



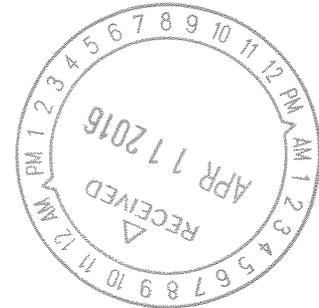
Norfolk Southern Corporation  
Law Department  
Three Commercial Place  
Norfolk, Virginia 23510-9241

Phone: (757) 823-5296  
E-Mail: aarthy.thamodaran@nscorp.com

Aarthy S. Thamodaran  
Assistant General Attorney

240455  
ENTERED  
Office of Proceedings  
April 11, 2016  
Part of  
Public Record

April 8, 2016



**VIA OVERNIGHT MAIL**

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

**Re: STB Finance Docket No. 36020**  
**Norfolk Southern Railway Company – Trackage Rights Exemption – Southern**  
**Electric Railroad Company**

Dear Ms. Brown:

For filing in STB Finance Docket No. 36020, please find enclosed the original as well as ten copies of the Verified Notice of Exemption, with exhibits, pursuant to the provisions of 49 C.F.R. § 1180.2(d)(7) relating to the trackage rights arrangement between Norfolk Southern Railway Company and Southern Electric Railroad Company. Also enclosed is credit card payment information for the amount of \$1,200 to cover the filing fee.

If there are any questions about this matter, please contact me directly using the contact information listed above.

Respectfully submitted,

Aarthy S. Thamodaran  
*Attorney for Norfolk Southern Railway Company*

FEE RECEIVED  
April 11, 2016  
SURFACE  
TRANSPORTATION BOARD

Enclosures

FILED  
April 11, 2016  
SURFACE  
TRANSPORTATION BOARD

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 36020**

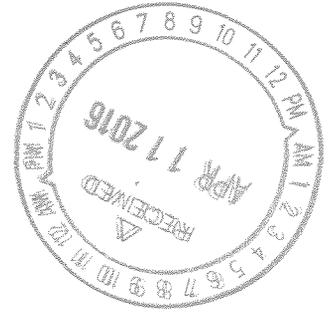
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**NORFOLK SOUTHERN RAILWAY COMPANY  
– TRACKAGE RIGHTS EXEMPTION –  
SOUTHERN ELECTRIC RAILROAD COMPANY**

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**VERIFIED NOTICE OF EXEMPTION**

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**April 8, 2016**

**John M. Scheib  
Aarth S. Thamodaran  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510  
(757) 823-5296**

*Attorneys for Norfolk Southern Railway Company*

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 36020**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
– TRACKAGE RIGHTS EXEMPTION –  
SOUTHERN ELECTRIC RAILROAD COMPANY**

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**VERIFIED NOTICE OF EXEMPTION**

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Norfolk Southern Railway Company (“NS”) submits this Verified 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 acquire approximately 0.6 miles of trackage rights pursuant to a draft written trackage rights agreement (“Agreement”) between NS and Southern Electric Railroad Company (“SERC”). Pursuant to the draft Agreement, NS seeks to acquire trackage rights over SERC’s mainline between MP 0.0 and MP 0.6 in the vicinity of Jefferson County, Alabama.

**SECTION 1180.2(d)(7)  
GROUND 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 another rail carrier 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. First, NS and SERC have finalized a draft Agreement, a redacted version of which is attached hereto as Exhibit 2. Pursuant to 49 C.F.R. § 1180.6(a)(7)(ii), NS will submit an executed copy of the Agreement within 10 days of its execution. Second, the proposed trackage rights are not being sought in a responsive application in a rail consolidation proceeding. Thus, the § 1180.2(d)(7) class exemption is applicable.

For a rail carrier to qualify for this class exemption, it must file a verified notice of the transaction with the Surface Transportation Board (“Board”) at least 30 days before the transaction is consummated. Such notice should include the following: the information required in § 1180.6(a)(1)(i)-(iii), (a)(5)-(6), and (a)(7)(ii); the level of labor protection to be imposed; and a caption summary suitable for publication in the *Federal Register*. Such information is provided herein.

