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# FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

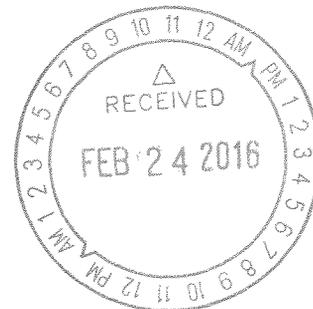
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**ENTERED**  
**Office of Proceedings**  
**February 24, 2016**  
**Part of**  
**Public Record**

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February 24, 2016



## VIA FEDEX

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

Re: *Wisconsin Chicago Link Ltd. – Discontinuance of Service Exemption – In Cook County, Ill.,*  
STB Docket No. AB-1238X

and

*Chicago, Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, and Wisconsin Central Ltd. – Trackage Rights Exemption – Norfolk Southern Railway Company,*  
Docket No. FD 35961

## **CONTAINS MATERIALS FILED UNDER SEAL PURSUANT TO A MOTION FOR ISSUANCE OF A PROTECTIVE ORDER**

Dear Ms. Brown:

Enclosed are the following filings:

1. An original and 11 copies of a verified discontinuance of service notice of exemption on behalf of Wisconsin Chicago Link Ltd., pursuant to the Board's class exemption procedures at 49 C.F.R. § 1152.50; and
2. An original and ten copies of a verified notice of exemption for a trackage rights transaction on behalf of Chicago, Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, and Wisconsin Central Ltd., pursuant to the Board's class exemption procedures at 49 C.F.R. § 1180.2(d)(7).
3. An original and ten copies of a motion for a protective order to submit under seal in the FD 35961 proceeding an unredacted copy of a draft trackage rights agreement.

FEE RECEIVED  
February 24, 2016  
SURFACE  
TRANSPORTATION BOARD

FILED  
FEBRUARY 24, 2016  
SURFACE  
TRANSPORTATION BOARD

# FLETCHER & SIPPEL LLC

Cynthia T. Brown, Chief  
February 24, 2016  
Page 2

(The above-referenced trackage rights notice of exemption filing contains at Exhibit B a redacted copy of the draft trackage rights agreement.)

4. A sealed envelope containing unredacted copies of the draft trackage rights agreement that is the subject of the FD 35961 proceeding, submitted pursuant to the aforementioned motion for protective order.

A check in the amount of \$5,100.00, representing the appropriate aggregate fees for both filings (\$3,900 for the discontinuance notice of exemption, and \$1,200 for the trackage rights notice of exemption) is attached.

If you have any questions regarding the enclosed filings, please feel free to contact me. Thank you for your assistance on these matters. Kind regards.

Sincerely,



Robert A. Wimbish  
Counsel for Wisconsin Chicago Link Ltd., Chicago  
Central & Pacific Railroad Company, Grand  
Trunk Western Railroad Company, Illinois  
Central Railroad Company, and Wisconsin  
Central Ltd.

Enclosures

cc: Thomas J. Healey

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 35961

CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY,  
GRAND TRUNK WESTERN RAILROAD COMPANY,  
ILLINOIS CENTRAL RAILROAD COMPANY, AND  
WISCONSIN CENTRAL LTD.  
-- TRACKAGE RIGHTS EXEMPTION --  
NORFOLK SOUTHERN RAILWAY COMPANY

---

**VERIFIED NOTICE OF EXEMPTION OF  
CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY,  
GRAND TRUNK WESTERN RAILROAD COMPANY,  
ILLINOIS CENTRAL RAILROAD COMPANY, AND  
WISCONSIN CENTRAL LTD.  
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Robert A Wimbish  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1504

**ATTORNEY FOR CHICAGO CENTRAL & PACIFIC  
RAILROAD COMPANY, GRAND TRUNK  
WESTERN RAILROAD COMPANY, ILLINOIS  
CENTRAL RAILROAD COMPANY, AND  
WISCONSIN CENTRAL LTD.**

Dated: February 24, 2016

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 35961

CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY,  
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WISCONSIN CENTRAL LTD.  
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Chicago, Central & Pacific Railroad Company (“CCP”), Grand Trunk Western Railroad Company (“GTW”), Illinois Central Railroad Company (“IC”), and Wisconsin Central Ltd. (“WCL”),<sup>1</sup> all of which are common carriers by rail, hereby file this verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) to acquire overhead trackage rights over a line of railroad of Norfolk Southern Railway Company (“NSR”) located in Chicago, Cook County, Illinois, consisting of NSR’s portion of a rail route known as the CREATE Western Avenue Corridor between milepost UW 0.0 (CP 518) and milepost UW 5.3 (Ogden Junction), a distance of approximately 5.3 miles, and, in addition, over that portion of NSR’s CREATE project WA7 track, when built, extending between Brighton Park and 21<sup>st</sup> Street, including that portion connecting to BNSF’s Chillicothe Subdivision.

