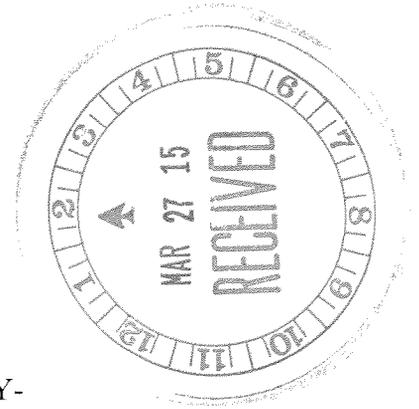


BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35908

NITTANY AND BALD EAGLE RAILROAD COMPANY-
TRACKAGE RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1180.2(d)(7)



238065

ENTERED
Office of Proceedings
March 27, 2015
Part of
Public Record

Richard R. Wilson, Esq.
518 N. Center Street, Ste. 1
Ebensburg, PA 15931
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Attorney for Nittany and Bald Eagle
Railway Company

March 25, 2015

FEE RECEIVED
March 27, 2015
SURFACE
TRANSPORTATION BOARD

FILED
March 27, 2015
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35908

NITTANY AND BALD EAGLE RAILROAD COMPANY-
TRackage RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1180.2(d)(7)

Nittany and Bald Eagle Railroad Company (hereinafter referred to as “User” or “N&BE”) hereby submits this Verified Notice of Exemption, pursuant to 49 C.F.R. §1180.2(d)(7), from the prior approval and authorization requirements of 49 U.S.C. §11323 to permit it to implement operations over approximately 55 miles of rail line operated and controlled by Norfolk Southern Railway Company (“NSR”). In support of this Notice of Exemption and in compliance with 49 C.F.R. §1180.4(g), N&BE states the following:

49 C.F.R. §1180.6(a)(1)(i)
Description of the proposed transaction

Pursuant to negotiations between N&BE and NSR, NSR has agreed to provide N&BE with non-exclusive, overhead, trackage rights over a portion of NSR’s railroad between Lock Haven and Driftwood, PA from M.P. BR 194.2 to M.P. BR 139.2, a distance of 55 miles (hereinafter referred to as the “Subject Trackage”) (see Exhibit 1 – Map) for the sole purpose of allowing N&BE to operate bridge train service for certain

seasonal traffic.¹ The rights are overhead rights only and will commence on or after the effective date of this Exemption. N&BE will have no right to (1) set out, pickup or store cars, or switch upon the Subject Trackage, or any part thereof, except as necessary for handling equipment that is bad ordered en route; (2) serve any industry, team or side track now existing or constructed in the future along the Subject Trackage; (3) permit or admit any third party to the use of all or any portion of the Subject Trackage; or (4) use the subject trackage for any traffic other than that specified in the agreement or for periods of time other than those specified in the agreement .

The full name and address of the applicant carrier is:

Nittany & Bald Eagle Railway Company
356 Priestly Avenue
Northumberland, PA 15857

The representative of Nittany & Bald Eagle Railway Company authorized to receive correspondence in this matter is:

Richard R. Wilson, Esq.
518 N. Center Street, Ste. 1
Ebensburg, PA 15931
Tel: (814) 419-8152
Fax: (814) 419-8256

49 C.F.R. 1180(a)(1)(ii)
Proposed Time Schedule for Consummation

N&BE service under the trackage rights that are the subject of this notice will commence on a date (the “Commencement Date”) mutually agreed to in writing with NSR which shall not occur until after the effective date of the Board exemption of the

¹ Although the agreement is styled as a Temporary Trackage Rights Agreement, the parties have agreed that term of the agreement shall endure until the agreement is terminated according to its terms. The trackage rights are temporary in that they are restricted to use during certain months each year.

trackage rights granted by NSR to N&BE hereunder and after the expiration of any required labor notices.

49 C.F.R. 1180.6 (a)(1)(iii)
Purpose Sought to be Accomplished

The sole purpose for the trackage rights is to allow N&BE adequate bridge train service for seasonal traffic originating on the N&BE for delivery to an off-line destination.

49 C.F.R. 1180.6(a)(5)
States in Which Applicant's Property is Located

N&BE operates rail property located in the Commonwealth of Pennsylvania.