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

The draft Agreement between NS and SERC, attached hereto as Exhibit 2, will grant NS restricted overhead trackage rights over approximately 0.6 miles of SERC’s mainline between MP 0.0 and MP 0.6 in the vicinity of Jefferson County, Alabama. Such trackage rights will allow NS to access four private storage tracks (“APC Storage Yard”) owned by Alabama Power Company (“Alabama Power”), in order to serve Alabama Power’s James H. Miller, Jr. Electric Generating Plant (“Plant Miller”) near West Jefferson, Jefferson County, Alabama.

The Applicant’s name, business address, and telephone number are provided below:

Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510  
(757) 823-5296

Questions regarding this transaction can be addressed to NS’s counsel:

Aarthy S. Thamodaran  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510  
(757) 823-5296

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

The proposed trackage rights will be consummated after the effective date of this Notice.

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

The proposed trackage rights are intended to permit NS to access the APC Storage Yard in order to serve Plant Miller. NS currently is unable to directly serve Plant Miller, so NS's acquisition of the trackage rights will provide Plant Miller with more competitive rail options.

**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.

The proposed trackage rights are located in Alabama.

**SECTION 1180.6(a)(6)**  
**MAP**

A map of the line and the proposed trackage rights is attached hereto as Exhibit 1.

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

A redacted version of the draft Agreement is attached hereto as Exhibit 2, with highly confidential material redacted. An unredacted version of the draft Agreement will be provided to a requesting party upon the issuance by the Board of an appropriate protective order. An executed copy of the Agreement will be filed with the Board within 10 days of its execution.

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

NS does not anticipate any adverse labor impacts as a result of the proposed acquisition of trackage rights. However, if warranted, NS agrees to the imposition of the employee protective conditions generally imposed in trackage rights proceedings pursuant to Norfolk &

Western Railway – Trackage Rights – Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified by 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 suitable for publication in the *Federal Register* is attached hereto as Exhibit 3.

**SECTION 1180.4(g)(3)**  
**ENVIRONMENTAL AND HISTORIC PRESERVATION REPORTING**

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, respectively.

Respectfully submitted,



John M. Scheib  
Aarthy S. Thamodaran  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510  
(757) 823-5296

*Attorneys for Norfolk Southern Railway Company*

April 8, 2016

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 36020**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
– TRackage RIGHTS EXEMPTION –  
SOUTHERN ELECTRIC RAILROAD COMPANY**