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<sup>1</sup> Collectively, CCP, GTW, IC, and WCL will be referred to herein as the “CN Roads.”

In accordance with the requirements of 49 C.F.R. § 1180.4(g), the CN Roads submit the following information:

**Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)**

CCP, GTW, IC, and WCL are indirect subsidiaries of Canadian National Railway Company (“CNR”). See Canadian Nat’l Ry. – Control – EJ&E W. Co., Docket No. FD 35087 (STB served Dec. 24, 2008), and see also Wisconsin Central Ltd. – Intra-Corporate Family Merger Exemption – Elgin, Joliet and Eastern Railway Company, Docket No. FD 35630 (STB served Jun. 8, 2012).<sup>2</sup> As such, the CN Roads are implementing a transaction to be governed by a single agreement with NSR, and they may therefore present the subject trackage rights arrangement under a single docket. See, e.g., Chicago, Central & Pacific Railroad Company, Elgin, Joliet and Eastern Railroad Company, Illinois Central Railroad Company, and Wisconsin Central Ltd. – Trackage Rights Exemption – CSX Transportation, Inc., Docket No. FD 35522 (Sub-No. 2) (STB served Feb. 8, 2013).

Pursuant to a written trackage rights agreement among CCP, GTW, IC, WCL and NSR (hereinafter the “Trackage Rights Agreement”), each of the CN Roads will acquire non-exclusive overhead trackage rights over NSR’s line of railroad between Milepost UW 0.0 (CP 518) and Milepost UW 5.3 (Ogden Junction), distance of approximately 5.3 miles, and over that portion of NSR’s CREATE project WA7 track, when built, extending between Brighton Park and 21<sup>st</sup> Street, including that portion connecting to BNSF’s Chillicothe Subdivision. The terms of the governing trackage rights agreement will entitle the CN Roads to enter and exit at Ogden Junction., 21st Street, Ash Street, Brighton Park, and any current or future connections and

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<sup>2</sup> CN’s U.S. rail subsidiaries, including CCP, GTW, IC, and WCL, are held directly or indirectly by Grand Trunk Corporation (“GTC”), a wholly-owned, indirect subsidiary of CNR, and they report to the Board on a consolidated basis under the GTC name.

crossovers along the trackage rights route that may be constructed or reconstructed. The two rail line segments over which the CN Roads propose to acquire trackage rights in this proceeding constitute NSR's portion of what is now regarded as the "CREATE Western Avenue Corridor" in Chicago. Both line segments over which the CN Roads will acquire trackage rights are integral and non-severable elements of the transaction, and STB authorization of trackage rights operations over both segments is necessary to permit related Western Avenue Corridor transactions to occur.

The full names and addresses of the applicant carriers herein are as follows:

Chicago, Central & Pacific Railroad Company; Grand Trunk Western Railroad Company; Illinois Central Railroad Company; Wisconsin Central Ltd.

The business address of each of the CN Roads is as follows:

17641 South Ashland Avenue  
Homewood, Illinois 60430  
(708) 332-4381

Any questions concerning this Notice should be sent to the CN Roads'

representative at the following address:

Robert A. Wimbish  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1504

**Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)**

The CN Roads intend to consummate the exemption authority proposed in this notice on or after March 25, 2016.

**Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)**

The proposed trackage rights are intended to facilitate CREATE-related track projects (and transfers); the CN Roads will be granted the subject trackage rights as part of a series of transactions designed to promote railroad traffic fluidity in Chicago. As has been agreed to by the parties, the effectuation of the present transaction is a precondition to the termination of leasehold and incidental trackage rights interests that the CN Roads' corporate affiliate, Wisconsin Chicago Link Ltd. ("WCLL"), holds in a parallel-running NSR-owned rail line known as the "Panhandle Line" that is also situated along the CREATE Western Avenue Corridor.<sup>3</sup> As such, the proposed transaction extends to the CN Roads operating rights over the Western Avenue Corridor replacing those that WCLL will relinquish in the interest of facilitating CREATE-oriented transactions among other railroads in Chicago.

**States in Which Applicants' Property is Located: 49 C.F.R. § 1180.6(a)(5)**

CCP: Illinois, Iowa, Nebraska

GTW: Illinois, Indiana, Michigan, Ohio

IC: Alabama, Illinois, Kentucky, Louisiana, Mississippi, Tennessee

WC: Illinois, Indiana, Michigan, Minnesota, Wisconsin

**Map: 49 C.F.R. § 1180.6(a)(6)**

A map of the rail line over which the CN Roads propose to acquire trackage rights is attached hereto as Exhibit A.