49 C.F.R. 1180.6(a)(6)
Map – Exhibit 1

A map of the rail line over which N&BE proposes to acquire trackage rights is attached hereto as Exhibit 1.

49 C.F.R. 1180.6(a)(7)(ii)
Agreement – Exhibit 2

A copy of the fully executed trackage rights agreement, with certain commercially sensitive information redacted, is attached as Exhibit 2. An unredacted copy of the trackage rights agreement is contemporaneously submitted to the Board together with a Motion for a Protective Order.

49 C.F.R. 1180.4(g)(i)
Labor Protection

N&BE anticipates that no employees will be adversely affected by this transaction but if there are adversely affected employees, Applicants are agreeable to the imposition of the standard labor protective conditions imposed by the Board pursuant to Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653 (1980), and with respect

to the discontinuance of these rights, imposition of conditions pursuant to Oregon Short Line RR Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

*49 C.F.R. 1180.4(g)(2)(i)
Caption Summary*

In accordance with §1180.4(g)(2)(i), a caption summary suitable for publication in the Federal Register is attached to this Notice of Exemption as Exhibit 3.

*49 C.F.R. 1180.4(g)(3)
Environmental and historic reporting requirements*

The proposed trackage rights operations will not result in any significant changes in N&BE's operations and thus environmental documentation does not need to be prepared in accordance with 49 C.F.R. §1105 (6)(c)(4). In addition, because N&BE's exercise of the subject trackage rights will not have a substantial, adverse effect on the maintenance level of the Subject Trackage, a historic report is not required for this filing. 49 C.F.R. §1105.8(b)(3).

Respectfully submitted,



Richard R. Wilson, Esq.
518 N. Center Street, Ste. 1
Ebensburg, PA 15931

Attorney for Nittany & Bald Eagle Railway
Company

VERIFICATION

I, Gary Shields, President of the Nittany & Bald Eagle Railway, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on March 25, 2015.



Gary Shields

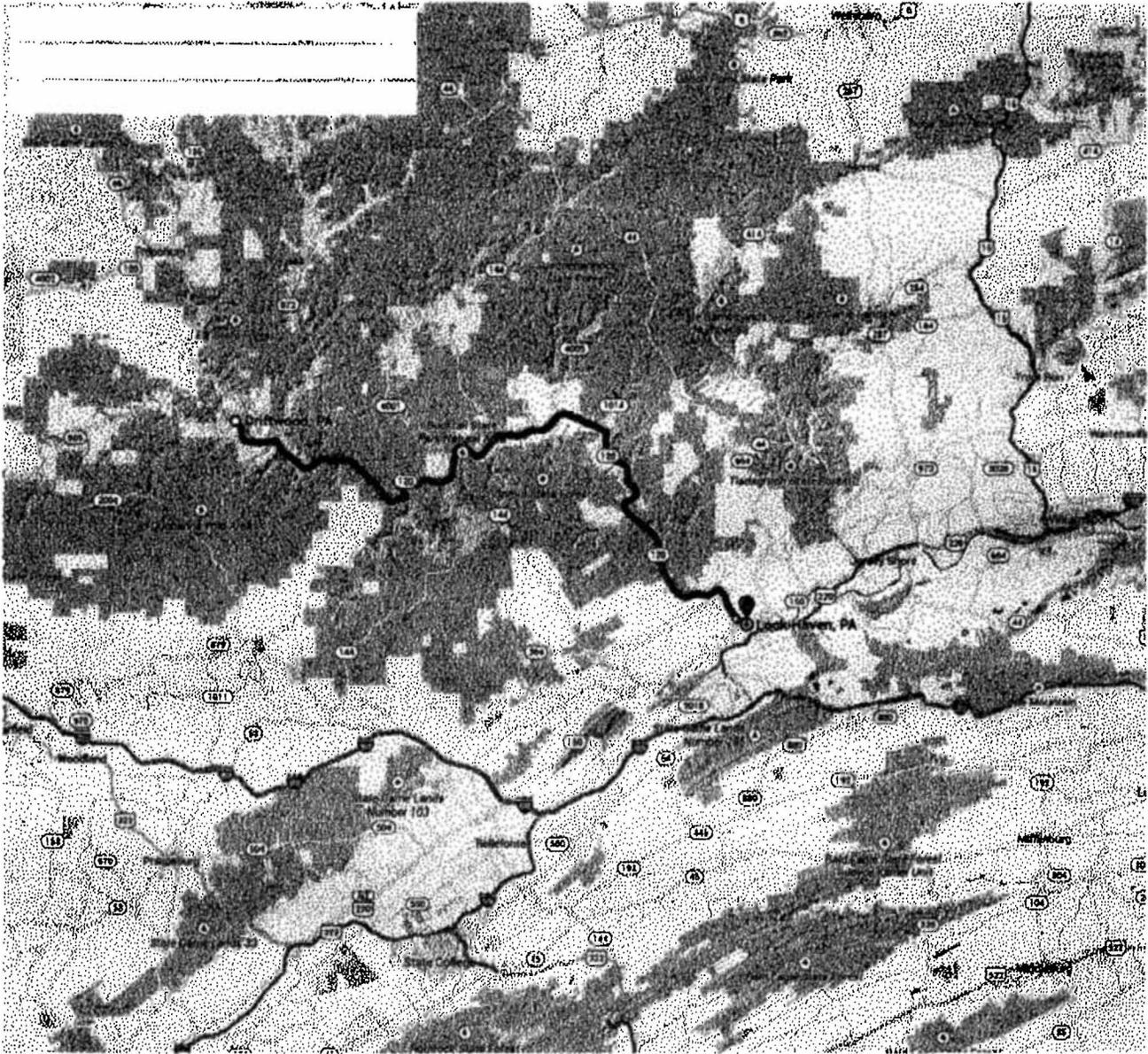
VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 40 C.F.R. §1180.2(d)(7)

