

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

WILLIAM A. MULLINS

237057
ENTERED
Office of Proceedings
November 17, 2014
Part of
Public Record

(202) 663-7823 (Direct Dial)
E-Mail: wmullins@bakerandmiller.com

November 17, 2014

BY HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: *Norfolk Southern Railway Company – Trackage Rights Exemption -
Delaware and Hudson Railway Company, Inc.*, STB Docket No. F.D.
34209 (Sub-No. 1)

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and 10 copies of a Verified Notice of Exemption for Norfolk Southern Railway Company, pursuant to 49 C.F.R. § 1180.2(d)(7). A check in the amount of \$1,200.00 is enclosed to cover the applicable filing fee.

Please acknowledge receipt of this filing by date-stamping the enclosed acknowledgment copy and returning it to our courier.

Sincerely,

FEE RECEIVED
November 17, 2014
SURFACE
TRANSPORTATION BOARD

FILED
November 17, 2014
SURFACE
TRANSPORTATION BOARD


William A. Mullins
Norfolk Southern Railway Company

Enclosures

cc: Maquiling Parkerson
Marc Kirchner



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET 34209 (SUB-NO. 1)

**NORFOLK SOUTHERN RAILWAY COMPANY -
TRACKAGE RIGHTS EXEMPTION – DELAWARE AND HUDSON RAILWAY
COMPANY, INC.**

NOTICE OF EXEMPTION

**Maquiling B. Parkerson
General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510
Telephone: (757) 533-4939
Facsimile: (757) 533-4872**

**William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849**

**Attorneys for Norfolk Southern Railway
Company**

November 17, 2014



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET 34209 (SUB-NO. 1)

**NORFOLK SOUTHERN RAILWAY COMPANY -
TRACKAGE RIGHTS EXEMPTION – DELAWARE AND HUDSON RAILWAY
COMPANY, INC.**

NOTICE OF EXEMPTION

Norfolk Southern Railway Company ("NS") submits this Notice of Exemption ("Notice"), pursuant to 49 C.F.R. § 1180.2(d)(7) and the procedures at 49 C.F.R. § 1180.4(g), to allow NS to retain approximately 17.45 miles of existing overhead trackage rights,¹ pursuant to a draft written trackage rights agreement (the "Agreement") between NS and Delaware and Hudson Railway Company, Inc. ("D&H"), a wholly owned, indirect subsidiary of Canadian Pacific Railway Company ("CP"). Per the Agreement, NS seeks to modify and retain approximately 17.45 miles of existing NS trackage rights over D&H's line between MP 484.85 ± in the vicinity of Schenectady, NY and CPF 467 in the vicinity of Mechanicville, NY, including the right to use such track(s) within D&H's Mohawk Yard as shall be designated from time to time by the D&H officer in charge of operations at Mohawk Yard.²

¹ The 17.45 miles of trackage rights which are being retained are a portion of the 284.6 miles of trackage rights originally authorized in Norfolk Southern Railway Company – Trackage Rights Exemption – Delaware And Hudson Railway Company, Inc., FD 34209 (STB served July 25, 2002).

² The proposed retention and modification of approximately 17.45 miles of existing overhead trackage rights is part of a simultaneously filed larger transaction, in which, NS has filed for acquisition and operation authority over 282.55 miles of D&H rail lines located in Pennsylvania and New York (the "D&H South Lines"), including any and all other tracks related to or auxiliary to the acquired lines. See Norfolk Southern Railway Company – Acquisition and

SECTION 1180.2 (d)(7)
GROUNDS FOR EXEMPTION

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal, or modification of trackage rights by a rail carrier over the lines owned or operated by any other rail carrier or carriers is exempt if the rights are: (i) based on a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The trackage rights at issue in this proceeding are based upon a draft written agreement, a redacted version of which is attached hereto as Exhibit 2, and are not being sought in a responsive application in a rail consolidation proceeding.³ Thus, the Section 1180.2(d)(7) class exemption is applicable.

For a railroad to qualify for an exemption, it must file a verified notice of the transaction with the Board at least 30 days before the transaction is consummated indicating the proposed consummation date, and the notice must include the information required in § 1180.6(a)(1)(i)-(iii), (a)(5)-(6), and (a)(7)(ii), and indicate the level of labor protection to be imposed.⁴

SECTION 1180.6 (a)(1)(i)
SUMMARY OF PROPOSED TRANSACTION

Pursuant to a draft written Agreement between NS and D&H (attached hereto as Exhibit 2), NS seeks to retain approximately 17.45 miles of existing NS trackage rights over D&H's line between MP 484.85 ± in the vicinity of Schenectady, NY and CPF 467 in the vicinity of Mechanicville, NY, including the right to use such track(s) within D&H's Mohawk Yard as shall be designated from time to time by the D&H officer in charge of operations at Mohawk Yard. These rights are a portion of the 284.6 miles of trackage rights granted in

Operation – Certain Rail Lines of Delaware and Hudson Railway Company, Inc., FD 35873, filed concurrently with this Notice (the “Transaction”).

³ Pursuant to 49 C.F.R. § 1180.6(a)(7)(ii), NS will submit, within 10 days of its execution, an executed copy of the Agreement.

⁴ See 49 C.F.R. § 1180.4(g).

FD 34209. If the Transaction in FD 35873 is approved, the portion of NS's existing rights between Sunbury, PA and Schenectady, NY authorized in FD 34209 will be subsumed into NS's ownership of that portion of the line authorized in that Transaction. However, NS will continue to need and use the portion of the previously authorized trackage rights between Schenectady and Mechanicville. As such, NS is modifying and amending the end point of the line so that its trackage rights will now be between MP 484.85 ± in the vicinity of Schenectady, NY and CPF 467 in the vicinity of Mechanicville, NY, including the right to use such track(s) within D&H's Mohawk Yard as shall be designated from time to time by the D&H officer in charge of operations at Mohawk Yard, which will ensure NS's continued access to NS's Mechanicville Terminal and NS's continued interchange with Pan Am Southern LLC ("PAS").

Name, business address, and telephone number of Applicant:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510
Tel: (757) 533-4939

Questions regarding this transaction are to be addressed to Applicant's representatives:

William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

SECTION 1180.6 (a)(1)(ii)
PROPOSED TIME SCHEDULE FOR CONSUMMATION

NS intends to consummate this transaction no sooner than December __, 2014 (the anticipated effective date of the transaction), or when the related proceeding filed in FD 35873 is approved and consummated, whichever is later.

SECTION 1180.6 (a)(1)(iii)
PURPOSE SOUGHT TO BE ACCOMPLISHED BY TRANSACTION

The trackage rights are necessary for NS's continued access to its Mechanicville Terminal and NS's continued interchange with Pan Am Southern LLC. The Agreement is related to a larger transaction whereby NS seeks authority to acquire certain rail lines owned by D&H in order to enhance competition and improve operating efficiencies and service.

