

BEFORE THE
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 35187 (SUB-NO. 1)

GRAND ELK RAILROAD, INC.
-- ACQUISITION OF INCIDENTAL TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

PETITION TO PARTIALLY REVOKE CLASS EXEMPTION

EXPEDITED CONSIDERATION REQUESTED

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PETITION TO PARTIALLY REVOKE CLASS EXEMPTION

Pursuant to 49 U.S.C. § 10502(d), Grand Elk Railroad, Inc. (“GDLK”) hereby petitions the Board to partially revoke the class exemption at 49 C.F.R. § 1150.41, et seq., as necessary to allow the notice for the acquisition of incidental trackage rights that GDLK has filed in this docket to take effect retroactively (“nunc pro tunc”) as of January 30, 2009, the effective date of the original class exemption in Docket No. FD 35187, to which the subject proceeding relates.¹ This proceeding, including the subject “Petition,” involves roughly 3.3 miles of trackage rights over rail lines (hereinafter, the “CSXT Line”) in Grand Rapids, Michigan, which are currently the subject of dispute among GDLK (purported trackage rights assignee) and Norfolk Southern Railway Company (“NSR” – purported trackage rights assignor) on one side, and CSX Transportation, Inc. (“CSXT” – owner of the rail line over which the subject trackage rights are asserted) on the other.

CSXT very recently has challenged as invalid and unenforceable NSR’s 2009 assignment of the trackage rights to GDLK, and CSXT has barred GDLK from continued access to the CSXT Line, despite the fact that CSXT had for 7 years allowed, and indeed actively facilitated, GDLK’s use of the lines in place of NSR. Had GDLK anticipated that it would be

¹ Grand Elk Railroad, L.L.C. – Lease and Operation Exemption – Norfolk Southern Railway Company, Docket No. FD 35187 (STB served Nov. 17, 2008) (“GDLK Lease”).

allowed to lease the rail lines that were the subject of the GDLK Lease transaction, but that it also would have been forbidden to exercise the incidental trackage rights now in dispute (thereby being forced to rely on costly and inefficient CSXT intermediate switching), GDLK never would have agreed to undertake lease operations in the first place. Such a peculiar arrangement isolating NSR trackage rights operations also would have faced opposition from affected shippers, who would have lost competitive options and incurred increased railroad service costs. Finally, GDLK submits that excluding the CSXT Line trackage rights operations from the overall transaction – if genuinely intended by the lease transaction parties – likely would have been met with skepticism, concern, or even outright opposition by this Board, given the operational complexity and inefficiencies that would have resulted.

In order for GDLK to restore the service that it had for 7 years provided and that its customers and interchange partners have come to depend upon, GDLK – (1) seeks in this proceeding to secure Board authority, which it currently lacks, to exercise the subject trackage rights in place of NSR; and (2) has sought a judicial determination as to whether NSR has assigned or may assign its trackage rights interests to GDLK. The contract issue is pending in state court before the 17th Judicial Circuit Court for Kent County – Civil Division.

Adding complexity to the case at hand, the respective contract interests of the parties are tied to trackage rights agreements that expired on their terms in 2014, and which have not been superseded by a new agreement. For this reason and others set forth herein, GDLK has filed the instant petition for partial revocation of the Section 1150.41 class exemption to allow the incidental trackage rights authority to take effect retroactively to January 30, 2009. Moreover, GDLK urges expedited Board action to facilitate state court action on the contested contract issues, and to hasten the restoration of the competitive short line service that GDLK has

offered in the Grand Rapids market for 7 years. It would also put to an end CSXT's apparent anti-competitive refusal to recognize the NSR-to-GDLK trackage rights assignment, and its insistence upon "alternative" intermediate switching services to be provided by CSXT (the charges for which CSXT recently has inflated). Finally, GDLK would welcome any other relief that the Board may here deem appropriate.

I. BACKGROUND

The seeds of this petition were sown in the early 1980s, when The Chesapeake & Ohio Railway Company ("C&O") and Consolidated Rail Corporation ("Conrail") negotiated arrangements to consolidate certain portions of their trackage in Grand Rapids. According to the records of the time, the track consolidation was driven in significant part by the City of Grand Rapids, which sought through the consolidation of C&O and Conrail track facilities to promote urban development otherwise precluded by the multiplicity of railroad lines traversing the city. The C&O-Conrail track consolidation plans called for the removal of certain line segments and the exchange of trackage rights among Conrail and C&O that would preserve the competitive status quo between the two railroads in Grand Rapids.

In connection with the track consolidation plans, C&O and Conrail negotiated two trackage rights agreements, the first entered into as of February 6, 1980 (the "1980 TRA"),² and the second entered into as of January 24, 1984 (the "1984 TRA").³ Conrail obtained Interstate Commerce Commission ("ICC") authority to acquire the rights conveyed under the 1980 TRA in 1984,⁴ and to acquire the rights conveyed under the 1984 TRA later that same year,⁵ in both

² Attached hereto as Exhibit A.

³ Attached hereto as Exhibit B.

⁴ See Consolidated Rail Corporation – Trackage Rights Exemption – Over Chesapeake and Ohio Railway Company, Docket No. FD 30385 (ICC served Feb. 7, 1984). The 1980 TRA

instances invoking the joint line relocation exemption at 49 C.F.R. § 1180.2(d)(5). C&O secured ICC authority for its acquisition of rights under the 1984 TRA in 1985⁶ pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7).

The trackage rights preserved Conrail's access to a handful of line segments and adjacent industry and yard tracks in Grand Rapids that otherwise would have become isolated from the balance of the Conrail network, and they maintained Conrail's ability to interchange traffic directly with the Grand Trunk Western Railroad Company ("GTW") at Grand Rapids. The two trackage rights agreements generally provided for "overhead" operations, but the 1984 TRA also entitled Conrail to enter and exit that part of the CSXT Line where the trackage rights lines intersected otherwise isolated Conrail trackage in Grand Rapids, which ensured that Conrail could continue to serve its customers.

extended to Conrail trackage rights over the following C&O property: "(a) Beginning at [C&O]'s new crossover in Grand Rapids, between Point of Switch, Valuation Station 8021+90 and Point of Switch, Valuation Station 8019+88, near Grandville Avenue, a distance of 202 feet; and (b) Between Point of Switch, Valuation Station 8040+44, and Last Long Tie, Valuation Station 8072+33, near Butterworth and Fulton Streets, a distance of 3,199 feet." See Exhibit A, 1980 TRA, Section 1.

⁵ See Consolidated Rail Corporation – Trackage Rights Exemption – Over Chesapeake and Ohio Railway Company, Docket No. FD 30449 (ICC served Apr. 24, 1984). The 1984 TRA extended to Conrail trackage rights over the following C&O property: "From C&O's Valuation Station 8071+35+/-, near Butterworth Street, to Valuation Station 8200+75+/-, north of Ann Street, a distance of approximately 2.45 miles, including use of the following connection: (i) between 9th Street and 11th Street at Valuation Station 8144+78+/- (the "9th Street Connection") (ii) between 11th Street and Leonard Street at Valuation Station 8147+00+/- (the "Leonard Street Connection") (iii) between Richmond Street and Ann Street at Valuation Station 8185+50+/- (The "Richmond Street Connection") (iv) north of Ann Street at Valuation Street 8200+75+/- (the "Ann Street Connection")." See Exhibit B, 1984 TRA, Section 2(a).

⁶ See Chesapeake & Ohio Railway Company – Trackage Rights – Consolidated Rail Corporation, Docket No. FD 30698 (ICC served Jul. 5, 1985). The 1984 TRA extended to C&O trackage rights over the following Conrail property: "Approximately 1,000 feet of Conrail's tracks between and including the Richmond Street Connection and the connection with the GTW [Grand Trunk Western Railroad Company]" (hereinafter, collectively, the "Richmond Street Connection"). Exhibit B, 1984 TRA, Section 2(b).

The 1980 TRA and the 1984 TRA each provide that the term of that agreement is 30 years from the “Commencement Date” (the date upon which, after obtaining appropriate regulatory authority to conduct trackage rights operations, the trackage rights tenant actually commences such operations),⁷ and each agreement also extends to the “User” (the trackage rights grantee) a right of renewal for an additional 30 years, provided that the User notifies the host railroad (the “Owner”) of its decision to renew not more than 12 months nor less than 6 months prior to the expiration of the initial 30-year term.⁸ Each agreement also contains a provision providing that neither party may assign its rights under that agreement unless the other party has given its prior written consent to the assignment.⁹

Subsequent to the negotiation of the 1980 and 1984 TRAs, Conrail and C&O’s corporate successor, CSXT, negotiated a “Supplemental Agreement” dated as of July 6, 1993.¹⁰ This Supplemental Agreement amended the 1980 TRA to include trackage rights that Conrail had been exercising over connecting trackage pursuant to an agreement (the “1915 TRA”) between the Pere Marquette Railroad Company, C&O’s predecessor, and The Grand Rapids & Indiana Railway Company, Conrail’s predecessor, dating to 1915 (and, hence, predating the ICC’s regulatory authority over trackage rights conveyances).¹¹

⁷ Exhibit A, 1980 TRA, Section 4; Exhibit B, 1984 TRA, Form A, Article 12.

⁸ 1980 TRA, Form A, Article 12(b); 1984 TRA, Section 8(b).

⁹ 1980 TRA, Form A, Article 13; 1984 TRA, Form A, Article 15.

¹⁰ Exhibit C.

¹¹ Supplemental Agreement, par. 1 (“between the Point of Switch at Valuation Station 8018+63 near Grandville Avenue and the Point of Switch of Owner's new crossover at Valuation Station 8019+88, a distance of approximately 125 feet; and . . . [f]rom the Point of Switch of Owner's new crossover at Valuation Station 8021+90 easterly to the property line between Owner and User at Valuation Station 8033+40 near Pleasant Street, a distance of approximately 1150 feet”).

The Supplemental Agreement states that it is intended to supersede and permit for the termination of the 1915 TRA as of the effective date of the Supplemental Agreement.¹² The Supplemental Agreement did not mandate that Conrail seek ICC authority for the trackage rights originally covered by the 1915 TRA, but does provide that the provisions of the 1915 TRA would terminate if supplemental regulatory authority for the Supplemental Agreement were required and was obtained.¹³ To the best of GDLK's knowledge, Conrail did not seek separate authority for the rights contained in the Supplemental Agreement.

Finally, the Supplemental Agreement recites the parties' "desire to incorporate [Conrail]'s trackage rights, as provided for under the terms and conditions of the [1915 TRA], into the [1980 TRA]." Accordingly, if the Supplemental Agreement took effect as intended, then the trackage rights covered in the 1915 TRA became subsumed within the 1980 TRA and, thus, are subject to the 1980 TRA's expiration provisions.

As is relevant here, the substance of the 1980 TRA (either as amended by the 1993 Supplemental Agreement or as informed by the 1915 TRA) and the 1984 TRA, taken together, is that Conrail acquired trackage rights over C&O in Grand Rapids extending from the GDLK/CSXT connection at milepost CH 151.3+/- at Pleasant Street on the south through milepost CH 151.6 / CGE 0.0 to and beyond the connection switch to the (NSR-owned and GDLK-leased) Comstock Industrial Track north of Ann Street at milepost CGE 3.0+/- on the north. This roughly 3.3 miles of CSXT line in Grand Rapids over which Conrail possessed trackage rights are the aforementioned "CSXT Line."

¹² Supplemental Agreement, par. 4.

¹³ Supplemental Agreement, pars. 3 and 4.

For over 30 years, the CSXT Line trackage rights operations went essentially undisturbed. C&O was merged into CSXT in 1987,¹⁴ and, in 1999, NSR inherited Conrail's trackage rights as part of the transaction with CSXT that resulted in the division of Conrail's assets (the so-called "Conrail Split").¹⁵ And, for roughly ten years after the Conrail Split, CSXT and NSR continued operations in Grand Rapids in observance of each railroad's respective trackage rights over the other without substantive change.

In 2007, NSR and Michigan Central Railway, LLC ("Michigan Central"), the latter a non-carrier entity under the indirect control of Watco Companies, Inc. ("Watco"), proposed a railroad line transaction under which Michigan Central would acquire various railroad properties from NSR in Michigan and Indiana, including NSR's former Conrail route between Grand Rapids and Elkhart, Indiana. As part of the deal, presented to the Board under an individual petition for exemption,¹⁶ Michigan Central stated that it proposed to acquire NSR's trackage rights on the CSXT Line that are now the subject of this proceeding.¹⁷ In late 2007, the Board denied Michigan Central's petition for authority to undertake the proposed transaction.

Watco returned to the Board in 2008, this time proposing a transaction under which a new Watco noncarrier subsidiary, GDLK, would lease from NSR and operate roughly 122.9 miles of railroad lines, of which NSR's Grand Rapids-Elkhart route was the principal

¹⁴ See The Chesapeake and Ohio Railway Co. and CSX Transportation, Inc., Merger Exemption, Docket No. FD 31106 (ICC served Sep. 18, 1987).

¹⁵ See CSX Corp. – Control – Conrail Inc., 3 S.T.B. 196 (1998).

¹⁶ Michigan Central, LLC – Acquisition and Operation Exemption – Lines of Norfolk Southern Railway Company, Docket No. FD 35063.

¹⁷ Although the milepost references appear to be incorrect, Michigan Central's petition for exemption (filed on July 13, 2007) refers to the proposed assignment of NSR's trackage rights governed by the 1980 and 1984 TRAs. See Exhibit D, attached hereto. In addition, the July 11, 2007 "Transaction Agreement" filed as a supplement to Michigan Central's petition for exemption included a description of the "Grand Rapids Trackage Rights" that NSR would assign to Michigan Central. See *id.*

component. As relevant here, the lease transaction presented to the Board also included the lease and operation of two additional rail line segments, which are isolated from the balance of the GDLK system and are accessible to GDLK (and were accessible to NSR) only via the CSXT Line trackage rights: (1) between milepost KZ 94.25 and milepost KZ 95.0 (the “Kalamazoo Industrial Track”); and (2) between milepost VW 106.0 and milepost VW 106.9 (the “Comstock Industrial Track” – including the former Conrail North Yard, which GDLK has re-designated as Turner Yard, the base of GDLK’s sand transload operations in support of Brink Farms, Sargent Sand, Universal Sand, and Zeeland Farms).¹⁸ Under the lease, GDLK also assumed possession of the Richmond Street Connection, which facilitates CSXT and GDLK interchange with Grand Rapids Eastern Railroad, Inc. (“GRE”), a short line that had assumed operation of GTW’s east-west line through Grand Rapids. As with the Kalamazoo Industrial Track and the Comstock Industrial Track, GDLK can only reach its Richmond Street Connection to interchange with GRE via the CSXT Line. The Board accepted GDLK’s class exemption notice to lease and operate the lines described in therein, and the exemption took effect as of January 30, 2009.¹⁹

As part of the GDLK lease transaction, NSR agreed to assign its CSXT Line trackage rights to GDLK. The assignment would afford GDLK the ability to – (1) interchange directly with GRE; (2) reach the Kalamazoo and Comstock Industrial Tracks (including ancillary industry and yard trackage stemming from those lines); and (3) serve PADNOS, a recyclables shipper that NSR served competitively with CSXT. However, GDLK inadvertently omitted reference to the incidental assignment of the CSXT Line trackage rights in its description of the lease transaction in its filings in the GDLK Lease proceeding, and accordingly, there is no reference to the trackage rights assignment in the Board-issued notice dated November 17, 2008,

¹⁸ GDLK Lease at 1-2.