FINANCE DOCKET NO. 35908

NITTANY AND BALD EAGLE RAILROAD COMPANY
- TRACKAGE RIGHTS EXEMPTION-
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT I

MAP



Map data ©2015 Google 5 mi

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 40 C.F.R. §1180.2(d)(7)

FINANCE DOCKET NO. 35908

NITTANY AND BALD EAGLE RAILROAD COMPANY
- TRACKAGE RIGHTS EXEMPTION-
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 2

2015 TRACKAGE RIGHTS AGREEMENT
(Redacted Copy)

TEMPORARY TRACKAGE RIGHTS AGREEMENT
Between
NORFOLK SOUTHERN RAILWAY COMPANY
And
NITTANY & BALD EAGLE RAILROAD COMPANY

THIS TRACKAGE RIGHTS AGREEMENT, ("Agreement"), entered into as of this 1st day of February 2015 (the "Effective Date"), by and between NITTANY & BALD EAGLE RAILROAD COMPANY, (hereinafter referred to as "NBER") and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter referred to as "NSR"). Each of NBER and NSR shall individually be referred to as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, NSR owns and operates a rail line from Driftwood, PA to Lock Haven, PA; and

WHEREAS, NBER desires to obtain temporary trackage rights over said rail line; and

WHEREAS, NSR is willing to grant such temporary trackage rights; and

WHEREAS, NBER and NSR desire to enter into a formal agreement governing the exercise and use of the Line by NBER during such temporary period (the "Agreement").

NOW, THEREFORE, NBER and NSR, intending to be legally bound, agree as follows:

ARTICLE 1. DESCRIPTION OF TRACKAGE RIGHTS

1.1 NBER shall enjoy hereunder temporary trackage rights over the Line (the "NBER Trackage Rights") as described below:

a) The segment of the Buffalo line owned by NSR between Driftwood, PA, at or near Milepost BR 139.2 and Lock Haven, PA, at or near Milepost BR 194.2, a distance of approximately 55 miles (the "Line"); and

ARTICLE 2. USE OF LINE

2.1 The NBER Trackage Rights shall only be utilized by NBER commencing February 1st of each year this Agreement is in effect, to December 31st of that same year for overhead movements

only. NBER shall perform no other freight service of any kind at any point located on the Line.