SECTION 1180.6 (a)(5)
STATES IN WHICH PROPERTY OF THE APPLICANT IS SITUATED

NS owns rail lines in the following 22 states: Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia.

SECTION 1180.6 (a)(6)
MAP

A map of the line subject to this transaction is attached hereto as Exhibit 1.

SECTION 1180.6 (a)(7)(ii)
AGREEMENT

A redacted version of the Agreement is attached as Exhibit 2, with highly confidential material redacted. An unredacted version of the Agreement will be provided to any party requesting it and upon issuance of an appropriate protective order.

SECTION 1180.4(g)(1)(i)
LABOR PROTECTIONS

NS does not anticipate any adverse labor impacts as a result of this transaction. However, NS agrees to imposition of the employee protective conditions established in Norfolk & Western Railway- Trackage Rights-Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway-Lease & Operate-California Western Railroad, 360 I.C.C. 653 (1980).

SECTION 1180.4(g)(2)(i)
CAPTION SUMMARY

A caption summary of this transaction suitable for publication in the Federal Register is attached hereto as Exhibit 3.

SECTION 1180.4(g)(3)
ENVIRONMENTAL AND HISTORIC PRESERVATION MATTERS

Under 49 C.F.R. §§ 1105.6(c)(4) and 1105.8(b)(3), the proposed acquisition of trackage rights is exempt from environmental reporting requirements, and historic preservation reporting requirements.

Respectfully submitted,

Maquiling B. Parkerson
General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510
Telephone: (757) 533-4939
Facsimile: (757) 533-4872


William A. Mullins
Crystal M. Zorbaugh
Baker & Miller PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

Attorneys for Norfolk Southern Railway Company

November 17, 2014

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET 34209 (SUB-NO. 1)

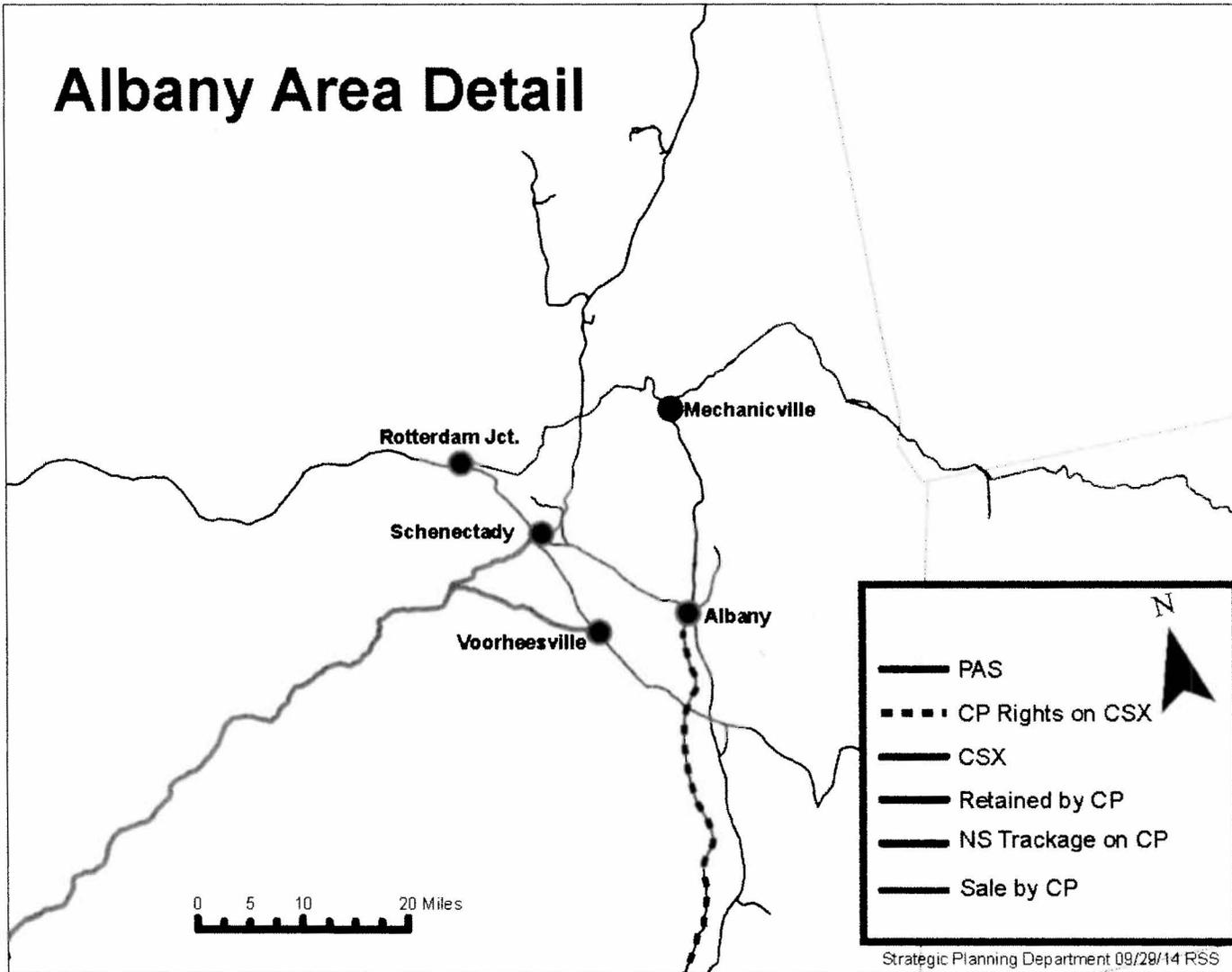
**NORFOLK SOUTHERN RAILWAY COMPANY -
TRACKAGE RIGHTS EXEMPTION – DELAWARE AND HUDSON RAILWAY
COMPANY, INC.**

NOTICE OF EXEMPTION

EXHIBIT 1

MAP

Albany Area Detail



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET 34209 (SUB-NO. 1)

**NORFOLK SOUTHERN RAILWAY COMPANY -
TRACKAGE RIGHTS EXEMPTION – DELAWARE AND HUDSON RAILWAY
COMPANY, INC.**

NOTICE OF EXEMPTION

EXHIBIT 2

AGREEMENT (REDACTED)

**MODIFICATION AND RESTATEMENT OF
THE 2002 TRACKAGE RIGHTS AGREEMENT**

THIS MODIFICATION AND RESTATEMENT OF THE 2002 TRACKAGE RIGHTS AGREEMENT (“Agreement”) is made this ___ day of _____, 2014 by and between DELAWARE AND HUDSON RAILWAY COMPANY, INC., a Delaware corporation (“D&H”) and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (“NSR”). D&H and NSR are sometimes referred to hereinafter individually as a “Party” and collectively as the “Parties”.