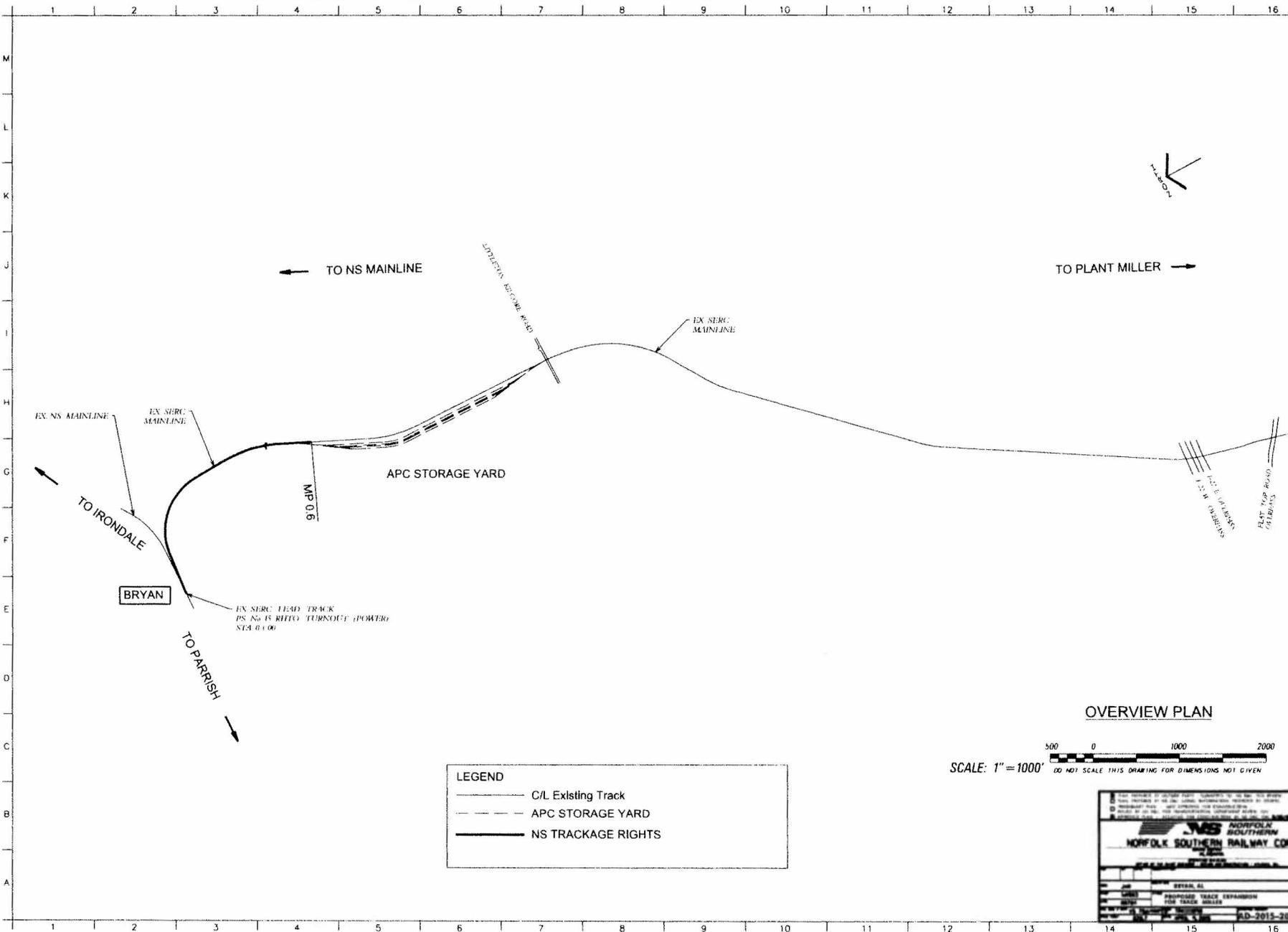
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**VERIFIED NOTICE OF EXEMPTION**

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**EXHIBIT 1**

**MAP**



M  
L  
K  
J  
I  
H  
G  
F  
E  
D  
C  
B  
A

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16

LEGEND	
	C/L Existing Track
	APC STORAGE YARD
	NS TRACKAGE RIGHTS

OVERVIEW PLAN

SCALE: 1" = 1000'  
DO NOT SCALE THIS DRAWING FOR DIMENSIONS NOT GIVEN



<b>NORFOLK SOUTHERN RAILWAY COMPANY</b>	
PROJECT NO. 14067	DATE: 12/31/2014
DRAWN BY: KRM	CHECKED BY: KRM
REVISIONS:	
ANY/MS COMMENTS:	
SHEET NUMBER:	
<h1>1</h1>	

**SOUTHERN ELECTRIC RAILROAD COMPANY - PLANT MILLER**  
JEFFERSON COUNTY, ALABAMA

**CROUCH ENGINEERING P.C.**  
428 WILSON PIKE CIRCLE  
BRENTWOOD, TN 37027  
PHONE NO. (615) 791-0630  
Engineering P.C.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 36020**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
- TRACKAGE RIGHTS EXEMPTION -  
SOUTHERN ELECTRIC RAILROAD COMPANY**

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**VERIFIED NOTICE OF EXEMPTION**

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**EXHIBIT 2**

**DRAFT AGREEMENT REDACTED**

## TRACKAGE RIGHTS AGREEMENT

**THIS AGREEMENT**, entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between **SOUTHERN ELECTRIC RAILROAD COMPANY** (hereinafter referred to as "Owner") and **NORFOLK SOUTHERN RAILWAY COMPANY**, including its subsidiaries and affiliates, (hereinafter referred to as "User").