2.2 NBER's use of the Line shall be in common with NSR and NSR's right to use the Line shall not be diminished by this Agreement. NBER shall not grant to other persons rights of any nature on the Line.

2.3 Except as may otherwise be provided by this Agreement, the NBER Trackage Rights shall be utilized as set forth in Article 2.1, and NBER shall not use any part of the Line for the purpose of switching, storing or servicing cars or the making or breaking up of trains, except that nothing contained herein shall

preclude the emergency use by NBER of such auxiliary tracks as may be designated and approved by NSR for such purposes.

2.4 NSR shall have exclusive control of the management and operation of the Line. NBER shall not have any claim against NSR for liability on account of loss or damage of any kind in the event the use of the Line by NBER is interrupted or delayed at any time from any cause.

ARTICLE 3. MISCELLANEOUS SPECIAL PROVISIONS

3.1 NBER's locomotives and crews shall be equipped to communicate with NSR on radio frequencies normally used by NSR in directing train movements on the Line.

3.2 NSR and NBER agree to consult and collaborate with respect to any improvement or other modifications that may be necessary or desirable with respect to segments of the Line that are subject to train speed or other restrictions that negatively impact NBER's operations over such segments.

ARTICLE 4. COMPENSATION

4.1 NBER shall compensate NSR for the use of the Line by paying to NSR a sum computed by multiplying (a) the Trackage Rights Charges (as defined in Article 4.2 of this Agreement) by (b) the number of cars (loaded or empty) and locomotives moved over the Line by (c) the miles of the Line over which the cars and/or locomotives are moved. In computing the compensation payable by NBER pursuant to this Section 4, cars that exceed ninety-six (96) feet in length shall be counted as one (1) car for each four (4) axles.

4.2 The charge payable by NBER for use of the Line shall be [REDACTED] per car mile, ("Trackage Rights Charge(s)"), effective February 1, 2015, and escalated pursuant to the provisions of this Section 4. The Trackage Rights Charges shall be adjusted upward or downward effective July 1 each year, beginning July 1, 2016, to compensate NSR for one hundred percent (100%) of any 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 "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 this Article 4.2. 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."

4.3 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 Article 4.2. 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 Article 4.2. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (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, 2016 would be determined by the following formula:

$$(B - A) / A = D$$

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

4.4 If the base for the "Annual Indexes 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 Indexes 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.

4.5 On or before the 15th day of each calendar month during the term of this Agreement, NBER shall prepare and deliver to NSR a statement setting forth the number of cars and miles operated on the Line pursuant to this Agreement during the immediately preceding month (the "Monthly Statement"). The Monthly Statement shall be delivered to NSR's Manager 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 and any other information relating to such cars that NSR may reasonably request in connection with accounting for the use of the Line. NSR shall develop and present to NBER an invoice (the "Use Invoice") computed in accordance with Article 4.2 for use of the Line covered by that Monthly Statement. NBER shall make payment to NSR within thirty (30) days after the date of such Use Invoice.

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

4.7 NBER and NSR shall each have the right, at its own expense, to audit the records of the other Party pertaining to the use of the Line under this Agreement, and any Monthly Statement, Use Invoice or other invoice issued by NBER or NSR, 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 Line. All such audits shall be conducted at reasonable intervals, locations and times. Each Party agrees that, except as permitted by Article 24 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 Article 4.7 with respect to which the Parties are in concurrence shall be reflected in a subsequent Use Invoice.

4.8 Invoices rendered pursuant to the provisions of this Agreement, other than Use Invoices and charges under Article 10, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by NSR at the time any work is performed by NSR for NBER, or shall include actual costs and expenses, upon mutual agreement of the Parties.

ARTICLE 5. REVISION OF CURRENT CHARGE

THIS ARTICLE INTENTIONALLY OMITTED

ARTICLE 6. PAYMENT OF BILLS

6.1 All payments called for under this Agreement shall be made by NBER 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 shall be adjusted in the accounts of a subsequent month. The records of each Party, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other Party for a period of three (3) years from the date of billing.

6.2 Bills rendered pursuant to the provisions of this Agreement, if any, other than those set forth in Article 4, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by the performing party at the time any work is performed by one Party for the other Party.