RECITALS

A. NSR and D&H are parties to the Norfolk Southern/CPR Agreement on Northeast U.S. Restructuring dated June 27, 2002 (the “2002 Restructuring Agreement”), pursuant to which D&H agreed to grant trackage rights over its lines, including the segment from Sunbury/CP-Kase (Milepost CPF 752.0) to D&H’s connection with Pan Am Southern, LLC in Mechanicville, NY (Milepost CPF 467.40) (the “2002 Trackage Rights”).

B. NSR and D&H are parties to a Trackage Rights Agreement dated June 27, 2002, which contains the terms and conditions that apply to NSR’s trackage rights over the line segments specified in the 2002 Restructuring Agreement.

C. NSR and D&H are parties to the Asset Purchase Agreement (“APA”), dated _____, 2014 and related transaction documents pursuant to which D&H is selling to NSR, and NSR is purchasing from D&H and its subsidiaries, certain railroad properties, rights and facilities relating to a rail line between Sunbury/CP Kase, PA (Milepost CPF 752) and Schenectady, NY (Milepost CPF 484.85) (the “Transaction”).

D. Pursuant to the APA the Parties have agreed to modify NSR’s existing 2002 Trackage Rights over D&H’s line of railroad between Schenectady, NY and Mechanicville, NY (the “D&H Line”).

E. The Parties wish to modify and restate the terms and conditions upon which NSR may operate over the D&H Line.

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

SECTION 1. GRANT OF TRACKAGE RIGHTS

(a) On the terms and subject to the conditions herein provided, D&H hereby grants to NSR the non-exclusive right to operate its overhead trains, locomotives, cars and equipment with its own crews (such rights being referred to hereinafter as the “Subject Trackage Rights”) over the following D&H railroad line, as shown in detail on Exhibit A to this Agreement:

D&H’s Freight Main Line between MP 484.85 ± in the vicinity of Schenectady, NY and CPF 467 in the vicinity of Mechanicville, NY, including the right to use such track(s)

within D&H's Mohawk Yard as shall be designated from time to time by the D&H officer in charge of operations at Mohawk Yard.

(b) The trackage described in this Section 1 is referred to as the "Subject Trackage."

SECTION 2. USE OF SUBJECT TRACKAGE

(a) NSR's use of the Subject Trackage shall be in common with D&H and any other user(s) of the Subject Trackage, and the rights of D&H's and such other user(s) to use the Subject Trackage shall not be diminished by this Agreement.

(b) NSR may operate trains in either direction over the Subject Trackage.

(c) NSR may use the Subject Trackage solely for the purpose of the overhead movement of trains consisting entirely of cars in the revenue waybill account of NSR.

(d) NSR locomotives and crews operating over the Subject Trackage shall be equipped to communicate with D&H on radio frequencies normally used by D&H in directing train movements on the Subject Trackage.

(e) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. NSR's operations over the Subject Trackage shall at all times be subject to the direction and control of the D&H operating officer in charge of the Subject Trackage and to applicable provisions of D&H's safety and operating rules.

(f) [REDACTED]

(g) NSR shall have the right to move in its own trains all dimensional loads and excess clearance rail cars which it may approve for movement over the Subject Trackage, subject to the clearance file ("Clearance File") maintained by D&H that is applicable to traffic of both Parties. D&H shall promptly inform NSR of any changes made to the Clearance File. Before any dimensional load or excess clearance rail car is proposed for movement by NSR under this Agreement, NSR shall first notify D&H in writing, giving all pertinent physical facts, and requesting verification. D&H shall respond promptly either confirming the physical facts related to the proposed dimensional load(s) or excess clearance rail car(s) or specifically identifying the physical facts which would interfere with a planned move. In no event shall D&H deny to NSR the ability to tender a specific rail car for movement over the Subject Trackage and then subsequently grant approval for the same or similar movement over the Subject Trackage in a D&H train unless NSR receives timely notice that the limiting clearance or other reason for denial has been removed. The Parties shall cooperate to accommodate all dimensional loads and excess clearance rail cars, subject to compensation to D&H in addition to the Trackage Rights Charges for any special services necessary or advisable for the movement thereof at the rate of [REDACTED], as escalated pursuant to the provisions of Section 5(b).

SECTION 3. RESTRICTIONS ON USE

(a) The Subject Trackage Rights are granted for the sole purpose of Norfolk Southern using the Subject Trackage to operate its trains in overhead movements. NSR trains may enter and exit the Subject Trackage only at Milepost 484.85 \pm of D&H's Freight Main Line in Schenectady, and Milepost CPF 467 \pm in Mechanicville. The points of ingress and egress designated in this Section 3(a) are referred to herein as the "End Points." NSR shall not have the right to enter or leave the Subject Trackage except at the End Points for the purpose of interchange with D&H at Mohawk Yard.

(b) NSR shall not perform any local freight service whatsoever at any point located on Subject Trackage.

(c) NSR shall not interchange any traffic with any other carrier, except with D&H at Mohawk Yard, at any point on or along, or at the End Points of, the Subject Trackage. NSR shall not have the right to serve existing or future shippers at facilities located on or along, or at the End Points of, the Subject Trackage.

(d) NSR shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains, except as necessary for the handling of locomotives, cars or cabooses bad ordered en route; provided, that NSR may use such auxiliary Subject Trackage as may be designated by D&H for such purposes.

(e) NSR may not grant trackage rights of any nature on the Subject Trackage to other parties.

(f) Notwithstanding any other provision of this Agreement to the contrary, NSR may not permit or admit any third party to the use of all or any part of the Subject Trackage, nor may NSR contract or make any agreement to provide haulage over the Subject Trackage of trains, locomotives, cars or cabooses of any third party which, in the normal course of business, would not be considered as the trains, locomotives, cars or cabooses of NSR, or in any other way provide haulage service for other carriers over the Subject Trackage; provided, however, that this Section 3(f) shall not be construed to prohibit NSR from using the locomotives, cars and cabooses of another railroad as its own in NSR trains pursuant to a run-through agreement with any railroad, or a bona fide equipment lease.

(g) The Parties agree that rebilling of traffic in the Schenectady, NY area or the Mechanicville, NY area is not a permissible method of avoiding any direct traffic limitation set forth in this Agreement.

(h) This Agreement is not intended to, and shall not operate to, expand or contract any Party's existing commercial access to, or right to serve (directly or through switching) any particular shipper facility.

(i) The length of NSR trains (including locomotives and other motive power units) operating pursuant to this Agreement shall not exceed 9,200 feet, subject to compliance with operating policies applied to D&H's own trains. The maximum train length set forth in this

Section 3(i) may be adjusted by D&H and NSR from time to time consistent with D&H's governing operating practices and procedures.