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<sup>3</sup> See Wisconsin Chicago Link Ltd. – Discontinuance of Service Exemption – In Cook County, IL, Docket No. AB-1238X (also filed on February 24, 2016).

**Agreement: 49 C.F.R. § 1180.6(a)(7)(ii)**

An executed copy of the Trackage Rights Agreement among the CN Roads and NSR is attached hereto as Exhibit B.

**Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)**

As a condition to this exemption, the CN Roads understand that to the employee protective conditions established in 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) are applicable to this transaction.

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

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

**Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)**

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

Respectfully submitted,

By: 

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

**ATTORNEY FOR CHICAGO CENTRAL &  
PACIFIC RAILROAD COMPANY, GRAND  
TRUNK WESTERN RAILROAD COMPANY,  
ILLINOIS CENTRAL RAILROAD COMPANY,  
AND WISCONSIN CENTRAL LTD.**

Dated: February 24, 2016

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 35961

CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY,  
GRAND TRUNK WESTERN RAILROAD COMPANY,  
ILLINOIS CENTRAL RAILROAD COMPANY, AND  
WISCONSIN CENTRAL LTD.  
-- TRACKAGE RIGHTS EXEMPTION --  
NORFOLK SOUTHERN RAILWAY COMPANY

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**VERIFIED NOTICE OF EXEMPTION OF  
CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY,  
GRAND TRUNK WESTERN RAILROAD COMPANY,  
ILLINOIS CENTRAL RAILROAD COMPANY, AND  
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PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

