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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35192

LEHIGH RAILWAY, LLC
-- LEASE AND OPERATION EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY



VERIFIED NOTICE OF EXEMPTION
OF
LEHIGH RAILWAY, LLC.
PURSUANT TO 49 C.F.R. § 1150.32

ENTERED
Office of Proceedings
OCT 30 2008
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Public Record

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OCT 30 2008
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Janic Sheng
Lauren B. Pryor
K&L Gates LLP
1601 K Street, N W
Washington, DC 20006
(202) 778-9000

ATTORNEYS FOR LEHIGH RAILWAY, LLC.

Dated: October 30, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 35192

LEHIGH RAILWAY, LLC
-- LEASE AND OPERATION EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION
OF
LEHIGH RAILWAY, LLC.
PURSUANT TO 49 C.F.R. § 1150.32**

Pursuant to 49 C F R § 1150 31 et seq., Lehigh Railway, LLC ("LRWY"), a non-carrier, hereby files this Verified Notice of Exemption to lease and operate a rail line currently owned and operated by Norfolk Southern Railway Company ("NSR") in Bradford and Wyoming Counties, PA (the "Subject Line") The total distance of the Subject Line is approximately 56 0 route miles. Based on projected revenues for the Subject Line, LRWY expects to become a Class III rail carrier after consummation of the transaction proposed herein.

In accordance with the requirements of 49 C.F.R. § 1150 33, LRWY submits the following information.

Advance Notice: **49 C.F.R. § 1150.32(e)**

LRWY does not expect the projected annual freight revenue of LRWY to exceed \$5 million. Accordingly, the requirements of 49 C F R § 1150.32(e) do not apply to this transaction.

Name and Address of Applicant: **49 C.F.R. § 1150.33(a)**

The full name and address of the applicant is as follows

Lehigh Railway, LLC
25 Delphine Street
Owego, NY 13827

Applicant's Representative: **49 C.F.R. § 1150.33(b)**

LRWY's representative to whom correspondence regarding this transaction should be addressed is as follows

Janie Sheng
K&L Gates LLP
1601 K Street, N W.
Washington, DC 20006
(202) 778-9000

Statement Concerning Agreement: **49 C.F.R. § 1150.33(c)**

LRWY and NSR have entered into a lease agreement providing for LRWY's lease and operation of the Subject Line

Operation of the Property: **49 C.F.R. § 1150.33(d)**

LRWY will be the operator of the Subject Line.

Summary of the Transaction: **49 C.F.R. § 1150.33(e)**

LRWY is presently a non-carrier entity Pursuant to a lease agreement which will be entered into by LRWY and NSR (the "Lease"), LRWY will lease from NSR and operate a rail line that extends between approximately Milepost IS 269 5 at Athens, PA and approximately Milepost IS 213 5 at Mehoopany, PA. The Subject Line is located in Bradford and Wyoming Counties, PA¹ The total distance of the rail line to be operated by LRWY is approximately 56.0 route miles.

The Notice of Exemption is related to Finance Docket No 35193, Steven C May – Continuance in Control Exemption – Lehigh Railway, LLC of same date herewith.

The Subject Line is currently owned and operated by NSR In addition to the end point to end point description above, the Subject Line also includes any sidings, sidetracks, yards or facilities presently owned by NSR that are accessed via the Subject Line. LRWY shall have

¹ The Subject Line does not connect with the Southern Tier, owned and operated by NSR

operating rights to certain designated track north of Milepost IS 269 5 extending into Sayre, PA, solely for interchange with NSR, as further described in the Interchange Agreement attached to the Lease.

The Subject Line does not include properties south of Milepost IS 213 5 which have been leased by NSR to the Reading, Blue Mountain, and Northern Railroad ("RBMN") and to Proctor and Gamble Corporation at Mehoopany, PA, since 2001. In the event that these NSR properties south of Milepost IS 213 5 should revert back to the control of NSR during the term of the Lease, NSR may, at its option, and subject to approval of the Surface Transportation Board, if required, elect to assign the property or properties at Mehoopany, PA to the Lease

The parties intend to consummate the Lease transaction on or soon after the date this Notice of Exemption becomes effective.

The name and address of the lessor of the Subject Line is as follows

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

Map: 49 C.F.R. § 1150.33(f)

A map indicating the area served by the Subject Line, including origins, termini, stations, cities and counties, is attached as Exhibit A to this Notice

Certification of Class III Status: 49 C.F.R. § 1150.33(g)

A certificate complying with the provisions of 49 C F R § 1150 33(g) is attached as Exhibit B to the Notice. Based on projected revenues for the Subject Line, LRWY will become a Class III rail carrier after consummation of the transaction proposed herein

Environmental/Historic Preservation Data: 49 C.F.R. Part 1105

Under 49 C F R. § 1105 6(c)(2)(i), the proposed lease and operation of the Subject Line by LRWY is exempt from environmental reporting requirements because it will not result in significant changes in carrier operations (i.e. changes which exceed the thresholds established in 49 C F R § 1105 7(c)(4) or (5))

Under 49 C.F.R. § 1105.8(b)(3), the proposed lease and operation of the Subject Line by LRWY also is exempt from historic preservation reporting requirements. LRWY's lease of the Subject Line is for the purpose of continued rail operations. Further Surface Transportation Board approval is required to abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Interchange Commitment **49 C.F.R. § 1121.3(d)**

The Board recently adopted a rule requiring the disclosure of "a provision or agreement that may limit future interchange with a third-party connecting carrier" in some circumstances. *Disclosure of Rail Interchange Commitments*, STB Ex Parte No. 575 (Sub-No. 1) (served May 29, 2008) (adopting, among other provisions, 49 C.F.R. § 1121.3(d)). The Subject Line does not connect with any carrier other than NSR on the northern limits of the leased property. The Subject Line does connect with the RBMN on the southern limits of the leased property, a significant portion of which is subject to an interchange commitment that previously has been upheld against challenge.² There is no restriction under the Lease on the ability of LRWY to interchange traffic with RBMN. Nevertheless, under the Lease with NSR, LRWY will receive lease credits for traffic interchanged with NSR. A complete copy of the Lease is being provided to the Board under separate cover, to be kept confidential without the need for a protective order, pursuant to 49 C.F.R. 1104.14(a) and 49 C.F.R. § 1121.3(d)(1)(ii).

² See CSX Corp. and CSX Transp., Inc., Norfolk Southern Corp. and Norfolk Southern Ry. Co. – Control and Operating Leases/Agreements – Conrail Inc. and Consolidated Rail Corporation, STB Fin. Docket No. 33388 (Sub-No. 91) [General Oversight] (STB served Feb. 2, 2001), slip op. at 23-24.

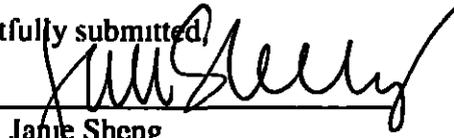
Caption Summary:

49 C.F.R. § 1150.34

A caption summary in the appropriate form is attached as Exhibit C to the Notice

Respectfully submitted,

By:



Janie Sheng

Lauren B Pryor

K&L Gates LLP

1601 K Street, N W

Washington, DC 20006

(202) 778-9000

ATTORNEYS FOR LEHIGH RAILWAY, LLC.

Dated: October 30, 2008

EXHIBIT B

CERTIFICATION

Steven C. May, being duly sworn, certifies that the projected revenue of Lehigh Railway, LLC upon consummation of the proposed transaction will not exceed \$5 million and will not result in the creation of a Class I or Class II rail carrier under the provisions of 49 C.F.R. § 1201 (1-1)



Steven C. May,
President – Lehigh Railway, LLC

SUBSCRIBED AND SWORN TO

before me this 29th day
of October, 2008



Notary Public

My Commission expires:

MEGAN B HORTON
Notary Public, State of New York
Qualified in Tioga County
No. 01HO604488
Commission Expires July 17, 2010

EXHIBIT C

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35192

**LEHIGH RAILWAY, LLC
-- LEASE AND OPERATION EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY**

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The Notice of Exemption is related to Finance Docket No. 35193 Steven C. May – Continuance in Control Exemption – Lehigh Railway, LLC

³ The Subject Line does not connect with the Southern Tier, owned and operated by NSR.

Comments must be filed with the Board and served on Janie Sheng, K&L Gates, 1601 K Street, N W , Washington, DC 20006, (202) 778-9000

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. § 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Date October ____, 2008

By the Board

Vernon A. Williams

Secretary

VERIFICATION

State of New York)

County of Albany) ss:

Steven C. May, being duly sworn, deposes and says that he is the President of Lehigh Railway, LLC , that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated

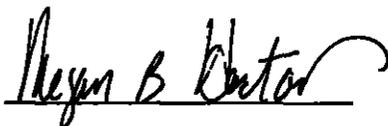


Steven C. May

SUBSCRIBED AND SWORN TO

before me this 29th day

of October , 2008



Notary Public

My Commission expires:

MEGAN B HORTON

Notary Public, State of New York

Qualified in Tioga County

No 01HO604488

Commission Expires July 17, 2010