(j) NSR's use of the Subject Trackage pursuant to this Agreement shall be subject to the following maximum volume limitation ("Maximum Volume Restriction"):

(i) [REDACTED]

(ii) [REDACTED]

(iii) If the Subject Trackage is unavailable to NSR due to a derailment, line outage or other interruption of service on the Subject Trackage, or if NSR experiences a derailment, an unintended line outage or other unintended interruption of service on its own lines connecting to, and necessary to reach, the Subject Trackage, in each case for a period of time (the "Outage Period") greater than twenty-four (24) hours, and no detour is available, then D&H shall cooperate and consult with NSR in order to address any resulting backlog of trains over a period of time ("Resolution Period") following the resolution of such derailment, line outage or other interruption of service (including the possibility of waiving the Maximum Volume Restriction set forth in this Section 3(j) for the Resolution Period as may be required to reduce such backlog of NSR trains), provided, however, that the Maximum Volume Restriction set forth in Section 3(j)(i) shall not be exceeded as measured over an average of the Outage Period plus the Resolution Period.

(k) If NSR develops further business such that additional NSR trains are required which necessitate the operation of trains in excess of the Maximum Volume Restriction ("Additional Trains"), NSR may request that D&H permit the operation of Additional Trains. D&H shall consider such a request in good faith and may in its discretion permit the operation of the number of Additional Trains specified by D&H. If D&H determines, through an Rail Traffic Controller capacity simulation (having regard to D&H's own present and future requirements and D&H's required reserve capacity), that facility changes, additions and betterments to D&H's line are necessary to accommodate the operation of Additional Trains ("Capacity Improvements"), D&H shall advise NSR of the required Capacity Improvements and the number of Additional Trains that would be permitted if the Capacity Improvements were constructed. If NSR wishes that the Capacity Improvements be made it shall request in writing that the Capacity Improvements be made by D&H at the sole cost and expense of NSR. If requested to do so by NSR, D&H shall construct the Capacity Improvements and upon completion of the construction of the Capacity Improvements and payment therefor by NSR, the Maximum Volume Restriction shall be amended to permit the operation of the number of Additional Trains specified by D&H.

SECTION 4. SERVICE STANDARDS

NSR shall provide D&H notice of the schedules for regularly scheduled NSR trains operating over the Subject Trackage, as well as any proposed modifications. NSR shall provide the Service Standards Committee at least seven (7) days prior written notice of such changes in NSR train schedules or frequencies, and notice as reasonably practicable in the case of train annulments and extra trains necessitated by sudden or seasonal surges in traffic volumes.

SECTION 5. COMPENSATION

(a) Generally.

(i) NSR shall compensate D&H for the use of the Subject Trackage by paying to D&H a sum computed by multiplying (a) the Trackage Rights Charges (as defined in Section 5(b) of this Agreement) by (b) the number of cars (loaded or empty) and locomotives moved over the Subject Trackage by (c) the miles of the Subject Trackage over which the cars and/or locomotives are moved (which are agreed to be 17.45 miles). In computing the compensation payable by NSR pursuant to this Section 5, cars that exceed ninety-six (96) feet in length shall be counted as one (1) car for each four (4) axles.

(b) The Trackage Rights Charges.

(i) The charge payable by NSR for use of the Subject Trackage shall initially be [REDACTED]

(ii) The Trackage Rights Charges shall be adjusted upward or downward effective July 1 each year, beginning July 1, 2016, to compensate D&H for one hundred percent (100%) of any increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-out Prices and Wage Rates (1977=100), Series RCR, included in "the AAR Railroad Cost Index" issued by the Association of American Railroads ("AAR"); provided, however, that the Trackage Rights Charges shall in no event be decreased to a level below those set forth in Section 5(b)(i) of this Agreement. In determining the amount (if any) of the annual adjustment, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the Eastern District shall be used, and the calendar year ending December 31, 2014 shall be deemed the "Base Calendar Year."

(iii) The first annual adjustment to the Trackage Rights Charges shall be computed by calculating the percentage of increase or decrease in the final index for the calendar year ending December 31, 2015, as related to the final index for the Base Calendar Year, and applying that percentage to the initial Trackage Rights Charges set forth in Section 5(b)(i). Subsequent annual adjustments will be computed by calculating the percentage of increase or decrease in the final index published for the calendar year immediately preceding the year in which the adjustment is to be applied, as related to the final index published for the Base Calendar Year, and applying that percentage to the initial Trackage Rights Charges set forth in Section 5(b)(i). By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined

PUBLIC VERSION (REDACTED) - DRAFT

(excluding fuel)” final index for the Base Calendar Year; “B” to be the “Material prices, wage rates and supplements combined (excluding fuel)” final index for the calendar year 2015; “C” to be the initial Trackage Rights Charges; “D” to be the percentage of increase or decrease, the adjusted Trackage Rights Charges to be applied on and after July 1, 2005 would be determined by the following formula:

$$(1) \quad (B - A) / A = D$$

$$(2) \quad (C \times D) + C = \text{adjusted Trackage Rights Charges, effective July 1, 2016.}$$

(iv) If the base for the “Annual Indices of Charge-out Prices and Wage Rates” issued by the AAR is changed from the year 1977, an appropriate revision shall be made in the base (established as herein provided) for the calendar year 1977. If the AAR or any successor organization discontinues publication of the “Annual Indices of Charge-out Prices and Wage Rates,” an equitable substitute for determining the annual percentage of increase or decrease shall be negotiated by the Parties. On or before the 15th day of each calendar month during the term of this Agreement, NSR shall prepare and deliver to D&H a statement setting forth the number of cars and miles operated on the Subject Trackage pursuant to this Agreement during the immediately preceding month (the “Monthly Statement”). The Monthly Statement shall be delivered to D&H’s Manager – Interline Agreement Management in electronic format, and shall contain a detailed list of the cars that moved during the subject month, which list shall include, for each car, the following information: (1) car initial and number, (2) the respective End Points that the car moved between, (3) whether the car exceeded ninety-six (96) feet in length; (4) for each car exceeding ninety-six (96) feet in length, the number of axles on such car; and (5) any other information relating to such cars that D&H may reasonably request in connection with accounting for the use of the Subject Trackage Rights. D&H shall develop and present to NSR an invoice (the “Use Invoice”) computed in accordance with Section 5(a) for use of the Subject Trackage Rights covered by that Monthly Statement. NSR shall make payment to D&H within thirty (30) days after the date of such Use Invoice.

(v) Any dispute regarding the amount of a Monthly Statement or Use Invoice shall be reconciled between the Parties, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Use Invoice. If NSR disputes any portion of a Use Invoice, it shall nevertheless pay such Use Invoice in full (unless such dispute involves a material amount in relation to the total amount of such Use Invoice), subject to adjustment upon resolution of the dispute; provided, however, that (i) no exception to any charge in a Use Invoice shall be honored, recognized or considered if filed after the expiration of three (3) years from the date of the Use Invoice, and (ii) no invoice shall be rendered more than three (3) years (a) after the last day of the calendar month in which the expense covered thereby is incurred, or (b) in the case of charges disputed as to amount or liability, after the amount owed or liability therefor is established. Any claim for the adjustment of a Monthly Statement or Use Invoice shall be deemed to be waived if not made in writing within three (3) years after the date of the

PUBLIC VERSION (REDACTED) - DRAFT

relevant Monthly Statement for statement adjustments and the date of the relevant Use Invoice for invoice adjustments.