**EXHIBIT A**

**MAP**

Exhibit A - CN Trackage Rights on NS

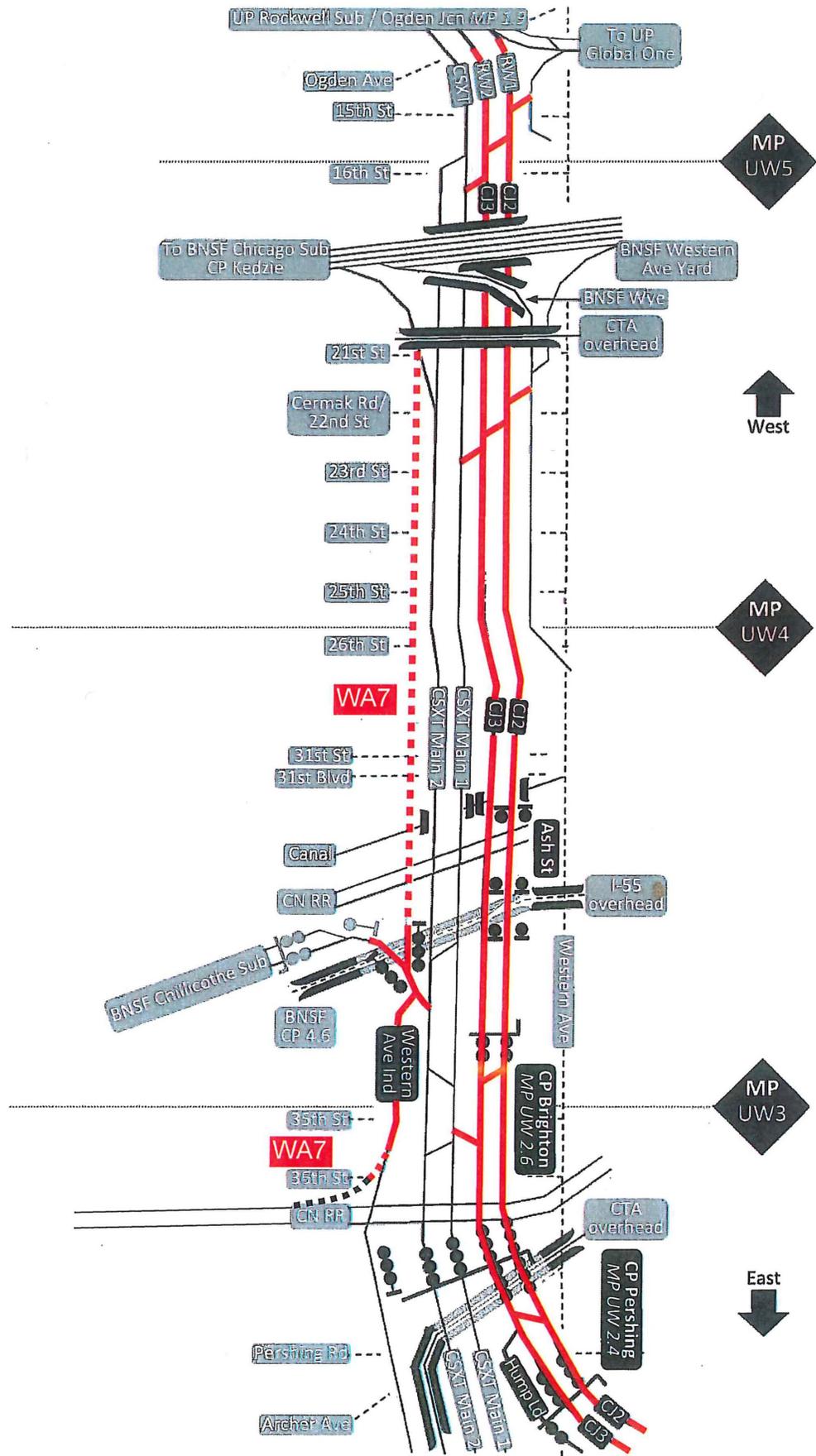
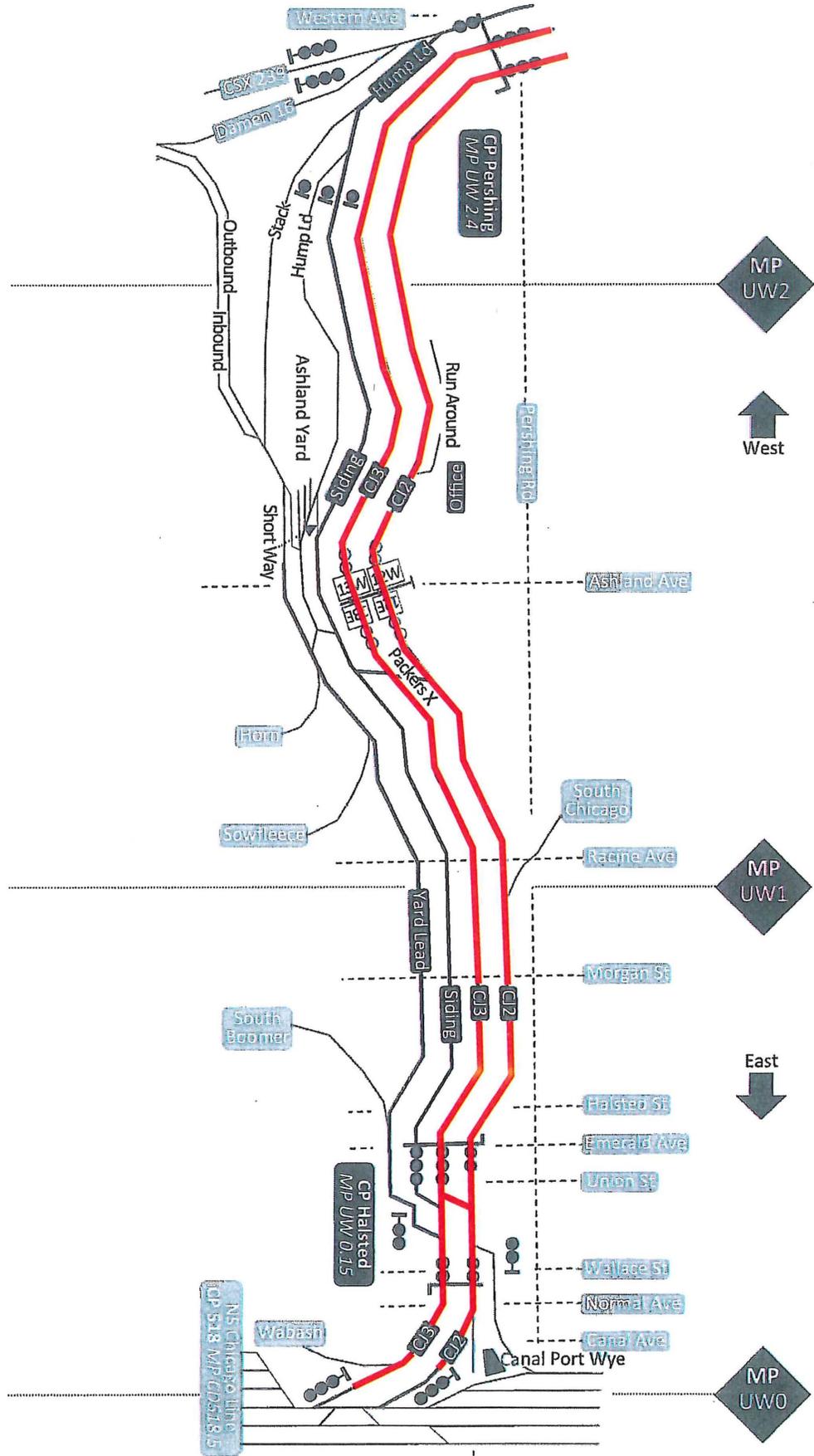