ARTICLE 7. MAINTENANCE OF LINE

7.1 Except as provided by this Article, NSR shall be responsible for all maintenance of the Line, including but not limited to track, bridges, signals, detectors and highway grade crossing equipment as applicable. The Line shall be maintained by NSR in reasonably good condition for the use herein contemplated, but NSR does not guarantee the condition of the Line, or that operation thereover will not be interrupted. Furthermore, except as may be otherwise provided in Article 13 hereof, NBER shall not by reason of failure or neglect on the part of NSR to maintain, repair, or renew the Line, have or make any claim or demand against NSR or its parent corporation, subsidiaries and affiliates and any or all of their respective directors, 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 a party resulting from any such failure or neglect. If the use of the Line shall at any time be interrupted or traffic thereon is delayed for any cause, NSR shall with reasonable diligence restore the Line for the movement of cars.

ARTICLE 8. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

THIS ARTICLE INTENTIONALLY OMITTED

ARTICLE 9. ADDITIONS, RETIREMENTS AND ALTERATIONS

THIS ARTICLE INTENTIONALLY OMITTED

ARTICLE 10. MANAGEMENT AND OPERATIONS

10.1 NBER 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 and cars) while such trains, locomotives, cars, and equipment are being operated over the Line. NBER shall indemnify, protect, defend, and save harmless NSR and its parent corporation, subsidiaries and affiliates, and any or all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon NSR 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 in the premises, when attributable solely to the failure of NBER to comply with its obligations in this regard.

10.2 NBER in its use of the Line shall comply in all respects with the safety rules, operating rules and other regulations of NSR, and the movement of NBER's trains (locomotives and cars) over the Line shall

at all times be subject to the orders of the transportation officers of NSR. NBER's trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Line, and, without the prior consent of NSR, no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by NSR's operating rules and regulations.

10.3 NBER shall make such arrangements with NSR as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Line qualified for operation thereover, and NBER shall pay to NSR, upon receipt of bills therefor, any reasonable cost incurred by NSR in connection with the qualification of such employees of NBER, as well as the reasonable cost of pilots furnished by NSR, until such time as such employees are deemed by the appropriate examining officer of NSR to be properly qualified for operation as herein contemplated, such determination not to be unreasonably withheld, conditioned or delayed.

10.4 If any employee of NBER shall neglect, refuse or fail to abide by NSR's rules, instructions and restrictions governing the operation on or along NSR's property, such employee shall, upon written request of NSR, be prohibited by NSR from working on NSR's property. If any Party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of NBER, then upon such notice presented in writing, NBER shall promptly hold an investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigations to NBER's employees shall be given by NBER's officers, and such investigation shall be conducted in accordance with the terms and conditions of scheduled agreements between NBER and its employees. If the result of such investigation warrants, such employee shall, upon written request by NSR, be withdrawn by NBER from service on NSR's property, and NBER shall release and indemnify NSR from and against any and all claims and expenses because of such withdrawal.

10.5 The trains, locomotives, cars and equipment of NBER, NSR, and any other present or future user of the Line or any portion thereof, shall be operated without prejudice or partiality to any party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.

10.6 (a) In the event that (i) an NBER train shall be forced to stop on the Line and unable to proceed due to mechanical failure of NBER's equipment or any other cause not resulting from an accident or derailment, (ii) an NBER train fails to maintain the speed required by NSR on the Line; or (iii) in emergencies, crippled or otherwise defective cars are set out of NBER's trains on the Line, NSR 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 Line, and NBER shall reimburse NSR for the reasonable cost incurred by NSR in rendering any such assistance.

(b) If it become necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Line, NSR shall have the option to perform such work, and NBER shall reimburse NSR for the reasonable cost incurred by NSR with respect thereto.

10.7 In the event NSR and NBER agree that NSR should retain employees or provide additional employees for the sole benefit of NBER, the Parties shall enter into a separate agreement under which NBER shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by NSR and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 11. MILEAGE AND CAR HIRE

11.1 All mileage and car hire charges accruing on cars in NBER's trains on the Line shall be assumed by NBER and reported and paid by it directly to the owner(s) of such cars.