(vi) NSR and D&H shall each have the right, at its own expense, to audit the records of the other Party pertaining to the use of the Subject Trackage Rights under this Agreement, and any Monthly Statement, Use Invoice or other invoice issued by NSR or D&H, respectively, pursuant to this Agreement, at any time within three (3) years of the date of the relevant Use Invoice or other invoice (as applicable) relating to use of the Subject Trackage Rights. All such audits shall be conducted at reasonable intervals, locations and times. Each Party agrees that, except as permitted by Section 19 of this Agreement, all information disclosed to it or its representatives in connection with such an audit will be held in strictest confidence and will not be disclosed to any third party (other than as required by applicable law). Any adjustment resulting from an audit conducted pursuant to this Section 5(b)(vii) with respect to which the Parties are in concurrence shall be reflected in a subsequent Use Invoice.

(vii) Invoices rendered pursuant to the provisions of this Agreement, other than Use Invoices and charges under Section 9(i), shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by D&H at the time any work is performed by D&H for NSR, or shall include actual costs and expenses, upon mutual agreement of the Parties.

SECTION 6. MAINTENANCE OF SUBJECT TRACKAGE

(a) D&H shall be solely responsible for the maintenance, repair and renewal of the Subject Trackage. D&H shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, such condition not to be less than Federal Railroad Administration class specification the Subject Trackage was as of the Effective Date of this Agreement, subject to slow orders and the like, but D&H does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. D&H shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts to avoid such interruptions.

(b) D&H shall, in planning program maintenance of the Subject Trackage, take into account the schedule of NSR trains on the Subject Trackage as well as D&H trains. D&H shall from time to time throughout the term of this Agreement, advise NSR of its schedule for planned maintenance, and any revisions to such schedule, as soon as practicable after such maintenance plan is determined or revised. D&H shall further provide the designated officer of NSR with seven (7) days prior notice (or such lesser notice period as is reasonable in the circumstances) of substantial delays or line outages on the Subject Trackage due to planned maintenance.

SECTION 7. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

Existing connections or facilities, which are jointly used by the Parties hereto under existing agreements, 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.

PUBLIC VERSION (REDACTED) - DRAFT

(a) If, in the opinion of NSR, a new or upgraded connection is required at a point of permitted entry or exit other than the endpoints, or, if in the opinion of NSR, other upgrading, including but not limited to switches, power switches, signals, communications, is required for operational efficiency, then D&H will, subject to its own operational needs, cooperate and NSR will be responsible for funding that construction/upgrading at actual cost or a cost mutually agreed to by NSR and D&H. Such construction/ upgrading shall be progressed as follows:

(i) NSR or others shall furnish all labor and materials and shall construct such portions of the tracks located on the right-of-way of NSR or others, which connect the respective lines of the Parties.

(ii) D&H shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way operated by D&H, which connect the respective lines of the Parties. Upon termination of this Agreement, D&H may at its option remove any portion of trackage and appurtenances located on right-of-way, constructed as a result of this provision, at the sole cost and expense of NSR. D&H will release any salvage material removed to NSR or will credit NSR for the current fair market value of the salvage materials.

(iii) D&H will maintain, repair and renew the constructed/upgraded portions of the tracks located on the right of way operated by D&H that connect the respective lines of the Parties at the sole cost and expense of NSR.

SECTION 8. ADDITIONS, RETIREMENTS AND ALTERATIONS

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

(b) If the Parties agree that changes in or additions and betterment to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate NSR's operations beyond that required by D&H to accommodate its operations, D&H shall construct the additional or altered facilities and NSR shall pay to D&H the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

SECTION 9. MANAGEMENT AND OPERATIONS

(a) D&H shall have exclusive control of the management and operation (including dispatching) of the Subject Trackage. Operation and control, including dispatching, of the Subject Trackage shall be conducted in a manner as to afford each of the Parties, and any other present or future user of the Subject Trackage (or any portion thereof) the most economical and efficient movement of its traffic over the line. For the purposes of dispatching, NSR's and D&H's trains of the same class shall be treated with equal priority, with the four (4) classes of trains being:

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1. Passenger
2. Intermodal and automotive
3. Regular (unit and freight trains not scheduled to set off/pick up en route)
4. Other (includes trains and equipment that must operate at restricted speeds, i.e., local, work, or other such equipment movements);

provided, that in the event of a conflict, the D&H dispatcher shall be empowered to deviate from the priorities set forth herein in order to employ best practices to efficiently move all trains.

(b) D&H shall provide NSR with read-only access to D&H's Central Traffic Control screens covering the Subject Trackage in the offices of NSR designated by NSR. D&H shall be responsible for the cost of modifying its system to the extent necessary to provide NSR access to its Central Traffic Control screens, and NSR shall be responsible for the cost of the communications link with D&H and the costs to use such link incurred in NSR's offices. Such access, and the information derived therefrom, shall be restricted to NSR operating personnel, who shall only use said access, and the information derived therefrom, to monitor NSR train movements and for no other purpose, and shall further protect the confidentiality of the information derived therefrom.

(c) NSR shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and 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 Subject Trackage. NSR shall indemnify, protect, defend, and save harmless D&H and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon D&H or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction, when attributable solely to the failure of NSR to comply with its obligations in this regard.

NSR in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of D&H, and the movement of NSR's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of D&H; provided, however, that such safety rules, operating rules, other regulations and orders of the transportation officers of D&H shall not unjustly discriminate between the Parties. D&H will not make any rule or restriction applying to NSR's trains that does not apply equally to D&H's trains. NSR's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances (which shall not be more restrictive than those in effect as of the Effective Date of this Agreement), and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by D&H's operating rules and regulations, without the prior consent of D&H. The Parties shall make proper accommodation for exceptions, should that be reasonable, necessary and practicable. All NSR trains shall be powered to permit operation at posted speeds.

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(d) NSR shall make such arrangements with D&H as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover. D&H shall provide reasonable cooperation and assistance in the qualification of NSR operating (train and engine) crews for service over the Subject Trackage as soon as the date such crews and D&H personnel are available and the notice of exemption relating to the trackage rights governed by this Agreement has been filed with the U.S. Surface Transportation Board (“STB”). NSR shall pay to D&H, upon receipt of bills therefor, any cost incurred by D&H in connection with the qualification of such employees of NSR, as well as the cost of pilots furnished by D&H until such time as such NSR employees are deemed by the appropriate examining officer of D&H to be properly qualified for operation as herein contemplated. NSR or NSR supervisory personnel who have been qualified to operate over the Subject Trackage by an appropriate examining officer of D&H may qualify other NSR employees for operation of trains over the Subject Trackage.