Exhibit A - CN Trackage Rights on NS



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 35961

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PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

**EXHIBIT B**

**49 C.F.R. §1180.6(a)(7)(ii)**

**TRACKAGE RIGHTS AGREEMENT  
(REDACTED)**

**TRACKAGE RIGHTS AGREEMENT**

**between**

**NORFOLK SOUTHERN RAILWAY COMPANY**

**And**

**WISCONSIN CENTRAL LTD.  
CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY  
GRAND TRUNK WESTERN RAILROAD COMPANY  
ILLINOIS CENTRAL RAILROAD COMPANY**

**Relating to User's Limited Trackage Rights**

**on Owners Portion of the CREATE Western Avenue Corridor**

## TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of this 11th day of February 2016, by and between NORFOLK SOUTHERN RAILWAY COMPANY (hereinafter referred to as ("NSR" or "Owner") and WISCONSIN CENTRAL LTD., CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY, GRAND TRUNK WESTERN RAILROAD COMPANY, and ILLINOIS CENTRAL RAILROAD COMPANY (hereinafter collectively referred to as ("CN" or "User")).

**WHEREAS**, in Application of the New York Central Railroad Company ("NYC") for Approval of Purchase of Stock, Lease of property, and Option to Purchase Stock or Property, Interstate Commerce Commission ("ICC") Finance Docket No. 1165 (decided May 16, 1922) (the "Chicago Junction Case"), the ICC approved of the NYC's purchase of the Chicago River and Indiana Railroad Company (the "CR&I") and CR&I's lease of the Chicago Junction Railway ("CJ," together with the CR&I referred to as the "Chicago Terminal Properties"); and

**WHEREAS**, in its order in the Chicago Junction Case, the ICC imposed conditions to ensure that switching, car service, and trackage rights agreements would remain in effect so that access to the Chicago Terminal Properties would be available to all connecting line-haul carriers; and

**WHEREAS**, Conrail, as successor in interest to NYC, reaffirmed in a 1989 ICC proceeding to revoke the conditions in the Chicago Junction Case that it continued to offer such trackage rights to other carriers and had no intention of foreclosing other carriers from the Chicago Terminal Properties (see Chicago Junction Case; Application of New York Central RR Co. for Approval of Purchase of Stock, Lease of Property, and Option to Purchase Stock or Property, ICC Finance Docket No. 1165 (Sub-No. 1) (ICC served August 18, 1989)); and

**WHEREAS**, Owner, as partial successor in interest to Conrail, owns and operates the segment of railroad located between Ogden Junction and CP 518 on Owner's portion of the CREATE Western Avenue corridor; and

**WHEREAS**, CN's Grand Trunk Western Railway Company subsidiary was a party to the Chicago Junction Case, and thus CN continues to have rights to operate between Ogden Junction and CP 518 as established in that case; and

**WHEREAS**, the United States Department of Transportation, the State of Illinois (acting by and through the State of Illinois Department of Transportation, "IDOT") and the City of Chicago have joined with the passenger and freight railroads serving the region to identify critically needed improvements to the Chicago region's rail and highway transportation infrastructure; and

**WHEREAS**, the resulting Chicago Region Environmental and Transportation Efficiency Program (hereinafter referred to as "CREATE", a public-private partnership, will include numerous improvements to railroad infrastructure in the Chicago region, including six (6) rail over rail crossings, 25 highway-railroad crossings, and provide new rail connections, crossovers, trackage, and other improvements to expedite train operations in their separate Chicago area rail corridors. CN and NSR are participants of CREATE; and

**WHEREAS**, CN and NSR are two of eight parties to an agreement ("Definitive Agreement") dated June 1, 2010 that, among other things set forth their understandings with

respect to the terms and conditions under which they will continue to participate in the CREATE Program; and

**WHEREAS**, Owner will construct a separate track known as CREATE project WA7 from Brighton Park to 21st Street in Chicago, Illinois; and

**WHEREAS**, Owner and User entered into an agreement dated October 1, 2000 whereby Owner leased to User a railroad corridor between the vicinity of Ogden Junction and Ash Street Interlocking ("WCLL Lease"); and

**WHEREAS**, simultaneously with the execution of the WCLL Lease, User and Owner entered into a trackage rights agreement dated October 1, 2000 whereby User granted to Owner limited trackage rights over User's tracks located on the property which was the subject of the WCLL Lease ("NSR Trackage Rights Agreement"); and

**WHEREAS**, Owner and User have agreed to terminate the WCLL Lease and the NSR Trackage Rights Agreement; and

**WHEREAS**, simultaneously with the termination of the WCLL Lease and NSR Trackage Rights Agreement, Owner has agreed to continue granting User limited trackage rights over Owner's portion of the CREATE Western Avenue corridor and to grant limited trackage rights over Owner's segment of the WA7 track, subject to the terms and conditions set forth herein.