ARTICLE 12. CLEARING OF WRECKS

12.1 Whenever NBER's use of the Line requires rerailling, wrecking service or wrecking train service, NSR shall be responsible for the provision of such service, including the repair and restoration of roadbed, track and structures so as to minimize the impact on NSR and NBER operations. 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 Article 13 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 NBER at the time of such wreck, shall be promptly delivered to NBER.

ARTICLE 13. LIABILITY

13.1 The responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the Parties and third persons), (ii) any real or personal property damage of any person (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgments, litigation expenses and attorney's fees resulting from the use of the Line by either Party as described herein, all of which are collectively referred to as a "Loss", shall be allocated as follows:

13.2 If a Loss occurs on the Line involving the trains, locomotives, engines and/or employees of only one Party, then such Party shall be solely responsible for the Loss, even if caused partially or completely by the other Party.

13.3 If a Loss occurs on the Line involving the trains and locomotives of both NSR and NBER, then: (i) each Party shall be solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) responsibility for any Loss to the Line and Loss sustained by third parties shall be divided equally between the two Parties, regardless of the proportionate responsibility between them as to the cause of the Loss.

13.4 If a Loss occurs on the Line involving only one of the Parties and one or more third parties, then such Party hereto shall be solely responsible for such Loss as between the Parties.

13.5 Whenever any Loss is assumed by or apportioned to a Party under the foregoing provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party and its parent corporation, subsidiaries and affiliates, and any and all of their respective directors, officers, agents, and employees from and against such Loss assumed by that Party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.

13.6 In every case of death or injury suffered by an employee of either NBER or NSR, when compensation to such employees 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 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.

13.7 For purposes of determining liability, pilots furnished by NSR to NBER pursuant to this Agreement

shall be considered as the employees of NBER while such employees are on duty as pilots for NBER.

13.8 If any suit or action shall be brought against either Party for damages which under the provisions of this Agreement are 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, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

13.9 In the event of a Loss as set out herein, the Parties shall be bound by the Freight Claim Rules, Principles, and Practices of the AAR as to the handling of any claims for the loss or damage to lading.

13.10 Notwithstanding any and all of the forgoing provisions of this Article 13, in the event a Loss occurs while the Line is being used by NSR and/or NBER, and such Loss is attributable solely to the willful or wanton negligence of only one of the parties to this Agreement, then the Party which was so willfully or wantonly negligent shall be solely responsible for such Loss.

ARTICLE 14. CLAIMS

14.1 (a) Except as provided in Article 14.1(b) below, all claims, injuries, death, 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 shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.

(c) In the event a claim or suit is asserted against NSR or NBER 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 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 49 U.S.C. Section 11706, 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 THIRTY-FIVE THOUSAND DOLLARS (\$35,000).

14.2 Except as provided in Article 10.7, each party agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries and affiliates, and any or all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the Parties that each Party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees. Similarly, each Party agrees to indemnify and hold harmless the other Parties against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered

by this Agreement, except to extent otherwise specifically provided in this Agreement.

14.3 It is understood that nothing in this Article 14 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 13.

ARTICLE 15. DEFAULT AND TERMINATION

THIS AREA INTENTIONALLY OMITTED

ARTICLE 16. INSURANCE

16.1 NBER shall procure and maintain in effect during the life of this Agreement a policy or policies of insurance covering the liability to which it is or may be subject under Article 13 hereof. Such insurance shall provide minimum limits of Ten Million Dollars (\$10,000,000) per occurrence but may be subject to an annual aggregate limit of Ten Million Dollars (\$10,000,000) and a per occurrence deductible not in excess of Twenty-Five Thousand Dollars (\$25,000). Said policy or policies shall name NSR as an additional insured.

16.2 If the insurance provided under this Article 16 takes the form of a Claims Made Policy, NBER agrees to purchase whatever supplemental coverage may be necessary to provide continuous supplemental coverage of its potential liability under this Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least five (5) years following the termination of this Agreement. NBER further agrees to immediately give written notice to the Director Risk Management, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, Virginia 23510-2191, of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company.