¹⁹ GDLK Lease.

or in the subsequent filings or decisions in that proceeding. Nevertheless, the parties contemporaneously executed the “Grand Rapids Assignment and Assumption Agreement,”²⁰ pursuant to which NSR assigned its CSXT Line trackage rights to GDLK.

GDLK commenced operations on March 8, 2009. From the beginning, GDLK’s operations included train service over the CSXT Line, and CSXT actively cooperated in the arrangement. CSXT gave no indication that there might be any potential future dispute over the assignment of NSR’s trackage rights in Grand Rapids. To the contrary, CSXT ensured from the commencement of GDLK operations (or very shortly thereafter) that GDLK train crews were qualified to operate trains over the CSXT Line in place of NSR. In facilitating the qualification of GDLK crews, CSXT confirmed that GDLK personnel were instructed on applicable operating rules, possessed the necessary employee timetable information, were alerted to any applicable special instructions, and possessed the requisite operating experience to be able to run trains over the CSXT Line without the aid of a CSXT pilot. During the 7 years of CSXT Line trackage rights operations, CSXT ensured that any new GDLK operating personnel assigned to operate over the CSXT Line were similarly so qualified. (For these reasons, it simply cannot be suggested that CSXT passively acquiesced in GDLK’s exercise of trackage rights for 7 years.)

On August 10, 2016, shortly after raising regulatory and contractual objections to GDLK’s operations over the CSXT Line, CSXT dispatchers refused GDLK trains entry onto the trackage rights, and have continued to refuse GDLK trains access ever since. CSXT’s actions appear to GDLK to have stemmed from recent discussions initiated by GDLK to improve interline service among GDLK and other short lines present in the Grand Rapids terminal area. CSXT has indicated that its refusal to continue to allow GDLK trains onto the trackage rights

²⁰ Attached hereto as Exhibit E.

lines is premised upon – (a) GDLK’s lack of Board authorization to exercise the now-disputed trackage rights; and (b) the asserted absence of CSXT’s written consent to the assignment of NSR’s trackage rights to GDLK. CSXT has advised that, having foreclosed GDLK’s trackage rights operations, it is willing to offer GDLK commercial access to GRE, PADNOS and other GDLK customers pursuant to an intermediate switch, the charges for which CSXT also happened at the same time to increase from \$105/car in each direction to \$300/car in each direction.

II. THE CURRENT SITUATION

Since August 10, 2016, GDLK has been denied access to the CSXT Line, and therefore is without direct access to various stranded assets – the Kalamazoo Industrial Track, the Comstock Industrial Track (including Turner Yard), and its interchange with GRE. GDLK has had no choice but to suspend service over the CSXT Line to various shippers that have come to depend upon GDLK’s services, including the following, which GDLK either had served directly or in partnership with GRE: Amway, King Milling, Formosa Plastics, and PADNOS, Brink Farms, Sargent Sand, Universal Sand, and Zeeland Farms. While GDLK acknowledges that its exemption notice in GDLK Lease did not refer to the incidental assignment of the CSXT Line trackage rights, both NSR and GDLK contend that, as a matter of contract law, NSR successfully assigned its CSXT Line trackage rights to GDLK, and that the assignment is legally valid and enforceable. Accordingly, in tandem with this proceeding before the STB, GDLK and NSR are jointly pursuing relief in Michigan state court, including a finding that the disputed trackage rights were legally assigned with or without CSXT’s written consent.²¹

Adding to the complication of the disputed trackage rights assignment, the 1980 and 1984 TRAs expired under their own terms as of 2014. While both trackage rights

²¹ The state court pleading, filed on August 24, 2016 (absent exhibits), is attached as Exhibit F.

agreements contained 30-year renewal provisions, GDLK believes that all of the involved parties, including CSXT, lost sight of the specific terms of those agreements, and GDLK operations on the CSXT Line continued for roughly 2 years after the expirations. No new agreements have been reached to replace the 1980 and 1984 TRAs.

That does not mean that a trackage rights tenancy no longer exists. Under Texas Mexican,²² the common carrier rights and obligations attached to an ICC or STB-authorized trackage rights operation would survive the termination of the underlying contract, the trackage rights tenant cannot be “evicted” or denied use of the trackage rights lines absent appropriate discontinuance authority, and the usual course of action is for the trackage rights parties to negotiate new terms. But if the parties cannot reach mutually acceptable replacement terms on their own, then the Board may be called upon to prescribe appropriate terms going forward.

Because the underlying trackage rights agreements have expired, it is critical for the Board to act on the present request to have the incidental assignment of trackage rights from NSR to GDLK authorized retroactively to January 30, 2009, the effective date of the notice in GDLK Lease. In light of Texas Mexican, GDLK does not dispute that CSXT’s own previously-authorized common carrier rights and obligations to operate over the Richmond Street Connection survive the termination of the 1984 TRA. Similarly, it is clear that the tenancy over the CSXT Line originally negotiated by Conrail and authorized by the ICC in 1984 has survived the expiration of the 1980 and 1984 TRAs. However, absent Board action on the present notice of exemption and this Petition, it is unclear whether the rights and obligations over the CSXT

²² Thompson v. Texas Mexican Ry. Co., 328 U.S. 134 (1946) (“Texas Mexican”) (in which the Supreme Court held that a carrier operating trackage rights is legally obligated to continue operations until it obtains discontinuance authorization from the ICC – now the Board; and added that this is so even if the agreement under which the trackage rights are operated is terminated).

Line were assigned as intended to GDLK (and are authorized pursuant to Board-ordered retroactive effectiveness) or whether the common carrier rights and obligations originally acquired by Conrail under ICC authority remain with NSR because the purported assignment to GDLK is invalid as a matter of federal regulatory law, state contract law, or both.²³

In the interest of fulfilling the mutual intent of GDLK and NSR dating back to 2008, GDLK must correct the inadvertent omission of the incidental CSXT Line trackage rights assignment from the lease transaction that the Board previously authorized (and that GDLK carried out). GDLK seeks supplemental authority to subsume within the scope of its lease transaction authority the acquisition by assignment of trackage rights over the CSXT Line. A recent Board proceeding offers a road map for the proper procedures to invoke under such circumstances. Saginaw Bay Southern Railway Company – Acquisition and Operation Exemption – Rail Line of CSX Transportation, Inc., Docket No. FD 34792 (STB served May 5, 2006) (“Saginaw Bay”) provides that, where a now-existing short line originally had filed under the non-carrier provisions of 49 C.F.R. § 1150.31, et seq., to acquire and operate rail lines, but

²³ Applying Texas Mexican to these facts, there is a continuing, federally-authorized trackage rights tenancy over the CSXT Line subject to the Board’s jurisdiction and regulatory authority. Such a tenancy would be transferable under federal law, if permissively authorized by this agency. Compare C&NC Railroad Corporation – Lease and Operation Exemption – Lines of Norfolk and Western Railway Company and Indiana Hi-Rail Corporation, Docket No. FD 33475, et al. (STB served Jul. 14, 2006) (Board declines to authorize the incidental assignment of trackage rights where it is not clear that the omission was truly inadvertent, and where there was no existing, federally-authorized trackage rights tenancy to assign); Winamac Southern Railway Company – Trackage Rights Exemption – A&R Line, Inc., Docket No. FD 35208 (STB served Jan. 9, 2009) (where the purported trackage rights tenant could point to no prior federal authorization for the asserted trackage rights tenancy, the underlying agreement conveying trackage rights had expired, and the trackage rights host objected to the purported tenant’s attempt to establish trackage rights authority, the Board declined under such circumstances to grant the purported tenant trackage rights exemption notice). Accordingly, it is in the interest of all involved that the Board assist the parties – who have thus far been unable privately to reach a mutually acceptable accord – in resolving which railroad or railroads may hold that tenancy by issuing the present notice of exemption and granting the related Petition.

had inadvertently omitted the acquisition by assignment of trackage rights incidental to the rail line acquisition transaction, the acquiror short line “must make a new filing under a new docket subnumber accompanied by a new filing fee.”²⁴ Moreover, the short line is expected to “file its new notice of exemption to acquire authority to [acquire incidental trackage rights] under 49 CFR 1150.41 instead of 49 CFR 1150.31, because [the short line] is now a Class III carrier.”²⁵

In keeping with the instructions in Saginaw Bay, GDLK has invoked the Section 1150.41 provisions, and has filed simultaneously with this Petition a notice of exemption under a new docket subnumber, accompanied by the applicable filing fee. Under the circumstances here, it is also critical to resolution of the underlying contract dispute that the Board grant the exemption sought in this proceeding retroactively – a result not sanctioned under the usual class exemption processes. Hence, GDLK hereby petitions that the Board’s class exemption be partially revoked to allow for such retroactivity. As such, GDLK offers below its case for partial revocation, expedited action, and for any other relief that the Board may deem appropriate.

III. ARGUMENT

As cases discussed below illustrate, the Board may, upon proper showing, grant a request for partial revocation of a class exemption to enable one invoking the exemption to obtain relief from the confines of the class exemption regulations or to obtain relief not otherwise deemed to be within the scope of the exemption. The partial revocation process allows the Board critical flexibility in appropriate circumstances to accommodate transactions that might not otherwise completely fit the applicable class exemption, or to modify the applicable procedural rules, such as to alter the effective date of an exemption.

²⁴ Saginaw Bay, slip op. at 2.

²⁵ Id.

Here, partial revocation of the class exemption would extend relief to GDLK not otherwise available under the Board’s interpretation of the Section 1150.41 class exemption. Specifically, the Board has stated that the Section 1150.41 class exemption, which GDLK has invoked here, do “not provide for retroactive effectiveness.”²⁶ Yet, an exemption authorizing GDLK to acquire the subject trackage rights retroactive to January 30, 2009, is critical to enable the state court reviewing the contract issues to determine whether NSR’s rights were assigned to GDLK. Without retroactive effectiveness of the exemption, the involved state court might decline to adjudicate whether an assignment had occurred, since GDLK would lack appropriate regulatory authority during the time that the trackage rights agreements were effective. Retroactive effectiveness of the exemption not only reflects the 7-year operational status quo (until CSXT recently barred GDLK access to the CSXT Line) and would aid the court called upon to adjudicate the contract assignment issue, but it also would pave the way for negotiations with CSXT toward a new agreement to govern use of the CSXT Line going forward.

Clearly, the Board has the authority and discretion under the partial revocation process effectively to override the retroactivity limitation for good cause shown.²⁷ Partial revocation petitions are, for example, de rigueur in class exemption proceedings involving temporary trackage rights that entitle the trackage rights tenant to engage in local (as opposed to overhead) operations, because the class exemption does not provide for temporary local operations. And, analogous to the “retroactive effect” request here, the Board has granted partial

²⁶ San Pedro Railroad Operating Company, LLC, d/b/a San Pedro & Southwestern Railroad – Lease and Operation Exemption – Union Pacific Railroad Company, Docket No. FD 35968 (STB served Nov. 6, 2015).

²⁷ See, e.g., R. J. Corman Railroad Property, LLC – Acquisition Exemption – NC Railroad, Inc., Docket No. FD 35363, et al. (STB served Jun. 29, 2011) (“R.J. Corman”); Horsehead Corporation – Petition for Acquisition and Operation Exemption – Chestnut Ridge Railway Company, Docket No. FD 34481 (STB served Mar. 12, 2004) (“Horsehead”).

revocation of the line acquisition class exemption to “expedite the effective dates” of exemption notices to less than 30 days from the date of filing.²⁸

While the Board has the discretion to allow an exemption to take effect retroactively – nunc pro tunc – and it has granted retroactivity in past cases, the Board has explained that such relief is not granted lightly, remarking that it is not favored and stating that it is disinclined to grant retroactivity where it is not necessary.²⁹ GDLK believes that, in this complex case, truly unique circumstances exist where retroactive effectiveness of GDLK’s incidental trackage rights exemption is essential to aid all involved in untangling the contractual and regulatory knots that need to be addressed to facilitate the negotiation of new trackage rights terms in place of the expired 1980 and 1984 TRAs; and to restore competitive railroad service to customers who have borne the brunt of CSXT’s decision to disrupt GDLK service and subject those customers to inefficiency and higher transportation costs.

For 7 years, GDLK has operated over the CSXT Line, believing that it possessed both the rights under contract law to do so and the necessary regulatory authority. Whether or not GDLK acquired the subject rights by assignment is currently disputed, although GDLK is confident of its case before the state court due to a number of contractual theories supporting the proposition that NSR successfully assigned its trackage rights. (In fact, if the Board believes that

²⁸ See Washington State Department of Transportation – Acquisition Exemption – Palouse River and Coulee City Railroad, Inc., Docket No. FD 35024, et al. (STB served May 30, 2007) (“Washington State”).

²⁹ See R.J. Corman, slip op. at 5 (“[a]lthough retroactive authority is generally to be avoided, the agency has granted it under appropriate circumstances when the failure to seek approval was unintentional”); Horsehead, slip op. at 2 (same, and granting retroactivity in the presence of “unusual circumstances”); cf. The New Brunswick Railway Company – Continuance in Control Exemption – Maine Northern Railway Company, Docket No. FD 35520 (STB served Sep. 26, 2011), et al. (retroactivity denied as unnecessary where the relief appeared to have been sought to avoid the possibility of a Board enforcement action, which the Board stated it would not pursue).

GDLK was correct to address the contract issue in a court proceeding rather than here, then GDLK urges the Board to facilitate adjudication in that venue by making clear that the Board will look to the court to resolve that issue.) But absent the Board granting retroactive effect to the subject exemption, NSR currently could be regarded as the trackage rights holder “of record” on tracks that are roughly 100 miles removed from any other line that NSR operates.