### WITNESSETH:

**WHEREAS**, Owner owns and holds operating authority on a line of railroad between the User's mainline at Owner Milepost 0.0 and the connection with Alabama Power Company's ("APC") plant lead track to its James H. Miller, Jr. Electric Generating Plant at Milepost 3.96 ("SERC Mainline");

**WHEREAS**, User has requested and Owner is agreeable to granting User limited trackage rights for the movement of traffic over a portion of the SERC Mainline to access APC's four private storage tracks ("APC Storage Yard") from the SERC Mainline; and

**WHEREAS**, by this Agreement, the parties hereto shall memorialize the terms and conditions pursuant to which Owner shall grant such trackage rights to User.

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

### **SECTION 1.0**      **GRANT AND DESCRIPTION OF TRACKAGE RIGHTS**

1.1 Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over certain trackage owned by Owner (hereinafter referred to as the "Subject Trackage"), as shown on the plan attached hereto as Exhibit A and made a part hereof, described as:

(a) Owner's SERC Mainline extending between Milepost 0.0 and approximately Milepost 0.6, near the north turnout to the APC Storage Yard, a distance of approximately 0.6 miles.

1.2 Such Trackage Rights include rights to operate (1) over all SERC sidings, yard tracks, and yard leads now existent or hereafter constructed along the Subject Trackage as well as the right-of-way for the Subject Trackage, and (2) signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the Subject Trackage by the parties hereto.

### **SECTION 2.0**      **USE OF SUBJECT TRACKAGE**

2.1 User's use of the Subject Trackage shall be in common with Owner and any other authorized user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.



**SECTION 6.0**      **MAINTENANCE OF SUBJECT TRACKAGE**

6.1      Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage for speeds consistent with a standard of FRA Class 2. Owner shall take reasonable steps to ensure that any interruptions in User's use of the Subject Trackage will be kept to a minimum and shall use its good faith efforts to avoid such interruptions. If User requests additional maintenance or a higher FRA Class for the Subject Trackage, Owner shall perform such work at User's expense pursuant to such additional terms and conditions as agreed to by the parties.

**SECTION 7.0**      **CONSTRUCTION AND MAINTENANCE OF CONNECTIONS**

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

7.2      User's request and design for any new or upgraded connections or other upgrades, including but not limited to switches, power switches, signals, communications, etc., to the Subject Trackage shall be subject to the Owner's approval. If Owner approves of User's request and design, Owner shall furnish the labor and materials, at its sole cost and expense, and shall be responsible for any construction located on its right-of-way, unless the parties otherwise agree.

**SECTION 8.0**      **ADDITIONS, RETIREMENTS AND ALTERATIONS**

8.1      Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction, provided however, that Owner shall not eliminate any connections between the Subject Trackage and the lines owned or operated by User. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

**SECTION 9.0**      **MANAGEMENT AND OPERATIONS**

9.1      Owner will provide a Designated Contact for day-to-day management and operations (hereinafter referred to as "Designated Contact").

9.2      User shall ensure that locomotives are fueled to a capacity that enables User's trains to traverse the Subject Trackage without having to be fueled.