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

**SECTION 1.0**                    **GRANT OF TRACKAGE RIGHTS**

1.1 Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in overhead freight service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of Owner's railroad as shown on Exhibit A-1 and A-2, which is attached hereto and made a part hereof ) (hereinafter referred to as the "Subject Trackage"):

- (a) That portion of Owner's railroad between Milepost UW 0.0 (CP 518) and Milepost UW 5.3 (Ogden Junction) on Owner's portion of the CREATE Western Avenue Corridor, a distance of approximately 5.3 miles.
- (b) That portion of the CREATE project WA7 track, when built, between Brighton Park and 21st Street, including that portion that connects to BNSF's Chillicothe Sub.
- (c) Such rights shall include,:
  - (i) all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and
  - (ii) right-of-way for the aforesaid tracks, signals, crossovers, diamonds, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto.

1.2 User has the right to enter and exit at Ogden Jct., 21<sup>st</sup> Street, Ash St., Brighton Park and any current or future connections and crossovers along the Subject Trackage that may be constructed or reconstructed.

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

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

2.2 Except as may otherwise be provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein precludes, upon prior approval of Owner, the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

2.3 Owner retains exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

2.4 User has the right to operate in either direction over the Subject Trackage.

2.5 Owner shall have exclusive control of the management and operation (including dispatching) of the Subject Trackage. Operation and control, including dispatching, will be in accordance with the specific terms of the Definitive Agreement Chicago Train Operations Protocol (dated May 1, 2003), ("Chicago Protocols"), attached hereto and made a part hereof as Exhibit B, pages 1 and 2. Such Chicago Protocols may be amended from time to time as mutually agreed and by written amendment executed by all parties to the Definitive Agreement.

2.6 In the event that the Chicago Protocols cease to be in effect, Owner and User agree that the Trackage Rights provided under this agreement shall be equal to the service Owner provides for its own rail traffic of similar type and commodity. Owner shall exercise reasonable diligence in the handling of trains under this Agreement to accomplish the through movement without undue delay. The management, operation, dispatching and maintenance of the Subject Trackage shall, at all times, be under the exclusive direction and control of Owner, and the movement of trains over and along the Subject Trackage shall at all times be subject to the direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time-to-time institute, but the management, operation, dispatching and maintenance of the Subject Trackage shall be made on a first come, first serve nondiscriminatory basis, without reference to ownership irrespective of whether the traffic is that of Owner or User, provided however that Amtrak intercity passenger trains shall continue to receive their statutory right of preference.

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

2.8 User shall ensure that User's crews when entering the Subject Trackage have sufficient time in which to traverse the Subject Trackage without having to recrew. If User's train is going to need to be recrewed, then User's crew shall notify Owner prior to expiring on the hours of service so that Owner's dispatcher can plan accordingly. User will arrange to have a recrew meet the train in order to cause minimum amount of delay. In the case of a

mechanical or other failure or User's failure to satisfy its obligation under this section, Section 9.8 will apply as to the re-crewing of User's trains at Owner's option.

### **SECTION 3.0            RESTRICTION ON USE**

3.1 The trackage rights herein granted are granted for the sole purpose of User using same for bridge traffic only between those entry and exit locations where User has the right to operate (those entry and exit locations identified in Section 1.0) over the Subject Trackage and User shall not perform any local freight service on Subject Trackage.

3.2 User may not grant rights of any nature on the Subject Trackage to other parties.

### **SECTION 4.0            COMPENSATION**

4.1 The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement is [REDACTED]

[REDACTED]. This rate does not cover any ancillary services such as intermediate or reciprocal switch charges, regardless of whether such switch charge is absorbed, weighing, lifts, haul-away or other drayage, or transloading services.

4.2 User shall pay Owner a sum computed by [REDACTED]

[REDACTED] For purposes of this Agreement, each locomotive unit, each caboose, and each platform of an articulated car shall be counted as one car.

4.3 With respect to articulate units, the number of cars will be determined by the AAR Car Type Code as defined in the ULMER Specification Manual. The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 53' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)

4.4 User shall furnish to Owner, in care of Manager Joint Facilities, or their designates, at the end of each month, [REDACTED]

[REDACTED]. Based on this statement, Owner shall render to User a bill, computed in accordance with the provisions of this Section 4, for User's use of the Subject Trackage.

4.5 The Base Charge will be revised to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

- (i) The Base Charge set forth in Section 4.1 of this Agreement will be revised effective July 1 of each year, beginning July 1, 2016 to compensate for the prior year increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the East District will be used.

