

# FLETCHER & SIPPEN LLC

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August 3, 2016

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## VIA ELECTRONIC FILING

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20024

ENTERED  
Office of Proceedings  
August 4, 2016  
Part of  
Public Record

Re: **Docket No. FD 36028**  
***Kanawha River Railroad, L.L.C. -- Lease Exemption Containing***  
***Interchange Commitment -- Norfolk Southern Railway Company***

### **Request for Clarification – Expedited Consideration Requested**

Dear Ms. Brown:

In the above-referenced proceeding, Kanawha River Railroad L.L.C. (“KNWA”) filed a class exemption notice (the “Notice”) to lease certain rail lines owned by Norfolk Southern Railway Company (“NS”) and to assume by assignment NS-held trackage rights over a rail line owned by CSX Transportation, Inc. (“CSXT”). The full scope of the transaction, including the incidental assignment of NSR’s trackage rights to KNWA, was set forth in the corrected exemption notice filed on July 1, 2016, including the caption summary appended thereto as Exhibit E. The STB-issued notice of the transaction and the corrected notice, served, respectively, on July 15, 2016 and August 1, 2016. After the 30 days ran, KNWA and NS closed the transaction, NS removed its equipment, and KNWA prepared to serve customers.

CSXT has expressed reluctance to accommodate the trackage rights assignment, because there is no mention in the STB-issued notices of the trackage rights assignment. KNWA and NSR, on the other hand, are of the view that the Board nevertheless implicitly authorized the trackage rights element of the transaction, which was plainly included in KNWA’s notice and caption summary and was not addressed negatively by the STB. To remove uncertainty and to facilitate KNWA’s ability to serve customers, KNWA and NSR respectfully request that the Board clarify that KNWA possesses the requisite exemption authority to undertake not only the lease elements of the transaction, but also the assignment of NSR’s trackage rights over CSXT. Absent such clarification, it appears that CSXT will not recognize the assignment and customers will not receive service.

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KNWA and NS also request expedited action on this clarification request. The undersigned has been authorized to represent that NSR has consented to the foregoing, and NSR has assisted in its preparation. Kind regards.

Respectfully submitted,



Robert A. Wimbish  
Attorney for Kanawha River Railroad, L.L.C.

RAW/ekf

Cc: All parties of record