16.3 On or before any anniversary date of this Agreement which occurs more than one (1) year after its Commencement Date, NSR may require an increase in the amount of insurance coverage required by this Article 16, or changes in the terms and conditions of the policy or policies, provided the amount of the increase does not exceed an average of Two Million Dollars (\$2,000,000) for each year that this Agreement has been in effect. To the extent possible, NSR shall give NBER at least thirty (30) days notice, in writing, of any increase in the amount of insurance required.

16.4 Every policy of insurance obtained by NBER pursuant to the requirements of this Article 16 shall contain provisions requiring that the insurance carriers give NSR at least thirty (30) days notice, in writing, of any proposed policy cancellation and of any material modification of the terms and conditions of the policy. The terms and conditions of each policy of insurance obtained by NBER to satisfy the requirements of this Article 16 will be subject to the approval of NSR.

16.5 Within thirty (30) days of execution of this Agreement, NBER will furnish to the above referenced Director Risk Management, an accurate copy of insurance obtained pursuant to the requirements of this Agreement. Compliance with this requirement will not relieve NBER of any other obligation under this Agreement and will in no way limit or modify NBER's obligation to provide the specific insurance coverage required by this Agreement. Evidence of subsequent renewal of such insurance or of any material change must be furnished to the above referenced Director Risk Management as stipulated in Article 16.2 above.

ARTICLE 17. REGULATORY APPROVAL

17.1 NBER, at its own cost and expense will initiate and thereafter diligently prosecute any actions necessary to obtain the approval, or exemption from such approval, of the U.S. Surface Transportation Board ("STB") of this temporary trackage rights agreement pursuant to 49 C.F.R. 1180.2(d)(8). Prior to making any

submission to the STB, NBER will present said submission to NSR for its review and approval, which shall not be unreasonably withheld or delayed.

ARTICLE 18. TERM AND TERMINATION

18.1 This Agreement shall become effective (the "Effective Date") as of the first date executed by all of the Parties. However, NBER operations over the Line shall not commence until a date (the "Commencement Date") mutually agreed in writing between NBER and NSR, which date shall not occur until the effective date of any required STB authorization or exemption of the trackage rights granted to NBER herein (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption) and completion of any required notice period(s) expire.

18.2 NSR shall have the right to terminate this Agreement upon giving NBER at least thirty (30) days' prior written notice of such termination. Such termination shall be considered a termination of both this Agreement and the underlying right of movement. Upon termination or non-renewal of this Agreement, NBER shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the Surface Transportation Board (STB) or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the NBER Trackage Rights herein granted. If NBER fails to file within (60) days, NBER hereby expressly authorizes NSR to file with the STB, or other regulatory body having jurisdiction, on behalf of NBER to abandon or discontinue the NBER Trackage Rights granted hereunder, and NBER further agrees to reimburse NSR for all costs incurred.

18.3 Termination of this Agreement shall not relieve or release either party hereto from any obligation 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.

ARTICLE 19. FORCE MAJEURE

19.1 Neither Party shall be responsible to the other for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond a Party's control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations.

ARTICLE 20. ARBITRATION

THIS AREA INTENTIONALLY OMITTED

ARTICLE 21. SUCCESSORS AND ASSIGNS

21.1 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties, provided, however, that neither Party shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm or corporation without obtaining the prior written consent of the other Party. In the event that NBER is replaced by another common carrier railroad ("Substitute Rail Carrier") as the operator for the SEDA-COG railroads, this Agreement may be assigned to such Substitute Rail Carrier upon the written consent of NSR, such consent not to be unreasonably withheld or delayed.

ARTICLE 22. NOTICE

22.1 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 mutually agree, and shall be addressed as follows:

If to NBER: Chairman and CEO
Nittany & Bald Eagle Railroad Co.
356 Priestley Avenue
Northumberland, PA 17857

If to NSR: Vice President Network & Service Management
Norfolk Southern Corporation
1200 Peachtree Street, NE
Atlanta, Georgia 30309

with a copy to:

Director – Joint Facilities
Norfolk Southern Corporation
1200 Peachtree Street, NE
Atlanta, Georgia 30309

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

ARTICLE 23. GENERAL PROVISIONS

23.1 This Agreement and each and every provision hereof is for the exclusive benefit of the Parties and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the Parties.