Without the requested retroactivity, NSR arguably could be called upon to provide service via the CSXT Line as an intermediate carrier between GDLK and its customers. Not only is such an NSR trackage rights “island” operation – inserting another carrier into the handling of traffic in combination with GDLK – inefficient operationally and more costly, but the entire concept of an NSR island operation here is absurd. What is more, such an island operation benefits CSXT, because, in the presence of less efficient GDLK service to and from Grand Rapids, CSXT would enjoy increased local market power by exerting control over and insisting upon less efficient alternatives to GDLK service.³⁰

Ultimately, in light of Texas Mexican, one railroad or the other, GDLK or NSR, possesses unextinguished common carrier rights and obligations over the CSXT Line regardless of the expiration of the 1980 and 1984 TRAs. If the STB were to grant GDLKs’ request for retroactivity, that would facilitate the state court’s determination whether NSR successfully had assigned its rights to GDLK under one or more state law contract theories. And if the state court were to rule that an enforceable assignment had occurred prior to the expiration of the 1980 and 1984 TRAs as the facts suggest, then GDLK and CSXT could move forward with the necessary task of negotiating new trackage rights terms, and GDLK customers could once again enjoy the

³⁰ Such an anticompetitive outcome is contrary to the purposes behind the 1980 and 1984 TRAs, both of which were intended to allow Conrail and C&O to relocate and consolidate operations in the Grand Rapids terminal area without diminishing intramodal competition or Conrail’s market access.

operating efficiencies of service that had existed until CSXT abruptly put a stop to GDLK's trackage rights operations.

IV. EXPEDITED CONSIDERATION

For 7 years, GDLK has provided service to customers and connecting railroad carriers via its trackage rights operations over the CSXT Line. Although CSXT blithely points to regulatory oversight as an excuse to bar GDLK from operating over the CSXT Line (thereby disrupting service to GDLK-served customers, and leaving isolated certain GDLK-leased rail lines), CSXT's actions are bad for railroad service in and around Grand Rapids, harm shippers, and diminish intramodal competition in the Grand Rapids terminal area. It would be fair to say that CSXT's technical, but draconian, tactics appear to constitute anticompetitive conduct.

Where the parties should now be focused on the task of resolving trackage rights terms going forward, CSXT evidently has other ideas. Swift Board action on the subject Petition would be a step in the right direction, and should hasten the restoration of the efficient, competitive railroad service that GDLK's customers have come to depend upon.

Also, since CSXT seems intent to force an adjudicated resolution of whether NSR's trackage rights over the CSXT Line have been assigned, and unless the Board were willing to direct the parties to return to the status quo ante pending resolution of the contract issues, then time will be of the essence to minimize service disruptions to GDLK customers and interchange partners. To minimize such disruption and the competitive harms flowing from it, and to facilitate prompt adjudication of the underlying contract dispute, GDLK respectfully urges the Board to act as expeditiously as possible on both the class exemption notice filed with this Petition and on the Petition itself. As indicated above, the partial revocation process previously has been invoked to secure Board authorization for line acquisition and operation transactions in

less than the prescribed 30-day notice time frame.³¹ So, it is inarguably at the Board's discretion to direct interested parties to respond to this Petition in less than the usual 20 days, given the current exigencies, and to rule on the Petition and issue the notice of exemption in this proceeding as soon as the Board sees fit to do so.

WHEREFORE, GDLK respectfully request that the Board partially revoke the class exemption at 49 C.F.R. § 1150.41, et seq., as invoked by GDLK in this docket; allow GDLK's notice of exemption filed to become effective retroactively as of January 30, 2009; grant GDLK's request for expedited consideration of the subject Petition; and issue any other orders or decisions as the Board may deem appropriate.

Respectfully submitted,

By: R. A. Wimbish
Robert A. Wimbish
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR GRAND ELK
RAILROAD, INC.**

Dated: August 25, 2016

³¹ See, e.g., Washington State; cf. Ohio & Pennsylvania Railroad Company – Lease and Operation Exemption – P&LE Properties, Inc., Docket No. FD 32711 (ICC served June 23, 1995) (wherein the ICC granted the requested relief through a “waiver” of then-available “7-day pre-effectiveness requirement,” and not by a partial revocation of the class exemption).

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35187 (SUB-NO. 1)

GRAND ELK RAILROAD, INC.
-- ACQUISITION OF INCIDENTAL TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

PETITION TO PARTIALLY REVOKE CLASS EXEMPTION

EXHIBIT A
TRACKAGE RIGHTS AGREEMENT
FEBRUARY 6, 1980

THIS AGREEMENT, made as of this 6th day of February, 1980,

by and between the Chesapeake and Ohio Railway Company (hereinafter called "C&O") referred to as "Owner" and Consolidated Rail Corporation (Hereinafter called "Conrail") referred to as "User":

WHEREAS, Conrail and C&O are operating their trains over their respective trackage between Pleasant Street and Lake Michigan Drive, Grand Rapids, Michigan, and,

WHEREAS, the City of Grand Rapids, Michigan, in an effort to revitalize its central business district and eliminate highway/rail congestion within the downtown area, is desirous of eliminating Conrail trackage through the central business district by having Conrail utilize C&O trackage located west of the central business district, and C&O and Conrail are agreeable to the joint use of C&O trackage; and,

WHEREAS, under Phase One of Railroad Relocation Project in the City of Grand Rapids, Michigan, it is proposed to consolidate Conrail and C&O operations over C&O tracks for a distance of approximately .64 of a mile west of present Pleasant Street Tower, Grand Rapids, Michigan, as described in Section One herein.

NOW, THEREFORE, in consideration of the premises and of the terms, covenants and conditions hereinafter set forth, it is agreed between the parties hereto as follows:

Section 1. Owner hereby grants trackage rights to User over certain rail properties of Owner, as specifically described below and does not cancel, modify or supercede existing agreements covering use of facilities adjacent to or contingent with the herein described facilities. The parties agree, subject to the terms and conditions herein provided, that

User shall have the right to operate its locomotives, cars and trains with its own crews over the following trackage sections (hereinafter referred to as "Trackage Rights") of Owner's railroad located at and between the following geographic points (hereinafter referred to as the "Joint Trackage"):

- (a) Beginning at Owner's new crossover in Grand Rapids, between Point of Switch, Valuation Station 8021+90 and Point of Switch, Valuation Station 8019+88, near Grandville Avenue, a distance of 202 feet, and;
- (b) Between Point of Switch, Valuation Station 8040+44, and Last Long Tie, Valuation Station 8072+33, near Butterworth and Fulton Streets, a distance of 3,199 feet. Both segments are shown on Plan No. 80043-B, dated October 9, 1979, attached hereto as Exhibit I.

Section 2. Except as otherwise provided below, this agreement is subject to and shall be governed by the "General Conditions, Form A" which are attached hereto and which are incorporated herein by reference with the same effect as if set forth at length. This Agreement shall not be effective unless the parties hereto, in addition to executing this Agreement, have also executed said General Conditions in the space provided therefor at the end thereof.

Section 3. For the purpose of applying Article 2 of the General Conditions-Form A, the Base Charges to be paid by User for

the trackage rights covered by this Agreement will be \$8,000 per year (hereinafter referred to as the "Base Charge").

The Base Charge herein specified is predicated on Owner being reimbursed for calculated maintenance costs as a result of User operating approximately 25,000 units (locomotives, cars and cabooses) over the Joint Trackage in any twelve (12) month period. If there is a significant change in maintenance costs, other than that caused by unit cost variations which are provided for in Article 2(c) of General Conditions-Form A referred to in Article 2 above and/or the number of cars operated on an annual basis, either party hereto may request renegotiation of the Base Charge. The party requesting renegotiation of the Base Charge will furnish necessary documentation to support the request. "Significant change" as used herein is defined as a variation of twenty (20) percent or more from the specified basis on which the original "Base Charge" is established.

Section 4. This Agreement is subject to the prior approval of the Interstate Commerce Commission, and if other federal, state or municipal agency approval is required, User will secure such approval and this Agreement shall take effect after such approval has been secured on the date User commences operations over the Joint 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.

Section 5. Any notice required or permitted to be given by one party to the other under this Agreement shall be addressed as follows:

(a) If to the Owner,

c/o Vice President-Transportation, The Chesapeake and Ohio
Railway Company, 2 North Charles Street, Baltimore, Maryland
21201.

(b) If to the User,

c/o Vice President-Operations, Consolidated Rail Corporation,
6 Penn Center Plaza, Philadelphia, Pa. 19104.

Section 6. The Trackage Rights are granted for the purpose of User using same for bridge rights only and User shall not perform any local freight service whatever at any point located on the Joint Trackage. User shall not use any part of the Joint Trackage for the purpose of switching, storage of cars, making or breaking up of trains, except that nothing contained herein shall, upon prior approval by Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

Section 7. It is agreed that for the purposes of all provisions under this Agreement, including General Conditions-Form A, all persons directly engaged in the operation of locomotives, cars and trains of User shall be considered as sole employees of User.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized.

ATTEST:

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

J. Brent

By *W. C. Ruffner*

Appd. as to
Legal Form

ATTEST:

CONSOLIDATED RAIL CORPORATION

W. P. ...
ASSISTANT SECRETARY

Stuart M. Reed
PRESIDENT



Mr

GENERAL CONDITIONS - FORM A

TO TRACKAGE RIGHTS AGREEMENT OF FEBRUARY 6, 1980 BETWEEN

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

AND

CONSOLIDATED RAIL CORPORATION

Article 1. Use of Trackage

(a) User's use of the Joint Trackage shall be in common with Owner, whose right to use the Joint Trackage shall not be diminished by this Agreement and who shall have the right to grant rights in the Joint Trackage to other railroads.

(b) Owner shall have exclusive control of the management and operation of the Joint Trackage.

(c) Unless otherwise stated in the Agreement to which these conditions pertain, User shall have the right to operate in either direction over the Joint Trackage.

(d) These trackage rights shall include User's right to elect, at any time during the term of this Agreement, to operate its trains onto or off of the Joint Trackage wherever said Joint Trackage crosses or connects with User.

(e) If, in the judgment of Owner, exercise of the rights conferred in paragraph (d) above requires additional connections, construction and maintenance of same shall be paid for by User under the terms of this Agreement.

Article 2. Compensation for Trackage Rights

(a) As compensation for the Trackage Rights, User will pay Owner the Base Charge specified in Section 3 of the Agreement to which these

General Conditions pertain. The Base Charge shall be subject to change to reflect any increase or decrease in labor, material and other costs subsequent to the Commencement Date of this Agreement in labor, material and other costs, as more fully set forth below.

(b) All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, but any discrepancies reconciled between parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party hereto.

(c) The Base Charge set forth in Section 3 of the Agreement to which these General Conditions pertain shall be escalated, upward or downward, effective July 1 of each year beginning July 1, 1981, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the final Annual Indexes of Charge-Out Prices and Wage Rates (1967=100), Series Q-MPW; included in "Indexes of Railroad Material Prices and Wage Rates" and supplements thereto, issued by the Association of American Railroads. In making such determination, the final "Material prices, wage rates and supplements combined (excl. fuel) a" index for the Eastern District shall be used and the final index figure for the calendar year 1979 shall be taken as the base. The method of escalating the Base Charge shall be determined by calculating the percent of increase or decrease, in the index of the year to be escalated

as related to the 1979 base, and apply that percent of increase, or decrease, to the Base Charge to obtain the incremental charge. This will be added to or subtracted from the base to establish the escalated Base Charge.

By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excl. fuel) a" final index figure for the calendar year 1979, "B" to be the "Material prices, wage rates and supplements combined (excl. fuel) a" final index figure for the calendar year 1980, "C" to be the Base Charge, "D" to be the percent of increase or decrease, the rate in Section 3 of this Agreement would be determined by the following formula:

$$\frac{B-A}{A} = D$$

$$(D \times C) + C = \text{escalated charge effective July 1, 1981}$$

In the event the base for the annual Indexes of Charge-Out Prices and Wage Rates issued by the Association of American Railroads shall be changed from the Year 1967, appropriate revision shall be made in the base (established as herein provided) for the calendar year 1979. If the Association of American Railroads or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto.

Article 3. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

User shall furnish all labor and material and shall maintain, repair and renew, at its sole cost and expense, such portions

of the tracks which connect the respective lines of the parties at the terminals of the Joint Trackage as are located on the right-of-way of User.

Owner shall furnish all labor and material and shall maintain, repair and renew, at the sole cost and expense of User, the portions of the track connections between said tracks of the parties hereto, located on the right-of-way of Owner.

Any other connections or facilities already existing and used jointly by the parties hereto shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance under existing agreements or practices.

Article 4. ADDITIONS, RETIREMENTS AND ALTERATIONS

Owner, from time to time, may make such changes in, additions to or retirements from the Joint Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation or ordinance promulgated by any governmental body having jurisdiction. Such additions shall become a part of the Joint Trackage and such retirements shall be excluded from the Joint Trackage.

If the parties mutually agree that changes in or additions to the Joint Trackage, including changes in communication or signal facilities,

are required to accommodate User's operations beyond that required by Owner to accommodate its own operations, Owner shall construct the additional or altered facilities and User shall pay to Owner the cost of such additions or alterations, including the annual expense of maintaining, repair and renewal of such additional or altered facilities.

Article 5. MAINTENANCE OF TRACKAGE SECTION

Owner shall maintain, repair and renew the Joint Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Joint Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Joint Trackage or that operation thereof will not be interrupted. Furthermore, User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Joint Trackage, have or make any claim or demand against Owner for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever or for any damages or loss of business suffered by User resulting from any such neglect or failure and User shall indemnify, protect, defend and save Owner harmless in these regards.

Owner shall also perform, at the expense of User, such additional maintenance as User may require.

Article 6. MANAGEMENT AND OPERATION

(a) User shall comply with the provisions of the Federal Boiler Inspection Act and the Federal Safety Appliance Act, as amended, and any other laws, regulations or rules, state or federal, respecting the operation, condition, inspection and/or safety of its locomotives and cars while such locomotives and cars are operated over the Joint Trackage. User shall

indemnify, protect, defend and save Owner harmless from all fines, penalties and liabilities imposed upon Owner under any such laws, rules and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.

(b) User agrees that in its use of the Joint Trackage it will comply in all respects with the operating rules and regulations of Owner, and that the movement of User's trains, locomotives, cars and equipment over the Joint Trackage section shall at all times be subject to the orders of the transportation officers of Owner.

User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Joint Trackage qualified for operation thereover, and User shall pay to Owner, promptly upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner, to be properly qualified for operation as herein contemplated.

In the event that Owner shall conduct an investigation or hearing concerning the violation of any operating rule or practice of Owner by User's employees, User shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by User and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements,

if any, that pertain to User's employee or employees required to attend such hearings.

Owner shall not be prohibited from barring from the Joint Trackage any employee of User, not including officers, determined by Owner, as the result of such investigation or hearing described above, to be in violation of Owner's rules, regulations, orders, practices or instructions issued by Timetable or otherwise.

It is understood that the trains, locomotives, cars and equipment of User and Owner shall be operated without prejudice or partiality to either party and in such manner as will afford each party the most economical and efficient manner of movement of its traffic.

(c) If by any reason of mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, or to properly move the disabled equipment off the Joint Trackage section, and User shall reimburse Owner for the cost of rendering any such assistance.