- 9.3 User's crews when entering the Subject Trackage must have sufficient time in which to traverse the Subject Trackage without having to recrew. If User's train needs to be recrewed, then User's crew will notify Owner's Designated Contact prior to expiring on their hours of service so that Owner can plan accordingly, and User will arrange to have a recrew meet the train in order to cause minimum amount of delay.
- 9.4 When operating over the Subject Trackage, User's locomotives and crews will communicate with Owner's Designated Contact by phone in directing train movements on the Subject Trackage.
- 9.5 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. Movement of trains, locomotives, cars and equipment on the Subject Trackage will be dispatched by Owner's Designated Contact.
- 9.6 Before User enters onto the Subject Trackage with its trains, User shall provide notice to the Owner's Designated Contact, and User shall receive permission from the same, with respect to User's train movements over the Subject Trackage that are destined to or from the APC Storage Yard. Operating limits for Owner's Designated Contact and User will be separated by a physical delineation point, as shown on the plan attached hereto as Exhibit A, and the parties agree that (a) User's operations south of such point will require special permission from the Designated Contact, provided that such permission shall not be unreasonably withheld if User needs to operate south of such point for the limited purpose of running around the APC Storage Yard and returning to User's Mainline and (b) the Designated Contact will not be permitted to operate north of such point except for the limited and sole purpose of switching the APC Storage Yard.
- 9.7 Each party shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state 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. Each party shall indemnify, protect, defend, and save harmless the other party and its parent corporation, subsidiaries, and affiliates, and all of their respective directors, officers, agents, employees, and partners from and against all claims, demands, costs, expenses, obligations, fines, penalties, and liabilities (including reasonable attorneys' fees and expenses and court and litigation costs) imposed upon the other party or its parent corporation, subsidiaries, and affiliates, and all of their respective directors, officers, agents, employees, or partners under such laws, rules, and regulations by any public authority or court having jurisdiction, when attributable to the failure of that party to comply with its obligations set forth in this Section 9.7.
- 9.8 User in its use of the Subject Trackage shall comply in all respects with its own safety and general conduct rules, equipment operation and train handling rules, and hazardous materials instructions. While using the Subject Trackage, User shall comply in all respects with its own operating rules, timetables, and special instructions, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage

shall at all times be subject to the orders of User's transportation officers; provided, however, that such operating rules, timetables, and special instructions and orders of User's transportation officers shall not unjustly discriminate between the parties. User's trains shall not include locomotives, cars, or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage, and User's trains shall be powered to permit operation at posted speeds and shall not contain any locomotives, cars or equipment which require speed restrictions or other movement restrictions which would not permit operation of User's trains at posted speeds. The parties shall make proper accommodation for exceptions, should that be reasonable, necessary, and practicable.

- 9.9 As discussed in Section 9.8, User's operations over the Subject Trackage shall be governed by User's operating rules and timetable, provided that User's timetable will show the SERC branch with instructions for contacting Owner's Designated Contact for permission to enter the Subject Trackage.
- 9.10 If any employee of User shall neglect, refuse, or fail to abide by Owner's rules, instructions, and restrictions governing the operation on or along Owner's property, such employee shall, upon written request of Owner, be prohibited by Owner from working on Owner'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 User, then upon such notice presented in writing, User 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 User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If the result of such investigation warrants, such employee shall, upon written request by Owner, be withdrawn by User from service on Owner's property, and User shall release and indemnify Owner from and against any and all claims and expenses because of such withdrawal.
- 9.11 The trains, locomotives, cars, and equipment of User, Owner, and any other present or future party on the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to any party and in such manner as will afford the most economical and efficient movement of all traffic.
- 9.12 In the event that (i) a train of User shall be forced to stop on the Subject Trackage, due to mechanical failure of User's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or (ii) a train of User fails to maintain the speed required by Owner on the Subject Trackage, or (iii) in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the reasonable cost of rendering any such assistance.

9.13 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in a train of a party hereto in order to move them off the Subject Trackage, such work shall be done by that party or its agent or contractors.

**SECTION 10.0 MILEAGE AND CAR HIRE**

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

**SECTION 11.0 CLEARING OF WRECKS**

11.1 Whenever User's use of the Subject Trackage requires rerailling, wrecking service, or wrecking train service, User shall perform such service, excluding the repair and restoration of roadbed, track, and structures which shall be performed by Owner at Users' expense. The cost, liability, and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or 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 12 hereof. Unless otherwise agreed by the parties hereto, all locomotives, cars, and equipment and salvage so picked up and removed in accordance with this Section 11.1 that are owned by, in the account of, or under the management and control of a party hereto at the time of such wreck shall be promptly delivered to that party.