The Base Charge will be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

- (ii) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the calendar year (2014) prior to the most recently completed calendar year; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the most recently completed calendar year (2015); and "C" to be the current Base Charge to be escalated; the revised Base Charge would be determined by the following formula:

$B/A \times C = \text{Revised Base Charge, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent)}$

- (iii) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR is changed from the year 1977, appropriate revision will be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease will be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Surface Transportation Board for determination. In the event said Board is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association will be final and binding upon the parties hereto. Each party to the arbitration will pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator will be borne equally by such parties.

PROVIDED, HOWEVER that under no circumstances

## **SECTION 5.0      PAYMENT OF BILLS**

5.1 User shall make all payments called for under this Agreement within thirty (30) days after receipt of bills therefore. No payments may be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto will be adjusted in the accounts of a subsequent month.

Each party hereto shall make their records, insofar as they pertain to matters covered by this Agreement, open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

5.2 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, must include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals as specified by Owner in effect at the time any work is performed by Owner for User or shall include actual costs and expenses upon mutual agreement of the Parties..

**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 in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations there over will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or 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 User resulting from any such failure or neglect.

6.2 Subject to the obligations of Owner described in 6.1 above, Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

**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, will continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements. If User desires a new or upgraded connection or other facility, Owner will approve such improvement if it does not adversely affect Owner's operations and will furnish the labor and materials for the construction on Owner's property as available, at User's sole cost and expense. User shall pay Owner for all maintenance expense for such new or upgraded connections or facilities.

**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, in its judgment, necessary or desirable for the economical or safe operation thereof or as required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments will become a part of the Subject Trackage and such retirements will be excluded from the Subject Trackage.

8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operation, Owner has the option to either (1) make such changes in or additions and betterments to the Subject Trackage, in which case User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or (2) to deny such request.

**SECTION 9.0            MANAGEMENT AND OPERATIONS**

9.1 When operating over the Subject Trackage, User shall equip its locomotives and crews to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User shall notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

9.4 User 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. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

9.5 User, in its use of the Subject Trackage, shall comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage will at all times be subject to the orders of the transportation officers of Owner. 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 except as provided for in normal clearance process protocols followed between Owner and User, and no train may contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage will be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, subject to availability as determined in the sole discretion of Owner and at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots

furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

9.7 If any employee of User neglects refuses or fails to abide by Owner's rules, instructions and restrictions governing the operation on or along Owner's property, such employee will, upon written request of Owner, be prohibited by Owner from working on Owner's property. If any party deems 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 will 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 will, 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.

9.8 In the event that User is unable to recrew User's train in an expeditious manner when on the Subject Trackage or User's train is unable to proceed under its own power due to mechanical inability or any other reason, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) 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 cost of rendering any such assistance.

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

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

#### **SECTION 10.0            MILEAGE AND CAR HIRE**

10.1 User shall assume all mileage and car hire charges accruing on cars in User's account in User's trains on the Subject Trackage and report and pay it directly to the owner 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, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. 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, will be apportioned in accordance with the provisions of Section 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

## **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, punitive or exemplary damages, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the parties 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 results from the use of the Subject Trackage solely by the trains and locomotives of one of the parties to this Agreement, then that using party is 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 and locomotives of both Owner and User, then: (i) each of Owner and User is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) Owner and User are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.

If any damage of the environment, including without limitation land, air, water wildlife, and vegetation, occurs with both Owner and User's traffic being involved, then as between themselves, (i) Owner is solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in such Owner's traffic and/or Owner's locomotive from which there is a release, (ii) User is solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in such User's traffic and/or a User's locomotive from which there was a release, and (iii) responsibility for damage or destruction to the environment and to third parties which results from one or more substances which was (or were) being transported in equipment in the revenue waybill and car hire accounts or locomotives of both Owner and User from which there was a release, is, to the extent not allocable under subparagraphs (i) and (ii) to the substance released, shared by the parties, with each party bearing the proportion of such liability equal to the proportion of number of cars in the revenue waybill and car hire account of that party and equipment and/or locomotives of that party from which there was such release, out of the total number of cars, in the revenue waybill and car hire account of all parties and equipment and/or locomotives of all parties from which there was such release.

- (c) If a Loss results from the use of the Subject Trackage by trains and locomotives 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 will 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 which 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 any party to this Agreement, 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 will 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, pilots furnished by Owner to User pursuant to this Agreement are 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 any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other party, the party sued shall notify said other party, and the party so notified will 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 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 will be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (i) Notwithstanding the provisions of Section 17.5 of this Agreement, for the purposes of this Section 12 the word "equipment" means and is confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (j) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner will be deemed performed for the sole benefit of User, and User will be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

## **SECTION 13.0      INVESTIGATION AND CLAIMS**

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement will be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

13.2 Each party shall investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. §11706 and 49 C.F.R. Part 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. §10709.