23.2 This Agreement contains the entire understanding of the Parties and supersedes any and all oral understandings between the Parties. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both Parties.

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

23.4 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, 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 and are in the possession or account of the other Party, such locomotives, cars and equipment shall be considered those of the other Party under this Agreement.

23.5 This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.

23.6 Neither Party may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other Party, except as otherwise required by law, regulation or ruling.

23.7 This Agreement shall be governed by and construed in accordance with the laws of the State of Pennsylvania without regard to its choice of law provisions.

ARTICLE 24. 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 to enforce its rights under this Agreement, during the term of this Agreement and during a period of three (3) years subsequent to termination of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or obtained hereunder shall be kept confidential and shall not be disclosed by either NSR or NBER to any party other than each Party's respective parent corporation, subsidiaries and affiliates, and their respective directors, officers, agents, employees and attorneys, without the prior written approval of the other Party.

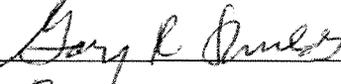
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

Witness for NBER:



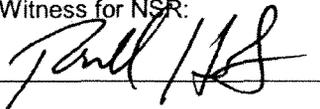
Vice President

NITTANY & BALD EAGLE RAILROAD COMPANY

By: 

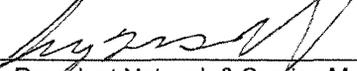
President

Witness for NSR:



Vice President

NORFOLK SOUTHERN RAILWAY COMPANY

By: 

Vice President Network & Service Management

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 40 C.F.R. §1180.2(d)(7)

FINANCE DOCKET NO. 35908

NITTANY AND BALD EAGLE RAILROAD COMPANY
-TRACKAGE RIGHTS EXEMPTION-
NORFOLK SOUTHERN RAILWAY COMPANY

EXHIBIT 3

FEDERAL REGISTER NOTICE

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35908

NITTANY AND BALD EAGLE RAILROAD COMPANY
-TRackage RIGHTS EXEMPTION-
NORFOLK SOUTHERN RAILWAY COMPANY

FEDERAL REGISTER NOTICE

Norfolk Southern Railway Company (“NS”), pursuant to a written Trackage Rights Agreement (“Agreement”), has agreed to grant non-exclusive, overhead trackage rights to Nittany and Bald Eagle Railroad Company (“N&BE”) over NS’s line of railroad between M.P. BR 194.2, at Lock Haven, PA and M.P. 139.2, at Driftwood, PA a distance of 55 miles.

The transaction may be consummated on or after the effective date of the exemption (30 days after the verified notice of exemption was filed.) The purpose of the trackage rights is to allow N&BE to operate bridge train service for seasonal traffic.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in Norfolk & Western Railway – Trackage Rights – Burlington Northern, Inc., 354 I.C.C. (1978), as modified in Mendocino Coast Railway, Inc. – Lease & Operate – California Western Railroad, 360 I.C.C. 653 (1980), and any employees affected by the acquisition of the trackage rights will be protected by the conditions set out in Oregon Short Line Railroad – Abandonment

Portion Goshen Branch Between Firth & Ammon, in Bingham & Benneville Counties, Idaho, 360 I.C.C. 91 (1979).

This notice is filed under 49 C.F.R. §1180.2(d)(87). If it contains false or misleading information, the exemption is void *ab initio*. 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. Petitions for stay must be filed no later than 7 days before the exemption becomes effective.

An original and 10 copies of all pleadings, referring to Docket No. 35908, must be filed with the Surface Transportation Board, 395 E. Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Richard R. Wilson, Esq., 518 N. Center Street, Ste. 1, Ebensburg, PA 15931, (814) 419-8152, rwilson@rrwilson.net.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided _____, 2015.

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of March, 2015 served a copy of this Verified Notice of Exemption upon the following by first class United States Mail, postage prepaid:

Mr. Gary Shields
Nittany & Bald Eagle Railroad Company
356 Priestley Avenue
Northumberland, PA 17857

Maqui Parkerson, Esq.
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510



Richard R. Wilson, Esq.