If it becomes necessary to make repairs to, or to adjust or transfer the lading of, such crippled or defective cars in order to move them off the Joint Trackage, such work shall be done by forces of Owner, and User shall reimburse Owner for the cost thereof in accordance with the

then current Code of Rules of the Association of American Railroads.

Article 7. PER DIEM

All mileage and per diem charges accruing on cars in User's trains on the Joint Trackage shall be assumed by User and reported and paid by it direct to the owner of such cars.

Article 8. CLEARING OF WRECKS

Whenever User's use of the Joint Trackage requires wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track and structures, and the cost and expense thereof shall be apportioned in accordance with the provisions of Article 9 hereof. All cars and equipment, and salvage from the same, so picked up and removed which is owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it.

Article 9. LIABILITY

Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of one party only being involved, that party shall assume all liability therefor, and all cost and expense in connection therewith, and shall indemnify, defend and save the other party harmless from any such liability, cost and expense. When any such loss, damage, destruction, injury or death occurs with the trains, locomotives, cars or equipment of both parties being involved, each party agrees to assume all liability for loss of or damage to said trains, locomotives, cars or equipment operated by it (including lading) and for injury to or death of its sole employees and persons in its care and custody, and

the parties further agree that injury to or death of any other person or persons whomsoever, and loss, damage or destruction of all other property (including the Joint Trackage so occurring, shall be borne equally by them. The foregoing provisions shall apply regardless of considerations of fault or negligence.

In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law and either of said parties, under the provisions of this Agreement, is required to pay such compensation, if such compensation is required to be paid in installments over a period of time, such parties shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

Article 10. PAYMENT OF BILLS

(a) Bills rendered pursuant to the provisions of this agreement, other than those provided by Article 2 hereof, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals in effect at the time any work is performed by Owner, as specified in the then current Rules Covering Preparation of Joint Facility and Other Bills Between Carriers and the Schedule of Equipment Rental and Other Rental Rates for Use Between Carriers, promulgated by the General Managers Association of Chicago or its successor organization.

(b) In the event that Owner and User mutually agree that Owner should hire additional employees for the sole benefit of User under this

Agreement, User will enter into a separate agreement with Owner under which User will assume all obligations for protection of any such employees in the event of their subsequent displacement during the term of or upon termination of this Agreement.

Article 11. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of the User to perform its obligations under this Agreement, and its continuance in such default for a period of sixty (60) days, Owner shall have the right, at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by the Owner of any prior breach thereof, to terminate the use of the facilities by the User and in the exercise of such right the Owner shall not impair its rights under this Agreement or any rights of action against the User for the recovery of damages.

Article 12. TERM

(a) This Agreement shall continue in full force and effect for a period of thirty (30) years from said Commencement Date, provided, however, that User shall have the right on giving twelve (12) months advance notice to Owner, to terminate this Agreement.

(b) User shall have the right to renew its rights for an additional thirty (30) year term (subject to User's right to terminate, as above) by giving written notice thereof to Owner at least six (6) months before expiration of the initial term; upon the exercise of that option, the parties shall, in good faith, renegotiate the terms and conditions under which the rights are exercised, and shall adjust them as may be reasonable

and equitable in the light of any changed circumstances arising during the initial term.

(c) If Owner secures proper regulatory authority to discontinue its own operations over or to abandon the Joint Trackage (or any portion thereof), Owner shall not abandon the Joint Trackage (or portion thereof) without first giving User the right of first refusal to purchase it for its then fair market value. Such option must be exercised by User within sixty (60) days after Owner gives notice to User of its desire to abandon the Joint Trackage (or portion thereof).

Article 13. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective lessees, successors and assigns, and shall continue for the term aforesaid, unless and until terminated by giving notice as aforesaid, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed, or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof. Neither party hereto shall assign or transfer this Agreement or any of its rights hereunder, without obtaining the prior written consent of the other party, except that the rights granted by this Agreement shall pass to the successor of substantially all the property or franchise of Owner.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized

as of the day and year first above written.

ATTEST:

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

By TC Rayburn

Attest to
this form

ATTEST:

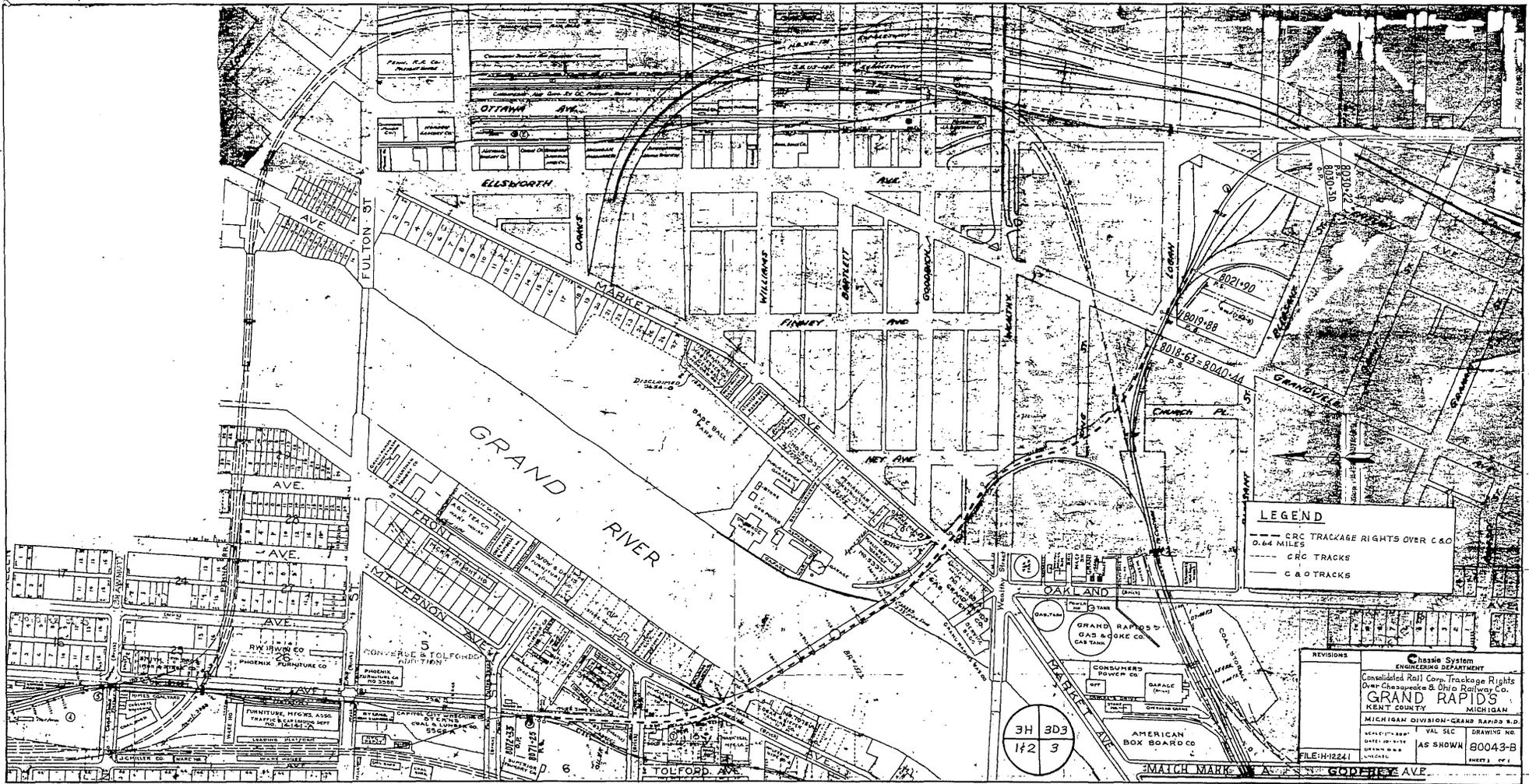
CONSOLIDATED RAIL CORPORATION

By Stuart M. Reed
PRESIDENT

AT

Z. P. [Signature]





BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35187 (SUB-NO. 1)

GRAND ELK RAILROAD, INC.
-- ACQUISITION OF INCIDENTAL TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

PETITION TO PARTIALLY REVOKE CLASS EXEMPTION

EXHIBIT B
TRACKAGE RIGHTS AGREEMENT
JANUARY 24, 1984

AGREEMENT

Dated as of January 24, 1984

between

THE CHESAPEAKE & OHIO RAILWAY COMPANY

and

CONSOLIDATED RAIL CORPORATION

Relating to Trackage Rights Over
Each Other's Lines in Grand Rapids, MI.

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of this 24th day of January, 1984, by and between THE CHESAPEAKE & OHIO RAILWAY COMPANY ("C&O") and CONSOLIDATED RAIL CORPORATION ("Conrail").

WHEREAS, under an agreement dated February 6, 1980, the C&O and Conrail agreed to consolidate their operations over approximately .64 of a mile of C&O's track west of the Pleasant Street Interlocking, Grand Rapids, MI ("Phase I"); and

WHEREAS, the City of Grand Rapids, MI has proposed a further consolidation of C&O's and Conrail's tracks within the City of Grand Rapids, MI between C&O's Valuation Station 8071+35±, near Butterworth and Fulton Streets, and Valuation Station 8200+75±, north of Ann Street ("Phase II"), which track consolidation will allow for the retirement and removal of Conrail's track from a point near Lake Michigan Street to a point north of Ann Street and provide for rail connections near Ninth, Leonard, Richmond, and Ann Streets, Grand Rapids, MI; and

WHEREAS, as a result of this Phase II consolidation it will be necessary for C&O and Conrail to operate over one another's trackage; and

WHEREAS, C&O (former Pere Marquette Railway Company), Conrail (former Pennsylvania Railroad Company) and the Grand Trunk Western Railroad Company ("GTW"), entered into an agreement dated January 2, 1934 to provide for the

installation and maintenance of crossing gates protecting the grade crossings of C&O and Conrail tracks with the main track of the GTW and for the maintenance, repair and renewal of the flashing light signal protection at Broadway (Ann Street); and

WHEREAS, C&O and Conrail agree to negotiate with the GTW to amend the January 2, 1934 agreement to exclude Conrail inasmuch as Conrail's tracks referred to in the January 2, 1934 agreement shall be removed.

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

SECTION 1. DEFINITIONS

(a) "Owner" shall mean Conrail when referring to Conrail Rail Properties and shall mean C&O when referring to C&O Rail Properties.

(b) "User" shall mean Conrail when referring to C&O Rail Properties and shall mean C&O when referring to Conrail Rail Properties.

(c) "Parties" shall mean Conrail and C&O.

(d) "Conrail Rail Properties" shall mean the rail properties, including additions and betterments thereto, identified herein in Section 2(b) hereof.

(e) "C&O Rail Properties" shall mean the rail properties, including additions and betterments thereto, identified herein in Section 2(a) hereof.

SECTION 2. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of Owner's railroad shown on the plan attached hereto, made a part hereof and marked "Exhibit I" (hereinafter referred to as the "Joint Trackage").

(a) Conrail over C&O - C&O Rail Properties

The Joint Trackage extends from C&O's Valuation Station 8071+35±, near Butterworth Street, to Valuation Station 8200+75±, north of Ann Street, a distance of approximately 2.45 miles, including use of the following connections: (i) between 9th Street and 11th Street at Valuation Station 8144+78± (the "9th Street Connection") (ii) between 11th Street and Leonard Street at Valuation Station 8147+00± (the "Leonard Street Connection") (iii) between Richmond Street and Ann Street at Valuation Station 8185+50± (The "Richmond Street Connection") (iv) north of Ann Street at Valuation Street 8200+75± (the "Ann Street Connection"), all in Grand Rapids, MI.

(b) C&O over Conrail - Conrail Rail Properties

Approximately 1,000 feet of Conrail's tracks between and including the Richmond Street Connection and the connection with the GTW.

SECTION 3. GENERAL CONDITIONS - FORM A.

Except as otherwise may be provided herein, this Agreement is subject to and shall be governed by the "General Conditions - Form A", pages A-1 through A-24, of even date herewith attached hereto, made a part hereof and incorporated herein by reference with the same force and effect as if set forth at length herein.

SECTION 4. COMPENSATION.

(a) The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be as shown below (hereinafter referred to as the "Base Charge"):

(i) Ten Thousand Dollars (\$10,000) annually for the Trackage Rights described in Section 2 (a) to be paid by Conrail to C&O.

(ii) Five Hundred Dollars (\$500) annually for the Trackage Rights described in Section 2 (b) to be paid by C&O to Conrail.

(b) The Base Charge in (i) above is predicated upon C&O being reimbursed for Conrail operating approximately 18,000 units over the Joint Trackage in any consecutive twelve (12) month period, a unit being each locomotive car (loaded or empty) or caboose handled by Conrail over the Joint Trackage. If there is a twenty percent (20%) variation in the 18,000 units operated by Conrail over the Joint Trackage in any consecutive twelve (12) month period, either party hereto may request renegotiation of the Base Charge referred to in (i). The party requesting renegotiation of the Base Charge will furnish necessary documentation to support the request. In the event the parties fail to reach agreement upon such renegotiation, such failure

shall not constitute a breach of this Agreement and the parties shall continue to be bound by the terms of compensation provided under Section 4(a) and Article 2 for the remainder of the term of this Agreement.

(c) The Base Charge referred to in Section 4(a)(i) and (ii) shall be revised in accordance with Article 2 of the General Conditions.

SECTION 5. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS.

(a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements or practices.

(b) Any additional connections to the Joint Trackage which may be required by User shall be constructed, maintained, repaired and renewed as follows:

(i) User shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of User which connect the respective lines of the parties hereto; and

(ii) Owner shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.

SECTION 6. NOTICE.

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

(a) If to C&O:

Vice President-Transportation
The Chesapeake and Ohio Railway Company
100 North Charles Street
Baltimore, Maryland 21201

(b) If to Conrail:

Senior Vice President-Operations
Consolidated Rail Corporation
6 Penn Center Plaza
Philadelphia, Pennsylvania 19104

(c) Either party may provide changes in the above addresses to the other party by personal service or certified mail.

SECTION 7. RESTRICTION ON 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 Joint Trackage and User shall not perform any local freight service whatever at any point located on the Joint Trackage, except Conrail shall have the right to use the proposed additional connections: 9th Street Connection, the Leonard Street Connection, the Richmond Street Connection, and the Ann Street Connection to serve industries situated west of the Joint Trackage.

SECTION 8. TERM.

(a) This Agreement shall continue in full force and effect for a period of thirty (30) years from the Commencement Date, as hereinafter defined; provided, however, that User shall have the right to terminate that portion of this Agreement pertaining to its Trackage Rights over Owner upon giving twelve (12) months' advance written notice to Owner. Such termination will not affect the Trackage Rights of the other User over Owner and shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

(b) User shall have the right to renew this Agreement for one (1) additional thirty (30) year term, subject

to User's above-stated right to terminate, by giving written notice thereof to Owner not more than twelve (12) months and not less than six (6) months prior to expiration of the initial term of this Agreement.