**SECTION 12.0 LIABILITY**

12.1 The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (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 attorneys' fees resulting from the use of the Subject Trackage by either party to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss (including without limitation damage to the environment) results from the use of the Subject Trackage solely by the trains, cars, locomotives, and equipment of one of the parties to this Agreement, then that using party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
- (b) If a Loss results from the use of the Subject Trackage by the trains, cars locomotives, and equipment of both Owner and User, then: (i) each of Owner and User is solely responsible for any Loss to its own employees, trains, cars, locomotives, and equipment in its own account including lading and (ii) Owner and User are

responsible for any Loss to the Subject Trackage and Loss sustained by third parties, in proportional responsibility between them as to the cause of the Loss.

If any damage to the environment, including without limitation land, air, water wildlife, and vegetation, that occurs with both Owner's and User's traffic or trains, cars, locomotives, and equipment being involved, then as between themselves, (i) Owner shall be solely responsible for any damage or destruction to the environment and to third parties that results solely from a release of a substance from Owner's trains, cars, locomotives, or equipment, (ii) User shall be solely responsible for any damage or destruction to the environment and to third parties that results solely from a release of a substance from User's trains, cars, locomotives, or equipment, and (iii) responsibility for damage or destruction to the environment and to third parties that results from releases of substances transported in cars or equipment in revenue waybill and car hire accounts or locomotives of both Owner and User, to the extent not allocable under subclauses (i) and (ii) above, shall be shared by the parties by calculating the respective proportion of cars or equipment in the revenue waybill and car hire account of each party or locomotives of each party from which there was such a release, out of the total number of cars, equipment and locomotives of both Owner and User from which there was such a release.

- (c) If a Loss results from the use of the Subject Trackage by the trains, cars, locomotives, and equipment of both User and any other third party user of the Subject Trackage not a party to this Agreement, then User's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered Owner for the purpose of determining User's share of that portion of the Loss that it must assume.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to any party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its subsidiaries, and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.
- (e) In every case of death or injury suffered by an employee of either Owner or User, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

- (f) For purposes of determining liability, in the event that any pilots are furnished by Owner to User pursuant to this Agreement, such pilots shall be considered as the employees of User while such employees are on board or getting on or off trains of User.
- (g) If any suit or action shall be brought against User or Owner for damages which under the provisions of the 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 be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- (h) In the event of a Loss as set out herein, the parties to this Agreement 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.
- (i) Notwithstanding any and all of the forgoing provisions of this Section 12, in the event a Loss occurs while the Subject Trackage is being used by Owner and/or User, and such Loss is attributable solely to the willful or wanton negligence of only one of the parties to this Agreement, then such party that was so willfully or wantonly negligent shall be solely responsible for such Loss.

### **SECTION 13.0      INSURANCE**

- 13.1 Owner 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 pursuant to this Agreement. Such insurance shall provide minimum limits of fifteen million dollars (\$15,000,000) per occurrence but may be subject to a deductible of two hundred thousand dollars (\$200,000). The insurance procured pursuant to this Agreement must include coverage for contractual liability and must provide coverage for punitive and exemplary damages, where permitted by law, and must not exclude coverage based on proximity to a railroad right of way. The insurer must be rated A- or better by A.M. Best Company, Inc. and said policy or policies shall name User as an additional insured.
- 13.2 If the insurance provided under this Section 13 takes the form of a Claims Made Policy, Owner shall purchase whatever supplemental coverage may be necessary to provide continuous coverage of its potential liability under this Agreement, with annual occurrence and annual aggregate limits no less than those required by Section 13.1, for a period of time lasting at least five (5) years following the termination or expiration of this Agreement. Owner shall immediately give written notice to the Director Risk Management, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510, of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company.
- 13.3 Subject to User's approval, Owner may self-insure its obligations as required by this Agreement.

- 13.4 On or before each tenth anniversary of this Agreement from its Commencement Date, User may require an increase in the amount of insurance coverage required by this Section, or changes in the terms and conditions of the policy, provided the amount of the increase does not exceed five million dollars (\$5,000,000).
- 13.5 Owner will endeavor to give User at least sixty (60) days' notice, in writing, of any proposed policy cancellation and of any material modification of the terms and conditions of the policy.
- 13.6 Prior to the Commencement Date of this Agreement, Owner will furnish to User's Director Risk Management a certificate of insurance which evidences coverage as required by this Agreement. Compliance with this requirement will not relieve Owner of any other obligation under this Agreement and will in no way limit or modify Owner's obligation to provide the specific insurance coverage required by this Agreement.
- 13.7 User undertakes to act and will continue to act as a self-insurer of its liabilities, if any, and will pay all sums which it shall become legally obligated to pay in connection with this Agreement. User further certifies that it maintains insurance coverage above its self-insured retention.