(e) If any employee of NSR shall neglect, refuse or fail to abide by the instructions and restrictions governing the operation on or along the Subject Trackage, D&H shall so notify NSR. D&H shall have the right to require NSR promptly to withhold any NSR employees from service over the Subject Trackage pending the results of a formal investigation of the alleged neglect, refusal or failure. After the notice is given to NSR, D&H and NSR shall promptly hold a joint investigation, in which each of the Parties shall bear the expenses of its own employees and witnesses. Notice of such investigation to NSR employees shall be given by NSR officers. The investigation shall be conducted in accordance with any applicable terms and conditions of schedule agreements between NSR and its employees. If the result of such investigation warrants, such employee shall, upon written request by D&H, be restricted by NSR from service on the Subject Trackage, and NSR shall release and indemnify D&H from and against any and all claims and expenses because of such withdrawal.

(f) In the event that a NSR train shall be forced to stop on the Subject Trackage, due to any cause whatsoever (mechanical, crewing or otherwise) not resulting from an accident or derailment, and such train is unable to proceed, or if a NSR train fails to maintain the speed required by D&H on the Subject Trackage, or if in emergencies, bad ordered or otherwise defective cars are set out of a NSR train on the Subject Trackage, D&H shall have the option to furnish motive power or such other assistance (mechanical or otherwise) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage. NSR shall reimburse D&H for the cost of rendering any such assistance. If it becomes necessary to make repairs to or adjust or transfer the lading of such disabled or defective cars in order to move them off the Subject Trackage, D&H shall arrange for such work to be done, and NSR shall reimburse D&H for the cost thereof.

(g) Whenever NSR’s use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, D&H shall arrange for the provision of such service, including the repair and restoration of roadbed, the Subject Trackage and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom shall be apportioned in accordance with the provisions of Section 11 hereof. All locomotives, 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 NSR at the time of such wreck, shall be promptly delivered to it.

(h) If any cars, cabooses, or locomotives of NSR are bad ordered en route on the Subject Trackage and it is necessary that they be set out, those cars, cabooses or locomotives shall, after being repaired, be picked up by NSR. D&H may, upon request of NSR and at the expense of NSR, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the AAR, furnish required labor and material to perform light repairs required to make such bad ordered equipment safe and lawful for movement, and billing for this work shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the AAR.

(i) NSR shall not have any claim against D&H for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by NSR is interrupted or delayed at any time from any cause.

(j) D&H shall make best efforts to provide the designated officer of NSR with prompt notice of any unplanned substantial delays or line outages on the Subject Trackage, and shall promptly advise the designated officer of NSR of the resumption of normal service on the Subject Trackage.

SECTION 10. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in NSR's trains on the Subject Trackage shall be assumed by NSR and reported and paid by it directly.

SECTION 11. LIABILITY

The responsibility between the Parties hereto for loss of, damage to, and destruction of any property whatsoever and injury to and death of any person or persons whomsoever, arising out of, incidental to or occurring in connection with this Agreement, also expressly including, without limitation, all liabilities arising after the Commencement Date hereof under FELA and environmental laws but excluding consequential damages of any Party hereto (which are always borne by the Party which sustained them) and excluding claims for exemplary and punitive damages, hereinafter referred to as "Damage," shall be apportioned as follows without regard to fault or negligence:

(a) If Damage occurs involving solely the trains, locomotives and Equipment, cars in the revenue account (including lading), or employees of one of the Parties, then that Party shall be solely responsible for such Damage, even if caused partially or completely by another party (including the other Party).

(b) If Damage occurs involving the trains, locomotives and Equipment, cars in the revenue account (including lading), and employees of both NSR and D&H, then (i) NSR and D&H each shall be solely responsible for any Damage to its own employees, locomotives and Equipment, and those cars in its own revenue account (including lading) (such cars (including lading) being referred to as "NSR Cars" and "D&H Cars," respectively, and collectively, the "Cars"), and (ii) the Parties shall each be responsible for 50 percent of the Damage to the Subject

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Trackage and associated facilities and any Damage sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Damage.

(c) For the purposes of assigning responsibility for Damage under this Section as between the Parties hereto, the trains of a third party or parties operating on the Subject Trackage shall be considered to be the trains of D&H.

(d) Notwithstanding anything to the contrary in Sections 11(a), (b) and (c), above, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, occurs with one or more trains of the Parties involved, then, as between themselves, the Parties agree that (i) NSR shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in NSR Cars or NSR locomotives and NSR Equipment from which there was a release, (ii) D&H shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in D&H Cars, or D&H locomotives and D&H Equipment from which there was a release, and (iii) NSR and D&H shall be responsible, in proportion to the total number of Cars, pieces of Equipment, and locomotives of each Party from which there was a release, for any damage or destruction to the environment and to third parties which results solely from one or more substances transported in both NSR Cars, NSR locomotives, and NSR Equipment and D&H Cars, D&H locomotives, and D&H Equipment from which there was a release.

(e) D&H and NSR each shall be responsible for the payment, handling, administration and disposition of all Damage for which it bears exclusive responsibility under this Section 11, and D&H and NSR shall have joint responsibility for the payment, handling, administration and disposition of all Damage for which they are jointly responsible under this Section 11. In assigning joint responsibility to both D&H and NSR, it is not intended that D&H and NSR will, in all instances, actually act jointly, but rather that they will agree between themselves on the most practical and efficient arrangement for handling, administering, and disposing of Damage for which they bear joint responsibility, with the objective of eliminating unnecessary duplication of effort and minimizing overall costs.

(f) Each Party covenants and agrees (i) to indemnify and save harmless the other Party from and against any payments which are the responsibility of such Party under this Agreement, and all expenses, including attorney's fees and expenses, and any other expenses of any court or regulatory proceeding, incurred by the indemnified Party in defending any claim for which the responsible Party is liable, and (ii) to defend such indemnified Party against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.

(g) Notwithstanding anything to the contrary in this Section 11, whenever Damage occurs with one or more trains being involved, and one or more of the involved trains is a NSR train, and such Damage is attributable solely to the gross negligence or willful or wanton misconduct of only one of the Parties to this Agreement, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Damage, then the Party to which such gross negligence or willful or wanton misconduct is attributable shall assume all liability, cost and expense in connection with such Damage. The Parties agree that, for purposes of this

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Section 11(g), “gross negligence or willful or wanton misconduct” shall be defined as “the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness.”

(h) Notwithstanding any provision of this Section 11 to the contrary, each Party shall assume and bear all responsibility for any Damage caused by acts or omissions of any its employees while under the influence of drugs or alcohol. An FRA positive test for drugs or an FRA alcohol test of .04 or greater shall establish that an employee was “under the influence of drugs or alcohol,” for the purposes of this Agreement.

(i) If any suit or action shall be brought against either Party for Damage which under the provisions of this Agreement is in whole or in part the responsibility of the other Party, said other Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expenses and attorneys' fees incurred in such suit according to its liability assumed hereunder.