(c) Upon the giving by User of the notice referred to in paragraph (b) above, the parties shall, in good faith, renegotiate the terms and conditions of this Agreement, and shall adjust such terms and conditions as may be reasonable and equitable in light of any changed circumstances during the initial term of this Agreement. In the event the parties fail to reach agreement upon such renegotiation, then such failure shall not constitute a breach of this Agreement and the terms and conditions of this Agreement shall remain in full force and effect for the remainder of the initial term and for the renewed term of this Agreement.

SECTION 9. MISCELLANEOUS SPECIAL PROVISIONS

(a) Conrail and C&O agree that the subject grants of trackage rights and the related abandonment of Conrail's line is for the purpose of accommodating the development plans of the City of Grand Rapids. Therefore, it is the intention of both Conrail and C&O that the existing switching rights of the respective carriers shall, insofar as possible, remain the same after the consummation of the subject trackage rights and the related abandonment.

(b) C&O's use of the Richmond Street Connection and Conrail's trackage referred to in Section 2 of this Agreement will be for the sole purpose of C&O reaching the GTW's Westside Yard for the purpose of interchanging with the GTW.

(c) The agreement of October 23, 1942, between Conrail (former Pennsylvania Railroad Company) and C&O (former Pere Marquette Railway Company) providing for the maintenance and operation of highway-crossing flashing light signals at Bridge, First, Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, Eleventh, Leonard, Crosby, Myrtle, Webster and Richmond Streets in the City of Grand Rapids, MI is hereby terminated effective with the Commencement Date, as hereinafter defined; provided, however, that said termination shall not relieve or release either party there- to from any obligations assumed or from any liability which assumed or from any liability which may have arisen or been incurred by either party under the terms of said agreement prior to the termination thereof.

IN WITNESS WHEREOF, the parties hereto have caused
this Agreement to be duly executed as of the date first
above written.

WITNESS: THE CHESAPEAKE & OHIO RAILWAY
COMPANY

Antonio Martinez By: F. W. Young, Jr.

WITNESS: CONSOLIDATED RAIL CORPORATION

Phyllis E. Pearson By: C. E. Wogan
General Manager-Contracts

Legal Dept
RW

GENERAL CONDITIONS-FORM ADATED: January 24, 1984

TO TRACKAGE RIGHTS AGREEMENT DATED AS OF January 24, 1984
BETWEEN THE CHESAPEAKE & OHIO RAILWAY COMPANY AND CONSOLI-
DATED RAIL CORPORATION relating to trackage rights over one
another's tracks in Grand Rapids, MI.

ARTICLE 1. USE OF JOINT TRACKAGE.

(a) User's use of the Joint Trackage shall be in common with Owner and any other user of the Joint Trackage, and Owner's right to use the Joint Trackage shall not be diminished by this Agreement. Owner shall retain the right to grant to other persons rights of any nature in the Joint Trackage.

(b) User shall not use any part of the Joint Trackage for the purpose of switching (except as provided in Sections 7 and 9 herein), storage of cars, or the making or breaking up of trains, except that 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.

(c) Owner shall have exclusive control of the management and operation of the Joint Trackage.

(d) Unless otherwise stated in the Agreement to which these conditions pertain, User shall have the

right to operate in either direction over the Joint Track-
age.

ARTICLE 2. REVISION OF BASE CHARGE.

(a) The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

(b) The Base Charge set forth in Section 4 of this Agreement shall be revised effective July 1 of each year, beginning July 1, 1984, to compensate for 75% of 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), Series RCR, included in "AAR Railroad Cost Recovery Index" and supplements thereto, issued by the Association of American Railroads. In making such determination, the final "Material prices, wage rates and supplements combined (excl. fuel)" index for the Eastern District shall be used and the final index figure for the calendar year 1982, hereinafter referred to as the "Base Calendar Year", shall be taken as the base. The Base Charge shall be revised by calculating the percentage of increase, or decrease, in the index of the year to be escalated as related to the Base Calendar Year; then multiplying this percentage of increase or decrease by 75%; and applying that percentage to the Base Charge.

(c) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excl. fuel)" final index figure for the Base Calendar Year; "B" to be the "Material prices, wage rates and supplements combined (excl. fuel)" final index figure for the calendar year to be escalated; "C" to be the Base Charge; "D" to be the percentage of increase or decrease; and "E" to be the adjusted revised percentage of increase or decrease, the revised Base Charge would be determined by the following formula:

$$(1) \frac{B - A}{A} = D$$

$$(2) D \times 75\% = E$$

$$(3) (C \times E) + C = \text{revised Base Charge,}$$

rounded to the nearest cent (5 mills rounds to next cent), effective July 1 of the year being escalated.

(d) In the event the base for the Annual Indices of Charge-Out Prices and Wage Rates issued by the Association of American Railroads shall be changed from the year 1977, appropriate revision shall be made in the Base Calendar Year. If the Association of American Railroads or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an

appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Interstate Commerce Commission for determination. In the event said Commission is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

ARTICLE 3. ADDITIONS, RETIREMENTS AND ALTERATIONS.

(a) Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, or retirements from the Joint Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Joint Trackage and such retirements shall be excluded from the Joint Trackage.

(b) If the parties agree that changes in or additions and betterments to the Joint Trackage, including changes in communication or signal facilities, are required to accommodate User's operations beyond that required by Owner to accommodate its own operations, Owner shall construct the additional or altered facilities and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities.

ARTICLE 4. MAINTENANCE OF JOINT TRackage.

(a) Owner shall maintain, repair, and renew the Joint Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Joint Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Joint Trackage or that operations thereover will not be interrupted. Furthermore, except as may be otherwise provided in Article 8 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Joint Trackage, have or make any claim or demand against Owner or its officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

(b) Owner shall also perform, at the expense of User, such additional maintenance as User may request.

ARTICLE 5. MANAGEMENT AND OPERATION.

(a) User shall comply with the provisions of the Federal Boiler Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal, state and local laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Joint Trackage. User shall indemnify, protect, defend, and save harmless Owner and its officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.

(b) User in its use of the Joint Trackage will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Joint Trackage shall at all times be subject to the orders of the transportation officers of Owner.

(c) User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars, and equipment over the Joint Trackage qualified for operation thereover, and User shall pay to Owner, promptly upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

(d) In the event Owner conducts an investigation or hearing concerning the violation of any operating rule or practice of Owner by an employee or employees of User, User shall be notified in advance of any such investigation or hearing and such investigation or hearing may be attended by any official designated by User and shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to said employee or employees.

(e) Owner shall have the right to exclude from the Joint Trackage any employee of User, except officers, determined by Owner, as the result of such investigation or hearing described above, to be in violation of Owner's rules, regulations, orders, practices, or instructions issued by Timetable or otherwise. User shall release, indemnify, defend, and save harmless Owner and its offi-

cers, agents, and employees from and against any and all claims and expenses resulting from such exclusion.

(f) The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Joint Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(g) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Joint Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

(h) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Joint Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

(i) In the event Owner and User agree that Owner should provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

ARTICLE 6. MILEAGE AND CAR HIRE.

All mileage and car hire charges accruing on cars in User's trains on the Joint Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

ARTICLE 7. CLEARING OF WRECKS.

Whenever User's use of the Joint Trackage requires rerailing, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability, and expense of the foregoing, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Article 8 hereof. All locomotives, cars, and equipment and salvage from

the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to it.

ARTICLE 8. LIABILITY.

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever and injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, only User being involved, User shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Article 7 hereof, and shall forever protect, defend, indemnify, and save harmless Owner and its officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner or its officers, agents or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, only Owner being involved, Owner shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Article 7 hereof, and shall forever protect, defend, indemnify, and save harmless User and its officers, agents, and employees from and against any such liability, cost, and expense regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of User or its officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both Owner and User being involved, Owner and User shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and for injury to and death of each of their officers, agents, and employees, and persons in each of their care and custody, and all liability, cost, and expense for injury to and death of any other person or per-

sons whomsoever, and for loss of, damage to, and destruction of all other property (including without limitation the Joint Trackage) so occurring shall be borne equally by Owner and User, including without limitation all cost and expense referred to in Article 7 hereof. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its offices, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the indemnitee or its officers, agents or employees.

(d) Except as provided in paragraph (e) below, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of, or in the account of, both User and any other user of the Joint Trackage being involved, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner, User, or any other user of the Joint Trackage or their officers, agents, or employees, then any such other user shall be considered as Owner for the purpose of determining between the parties to this Agreement User's

assumption and apportionment of liability, cost and expense under paragraph (c) above.

(e) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, Owner, User, and any other user being involved, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner, User, or any other user of the Joint Trackage or their officers, agents, or employees, then Owner and such other user shall be jointly considered as Owner and a single party to this Agreement for the purpose of determining the assumption and apportionment of liability, cost, and expense between the parties to this Agreement under paragraph (c) above.

(f) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both parties to this Agreement being so involved, without the trains, locomotives, cars, or equipment of, or in the account of, any other user being involved, and in the event such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s),

locomotive(s), car(s), or caboose(s) of, or in the account of, only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost, and expense in connection with the loss, damage, destruction, injury, and death so occurring, including without limitation all cost and expense referred to in Article 7 hereof, and said party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its officers, agents, and employees from and against any such liability, cost, and expense.

(g) In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties, under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(h) For purposes of this Article 8, pilots furnished by Owner to User pursuant to Article 5(c) of this Agreement shall be considered as the employees of User while such pilots are on board or getting on or off trains of User.

(i) Notwithstanding the provisions of Article 14(f) of this Agreement, for the purposes of this Article 8 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Joint Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Joint Trackage or its right-of-way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

ARTICLE 9. INVESTIGATION.

(a) Except as provided in subarticle (b) hereof, all claims, injuries, deaths, or property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with Section 11707 of the Interstate Commerce Act.

(c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time claim agents, full-time attorneys, and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with Section 11707 of the Interstate Commerce Act, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Ten Thousand Dollars (\$10,000).

(f) It is understood that nothing in this Article shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Article 8 hereof.

ARTICLE 10. PAYMENT OF BILLS.

(a) All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party.

(b) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4 hereof, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals which the parties hereto may agree upon at the time any work is performed for User by Owner.

ARTICLE 11. DEFAULT AND TERMINATION.

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail, and notwithstanding any waiver by Owner

of any prior breach thereof, to terminate the Trackage Rights and User's use of the Joint Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

ARTICLE 12. REGULATORY APPROVAL.

Should this Agreement require the prior approval of the Interstate Commerce Commission, User at its own cost and expense will initiate and thereafter diligently prosecute an appropriate application or petition to secure such approval and this Agreement shall take effect after such approval has been secured on the date User commences operations over the Joint Trackage (herein 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 Interstate Commerce Commission approval 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 secure Interstate Commerce Commission approval of this Agreement.

ARTICLE 13. ABANDONMENT OF JOINT TRACKAGE.

(a) Notwithstanding the provisions of Section 8 of this Agreement, Owner shall have the right, subject to securing any necessary regulatory approval, to abandon the Joint Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, Owner shall give User 90 days' advance notice in writing of its intention to do so in order that User may determine whether it desires to purchase the Joint Trackage (or portion thereof) or to discontinue its use thereof.

(b) If User desires to purchase the Joint Trackage, it shall submit an offer of financial assistance under 49 U.S.C. Section 10905 (or, in the event Conrail is the Owner, an offer of financial assistance under 49 U.S.C. Section 10905 and 45 U.S.C. Section 748, where applicable). In the event the offer meets the requirements of the aforesaid sections and Owner receives more than one such offer, Owner will exercise its statutory right to negotiate with User rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to User's acquisition of the Joint Trackage shall be governed by applicable provisions of the law.

(c) In any one of the circumstances listed below User shall be deemed to have determined that it does not desire to purchase the Joint Trackage and that it desires to discontinue its use thereof:

- (1) User fails to submit an offer of financial assistance to purchase the Joint Trackage within the time prescribed by statute and applicable regulations, or
- (2) User, having made an offer of financial assistance to purchase the Joint Trackage, but being unable to reach agreement with Owner as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or
- (3) User, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or
- (4) User, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms or terms within the time prescribed by said order.

In such event Owner shall be deemed to have been given User's power of attorney to file an application with the proper regulatory authority seeking approval of the discontinuance of User's operations over the Joint Trackage.

(d) In the event any application filed by Owner is granted but an application filed by Owner on behalf of User under subsection (c) above is denied by the proper regulatory authority, the parties shall cooperate in taking such actions as are reasonably necessary to effect a sale of the Joint Trackage to User (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10905.

(e) In the event Owner abandons any portion (or all) of the Joint Trackage under circumstances which (because of changes in the law or otherwise) are not susceptible of handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that User either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10905 as interpreted on the date of this Agreement.

(f) In the event Owner's application for authority to abandon is denied, Owner will withdraw any application it has filed on behalf of User under subsection (c) above.

(g) Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under Article 13 result in an obligation imposed by any competent authority on either or both parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

(h) In the event that either C&O or Conrail conveys its Joint Trackage to the other party to this Agreement in accordance with the provisions of this Article

13 and in the event that the party hereto so conveying its Joint Trackage to the other party hereto also conveys its line of railroad adjacent to such Joint Trackage to another person, firm or corporation for continued rail service, then the party hereto acquiring the Joint Trackage shall grant trackage rights over such Joint Trackage to such other person, firm or corporation upon substantially the same terms and conditions as are contained in this Agreement.

ARTICLE 14. GENERAL PROVISIONS.