#### **SECTION 14.0      INVESTIGATION AND CLAIMS**

- 14.1 Except as provided in Section 14.2 hereof, all claims, injuries, deaths, 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.
- 14.2 Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.
- 14.3 In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.
- 14.4 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 employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

- 14.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds ten thousand dollars (\$10,000).
- 14.6 Except as provided in Section 12.1(i), each party to this Agreement agrees to indemnify and hold harmless the other party and their respective stockholders and its parent corporation, subsidiaries and affiliates, and any and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, or those of its subsidiaries, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval or exemption of the Agreement, or pursuant to a collective bargaining 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 employees arising under its collective bargaining agreements with its employees. Similarly, each party to this Agreement agrees to indemnify and hold harmless the other party 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.
- 14.7 It is understood that nothing in this Section 14 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

#### **SECTION 15.0 DEFAULT AND TERMINATION**

- 15.1 In the event of any material failure on the part of a party to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from the non-defaulting party, the non-defaulting party shall have the right at its option, and after first giving thirty (30) days' written notice thereof by certified mail, and notwithstanding any waiver by the non-defaulting party of any prior breach thereof, to terminate this Agreement. The exercise of such right by the non-defaulting party shall not impair its rights under this Agreement or any cause or causes of action it may have against the defaulting party for the recovery of damages.

#### **SECTION 16.0 REGULATORY APPROVAL**

- 16.1 Should implementation of this Agreement require the prior approval of the Surface Transportation Board ("STB") or other regulatory authority, User at its own cost and expense will initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. User shall provide a draft of any such application and petition to

Owner for Owner's review, prior to filing, and Owner will assist and support efforts of User to meet the requirements of this Section 16.

- 16.2 In the event the Agreement is terminated under Section 21, User at its own cost and expense will initiate and thereafter diligently pursue an appropriate application or petition to secure such approval of the discontinuance of its operations over the Subject Trackage. User shall provide a draft of any such application and petition to Owner for Owner's review, prior to filing, and Owner will assist efforts of User to meet the requirements of this Section 16.

#### **SECTION 17.0      FORCE MAJEURE**

- 17.1 Neither party to this Agreement shall be responsible to the other party hereto for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, intrusions from space, including, but not limited to, solar flares, asteroids, meteors, or magnetic disturbances, 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, provided that, the party declaring *force majeure* shall use commercially reasonable efforts to continue to meet its obligations under this Contract during the *force majeure* condition and to remedy the cause thereof. The party declaring *force majeure* shall promptly notify the non-declaring party in writing when the *force majeure* begins, and shall further notify the non-declaring party in writing of the nature of the *force majeure*, commercially reasonable efforts taken to continue to meet its obligations under this Contract during the *force majeure* and to remedy the cause thereof, and when the *force majeure* is terminated.

#### **SECTION 18.0      GENERAL PROVISIONS**

- 18.1 This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.
- 18.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 18.3 This Agreement contains the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.
- 18.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

- 18.5 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, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.
- 18.6 Except as otherwise expressly set forth in this Agreement, 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.
- 18.7 This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.
- 18.8 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, no party hereto may disclose the provisions of this Agreement or any commercial information to which access is provided or obtained hereunder to any party, excluding Owner's and User's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other party.

**SECTION 19.0      SUCCESSORS AND ASSIGNS**

- 19.1 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that Owner shall not transfer nor 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 User.

**SECTION 20.0      NOTICE**

- 20.1 Any notice required or permitted to be given by one party to the other under this Agreement shall be transmitted by certified mail or by overnight delivery service, or by such other means as the parties may mutually agree, and shall be addressed as follows:

If to Owner:

c/o Vice President & General Manager  
Southern Electric Railroad Company  
P.O. Box 10266  
Birmingham, AL 35202

If to User:

c/o Director-Joint Facilities  
Norfolk Southern Railway Company  
1200 Peachtree St NE  
Atlanta, GA 30309

- 20.2 Any party may provide changes in the above addresses to the other parties in accordance with the provisions in this Section 20. All notice will be deemed effective on the third business day following the date of certified mailing, or on the first business day following the date sent via overnight delivery service, or as otherwise agreed to by the parties.

**SECTION 21.0 COMMENCEMENT, TERM, AND TERMINATION**

- 21.1 This Agreement shall be effective on the date first written above. User's trackage rights shall commence and take effect on the date mutually agreed upon in writing between Owner and User ("Commencement Date"), which shall not occur until the effective date of any required STB or other regulatory authorization or exemption of User's trackage rights granted by this Agreement (including compliance with any condition(s) imposed by the STB in connection with such authorization or exemption) or January 1, 2016, whichever is later.
- 21.2 Except as otherwise provided in this Agreement, this Agreement will continue in full force and effect until mutually terminated in writing by Owner and User, provided that User shall have the unilateral right to terminate this Agreement for any reason upon sixty (60) days prior written notice to Owner.
- 21.3 Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed by, or from any liability imposed on, such party under the terms of this Agreement prior to the termination hereof.

**SECTION 22.0 CHOICE OF LAW**

- 22.1 The laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties arising hereunder, without regard to the laws that might otherwise govern under the applicable principles of conflicts of law thereof.

**SECTION 23.0 EXTENT OF WAIVER AND INDEMNIFICATION**

- 23.1 As part of the consideration hereof, all of the waiver and indemnification commitments of each party contained herein in favor of the other party shall also extend to and constitute a waiver or indemnification, as applicable, to the other party's parent, subsidiaries, affiliated entities and its and their respective officers, directors, agents and employees.

**SECTION 24.0      SEVERABILITY**

24.1 If any part of this Agreement is determined to be invalid, illegal, or unenforceable, such determination will not affect the validity, legality, or enforceability of any other part of this Agreement and the remaining parts of this Agreement will be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

**SECTION 25.0      EXECUTION OF COUNTERPARTS**

25.1 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.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

**WITNESS**

**SOUTHERN ELECTRIC RAILROAD  
COMPANY**

\_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**WITNESS**

**NORFOLK SOUTHERN RAILWAY  
COMPANY**

\_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**EXHIBIT A  
MAP**



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 36020**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
– TRackage RIGHTS EXEMPTION –  
SOUTHERN ELECTRIC RAILROAD COMPANY**

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**VERIFIED NOTICE OF EXEMPTION**

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**EXHIBIT 3**

**CAPTION SUMMARY  
FEDERAL REGISTER NOTICE**

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 36020

NORFOLK SOUTHERN RAILWAY COMPANY  
– TRACKAGE RIGHTS EXEMPTION –  
SOUTHERN ELECTRIC RAILROAD COMPANY

Southern Electric Railroad Company (“SERC”) will agree to grant restricted overhead trackage rights to Norfolk Southern Railway Company (“NS”) over SERC’s mainline between MP 0.0 and MP 0.6 in the vicinity of Jefferson County, Alabama, a distance of approximately 0.6 miles. The restricted overhead trackage rights will allow NS to serve the James H. Miller, Jr. Electric Generating Plant owned by Alabama Power Company near West Jefferson, Jefferson County, Alabama.

The trackage rights will be consummated on or after May 11, 2016.

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

Director, Office of Proceedings

**VERIFICATION**

I, Aarthy S. Thamodaran, declare under penalty of perjury that I am authorized to make this verification on behalf of Norfolk Southern Railway Company, and that the information included in the foregoing Verified Notice of Exemption is true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'A. S. Thamodaran', is written over a horizontal line.

Aarthy S. Thamodaran  
Assistant General Attorney  
Norfolk Southern Corporation

Dated: April 8, 2016