(j) For purposes of determining liability under this Section 11, pilots furnished by D&H to NSR pursuant to this Agreement shall be considered to be the employees of NSR while such pilots are on board or getting on or off NSR trains.

(k) Each of D&H and NS shall indemnify and hold harmless the other Party against, any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of lawsuits, claims or grievances brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the Parties' intention that D&H and NS each shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

(l) Notwithstanding any provision of this Agreement to the contrary, for the purpose of this Section 11, 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 Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right of way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

SECTION 12. CLAIMS

(a) Under no circumstances will either Party assert a claim for punitive or exemplary damages against the other Party related to the matters contemplated by this Agreement.

(b) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit (other than cargo-related claims made against a Party by a customer whose traffic was moving in the revenue and/or car hire account of such Party) under Agreement

shall be included as costs and expenses in applying the liability provisions of Section 11. However, each Party shall bear the salaries or wages of its full-time agents, full-time attorneys, and other full-time employees engaged directly or indirectly in such work.

(c) No Party shall settle or compromise any claim, demand, suit, or cause of action (other than a cargo-related claim filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709) 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 [REDACTED]

(d) The Parties shall agree between themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each Party shall be responsible for losses occurring to lading in its possession for the account of such Party and (ii) the Parties shall follow applicable AAR rules and formulas in providing for the allocation of losses which are either of undetermined origin or in cars handled in interline service by or for the account of the Parties.

SECTION 13. TERM, DEFAULT AND TERMINATION

(a) This Agreement shall become effective (“Effective Date”) as of the first date executed by each of the Parties. However, NSR operations over the Subject Trackage shall not commence until a date (the “Commencement Date”) mutually agreed in writing between NSR and D&H, which shall not occur until the effective date of any required STB authorization or exemption of NSR’s trackage rights granted by this Agreement (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption).

(b) This Agreement shall remain in full force and effect until mutually terminated by the Parties. The Initial Term of this Agreement shall be twenty-five (25) years from the Commencement Date, and shall be renewable continuously thereafter for additional periods of ten (10) years (“Additional Term(s)"). At the end of the Initial Term, NSR may, at its option, (i) extend this Agreement under the same terms and conditions for one Additional Term, or (ii) require renegotiation of the Agreement. At the end of the first (and any subsequent) Additional Term, either NSR or D&H may extend the Agreement under the then-current terms and conditions, or require renegotiation of the agreement. In either case, the notice to continue the then-current terms and conditions or to require renegotiation shall be given by D&H or NSR, as the case may be, by giving the other Party advance written notice at least six (6) months prior to the expiration of the then-current term. The Parties shall take into consideration the relative economic positions of the Parties under this Agreement, and intent of the Parties, in each case at the time this Agreement was executed, as well as any significant operating, economic and/or technological changes that have occurred in the interim. If the Parties cannot agree upon the terms and conditions upon which the trackage rights granted herein may be exercised by NSR during such Additional Term, either Party may invoke mediation or other methods of non-binding alternative dispute resolution, in which the other Party agrees to participate in good faith. If the Parties are unable to agree to new terms and conditions, then the then-existing terms shall continue to apply during the subsequent Additional Term.

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(c) In the event that railroad operations, technology or other events create, in the view of one Party to this Agreement, a disparity such that the terms and conditions of this Agreement over time no longer reflect the intention of the Parties in a substantial and material way, and such disparity has a material and substantial adverse effect on said Party, that Party may give notice of such to the other Party, who shall negotiate in good faith modification of this Agreement in order to address and possibly remove said perceived disparity. Should the Parties fail to reach agreement with regard to such perceived disparity, the concerned Party may invoke mediation or other methods of non-binding alternative dispute resolution, in which the other Party agrees to participate in good faith.

(d) NSR shall have the right to terminate this Agreement upon giving D&H at least thirty (30) days prior written notice of such termination. Such termination shall be considered to be a termination of both this Agreement and the underlying right of movement.

(e) 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 such Party under the terms of this Agreement prior to termination thereof.

(f) In the event of any substantial failure on the part of any Party to perform its obligations provided under the terms of this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from another Party, the non-defaulting Party shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by such Party of any prior breach thereof, to file a lawsuit pursuant to Section 14 and seek damages and/or specific performance of the terms of this Agreement from the defaulting Party. In the case of a substantial default by NSR which continues after adjudication of such default through litigation described in Section 14, D&H may terminate this Agreement and the underlying right of movement if NSR fails to cure such substantial default within: (i) thirty (30) days of the receipt of notice of continued default in the case of such a default by NSR in an obligation to pay D&H, (ii) fourteen (14) days of the receipt of notice of continued default in the case of such a default under Section 3(b), (c), (d), (f), (g) or (h); and (iii) ninety (90) days of the receipt notice of continued default in the case of any other such default under this Agreement.

SECTION 14. DISPUTE RESOLUTION

Any dispute arising between the Parties with respect to this Agreement shall be referred to their respective senior operating officers for resolution. In the event such officers are unable to resolve the dispute, either Party may commence litigation in a state or federal court in the State of Delaware. **THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF SUCH COURTS IN ANY SUCH ACTION OR PROCEEDING AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING. EACH OF THE PARTIES HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.**

SECTION 15. ABANDONMENT

(a) D&H shall have the right, subject to securing any necessary regulatory approval or exemption, to abandon the Subject Trackage or any portion thereof (the “Abandonment Segment”) during the Initial Term, or any Additional Term, of this Agreement. D&H shall provide NSR no less than ninety (90) days prior notice of its intention to seek to abandon any Abandonment Segment.

(b) If D&H elects to abandon an Abandonment Segment, D&H shall, not less than ninety (90) days prior to any submission to the Surface Transportation Board (or successor agency having jurisdiction over said abandonment) of an application or exemption for authority to abandon such Abandonment Segment, offer NSR the first right to purchase the Abandonment Segment for the fair market value of such Abandonment Segment at the time of purchase, and on such other terms and conditions as are customary with respect to line sales by D&H at the time. The fair market value shall be no less than the greater of the net liquidation value of such line or the going concern value of such line, as used and defined by applicable STB regulations. NSR shall have sixty (60) days (“Abandonment Notice Period”) within which to advise D&H that it will exercise its right to purchase (“Exercise Notice”). If the Parties are unable to agree upon the fair market value of the Abandonment Segment that NSR wishes to purchase, either Party may refer the issue to mediation or binding arbitration before a single arbitrator who is a qualified expert on rail line value and appraisal (“ADR”). Any such arbitration shall be conducted on an expedited basis, with a selection of the arbitrator within forty-five (45) days of the initiation of arbitration, all submissions to be made by the Parties within ninety (90) days of the initiation of arbitration, and a decision to be rendered within thirty (30) days following the final submissions of the Parties.

(c) The Parties shall consummate the sale contemplated by this Section 15 within forty-five (45) days of the latest of: (a) the date of the final decision or order, should issues related to the sale proceed to ADR; (b) the execution of a purchase and sale agreement, should the Parties execute the same; and (c) the grant of authority, or exemption from the need to obtain a grant of authority, from any regulatory body having jurisdiction over the same.