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section and Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

(d) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

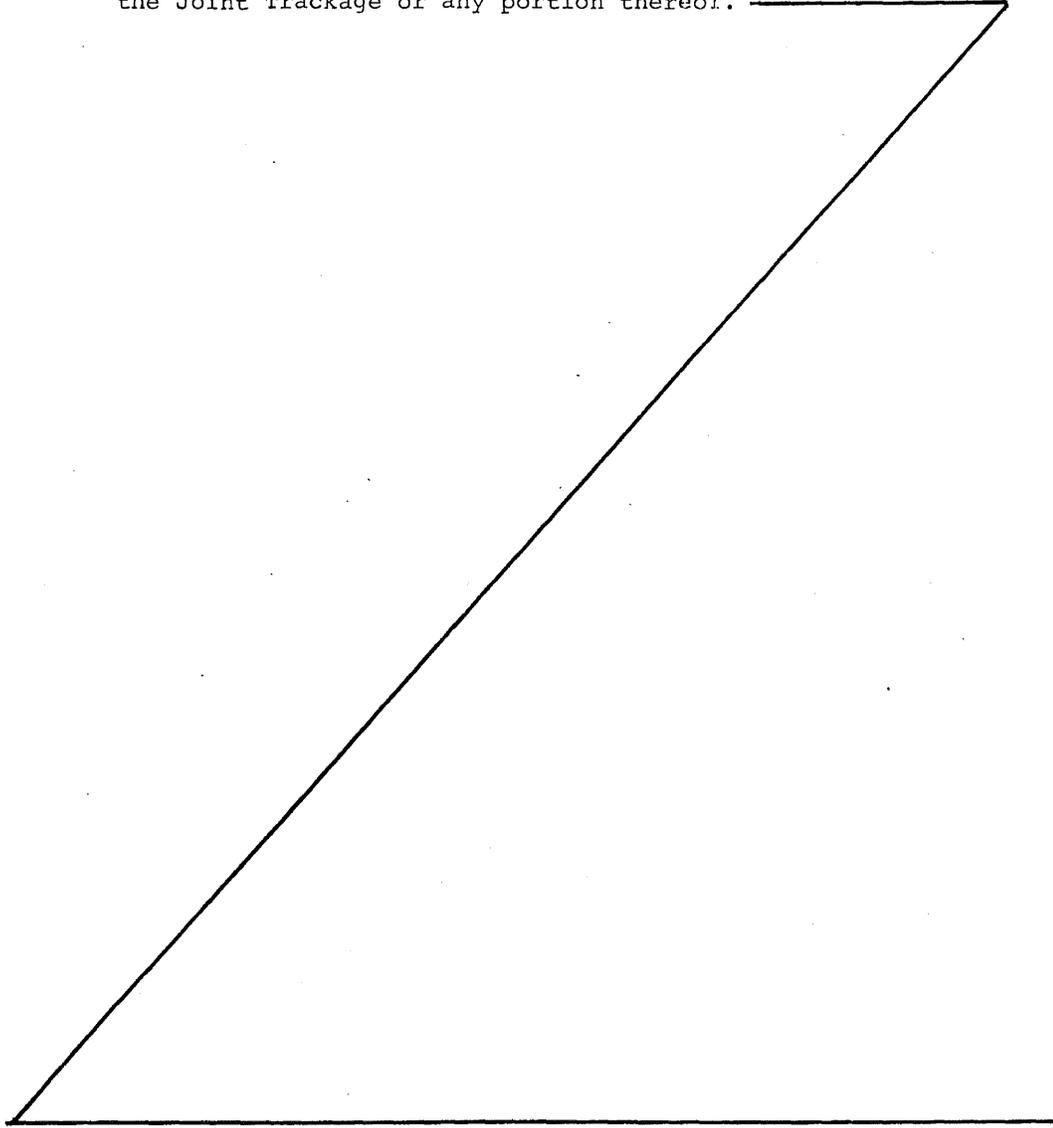
(e) As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars, or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

(f) All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

ARTICLE 15. SUCCESSORS AND ASSIGNS.

This Agreement shall apply to and bind the successors and assigns of the parties hereto, including, but not limited to, the successors and assigns of Owner's interest in the Joint Trackage or any portion thereof. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement,

provided, however, that such consent shall not be necessary if such transfer or assignment is to a successor of all or substantially all of the rail properties of the parties hereto or to a successor or assign of Owner's interest in the Joint Trackage or any portion thereof.



A-24

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35187 (SUB-NO. 1)

GRAND ELK RAILROAD, INC.
-- ACQUISITION OF INCIDENTAL TRackage RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

PETITION TO PARTIALLY REVOKE CLASS EXEMPTION

EXHIBIT C
SUPPLEMENTAL AGREEMENT
JULY 6, 1993

THIS SUPPLEMENTAL AGREEMENT, made this 6th day of July, 1993, by and between CSX TRANSPORTATION, INC., hereinafter referred to as "Owner", and CONSOLIDATED RAIL CORPORATION, hereinafter referred to as "User";

WITNESSETH:

WHEREAS, The Chesapeake and Ohio Railway Company, predecessor of Owner, and User entered into an agreement dated February 6, 1980, hereinafter referred to as the "Agreement", wherein Owner granted User the right to operate User's locomotives, cars and trains over Owner's tracks between Grandville Avenue and Butterworth and Fulton Streets, Grand Rapids, Michigan; and

WHEREAS, User presently operates its locomotives, cars and trains over Owner's tracks between the eastern terminus of User's trackage rights at Grandville Avenue, as defined in the Agreement, and the point of connection of Owner's and User's tracks in the vicinity of Pleasant Street, Grand Rapids, Michigan pursuant to an agreement dated March 1, 1915 between the Pere Marquette Railroad Company, predecessor of Owner, and The Grand Rapids & Indiana Railway Company, predecessor of User; and

WHEREAS, Owner and User desire to incorporate User's trackage rights, as provided for under the terms and conditions

of the March 1, 1915 agreement, into the Agreement dated February 6, 1980, and thus terminate the March 1, 1915 agreement;

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

1. "Section 1" of the Agreement is hereby amended to include the following trackage of Owner's railroad as Joint Trackage as shown on Drawing No. A-921008, dated October 8, 1992, revised October 19, 1992, attached hereto and made a part hereof as Exhibit II:

(c) Between the Point of Switch at Valuation Station 8018+63 near Grandville Avenue and the Point of Switch of Owner's new crossover at Valuation Station 8019+88, a distance of approximately 125 feet; and

(d) From the Point of Switch of Owner's new crossover at Valuation Station 8021+90 easterly to the property line between Owner and User at Valuation Station 8033+40 near Pleasant Street, a distance of approximately 1150 feet.

2. Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired and renewed by and at

the expense of the party or parties responsible for such maintenance, repair and renewal under such agreement or practices.

3. Should this Supplemental Agreement require Interstate Commerce Commission's (ICC) approval or exemption from the requirement to obtain such approval, then, User, at its own cost and expense, will initiate and hereafter diligently pursue an appropriate application or petition to secure such ICC approval or exemption, and this Supplemental Agreement shall take effect on the effective date such ICC approval or exemption is secured. In the event that such ICC approval or exemption is not required, this Supplemental Agreement shall take effect on the date first above written. Owner will assist and support efforts of User to secure any necessary ICC approval of this Supplemental Agreement.

4. This Supplemental Agreement shall terminate the March 1, 1915 agreement as of the effective date hereof; however, termination of the March 1, 1915 agreement does not relieve or release either party hereto from any obligation assumed by it or from any liability which may have arisen or been incurred by either party under the terms of the March 1, 1915 agreement during the term thereof.

5. Except as herein supplemented and amended, the Agreement dated February 6, 1980 is in all respects reaffirmed.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be duly executed as of the date first above written.

WITNESS:

 A.W. Roth

CSX TRANSPORTATION, INC.

 D.L. Huchard

(Title) Assistant Vice President
Joint Facilities

WITNESS:

 W.D. Bayliff

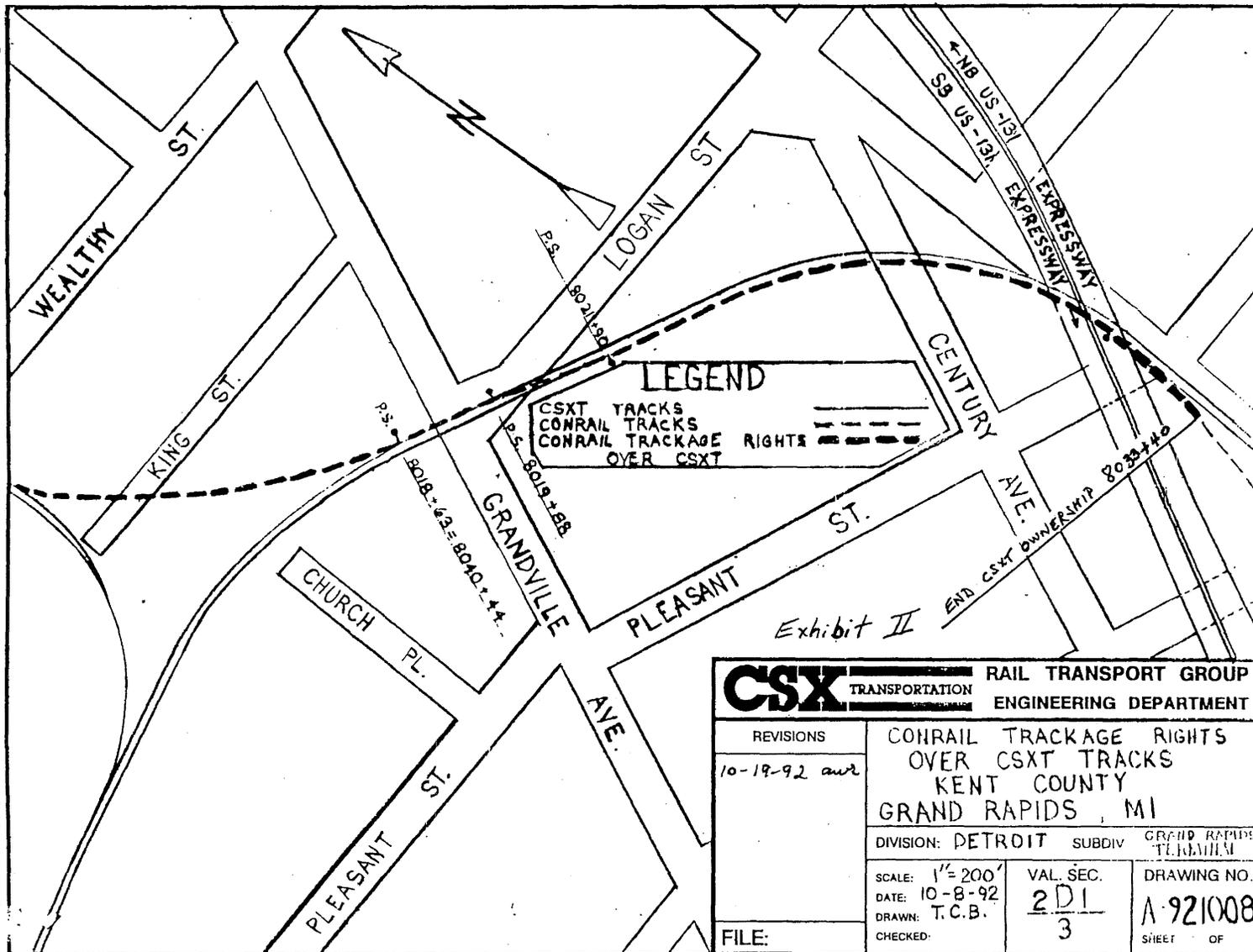
CONSOLIDATED RAIL CORPORATION

 D. Mulcahey

(Title)

Approved as to legal form

 Charles M. Rosenberger
Charles M. Rosenberger



P. O. BOX 1000 ORLANDO, FL 32816-1000

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35187 (SUB-NO. 1)

GRAND ELK RAILROAD, INC.
-- ACQUISITION OF INCIDENTAL TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

PETITION TO PARTIALLY REVOKE CLASS EXEMPTION

EXHIBIT D

**SELECTED MATERIALS FROM MICHIGAN
CENTRAL RAILWAY, LLC FILINGS IN
DOCKET NO. FD 35063**

BEFORE THE
SURFACE TRANSPORTATION BOARD

JUL 13 2007
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FINANCE DOCKET NO. 35063

MICHIGAN CENTRAL RAILWAY, LLC –
ACQUISITION AND OPERATION EXEMPTION –
LINES OF NORFOLK SOUTHERN RAILWAY COMPANY

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TRANSPORTATION BOARD

PETITION FOR EXEMPTION

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TRANSPORTATION BOARD

KARL MORELL
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorney for:
Michigan Central Railway, LLC

Dated: July 13, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35063

**MICHIGAN CENTRAL RAILWAY, LLC –
ACQUISITION AND OPERATION EXEMPTION –
LINES OF NORFOLK SOUTHERN RAILWAY COMPANY**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502 and 49 C.F.R. § 1121.1 *et seq.*, Michigan Central Railway, LLC (“Michigan Central”), a noncarrier, hereby requests an individual exemption from the provisions of 49 U.S.C. § 10901 with respect to its proposed acquisition and operation of certain rail lines currently owned and operated by Norfolk Southern Railway Company (“NSR”) in Michigan and Indiana.

Although Michigan Central’s proposed acquisition falls within the scope of the class exemption set forth at 49 C.F.R. § 1150.31, Michigan Central is filing, concurrently with this Petition, a Petition to Revoke the class exemption. Several interested parties, including the Michigan Senate and House of Representatives, have expressed concerns about a proposed transaction involving these rail lines. In light of these concerns, and as further set forth in its Petition to Revoke the class exemption for purposes of the proposed transaction, Michigan Central believes that it is appropriate for the Surface Transportation Board (the “Board” or “STB”) to revoke the class exemption in order to allow Michigan Central to seek an individual exemption under 49 C.F.R. § 1121.1 *et seq.*, and to provide a more detailed description of the

In this case, as noted above, Michigan Central has sought revocation of the class exemption, in order to allow for a more detailed review of the relevant facts, and to ensure that interested parties' concerns will be appropriately addressed. Nonetheless, Michigan Central's case-in-chief relies principally on the same information that would be required in a class exemption proceeding, with certain additional information intended to address the statutory standard and the interested parties' concerns.

For ease of reference, Michigan Central's case-in-chief is presented in the format that would be required in a class exemption notice, followed by additional sections addressing the statutory standard and providing other information as appropriate. Because Michigan Central will become a Class II carrier when it acquires the rail lines at issue, the following information follows the format set forth in 49 C.F.R. § 1150.35 (governing the creation of Class II carriers).

III. INFORMATION REQUIRED BY § 1150.35

A. Information from notice of intent (see 49 C.F.R. § 1150.33)

1. A notice of intent is not required in individual exemption proceedings, but the following information is provided for reference.

(a) The full name and address of the applicant is:

Michigan Central Railway, LLC
315 W. 3rd Street
Pittsburg, Kansas 66762

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence is:

Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

- (c) A statement that an agreement has been reached or details about when an agreement will be reached:

Michigan Central is currently governed by a limited liability company agreement between itself and Watco Transportation Services, Inc. ("Watco"). The terms of the proposed acquisition are set forth in a Transaction Agreement between and among Michigan Central, Watco and NSR. *See Exhibit 2.* After receiving a final STB order authorizing the proposed acquisition and related transactions, Michigan Central, Watco and NSR will enter into a series of agreements, including a First Amended and Restated Company Agreement, implementing the proposed transactions.

- (d) The operator of the property:

Michigan Central Railway, LLC.

- (e) A brief summary of the proposed transaction (*see also* Section IV, *infra*), including:

- (i) The name and address of the railroad transferring the subject property:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

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

After receiving a final STB order authorizing the proposed acquisition and related transactions.

