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November 25, 2008

Hand Delivery

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street S W
Washington, DC 20423

Re STB Docket No. AB-1020X, East Penn Railroad, LLC – Abandonment Exemption – In Berks and Montgomery Counties, Pennsylvania

Dear Acting Secretary Quinlan:

Attached for filing are the original and ten (10) copies of the Reply of East Penn Railroad, LLC to the Request For Tolling of Deadline

If you have any questions, please call me

Sincerely,

Karl Morell

Enclosures

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Office of Proceedings

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO AB-1020X

EAST PENN RAILROAD, LLC
--ABANDONMENT EXEMPTION--
IN BERKS AND MONTGOMERY COUNTIES, PA

REPLY TO REQUEST FOR TOLLING OF DEADLINE FOR FILING AN OFFER OF
FINANCIAL ASSISTANCE



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Attorney for.
East Penn Railroad, LLC

Dated November 25, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB DOCKET NO AB-1020X

EAST PENN RAILROAD, LLC
--ABANDONMENT EXEMPTION--
IN BERKS AND MONTGOMERY COUNTIES, PA

REPLY TO REQUEST FOR TOLLING OF DEADLINE FOR FILING AN OFFER OF
FINANCIAL ASSISTANCE

East Penn Railroad, LLC ("ESPN") hereby replies in opposition to the Request For Tolling of Deadline for Filing an Offer of Financial Assistance ("OFA") filed by Berks County ("County"), on November 19, 2008 ("Tolling Request").

ESPN opposes the Tolling Request on two grounds. First, all of the information requested by the County in its letter dated November 19, 2008 has already been provided by ESPN in its various filings in this proceeding and in the Response to Discovery Requests. For example, ESPN's estimate of the annual subsidy and minimum purchase price is set forth in its Petition and summarized in Exhibit 1 to the Surface Transportation Board's decision dated November 18, 2008, in this proceeding. As to the condition of the line, ESPN responded to the County's similar request in Interrogatory No 7.

Second, the tolling provisions contained in 49 C F R § 1152 27(c)(1)(i)(C) are intended to assist entities that have made timely and "*bona fide* requests" for OFA information and not an entity, like the County, that waits until the last minute to make its request. Indeed, Section 1152 27(c)(1)(i)(C) expressly requires that the party seeking to toll the deadline should "include copies of the prior written request for information." Emphasis added. The County has no

prior requests to submit (other than its discovery requests to which ESPN fully responded) because its request for the OFA information was submitted simultaneously with its Tolling Request. The deadline for filing an OFA in this proceeding is derived from 49 U.S.C. § 10904(c), which “sets 4 months as the outer limit for the filing of OFAs.” *Aban and Discon Of R Lines and Transp Under 49 U.S.C. 10903*, 1 S.T.B. 894, 910-11 (1996)

The County has actively participated in this proceeding and already has in its possession all of the information it now belatedly seeks. Consequently, one can only assume that the County’s real motive in seeking the redundant information is to delay this proceeding. A party should not be allowed to manipulate a firm statutory deadline by filing untimely requests for OFA information, particularly where, as here, the party already has all of the information it needs to file the OFA. *Cf. STB Docket No. AB-55 (Sub-No. 538X), CSX Transportation, Inc. – Abandonment Exemption – In Fayette and Nicholas Counties, WV* (not printed), served February 11, 1997.

Respectfully submitted,



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Dated: November 25, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply has been served on Counsel for Berks County, PA, by hand delivery this 25th day of November 2008



Karl Morell