(d) If NSR elects not to purchase the Abandonment Segment, it shall so advise D&H within the same sixty (60) day Abandonment Notice Period by delivering to D&H a notice of waiver of right to purchase said segment (“Waiver Notice”). Failure of NSR to provide D&H with either an Exercise Notice or a Waiver Notice within the aforesaid sixty (60) day period shall constitute a Waiver Notice.

(e) In the event of a Waiver Notice, NSR shall promptly file such application, petition or exemption notice as may then be required to obtain regulatory authority or exemption for the discontinuance of its trackage rights over the Abandonment Segment.

(f) A Waiver Notice shall constitute a waiver by NSR of its statutory rights, if any at the time of the abandonment, to purchase or otherwise subsidize operations over the Abandonment Segment pursuant to an offer of financial assistance or other applicable method.

SECTION 16. SUCCESSORS AND ASSIGNS

(a) This Agreement shall inure to the benefit of and be binding upon each of the parties and their respective successors and assigns.

(b) Neither Party may assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, without the prior consent in writing of the other Party. The consenting party may not unreasonably withhold, condition, or delay its consent. Each Party may assign this Agreement to a parent or controlled subsidiary without the consent of the other Party.

SECTION 17. NOTICE

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

If to D&H: Canadian Pacific Railway Company
120 S. 6th Street, Suite 1000
Minneapolis, MN 55402
Facsimile: (612) 904-5981

with copies to:

Vice President - Operations
Canadian Pacific Railway Company
7550 Ogden Dale Road SE
Building 1
Calgary, AB T2C 4X9
Facsimile: (403) 319-7724

Vice-President, Legal Services
Canadian Pacific Railway Company
Building 1
7550 Ogden Dale Road SE
Calgary, AB T2C 4X9
Facsimile: (403) 319-3725

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If to NSR: Norfolk Southern Railway Company
c/o Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191
Attn: Executive Vice President Operations
Facsimile: (757) 823-5371

with a copy to:

Norfolk Southern Railway Company
c/o Norfolk Southern Corporation
1200 Peachtree Street, NE – Box 158
Attn: Director – Joint Facilities
Atlanta, Georgia 30309
Facsimile: (757) 823-5927

Either Party may provide changes in the above addresses to the other Party by personal service or certified mail.

SECTION 18. FORCE MAJEURE

The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (including strikes, riots, floods, accidents, Acts of God, acts of terrorism, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take all reasonable measures including providing routing over alternate rail lines to the extent practicable (subject to reimbursement for incremental costs), and granting the right to enter and exit the Subject Trackage at locations other than the End Points in the case of a necessary detour, to restore performance of its obligations in a timely manner.

SECTION 19. CONFIDENTIALITY

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, during the Initial Term and any Additional Terms, the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential, and will not be disclosed by either Party to any person other than such Party's officers, employees, and attorneys, without the prior written approval of the other Party.

SECTION 20. INDEMNITY COVERAGE

As part of the consideration hereof, each Party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other Party shall also extend to and

indemnify the parent corporation, subsidiaries and affiliates of such other Party, and all of its directors, officers, agents and employees.

SECTION 21. REGULATORY APPROVAL

Upon execution of this Agreement by each of the Parties hereto, NSR shall promptly file with the STB, and diligently prosecute, an appropriate notice of exemption with respect to the trackage rights covered by this Agreement.

SECTION 22. 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 other person. Nothing herein contained shall be taken as creating or increasing any right of any other person to recover by way of damages or otherwise against any of the Parties hereto.

(b) This Agreement contains the entire understanding of the Parties hereto with respect to its subject matter and supersedes any and all other agreements and understandings between the Parties.

(c) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all of the Parties.

(d) Each definition in this Agreement includes the singular and the plural, and references in this Agreement to the neuter gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the word “including” means “without limitation”, and the words “herein”, “hereof” and “hereunder” refer to this Agreement as a whole. All dollar amounts stated herein are in United States currency.

(e) 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.

(f) The division of this Agreement into sections and subsections, and the insertion of headings and references are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, all references herein to sections are to sections in this Agreement.

(g) 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 moving in the trains of such Party. Whenever such locomotives, cars or equipment are owned or leased by one Party, but are in the possession of, or are being operated in a train of the other Party, such locomotives, cars and equipment shall be considered those of that other Party in whose possession or train such locomotives, cars and equipment are located.

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

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

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

(k) Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between NSR and D&H.

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

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

PUBLIC VERSION (REDACTED) - DRAFT

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

WITNESS:

DELAWARE AND HUDSON RAILWAY
COMPANY, INC.

Title

By _____

WITNESS:

NORFOLK SOUTHERN RAILWAY
COMPANY

Title

By _____

EXHIBIT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET 34209 (SUB-NO. 1)

**NORFOLK SOUTHERN RAILWAY COMPANY -
TRACKAGE RIGHTS EXEMPTION – DELAWARE AND HUDSON RAILWAY
COMPANY, INC.**

NOTICE OF EXEMPTION

EXHIBIT 3

**DRAFT CAPTION SUMMARY
FEDERAL REGISTER NOTICE**

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34209 (SUB-NO. 1)

NORFOLK SOUTHERN RAILWAY COMPANY
– TRACKAGE RIGHTS EXEMPTION –
DELAWARE AND HUDSON RAILWAY COMPANY, INC.

Delaware and Hudson Railway Company, Inc. (“D&H”), a wholly owned, indirect subsidiary of Canadian Pacific Railway Company, has agreed to continue to grant, subject to modification, overhead trackage rights to the Norfolk Southern Railway Company (“NS”) over D&H’s line between MP 484.85 ± in the vicinity of Schenectady, NY and CPF 467 in the vicinity of Mechanicville, NY, including the right to use such track(s) within D&H’s Mohawk Yard as shall be designated from time to time by the D&H officer in charge of operations at Mohawk Yard, which will ensure NS’s continued access to NS’s Mechanicville Terminal and NS’s continued interchange with Pan Am Southern LLC (“PAS”).

The trackage rights will be effective no sooner than December __, 2014.

This Notice is filed pursuant to 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: _____

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET 34209 (SUB-NO. 1)

**NORFOLK SOUTHERN RAILWAY COMPANY -
TRACKAGE RIGHTS EXEMPTION – DELAWARE AND HUDSON RAILWAY
COMPANY, INC.**

NOTICE OF EXEMPTION

VERIFICATION

VERIFICATION

I, John H. Friedmann, Vice President – Strategic Planning of Norfolk Southern Corporation, hereby verify under penalty of perjury that to the best of my knowledge the foregoing trackage rights notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of Norfolk Southern Railway Company in connection with this proceeding before the Surface Transportation Board.

Executed this 11th day of November 2014.



John H. Friedmann
Vice President – Strategic Planning
Norfolk Southern Corporation