- (iii) The mile-posts of the subject property, including any branch lines:

See Exhibit 2 (Ex. A, First Amended and Restated Company Agreement). In general, the rail lines to be acquired run between Milepost KH 1.4 at Elkhart, IN and Milepost KH 27.4 at Three Rivers, MI; between Milepost FB 27.3 at Three Rivers and Milepost FB 102.3 at Grand Rapids, MI; between Milepost MH 143.03 at CP BO in Kalamazoo, MI and Milepost MH28 at CP Ypsi; and between Milepost LZ 0.0 at Jackson, MI and Milepost LZ 36.9 at Lansing, MI, along with 80 miles of trackage rights over the line of the National Railroad Passenger

Corporation (“Amtrak”) between MP MH 143.3 near Kalamazoo and MP MH 222.8 at the Michigan/Indiana border (east of Michigan City, IN).

In addition, Michigan Central will exercise trackage rights over the CSX Transportation, Inc. (“CSXT”) line between mileposts 0.0 – 1.0 M9 in Grand Rapids, as an assignee of an agreement entered into between The Chesapeake and Ohio Railway Company (“C&O”, predecessor to CSXT) and Consolidated Rail Corporation (“Conrail”, predecessor to NSR), dated January 24, 1984, and an agreement entered into between C&O and Conrail, dated February 6, 1980; over CSXT between mileposts LZ 36.8 – 37.9 and 0.0 – 2.2 HZ in Lansing, as an assignee of an agreement entered into between CSXT and Conrail, dated April 21, 1995; and over Canadian National Railway Company (“CN”) between mileposts 176.7 – 175.5 in Battle Creek, as an assignee of an agreement between Grand Trunk Western Railroad Company (“Grand Trunk”, predecessor to CN) and Conrail (predecessor to NSR), dated September 14, 1979.¹ Upon closing of the proposed transaction, Michigan Central will become landlord to CSXT for a short stretch of track between mileposts LZ 36.8 – 37.9 in Lansing, pursuant to an assignment of an agreement between CSXT and Conrail (predecessor to NSR) dated April 21, 1995. Further, Michigan Central will host trackage rights for CN over a short stretch of track between mileposts UP 2.2 – UP 0.0, KY 0.0 – KY 0.4, and FB 54.0 – FB 56.3 in Kalamazoo, pursuant to an agreement between Grand Trunk (predecessor to CN) and Conrail (predecessor to NSR) dated July 31, 1982 and approved by the Interstate Commerce Commission in F.D. 30171, June 15, 1983. Michigan Central will become lessor of the rail line between Kalamazoo (MP 9.51) and Pavilion (MP0.4) leased to CN pursuant to an assignment of an agreement between the Chicago, Kalamazoo & Saginaw Railway Company (predecessor to NSR) and Grand Trunk (predecessor to CN) dated August 1, 1910.

- (iv) The total route miles being acquired:

299 route miles and 85.5 miles of trackage rights will be acquired by Michigan Central.

¹ Consent to the assignment for each of these agreements has been sought.

- (f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States:

See Exhibit 1.

B. Additional information required by 49 C.F.R. § 1150.35

- 1. A general statement of service intentions;

In general terms, Michigan Central will strive to provide safe, reliable, efficient rail service that effectively meets customers' shipping needs. At this time, Michigan Central intends to operate 4 interchange trains and 15 local trains on a regular basis over the rail lines acquired from NSR. Michigan Central will operate yards at Kalamazoo, Jackson, Grand Rapids and Lansing MI. Michigan Central will interchange rail traffic with NSR (principally at NSR's Elkhart yard and secondarily at NSR's Willow Run Yard); with CSXT (at Grand Rapids, at a location to be determined in consultation with CSXT); with CN (at Kalamazoo, at a location to be determined in consultation with CN); with Grand Rapids Eastern (in Grand Rapids); with Michigan Southern (at White Pigeon, Michigan); and with Marquette Rail LLC (via CSXT intermediate switch). With respect to Amtrak's six daily trains operating over the subject lines between Ypsilanti and Kalamazoo and two daily trains operating over the subject trackage between Battle Creek and Kalamazoo, Michigan Central anticipates no operational changes.

- 2. A general statement of labor impacts.

Michigan Central, currently a noncarrier, intends to hire approximately 118 employees to operate the rail lines at issue. The tables below compare the anticipated impact of the proposed acquisition on NSR's current employees and the planned hiring by Michigan Central.

that would exceed any of the quantitative activity thresholds for increased rail traffic or rail yard activity established in §1105.7(e) (4) or (5). In this case, none of the quantitative thresholds is expected to be met or exceeded. In addition, there are no plans to dispose of or alter any historic structures subject to 49 C.F.R. §1105.8. Therefore, the proposed transactions are projected to have negligible environmental and historic impacts and do not require additional environmental or historic review.

IV. ADDITIONAL FACTUAL INFORMATION

A. Detailed Description Of The Proposed Transaction

1. Michigan Central, a noncarrier, is a Delaware limited liability company formed for the purpose of acquiring and operating the rail lines at issue. Michigan Central currently is wholly owned by Watco Transportation Services, Inc. (“Watco”), a noncarrier subsidiary of Watco Companies, Inc., a noncarrier holding company that owns and controls 16 individual Class III railroads in 15 states, none of which abuts Michigan or Indiana. *See* STB Finance Docket No. 34766, *Watco Companies, Inc.—Continuance in Control Exemption—Vicksburg Southern Railroad, Inc.* (served January 13, 2006).

2. The rail lines at issue consist of 299 miles of NSR rail lines between Ypsilanti and Kalamazoo, MI; Kalamazoo and Elkhart, Indiana (not including Elkhart Yard); Kalamazoo and Grand Rapids, MI; and Jackson and Lansing, MI. In connection with the proposed acquisition, NSR also will assign to Michigan Central (i) 80 miles of trackage rights between Kalamazoo and the Michigan/Indiana border (east of Michigan City, Indiana), previously granted to Conrail, and subsequently assigned to NSR, over a rail line owned by Amtrak; (ii) certain incidental trackage rights in and about Grand Rapids, MI, previously granted to Conrail, and subsequently assigned to NSR, over rail lines and/or tracks now owned by CSXT, as successor to The Chesapeake & Ohio Railway Company (the “Grand Rapids Trackage Rights”); (iii) certain incidental trackage rights in and about Lansing, MI, previously granted to Conrail, and subsequently assigned to NSR, over rail lines and/or tracks owned by

Execution Copy -- Redacted

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TRANSACTION AGREEMENT

BY AND AMONG

NORFOLK SOUTHERN RAILWAY COMPANY,

MICHIGAN CENTRAL RAILWAY, LLC

AND

WATCO TRANSPORTATION SERVICES, INC.

DATED AS OF

July 11, 2007

TABLE OF CONTENTS

<u>Page</u> 1.....		Definitions.
4		
1.1	Certain Definitions.....	4
1.2	Construction of Certain Terms and Phrases.....	8
2.	Pre-Closing Creation and Operations of the Company.....	9
2.1	Creation of the Company.....	9
2.2	Hiring and Qualification of Supervisory Management.....	
1.	Definitions.....	4
2.3	Dispatching Conversion Plan.....	10
3.	Purchase and Sale of Membership Interest.....	11
3.1	Execution of the First Amended and Restated Company Agreement.	11
3.2	Purchase and Sale of Watco Interest.....	11
3.3	Purchase and Sale of the NSR Interest.	Error! Bookmark not defined.
3.4	Transfer of Liabilities.	12
4.	Certain Trackage Rights and Retained Interests.	12
5.	The Restrictions.	13
5.1	Restrictions Generally.....	13
5.2	Waiver of the Restrictions.	14
5.3	Liquidated Damages for Violation of the Restrictions; Audit and Payment of Liquidated Damages.	14
6.	The Closing.....	16
6.1	The Closing.....	16
7.	Deliveries at the Closing.....	16
7.1	Deliveries at the Closing.....	16
7.2	Further Assurances.....	17
8.	Representations and Warranties of NSR.....	17
8.1	Organization, Standing and Power	17
8.2	Authority; Enforceability; Noncontravention	17
8.3	Assets	18
8.4	Material Contracts.....	19
8.5	Litigation and Proceedings	20
8.6	Environmental Matters.....	20
8.7	Labor Relations.....	21
8.8	Books and Records	21
8.9	Real Property.	21
8.10	Brokers.....	23

TRANSACTION AGREEMENT

THIS TRANSACTION AGREEMENT (this "Agreement") is made and entered into as of [], 2007, by and among NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation ("NSR"), MICHIGAN CENTRAL RAILWAY, LLC ("MCR" or the "Company"), a Delaware limited liability company, and WATCO TRANSPORTATION SERVICES, INC., a Kansas corporation and parent to MCR ("Watco"). Each of NSR and Watco shall hereinafter be referred to as a "Party" or collectively as the "Parties."

WHEREAS, NSR currently owns or operates certain properties, trackage rights, signals, equipment, and other rights, Permits, claims, contracts and assets related thereto, in each case, as set forth on Annex A hereto (collectively, the "Assets"), including the rail line (tracks, rails, ballast, associated rail assets and underlying real estate) and certain operating rights constituting rail operating property located in Michigan and Indiana generally depicted on the map attached hereto as Appendix B (the "Line" or the "Subject Trackage"); and

WHEREAS, Amtrak operates passenger train service over a portion of the Line; and

WHEREAS, Amtrak owns a line of railroad between Kalamazoo, MI and Porter, IN, which constitutes a portion of the operating rights included in the Line; and

WHEREAS, Amtrak and NSR are parties to several agreements that govern the rights and obligations of each relating to the provision of passenger service, including passenger service on the Line; and

WHEREAS, NSR, Watco and the Company are aware of proposals to expand rail passenger service on trackage that may include portions of the Line, and each recognize the importance of that service to state and national constituencies; and

WHEREAS, the Company currently is wholly owned by Watco and governed by the limited liability company agreement attached hereto as Appendix C (the "Company Agreement"); and

WHEREAS, NSR, MCR and Watco have determined that it is advisable to join together in a joint venture which will own the Assets, subject to the Restrictions, as hereinafter defined; and

WHEREAS, MCR intends to make an application for STB Approval (as hereinafter defined) of the joint venture.

WHEREAS, upon the issuance of a decision granting STB Approval of the joint venture, Watco intends to prepare a Preliminary Start-Up Plan (as hereinafter defined) and, after NSR approves the Preliminary Start-Up Plan, loan cash to MCR from time to time within three (3) months after the Closing Date to fund the activities described in the Preliminary Start-Up Plan, such loan estimated to be a total of approximately \$1,100,000

"Closing" shall mean the closing for the joint venture, which shall involve the capital contribution by Watco to MCR described in Section 3.2(a) of this Agreement and the capital contribution by NSR to MCR described in Section 3.3(a) of this Agreement.

"Closing Date" shall mean the date of the Closing.

"Contract" shall mean any note, bond, debenture, mortgage, license, agreement, commitment, contract, obligation, promise or understanding.

"Environmental Claim" means any fine, claim, action, lien, cause of action, investigation or notice by any Person alleging potential liability (including potential liability for Cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence, Release of any Hazardous Materials, or (b) circumstances forming the basis of any violation of any Environmental Law.

"Environmental Laws" means all Laws relating to pollution or protection of human health or the environment, including all Laws relating to Releases or threatened Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, disposal, transport or handling of Hazardous Materials, all Laws relating to record keeping, notification, disclosure and reporting requirements respecting Hazardous Materials and all Laws relating to endangered or threatened species of fish, wildlife and plants and natural resources.

"Governmental Authority" shall mean any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any mediation body or arbitral tribunal, including the STB.

"Grand Rapids Trackage Rights" shall mean the two agreements, one dated January 24, 1984, by and between The Chesapeake & Ohio Railway Company ("C&O"), to which CSX Transportation, Inc. ("CSXT") is successor, and Conrail, to which NSR is successor, and one dated February 6, 1980, by and between C&O, to which CSXT is successor, and Conrail, to which NSR is successor, as amended from time to time, including by a Supplemental Agreement dated July 6, 1993, by and between CSXT and Conrail, to which NSR is successor, in each case as it has been from time to time amended and assigned, and the underlying rights of movement in and about Grand Rapids, MI.

"Hazardous Materials" shall mean all substances defined as Hazardous Substances, Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.5, or defined as such by, or regulated as such under, any Environmental Law.

"Indebtedness" means, with respect to any Person, (i) any liability, contingent or otherwise, (a) for borrowed money, capitalized lease obligations, purchase money obligations or other obligations relating to the deferred purchase price of assets or

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35187 (SUB-NO. 1)

GRAND ELK RAILROAD, INC.
-- ACQUISITION OF INCIDENTAL TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

PETITION TO PARTIALLY REVOKE CLASS EXEMPTION

EXHIBIT E
GRAND RAPIDS ASSIGNMENT AND
ASSUMPTION AGREEMENT

GRAND RAPIDS ASSIGNMENT AND ASSUMPTION AGREEMENT

This **GRAND RAPIDS ASSIGNMENT AND ASSUMPTION AGREEMENT** (this "Agreement") is dated as of the fifth day of March, 2009 by and between Norfolk Southern Railway Company, a Virginia corporation ("Assignor"), and Grand Elk Railroad, LLC, a Delaware limited liability company ("Assignee"). All capitalized terms used but not otherwise defined in this Agreement shall have the meaning ascribed to such terms in the Lease Agreement between Assignee and Assignor, dated December 29, 2008 (the "Lease").

RECITALS:

WHEREAS, there exists that certain trackage rights agreement, dated January 24, 1984, by and between The Chesapeake & Ohio Railway Company ("C&O") and Consolidated Rail Corporation (Conrail), as it has been from time to time amended and assigned, and the underlying right of movements in and about Grand Rapids, MI (the "1984 Agreement"); and

WHEREAS, there exists that certain trackage rights agreement, dated February 6, 1980, by and between the C&O and Conrail, as it has been from time to time amended and assigned, and the underlying right of movements in and about Grand Rapids, MI (the "1980 Agreement"); and

WHEREAS, there exists that certain interlocking agreement, dated June 1, 1994, by and between CSX, Transportation, Inc. ("CSXT") and Conrail, as it has been from time to time amended and assigned, and the underlying right of movements in and about Grand Rapids, MI (the "1994 Agreement"); and

WHEREAS, there exists that certain trackage rights agreement, dated July 6, 1993, by and between the C&O and Conrail, as it has been from time to time amended and assigned, and the underlying right of movements in and about Grand Rapids, MI (the "1993 Agreement"); and

WHEREAS, there exists that certain trackage rights agreement, dated December 23, 1964, by and between the C&O, the Pennel Company and the Pennsylvania Railroad Company, as it has been from time to time amended and assigned, and the operation of the Godfrey Mill Spur in Grand Rapids, MI (the "1964 Agreement"); and

WHEREAS, there exists that certain interchange agreement, dated December 18, 1989, by and between CSXT and Conrail, as it has been from time to time amended and assigned, and the interchange of traffic at Grand Rapids, MI (the "1989 Agreement"); and

WHEREAS, on the terms and subject to the conditions set forth in the Lease, Assignor agreed to assign the 1984 Agreement, the 1980 Agreement, the 1994 Agreement, the 1993

Agreement, the 1964 Agreement and the 1989 Agreement (collectively the "Grand Rapids Joint Facility Agreements") to Assignee, upon receiving consent from CSXT, successor to C&O; and

WHEREAS, CSXT has consented to such assignment; and

WHEREAS, Assignee desires to accept such assignment.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants and agreements contained herein and in the Lease, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Assignment. Assignor hereby contributes, assigns, sets over and transfers to Assignee, its Joint Facility Agreements.

