



John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Counsel for Petitioner

Dated: September 30, 2013

EXHIBIT A

EXHIBIT A

Page 1 of 2

ROUTE MAP

of the
**Line from Darlington, PA
to Youngstown, OH**

Formerly known
As the
**Youngstown
& Southern Railway**

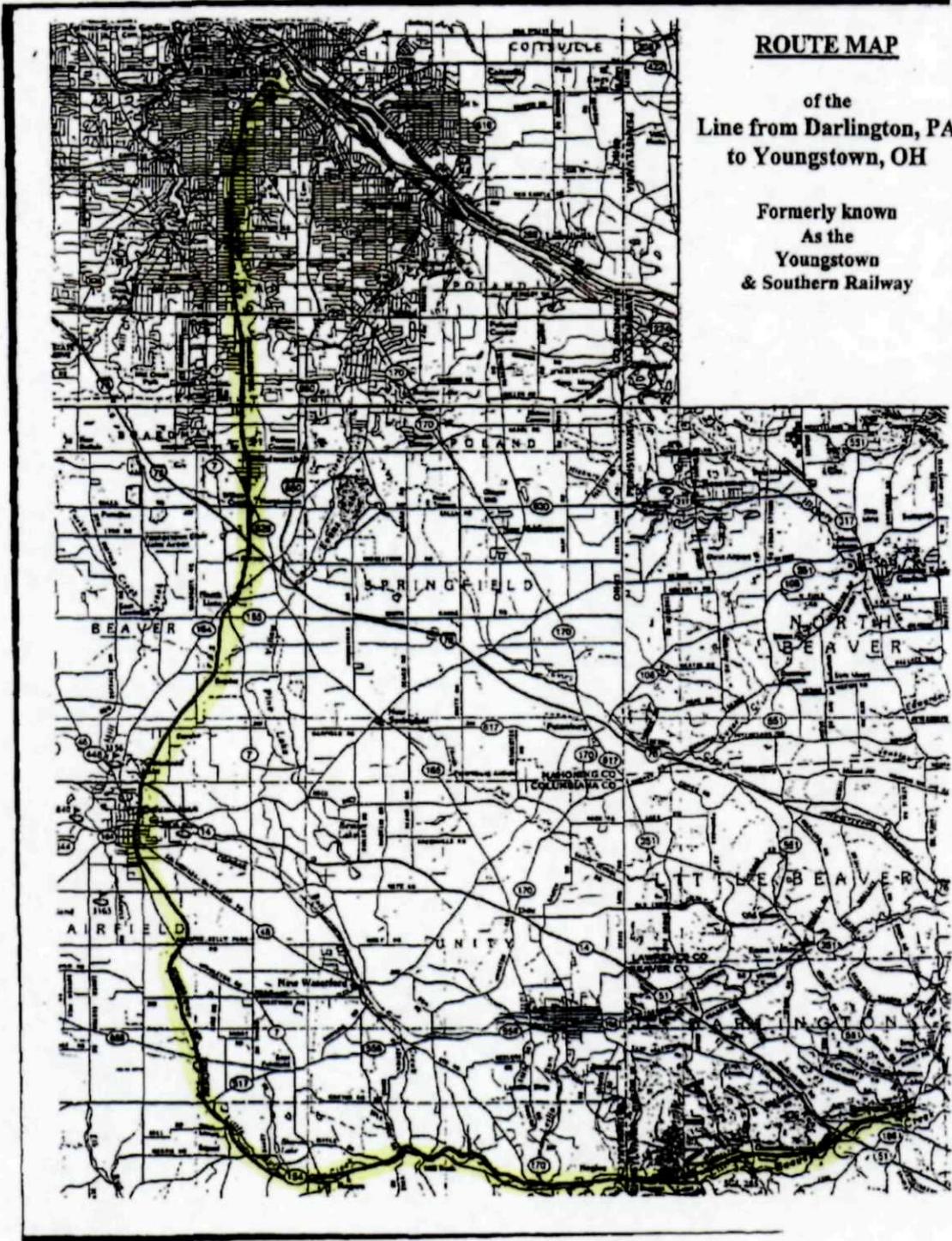


Exhibit B

Certification

I, R. Powell Felix, certify that I am President of the Youngstown & Southeastern Railroad Company and that applicant's historic and projected revenues have not, and are projected to not, exceed \$5 million dollars annually and will not result in the applicant becoming a Class I or Class II carrier under provisions of 49 CFR 1201 (1 - 1).

Dated September 27, 2013

Signature: R Powell Felix

EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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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 effectiveness of the exemption. Petitions for stay must be filed no later than October 23, at least 7 days before the exemption becomes effective.

² Docketed as *Mule Sidetracks, L.L.C.—Exemption For Purchase of Line of railroad And Assignment of Operating Rights—Columbiana County Port Authority*.

An original and 10 copies of all pleadings, referring to FD 35774 must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D. Heffner, Esq., Strasburger & Price, 1700 K Street, N.W. – Suite 640, Washington, D.C. 20006, Telephone: (202) 742-8607, counsel for Y&SE

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided:

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

VERIFICATION

STATE OF INDIANA)
)
CITY OF FAYETTE)

R. Powell Felix being duly sworn according to law, hereby deposes and states that (s)he holds the position of President with applicant/petitioner. is authorized to make this Verification. had read the foregoing document. and knows the facts asserted therein are true and accurate as stated. to the best of (her)his knowledge. information. and belief.

R Powell Felix

Subscribed to and sworn to before me, a Notary Public, in and for the County of Fayette in the State of ~~Indiana~~ this 27th day of September, 2013

Lisa L. Hohman
Notary Public

My Commission expires:

