

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35980



**READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY  
– TRACKAGE RIGHTS EXEMPTION –  
NORFOLK SOUTHERN RAILWAY COMPANY**

239614

**VERIFIED NOTICE OF EXEMPTION**

**ENTERED  
Office of Proceedings  
November 25, 2015  
Part of  
Public Record**

ERIC M. HOCKY  
CLARK HILL, PLC  
One Commerce Square  
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Philadelphia, PA 19103  
(215) 640-8500

Attorneys for Reading Blue Mountain &  
Northern Railroad Company

Dated: November 24, 2015

**FEE RECEIVED  
November 25, 2015  
SURFACE  
TRANSPORTATION BOARD**

**FILED  
November 25, 2015  
SURFACE  
TRANSPORTATION BOARD**

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SURFACE TRANSPORTATION BOARD**

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**READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY  
– TRACKAGE RIGHTS EXEMPTION –  
NORFOLK SOUTHERN RAILWAY COMPANY**

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**VERIFIED NOTICE OF EXEMPTION**

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Reading Blue Mountain & Northern Railroad Company (“RBMN”), a Class III railroad, files this Verified Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7), for RBMN’s acquisition of trackage rights over a line of railroad owned by Norfolk Southern Railway Company (“NS”) pursuant to two amendments (“Amendments”) to an existing trackage rights agreement (the “Base Agreement”) between RBMN and NS.<sup>1</sup> The trackage rights relate to the line of railroad between MP JW 147.4 at Oneida Jct., PA, and MP JW 141.3 ± at Ashmore Jct., PA, a distance of approximately 6.1 miles (the “Line”). The Amendments grant RBMN limited local and additional overhead trackage rights, in addition to the overhead trackage rights originally granted, so that RBMN can enter and exit the Line at two different intermediate points to provide service as described in the Amendments. The trackage rights are based on written agreements between the parties, and are not being sought in a responsive application.

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<sup>1</sup> The Agreement was originally between East Mahanoy and Hazleton Railroad Company (“EMH”) and Consolidated Rail Corporation (“Conrail”), and was authorized as incidental trackage rights. *East Mahanoy & Hazleton Railroad Company – Acquisition and Operation Exemption – Consolidated Rail Corporation*, ICC Finance Docket No. 32076 (served July 15, 1992). RBMN is the successor to EMH and NS is the successor-in-interest to Conrail.

### **Required Information**

In accordance with the provisions of 49 C.F.R. §1180.4(g), RBMN provides the following information as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

**(a)(1)(i)** RBMN is being granted limited local and additional overhead trackage rights by NSR to allow RBMN to enter and exit the Line at two different intermediate points to provide service from the Line as described in the Amendments. (The Base Agreement provided RBMN with overhead trackage rights over the Line.) Amendment No. 2 provides RBMN with the right to enter and exit the Line at MP JW 143.7 to serve a coal customer.<sup>2</sup> Amendment No. 3 will provide RBMN with the right to enter and exit the Line at the point shown on the map attached as Exhibit A, and to use NS's connecting industrial track to MP KA 150± (the RBMN/NS property line) at Humboldt Industrial Park, to provide service to customers located in a connected industrial park.

The name, business address and telephone number of Applicant are: Reading, Blue Mountain & Northern Railroad Company, P.O. Box 218, Port Clinton, PA 19549; (610) 562-2100.

The name, business address and telephone number of counsel to whom questions regarding the transaction can be addressed are: Eric M. Hocky, Clark Hill, PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

**(a)(1)(ii)** RBMN intends to commence operations under the trackage rights on or after the effective date of this notice.

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<sup>2</sup> Although Amendment No. 2 was signed as of December 1, 2011, the switch was only installed last month, and the sidetrack to the customer is still under construction. Accordingly, RBMN has not yet use the trackage rights provided under Amendment No. 2.

(a)(1)(iii) The additional trackage rights being granted allow RBMN to allow RBMN to enter and exit the Line at two different intermediate points to provide service over the Line as described in the Amendments.

(a)(5) RBMN operates in the Commonwealth of Pennsylvania, and the Line is also located in the Commonwealth of Pennsylvania.

(a)(6) A map showing the Line, and the locations where RBMN will be permitted to enter and exit the Line is attached as Exhibit A. Twenty extra copies of the map are also included.

(a)(7)(ii) Redacted public versions of the Amendments are attached as Exhibit B and Exhibit C. Amendment No. 3 (Exhibit C) is not yet executed. RBMN will submit a copy of the signed agreement within 10 days of its execution in accordance with the provisions of 49 CFR §1180.6(7)(ii). Applicant is filing a Motion for a Protective Order to protect the confidentiality of the commercial terms of the Amendments. Highly confidential versions of the Amendments are being filed under seal.

#### **Labor Protection**

Applicant understands that any employees adversely affected by the trackage rights are entitled to protection under the conditions imposed in *Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc. - Lease and Operate - California Western Railroad*, 360 I.C.C. 653 (1980).

#### **Environmental and Historic Reports**

Under 49 C.F.R. §1105.6(c)(4) and 49 C.F.R. §1105.8(b)(3), no environmental or historic documentation is required.

#### **Caption Summary**

Attached as Exhibit D is the caption summary required by 49 C.F.R. §1180.4(g)(2)(ii).

## Conclusion

Based on the information provided above, RBMN requests that the Board issue a notice of exemption for the limited local trackage and additional overhead rights that are the subject of this Notice.

Respectfully submitted,



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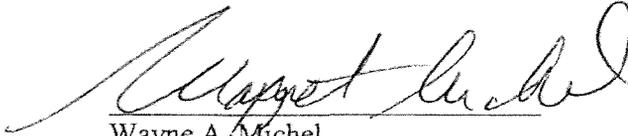
ERIC M. HOCKY  
CLARK HILL, PLC  
One Commerce Square  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103  
(215) 640-8500

Attorneys for Reading Blue Mountain &  
Northern Railroad Company

Dated: November 24, 2015

**VERIFICATION**

I, Wayne A. Michel, verify under penalty of perjury that I am authorized to make this verification on behalf of the Reading, Blue Mountain & Northern Railroad Company, and that the information included in the foregoing Notice of Exemption is true and correct to the best of my knowledge and belief.

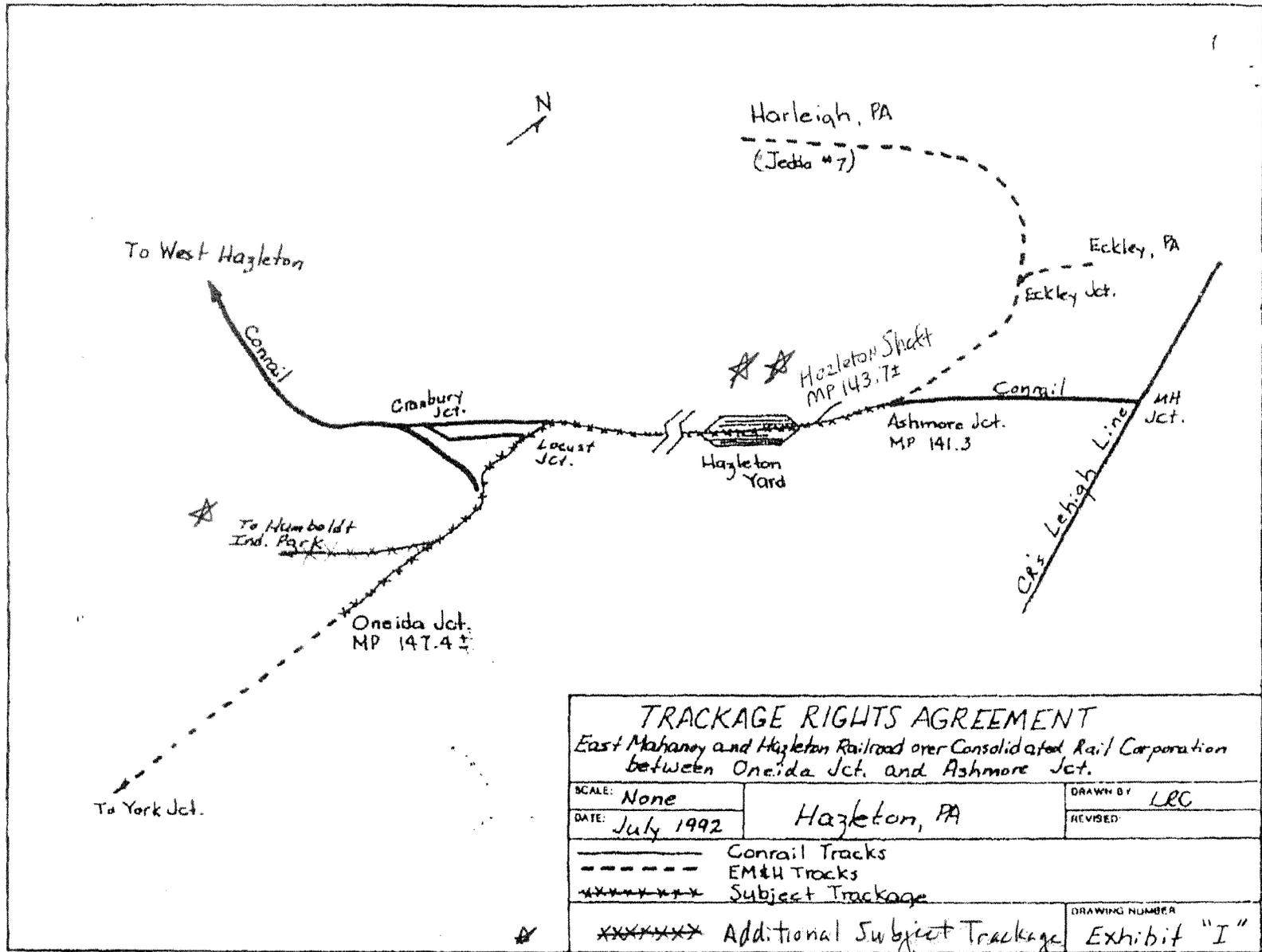
A handwritten signature in cursive script, appearing to read "Wayne A. Michel", written over a horizontal line.

Wayne A. Michel  
President

Dated: November 24, 2015

# **EXHIBIT A**

## **MAP**



<b>TRackage RIGHTS AGREEMENT</b>		
East Mahanoy and Hazleton Railroad over Consolidated Rail Corporation between Oneida Jct. and Ashmore Jct.		
SCALE: None	Hazleton, PA	DRAWN BY LRC
DATE: July 1992		REVISED:
————— Conrail Tracks - - - - - EM&H Tracks * * * * * Subject Trackage		
* * * * * Additional Subject Trackage		DRAWING NUMBER
		Exhibit "I"

\* \* \* Amendment No. 2

pursuant to Amendment No. 3

EXHIBIT A

304 159

**EXHIBIT B**  
**AMENDMENT NO. 2**

EMH Trackage Rights Amendment

**CONFIDENTIAL**

RBMN Trackage Rights Agreement:  
Oneida Jct. to Ashmore Jct.

Amendment Number 2

This Trackage Rights Agreement Amendment (hereinafter referred to as "Amendment No. 2"), entered into as of this 1st day of December 2011, by and between **THE READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY** (hereinafter referred to as "RBMN" or "User"), with a business address of P.O. Box 218, Port Clinton, PA 19549, and **NORFOLK SOUTHERN RAILWAY COMPANY** and its subsidiary railroads (hereinafter referred to as "NSR" or "Owner"), with a business address at 110 Franklin Road, Roanoke, VA 24042-0026.

**WHEREAS**, The East Mahanoy and Hazleton Railroad (hereinafter referred to as "EMH") entered into a trackage rights agreement (hereinafter referred to as "Trackage Rights Agreement") with the Consolidated Rail Corporation (hereinafter referred to as "Conrail"), dated July 21, 1992, to operate EMH trains over Conrail between Oneida Junction, milepost JW 147.4 +/-, and Ashmore Junction, milepost JW 141.3 +/-, (hereinafter referred to as the "Subject Trackage"); and

**WHEREAS**, NSR is the successor by merger to Conrail and RBMN is the successor to EMH; and

**WHEREAS**, the Trackage Rights Agreement was amended by a letter agreement, effective September 19, 1997, [REDACTED]; and

**WHEREAS**, RBMN seeks to receive local trackage rights from NSR to transport rail car shipments of anthracite coal originating from Hazleton Shaft near milepost JW 143.7 +/-, (hereinafter referred to as "HSC") and terminating at the Panther Creek Co-Generation power plant on the RBMN or to interchange said anthracite coal originating from HSC to NSR at a designated interchange near North Reading, PA; and

**WHEREAS**, the parties desire to amend the Trackage Rights Agreement to allow for such local trackage rights, all as more particularly described herein.

**NOW, THEREFORE**, the parties hereto, intending to be legally bound, agree as follows:

1. Section 2, Use of Subject Trackage, subsection b, is hereby deleted in its entirety and replaced with the following:

"(b) User shall not use any part of the Subject Trackage for the purpose of switching, storage of cars, or the making or breaking up of trains, except that RBMN trains switching at the HSC facility may occupy the NSR Hazleton Running Track during the period of time needed for the RBMN train crew to place the inbound empty rail cars on the HSC track and to pull the outbound loaded rail cars from the HSC track. All RBMN trains switching the HSC track must have sufficient, serviceable locomotives to allow for HSC rail service that will not require the rail cars and/or train to be run-around to switch

HSC, and the NSR Hazleton Yard will not be available for RBMN to place locomotives on the west end of its trains to switch HSC. All RBMN switching of HSC must be performed in a safe and efficient manner, and no RBMN trains may be secured or stored on the Hazleton Running Track and left unoccupied by RBMN with or without RBMN locomotives attached. Nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose."

2. Section 3, Restrictions of Use, is hereby deleted in its entirety and replaced with the following:

"Section 3, Restrictions of Use

The Trackage Rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the termini of the Subject Trackage and User shall not perform any local freight service whatever at any point located on the Subject Trackage, with the exception of local freight service permitted to be performed by User at HSC, milepost JW 143.7 +/- . Such local freight service at HSC is limited to placing empty rail cars for loading of anthracite coal into said rail cars and pulling from HSC said rail cars loaded with anthracite coal. No loaded rail cars containing any commodities may be delivered by RBMN trains to HSC and no other commodities, except anthracite coal, may be loaded in rail cars and pulled by RBMN trains from HSC. All loaded rail cars pulled from HSC by RBMN either must be interchanged to NSR at RBMN's North Reading, PA, rail yard or such other interchange point as may be designated by NSR, or otherwise must terminate, and the rail car loadings must be consumed, at the Panther Creek Co-Generation power plant located on the RBMN railroad. No rail cars loaded with anthracite coal at HSC, using the Subject Trackage, may be interchanged to any railroad other than NSR.

3. Section 4, Compensation, is added hereby in its entirety as follows:

"Section 4, Compensation

(a) The base charge (hereinafter referred to as the "HSC Base Charge") to be used in calculating payments to be made by RBMN to NSR for the round trip movement between Oneida Junction and HSC shall be [REDACTED] per car-mile for loaded cars and locomotives handled by RBMN over the portion of the Subject Trackage between Oneida Junction and HSC (hereinafter referred to as the "HSC Local Trackage").

(i) A separate sidetrack agreement between NSR and RBMN will be made to cover the installation of the HSC connection switch and the charges for the switch installation, renewal and replacement costs and expenses. Section 8 b(ii) of the Trackage Rights Agreement will not apply to the HSC switch. [REDACTED]

(b)(i) No later than the fifteenth day of each month, RBMN will report to NSR (attention: Manager, Miscellaneous Billing; Norfolk Southern Railway Company; 110 Franklin Road, SE - Box 34, Roanoke, VA 24042) the total number of loaded cars and locomotives operated during the previous month over HSC Local Trackage (hereinafter referred to as the "Monthly Reporting Requirement").

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(ii) The Monthly Reporting Requirement contained in Section 4 (b)(i) is hereby temporarily suspended and replaced with an annual reporting requirement that RBMN will report to NSR (attention: Manager, Miscellaneous Billing; Norfolk Southern Railway Company, 110 Franklin Road, SE - Box 34; Roanoke, VA 24042), no later than the fifteenth day of each July, the total number of loaded cars and locomotives operated during the previous year (July 1 to June 30, inclusive) over the HSC Local Trackage with the report arranged to show loads and locomotives operated each month of the previous year (hereinafter referred to as the "Annual Reporting Requirement"). The Annual Reporting Requirement contained in this subsection may be canceled upon 30 days written notice by either party to the other party, at which time the Monthly Reporting Requirement of Section 4 (b)(i) will resume.

(c) RBMN will pay NSR a sum computed by multiplying: (i) the total number of loaded cars and locomotives that are handled as part of a round-trip movement between Oneida Junction and HSC by RBMN with its own crews and power over the HSC Local Trackage by (ii) the HSC Base Charge, and then by (iii) 7.2 miles (applicable miles of Subject Trackage used). Each locomotive unit and caboose, for the purpose of the Agreement shall be counted as one (1) rail car. With respect to articulated units, the number of cars shall be determined by the AAR Car Type code as defined in the UMLER Specification Manual. The second numeric in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type code "S566" would equate to five (5) car counts as these car types have five (5) wells capable of handling forty-foot (40') to fifty-foot (50') containers in each well.

(d)(i) NSR shall, on or about the fifteenth (15<sup>th</sup>) day of each month, render billing to RBMN for RBMN's previous month's use of HSC Local Trackage computed in accordance with the terms and conditions of the Agreement (hereinafter referred to as the "Monthly Billing Requirement").

(ii) During the period that the annual reporting requirement of Section 4 (b)(ii) is in effect, the Monthly Billing Requirement in Section 4 (d)(i) shall be temporarily suspended, and NSR shall, on or about the fifteenth (15<sup>th</sup>) day of each July, render billing to RBMN for RBMN's previous year's use (July 1 to June 30, inclusive) of the HSC Local Trackage (hereinafter referred to as the "Annual Billing Requirement"). If at any time the Annual Reporting Requirement is canceled, then the Annual Billing Requirement will also be canceled, and billing to RBMN will resume in accordance with the Monthly Billing Requirement set forth in Section 4(d)(i).

(e) RBMN will not be assessed by NSR a base charge for one way empty or loaded rail car movements, when such movements consist solely and exclusively of rail cars originating from the Jeddo, PA, anthracite coal load-out or rail cars bound for loading at the Jeddo, PA, load-out, between Oneida Junction and Ashmore Junction.

(f) If RBMN fails to submit their monthly or annual report of loaded cars and locomotives over the HSC Local Trackage by the dates required, (either the fifteenth of each month or the fifteenth of each July, as set forth in Section 4 (b)), NSR will render billing to RBMN, and RBMN will be liable for, the amount of [REDACTED] for each month when the Monthly Billing Requirement is in effect or [REDACTED] for the previous year when the

Annual Billing Requirement is in effect, (hereinafter referred to as the "Non-reporting Penalty Charge" for either the monthly or annual amounts).

4. Section 5, Revision of Current Charges, is added hereby in its entirety as follows:

"Section 5, Revision of Current Charges

(a) The HSC Base Charge and the Non-reporting Penalty Charge shall be revised annually, beginning with the bill rendered for the month of July 2012, or the year of July 2012 to June 2013, upward or downward, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the annual indices of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indices" and supplements thereto, issued by the AAR. In the event the base for the Annual Indices of Charge-Out Prices and Wage Rates issued by the AAR used to adjust the HSC Base Charge and the Non-reporting Penalty Charge shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates used for adjusting the HSC Base Charge and the Non-reporting Penalty Charge, appropriate substitutes(s) for determining the percentage(s) of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration.

(b) In making such determination, the Final "Material prices, wage rates and supplements combined (excluding fuel)" index for the East District shall be used. The HSC Base Charge shall be revised by calculating the percentage increase or decrease in this index for the previous calendar year and applying that percentage to the HSC Base Charge."

5. Section 16, Regulatory Approval, is hereby deleted in its entirety and replaced with the following language, which shall survive the termination or expiration of the Amendment No. 2:

"Section 16, Regulatory Approval

(a) Should implementation of this Agreement require the taking of any action by User and/or the STB under 49 U.S.C. Sections 10505, 10901, 11343 or 11344, User at its own cost and expense will initiate and thereafter diligently prosecute such action and this Agreement shall take effect on the date User commences operations over the Subject Trackage (hereinafter referred to as the "Commencement Date"). The Commencement Date shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto. In the event action under such sections is not required, the Commencement Date shall be the date agreed upon by the parties hereto as evidenced by an exchange of correspondence referred to above. Owner will assist and support efforts of User to meet the requirements of the aforesaid sections.

(b) Should termination of this Agreement require the prior approval or authorization of the STB or any other regulatory agency, then at least 90 days prior to the termination or expiration of this Agreement, User, at its own cost and expense, shall promptly initiate and diligently pursue an appropriate application or petition to obtain that

regulatory approval or authorization. Prior to making any such application or petition User will present said submission to Owner for its review and approval, which shall not be unreasonable withheld or delayed. User hereby grants Owner an irrevocable power of attorney to file an application or petition on User's behalf seeking approval of the termination of this Agreement if User fails to file such a petition or application at least 90 days prior to the termination or expiration of this Agreement. User will reimburse Owner for the cost (including attorney's fees) of obtaining any required approvals for which User does not timely apply or pursue but for which Owner then applies. Upon the date of termination or expiration provided for by the terms of this Agreement, User will cease operations over the Subject Tracks, even if approval for the termination of the Agreement has not yet been obtained from the STB or the appropriate regulatory agency. The terms contained within this subsection (b) will survive the termination or expiration of the Agreement."

6. Upon execution of this Amendment No. 2 by each of the Parties hereto, RBMN, at its own cost and expense, shall promptly initiate and thereafter diligently prosecute any actions necessary to obtain the approval, or exemption from such approval, of the U.S. Surface Transportation Board, ("STB"), with respect to the local trackage rights granted at HSC granted to RBMN herein. Prior to making any submission to the STB, RBMN will present said submission to NSR for its review and approval, which shall not be unreasonably withheld or delayed. This Amendment No. 2 shall become effective as of the later of the following three dates: (i) the effective date of any required STB authorization or exemption of the local trackage rights granted to RBMN herein (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption) or (ii) the expiration of any required labor notices or (iii) the in-service date of the switch connection to the HSC (hereinafter referred to as the "Effective Date").

7. (a) The initial term of this Amendment No. 2 shall run ten (10) years from the Effective Date. At the 10 year Anniversary Date of the Effective Date, this Amendment No. 2 will automatically renew for an additional five (5) year term and will continue to renew for additional five (5) year terms until the thirtieth (30<sup>th</sup>) anniversary of the Effective Date. Either party, upon written notification to the other party not more than twelve (12) months and not less than six (6) months prior to the end of the 10 year term and to the end of any of the successive 5 year renewal terms, may renegotiate the terms of this Amendment No. 2. This Amendment No. 2 will expire or terminate upon the thirtieth (30<sup>th</sup>) anniversary of the Effective Date or upon the expiration or termination of the Trackage Rights Agreement.

(b) Should the termination of the local trackage rights at HSC granted to RBMN herein require the prior approval or authorization of the STB or any other regulatory agency, then at least 50 days prior to the termination or expiration of this Amendment No. 2, RBMN, at its own cost and expense, shall promptly initiate and diligently pursue an appropriate application or petition to obtain that regulatory approval or authorization. Prior to making any such application or petition, RBMN will present said submission to NSR for its review and approval, which shall not be unreasonably withheld or delayed. RBMN hereby grants NSR an irrevocable power of attorney to file an application or petition on RBMN's behalf seeking approval of the termination of local trackage at HSC if RBMN fails to file such a petition or application at least 50 days prior to the termination or expiration of this Amendment No. 2. RBMN will reimburse NSR for the

- 6 - EMH Trackage Rights Amendment

cost (including attorney's fees) of obtaining any required approvals for which RBMN does not timely apply or pursue but for which NSR then applies. Upon the date of termination or expiration provided for by the terms of this Amendment No. 2, RBMN will cease local freight service at HSC, even if approval for the termination of the local trackage rights at HSC has not yet been obtained from the STB or the appropriate regulatory agency. The terms contained within this subsection (b) will survive the termination or expiration of Amendment No. 2.

(c) Unless otherwise agreed by the Parties in writing, upon termination or expiration of this Amendment No. 2, all terms of the July 21, 1992 Trackage Rights Agreements and its other Amendments that were altered by this Amendment No. 2 shall revert to the terms that were in place prior to the execution of this Amendment No. 2, with the exception of Section 16, Regulatory Approval, the terms of which shall be governed by this Amendment No. 2. Upon termination or expiration of this Amendment No. 2, all terms of the July 21, 1992 Trackage Rights Agreement and its Amendments that were not altered by this Amendment No. 2 shall remain in effect.

8. Except as modified or changed herein, all other terms of the July 21, 1992 Trackage Rights Agreement and its Amendments remain in effect.

**IN WITNESS WHEREOF, the parties have executed this Amendment by their duly authorized representatives as of the day and year first above written.**

THE READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY

By: Wayne Mitchell

Title: President

Date: 11/26/12

NORFOLK SOUTHERN RAILWAY COMPANY

By: Walter D. Johnson

Title: SR. DIRECTOR JOINT FACILITIES

Date: DEC. 1, 2014

**EXHIBIT C**  
**AMENDMENT NO. 3**

**CONFIDENTIAL**

**RBMN Trackage Rights Agreement:  
Oneida Jct. to Ashmore Jct.**

**Amendment No. 3**

This Amendment No. 3 (the "Amendment") to the Base Agreement, defined below, is made this \_\_\_ day of \_\_\_\_\_, 2015 by and between NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation ("Owner") and THE READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY ("User"). Owner and User are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties." Undefined terms are defined in the Base Agreement.

**RECITALS:**

- A. The East Mahanoy and Hazleton Railroad (hereinafter referred to as "EMH") entered into a trackage rights agreement (hereinafter referred to as "Base Agreement") with Consolidated Rail Corporation (hereinafter referred to as "Conrail"), dated July 21, 1992, to operate EMH trains over Conrail between Oneida Junction, milepost JW 147.4 +/-, and Ashmore Junction, milepost JW 141.3 +/-; and
- B. Owner is the successor to Conrail's interest in the Subject Trackage and User is the successor to EMH; and
- C. The Base Agreement was amended by a letter agreement, effective September 19, 1997 ("Amendment No. 1"), \_\_\_\_\_; and
- D. The Base Agreement was amended again, effective December 1, 2011 ("Amendment No. 2"), to grant local trackage rights to User from Owner to transport rail car shipments of anthracite coal originating from Hazleton Shaft near Milepost JW 143.7+/- (hereinafter referred to as "HSC") and terminating at the Panther Creek Co-Generation power plant on the User or to interchange said anthracite coal originating from HSC to Owner at a designated interchange near North Reading, PA; and
- E. The Parties wish to further extend User's trackage rights between Oneida Junction and Ashmore Junction in Hazleton, PA to allow User to handle overhead traffic in Owner's revenue account between the tracks at the Humboldt Industrial Park and the junction between Owner's and User's tracks at Oneida Junction; and
- F. The Parties desire to amend the Base Agreement for such overhead trackage rights, as described below.

**NOW, THEREFORE**, in consideration of the following mutual promises, the Parties agree as follows:

1. Section 1. GRANT OF TRACKAGE RIGHTS of the Base Agreement is hereby deleted in its entirety and replaced with the following:

"SECTION 1. GRANT OF TRACKAGE RIGHTS

(a) On the terms and subject to the conditions herein provided, Owner hereby grants to User the right to operate its trains, locomotives, cars, and equipment with its own crews over the Owner's following railroad line segments, as shown in detail on Exhibit A to this Agreement:

(i) Camp Running Track between Oneida Junction. Milepost JW 147.4± to Milepost JW 146.2±, continuing over the Hazleton Running Track between Milepost JW 146.2± and Ashmore Jct., Milepost JW 141.3±, Hazleton, PA a distance one way of approximately six and one tenth (6.1) miles.

(ii) Between Oneida Junction Milepost JW 147.4± and Hazleton Shaft near Milepost JW 143.7± ("HSC Local Trackage").

(iii) Between Oneida Junction Milepost JW 147.4± and Milepost KA 150.0± at Humboldt Industrial Park.

↑ AT NS/RBMN PROPERTY LINE TAG  
(b) The trackage described in this Section 1 is hereinafter referred to as the "Subject Trackage."

2. The following language shall be added to Section 18. GENERAL PROVISIONS of the Base Agreement:

"(g) This Agreement is the product of mutual negotiations of the Parties hereto, none of whom shall be considered the drafter for purposes of contract construction.

(h) No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

(i) If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner which produces a result which is substantially equivalent to the terms of this Agreement in all material respects.

(j) Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between Owner and User.

(k) The interpretation and performance of this Amendment shall be governed by the substantive and procedural laws of the State of Pennsylvania, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Pennsylvania or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the State of Pennsylvania.

(l) This Amendment may be executed in several counterparts, each of which will be deemed an original, and such counterparts shall constitute one and the same instrument."

3. Except as modified or changed herein, all other terms of the Base Agreement, as amended, remain in effect.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the date first above written.

WITNESS:

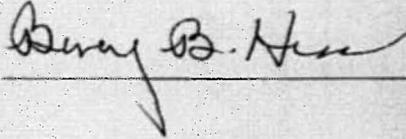
NORFOLK SOUTHERN RAILWAY  
COMPANY

\_\_\_\_\_

By \_\_\_\_\_

WITNESS:

THE READING BLUE MOUNTAIN &  
NORTHERN RAILROAD COMPANY

  
\_\_\_\_\_

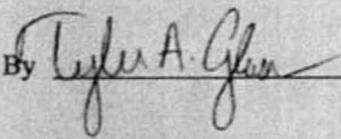
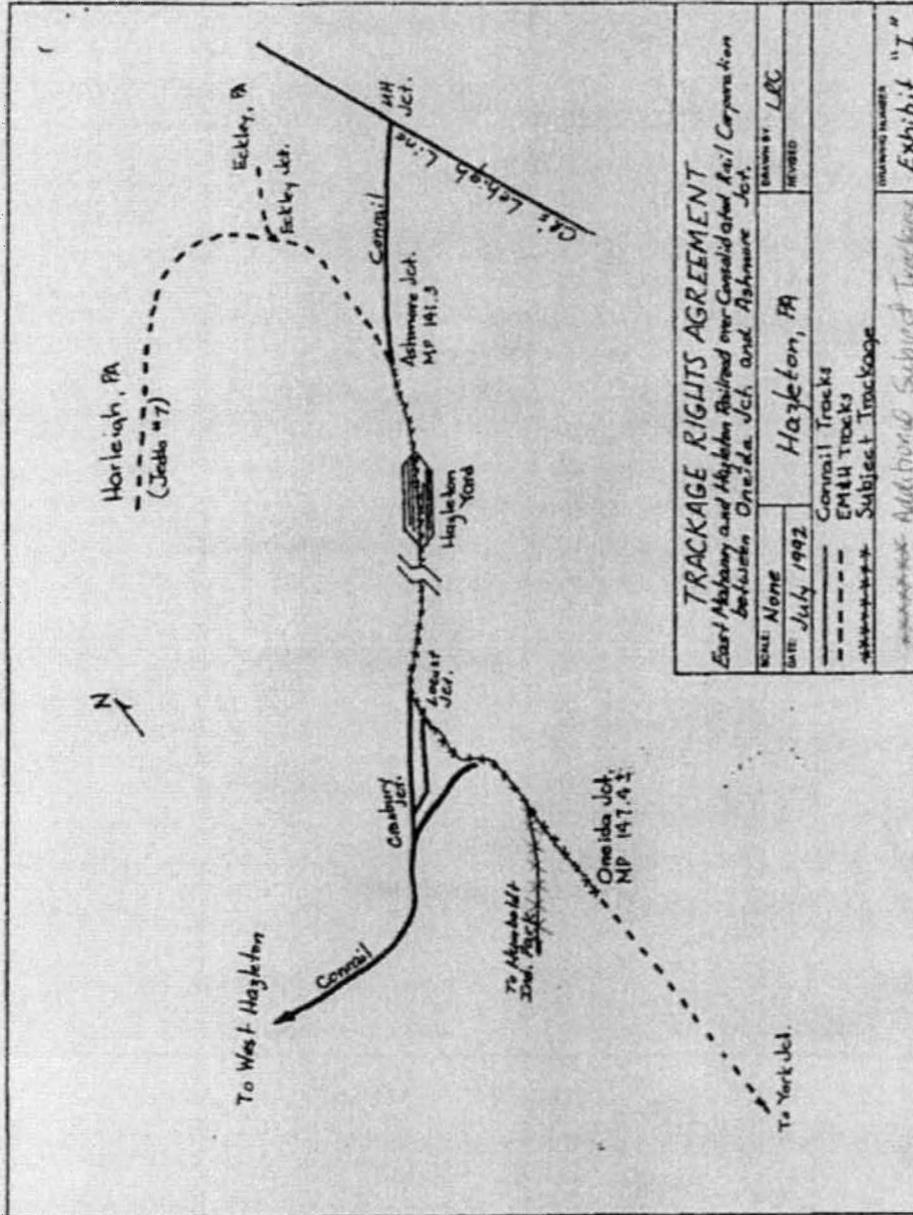
By   
\_\_\_\_\_

EXHIBIT A

304 159



<b>TRACKAGE RIGHTS AGREEMENT</b>	
East Mahoning and Haystack Railroad over Consolidated Rail Corporation between Ormsida Jct. and Ashmore Jct.	
SCALE: None	DRAWN BY: LBC
DATE: July 1992	REVISED:
Haystack, PA	
--- Connail Tracks - - - - - EM&H Tracks +-----+ Subject Trackage	
~~~~~ Additional Subject Trackage Pursuant to Amendment No. 3	
DRAWING NUMBER: Exhibit "I"	

**EXHIBIT D**

**CAPTION SUMMARY**

**READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY  
– TRACKAGE RIGHTS EXEMPTION –  
NORFOLK SOUTHERN RAILWAY COMPANY**

Norfolk Southern Railway Company (“NS”) has agreed to grant limited local and additional overhead trackage rights to the Reading Blue Mountain & Northern Railroad Company (“RBMN”) over that portion of NS’s rail line between MP JW 147.4 at Oneida Jct., PA, and MP JW 141.3 ± at Ashmore Jct., PA, a distance of approximately 6.1 miles. RBMN currently has overhead trackage rights over the Line, and is being granted limited local and additional overhead trackage rights under two amendments. The amended trackage rights will become effective according to the terms of the amendments, on or after December 25, 2015, the effective date of the Notice.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). 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 stay the transaction.

Dated:

By the Board,

Rachel D. Campbell, Director, Office of Proceedings