Section 2. Assumption. Assignee hereby accepts the assignment of all of Assignor's right, title and interest in, to and under the Grand Rapids Joint Facility Agreements.

Section 3. Effect of the Assignment and Assumption. All rights and responsibilities under the Grand Rapids Joint Facility Agreements accruing prior to the effectiveness of this Agreement shall be the rights and responsibilities of Assignor. All rights and responsibilities under the Grand Rapids Joint Facilities Agreements accruing after the effectiveness of this Agreement shall be the rights and responsibilities of Assignee.

Section 4. The Lease Agreement. Nothing herein shall be deemed to amend, modify, alter, expand or diminish the terms and conditions of the Lease Agreement, including, without limitation, the covenants, representations, warranties and indemnification obligations contained therein.

Section 5. Further Assurances. Assignor shall, from time to time upon the reasonable request of Assignee, execute and deliver all such further documents and instruments, and take all such further acts as shall be necessary or desirable to give full effect to the intent and meaning of this Agreement.

Section 6. Governing Law. The laws of the state of Delaware shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties arising hereunder, without regard to the laws that might otherwise govern under the applicable principles of conflicts of law thereof.

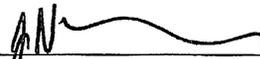
Section 7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 8. Successors and Assigns. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns,

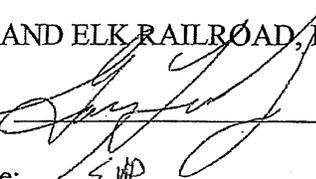
and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, interests, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

NORFOLK SOUTHERN RAILWAY COMPANY

By: 
Title: Vice President

GRAND ELK RAILROAD, L.L.C.

By: 
Title: 

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35187 (SUB-NO. 1)

GRAND ELK RAILROAD, INC.
-- ACQUISITION OF INCIDENTAL TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

PETITION TO PARTIALLY REVOKE CLASS EXEMPTION

EXHIBIT F

**17th JUDICIAL CIRCUIT COURT FOR KENT
COUNTY – CIVIL DIVISION
VERIFIED COMPLAINT**

Grand Rapids, Michigan. Grand Elk operates over approximately three miles of track in Grand Rapids, Michigan owned by CSXT (the "Grand Rapids Track") pursuant to trackage rights more fully discussed below.

2. The term "trackage rights" refers to the grant to a foreign carrier the right to operate over the tracks and right of way of another carrier.

3. NS is a common carrier by rail that owns and operates over tracks in several states including Michigan, and owns approximately 1,000 feet of track located north of Richmond Street in Grand Rapids, Michigan (the "Richmond Street Connection").

4. NS is a corporation organized under the laws of Virginia.

5. CSXT is a common carrier by rail that owns and operates over track in several states, including track in and around the Grand Rapids area, including the Grand Rapids Track.

6. CSXT, as discussed below, also operates over the Richmond Street Connection.

7. CSXT is a corporation organized under the laws of Virginia.

8. In a series of agreements including a trackage rights agreement dated January 24, 1984 (the "1984 Agreement"); a trackage rights agreement dated February 6, 1980 (the "1980 Agreement"); an interlocking agreement dated June 1, 1994 (the "1994 Agreement"); a trackage rights agreement dated July 6, 1993 (the "1993 Agreement"); a trackage rights agreement dated December 23, 1964 (the "1964 Agreement"); and an interchange agreement dated December 18, 1989 (the 1989 Agreement") (collectively referred to as the "Trackage Rights Agreements"); CSXT's predecessor in interest, the Chesapeake and Ohio Railway Company ("C&O") and NS's predecessor in interest, Consolidated Rail Corporation ("Conrail"),

entered into an arrangement under which C&O granted to Conrail, *inter alia*, trackage rights to operate on the Grand Rapids Track, and Conrail conversely granted to C&O certain rights, including trackage rights to operate on the Richmond Street Connection. (See 1980 Agreement, Section 1, attached hereto as Exhibit A; 1984 Agreement, Section 2, attached hereto as Exhibit B; 1993 Agreement, Section 1, attached hereto as Exhibit C).

9. CSXT is the corporate successor to C&O and as such acquired C&O's rights and obligations under the Trackage Rights Agreements.

10. In 1999, NS acquired Conrail's rights and obligations under the Trackage Rights Agreements.

11. On March 5, 2009, NS assigned the Trackage Rights Agreements to Grand Elk, which included trackage rights over the Grand Rapids Track ("The Assignment"). See Grand Rapid and Assumption Assignment Agreement, attached hereto as Exhibit D.

12. Following The Assignment, CSXT has repeatedly in writing recognized and acknowledged Grand Elks trackage rights over the Grand Rapids Track. For example, a Memorandum of Understanding relating to the joint operation of industrial track serving Padnos, which CSXT signed, states:

CSXT, Norfolk Southern and Grand Elk have established trackage right agreements that grant Norfolk Southern and Grand Elk permission to use CSXT tracks [the Grand Rapids Track] to access the Facilities and those trackage rights are to be maintained, preserved and honored before, during, and after the project such that CSXT, Norfolk Southern and Grand Elk may continue to offer service to Padnos.

See Memorandum of Understanding, attached hereto as Exhibit E.

13. Grand Elk commenced operations in March, 2009. From the beginning, Grand Elk's operations included operating over the Grand Rapids Track, and CSXT actively

cooperated in the arrangement. CSXT gave no indication of any lack of consent over the assignment of NS's trackage rights in Grand Rapids. To the contrary, CSXT ensured from the commencement of Grand Elk operations (or very shortly thereafter) that Grand Elk train crews were qualified to operate trains over the Grand Rapids Track instead of NS. In so qualifying Grand Elk crews, CSXT confirmed that Grand Elk personnel were instructed on applicable CSXT operating rules, possessed the necessary employee timetable information, were alerted to any applicable special instructions, and possessed the requisite operating experience to be able to run trains over the Grand Rapids Track without the aid of a CSXT pilot. During the seven years since, CSXT ensured that any new Grand Elk operating personnel assigned to operate over the Grand Rapids Track were similarly so qualified.

14. CSXT dispatches rail traffic over the Grand Rapids Track. In other words, to assure safety, no trains can operate over the Grand Rapids Track until a CSXT dispatcher authorizes the train to operate over said track.

15. Since The Assignment, CSXT dispatchers have consistently granted authority to Grand Elk to operate its trains over the Grand Rapids Track.

16. Although the 1984 Agreement had an expiration date in 2015, CSXT, to this day, continues to operate over the Richmond Street Connection owned by NS, and leased to Grand Elk.

17. Similarly, until June, 2016, Grand Elk continued to operate over the Grand Rapids Track with no objection from CSXT.

18. Despite CSXT's long-standing recognition of Grand Elk's right to operate on the Grand Rapids Track, on June 14, 2016, CSXT sent Grand Elk a letter informing Grand Elk that CSXT believed that Grand Elk did not have the right to operate on the Grand Rapids

Track on the basis that NS never properly assigned such rights to Grand Elk because CSXT did not consent to the assignment in writing and demanding that Grand Elk cease operations. See June 14, 2016 letter, attached hereto as Exhibit F.

19. In order to avoid disruption of service to its customers, Grand Elk, as an interim measure, reached a provisional understanding with CSXT to allow Grand Elk to continue operations on the Grand Rapids Track pending mediation at the Surface Transportation Board to try to resolve the parties' dispute.

20. On August 8, 2016, CSXT informed Grand Elk that it would no longer allow Grand Elk to operate on the Grand Rapids Track, and on August 10, 2016, CSXT dispatchers refused, and continue to refuse, to authorize Grand Elk trains to operate on the Grand Rapids Track.

21. If The Assignment was valid, as Grand Elk contends, and the Surface Transportation Board authorizes retroactively Grand Elk's exercise of the trackage rights over the Grand Rapids Track, then Grand Elk has an ongoing common carrier right and obligation on the Grand Rapids Track, which is not extinguished by the expiration of the 1984 Agreement and CSXT is prohibited by law from interfering with Grand Elk's continued trackage rights operations on the Grand Rapids Track.

22. Grand Elk is in the process of securing from the Surface Transportation Board retroactive authorization of its trackage right operations over the Grand Rapids Track dating back to 2009.

23. Jurisdiction is proper pursuant to M.C.R. 2.605(A)(2) as an actual and justiciable controversy exists between the parties and a present adjudication of the controversy is necessary to guide Grand Elk's future conduct and preserve its legal rights.

24. Venue is proper pursuant to M.C.L. § 600.1621(a) as CSXT conducts business within Kent County.

Count 1 Declaratory Judgment

25. Grand Elk and NS re-allege and assert Paragraphs 1-24 as though fully set forth herein.

26. CSXT has repeatedly recognized in writing the validity of Grand Elk's trackage rights on the Grand Rapids Track, and the performance of the parties over several years is also consistent with CSXT's recognition of the assignment to Grand Elk of the trackage rights.

27. CSXT consented in writing to the assignment from NS to Grand Elk.

28. Alternatively, CSXT unreasonably withheld its consent to the assignment from NS to Grand Elk contrary to law.

29. Alternatively, CSXT has waived any right it had to consent in writing to the assignment from NS to Grand Elk.

30. Alternatively, the Assignment is valid even if CSXT did not consent in writing.

31. Alternatively, CSXT is barred by the doctrine of estoppel from preventing Grand Elks from operating on the Grand Rapids Track.

32. Alternatively, CSXT is barred by the doctrine of laches from preventing Grand Elks to operating on the Grand Rapids Track.

33. Alternatively, CSXT by continuing to operate on the Richmond Street connection, CSXT has established a contract pursuant to which Grand Elk likewise continues to have the right to operate on the Grand Rapids Track.

34. Alternatively, to the extent CSXT claims that it has a right of consent arising out of the 1984 Agreement, CSXT has breached the 1984 Agreement by refusing to consent to the Assignment.

35. Alternatively, if the Assignment is not valid, NS still retains its common carrier rights on the Grand Rapids Track and those rights are freely assignable.

36. An actual controversy exists between the parties such that NS and Grand Elk are entitled to declaratory relief pursuant to M.C.R. 2.605.

37. CSXT's past and continuing breaches and refusal to allow Grand Elk to operate on the Grand Rapids Track, have damaged and continue to damage Grand Elk. Those damages include, but are not limited to, lost revenue, loss of good will, additional costs incurred, and irreparable harm and other damages that are difficult to calculate.

38. NS is harmed by the fact that CSXT, through its breach, would impose a common carrier obligation on NS on a line wholly disconnected from its network.

39. An expedited resolution of this matter is necessary to protect NS and Grand Elk's interests, goodwill, and to prevent further damage to NS and Grand Elk, and to protect shippers, other rail carriers with whom Grand Elk and NS interchange, all of whom are being damaged daily by CSXT's refusal to allow Grand Elk to operate over the Grand Rapids Track.

40. Grand Elk and NS are entitled to a declaratory order that, as a matter of state law, the assignment of trackage rights on the Grand Rapids Track from NS to Grand Elk was valid and enforceable, or in the alternative, if the court determines that the assignment was not valid, then Grand Elk and NS are entitled to a declaration that NS retained common carrier rights that are now assignable to Grand Elk.

WHEREFORE, Grand Elk and NS request that this court declare that the NS's assignment to Grand Elk of trackage rights on the Grand Rapids Track is valid, or in the alternative, that NS can assign its residual common carrier rights to Grand Elk, award damages to Grand Elk and NS in an amount to be determined at trial, and to order other such legal and equitable relief as the court deems just.

DATED: August 24, 2016

Respectfully submitted,

FLETCHER & SIPPEL LLC

By



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Respectfully submitted,

FOSTER SWIFT COLLINS & SMITH PC

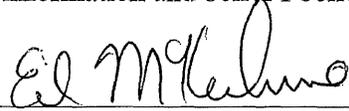
By /s/ Dirk H. Beckwith

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Counsel for Norfolk Southern Railway Company

Verification

I, Ed McKechnie, Chief Commercial Officer, Grand Elk Railroad, Inc., being first duly sworn, depose, and say that I have read this verified complaint and attest that the assertions in this complaint are either facts stated of my own knowledge that are true or are matters that on information and belief I believe to be true after reasonable inquiry.



Signature

Date: Aug. 23, 2016

Verification

I, Frank B. Meador, Director Strategic Planning, Norfolk Southern Railway Company, being first duly sworn, depose, and say that I have read this verified complaint and attest that the assertions in this complaint are either facts stated of my own knowledge that are true or are matters that on information and belief I believe to be true after reasonable inquiry.

Handwritten signature of Frank B. Meador in cursive script.

Signature

Date: August 22, 2016

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35187 (SUB-NO. 1)

GRAND ELK RAILROAD, INC.
-- ACQUISITION OF INCIDENTAL TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

PETITION TO PARTIALLY REVOKE CLASS EXEMPTION

VERIFICATION

VERIFICATION

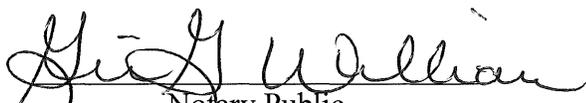
State of Kansas)
) ss:
County of Crawford)

Arthur E. McKechnie III, being duly sworn, deposes and says that he is Chief Commercial Officer of Grand Elk Railroad, Inc., that he has read the foregoing Petition to Partially Revoke Class Exemption and knows the facts asserted therein, and that the same are true as stated.



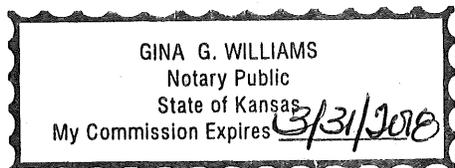
Arthur E. McKechnie III

SUBSCRIBED AND SWORN TO
before me this 22 day
of August, 2016.



Notary Public

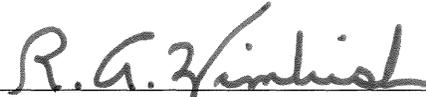
My Commission expires: 3/31/2018



CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August, 2016, a copy of the foregoing
Petition to Partially Revoke Class Exemption was served by overnight and electronic delivery
upon:

Louis E. Gitomer
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204



Robert A. Wimbish