13.3 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.

13.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement will 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 will be borne by such party.

13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. §11706 or 49 C.F.R. Part 1005 or similar regulation, neither party will 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).

13.6 Each Party agrees to indemnify and hold harmless the other Party and their respective stockholders and its parent corporation, subsidiaries and affiliates, and 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, or those of its subsidiaries, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of the Agreement, or pursuant to a collective bargaining agreement. It is the intention of the parties that each party will 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.

13.7 It is understood that nothing in this Section 13 modifies or waives the conditions, obligations, assumptions or apportionments, or supersedes the provisions of Section 12 hereof.

#### **SECTION 14.0      DEFAULT AND TERMINATION**

14.1 In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner will have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner will not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

#### **SECTION 15.0      REGULATORY APPROVAL**

15.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.

15.2 Each party shall assume and hold the other party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

15.3 Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement; User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

## **SECTION 16.0      ABANDONMENT OF SUBJECT TRACKAGE**

16.1 Notwithstanding the provisions of Section 20 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. §10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. §10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

## **SECTION 17.0      GENERAL PROVISIONS**

17.1 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 should 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.

17.2 All Section headings are inserted for convenience only and do not affect any construction or interpretation of this Agreement.

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

17.4 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.

17.5 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.

17.6 All words, terms, and phrases used in this Agreement are to be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

17.7 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.

17.8 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, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either Owner or User to any party other than 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 18.0      SUCCESSORS AND ASSIGNS**

18.1 User may not assign this Agreement, in whole or in part, or any rights granted herein, or delegate to another party any duties hereunder, except a subsidiary, or an affiliate, without the prior written consent of Owner. Any transfer, assignment, or delegation of this Agreement by User, or of any rights or duties herein granted or imposed, whether voluntary, by operation of law, or otherwise, without such consent in writing, is absolutely void, and at Owner's option this Agreement may be terminated. Subject to this Section, this Agreement shall be binding upon and inure to the benefits of the parties hereto, their successors and assigns

#### **SECTION 19.0      NOTICE**

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

If intended for Owner:

Executive Vice President and  
Chief Operating Officer  
Network & Service Management  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191

With a copy to:

Director Joint Facilities  
Norfolk Southern Corporation  
1200 Peachtree Street, NE, Box 158  
Atlanta, Georgia 30309

If intended for User:

Sr. Vice President  
Southern Region  
17641 South Ashland Ave  
Homewood, IL 60430

With a copy to:

Region Director Contracts  
and Administration  
17641 South Ashland Avenue  
Homewood, IL 60430

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

## **SECTION 20.0 COMMENCEMENT, TERM AND TERMINATION**

20.1 This Agreement shall take effect on the date User commences operations over the Subject Trackage, but will not be prior to the effective date of any required regulatory approvals, and will be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto.

20.2 This Agreement will continue in full force and effect for a period of twenty (20) years from the Commencement Date, and will continue in full force and effect for an additional one (1) year term, provided, however, that User shall have the right to terminate this Agreement upon giving sixty (60) days' advance written notice to the Owner.

20.3 Termination of this Agreement will not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

20.4 Except as provided in Section 16, upon termination or non-renewal of this Agreement, User 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 Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all costs incurred.

## **SECTION 21.0 GOVERNING LAWS**

21.1 The terms of this Trackage Rights Agreement are governed by and construed in accordance with the laws of the State of Illinois.

## **SECTION 22.0 FORCE MAJEURE**

22.1 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. The party declaring force majeure shall promptly notify the other parties when the force majeure begins, the nature of the force majeure, and when the condition is terminated.

**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**

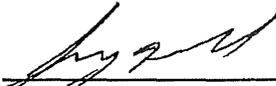
25.1 This Agreement may be executed in several counterparts, each of which will be deemed an original, and such counterparts shall constitute one and the same instrument.

**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**



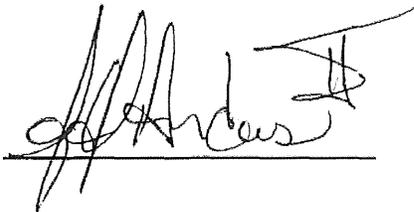
**NORFOLK SOUTHERN RAILWAY COMPANY**

By: 

Its: CP. NSM

Date: 2/14/16

**WITNESS**



**WISCONSIN CENTRAL LTD.  
GRAND TRUNK WESTERN RAILROAD COMPANY  
ILLINOIS CENTRAL RAILROAD COMPANY  
CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY**

By: 

Its: **Region Director Contracts & Administration**

Date: 2/17/16

Exhibit A - CN Trackage Rights on NS

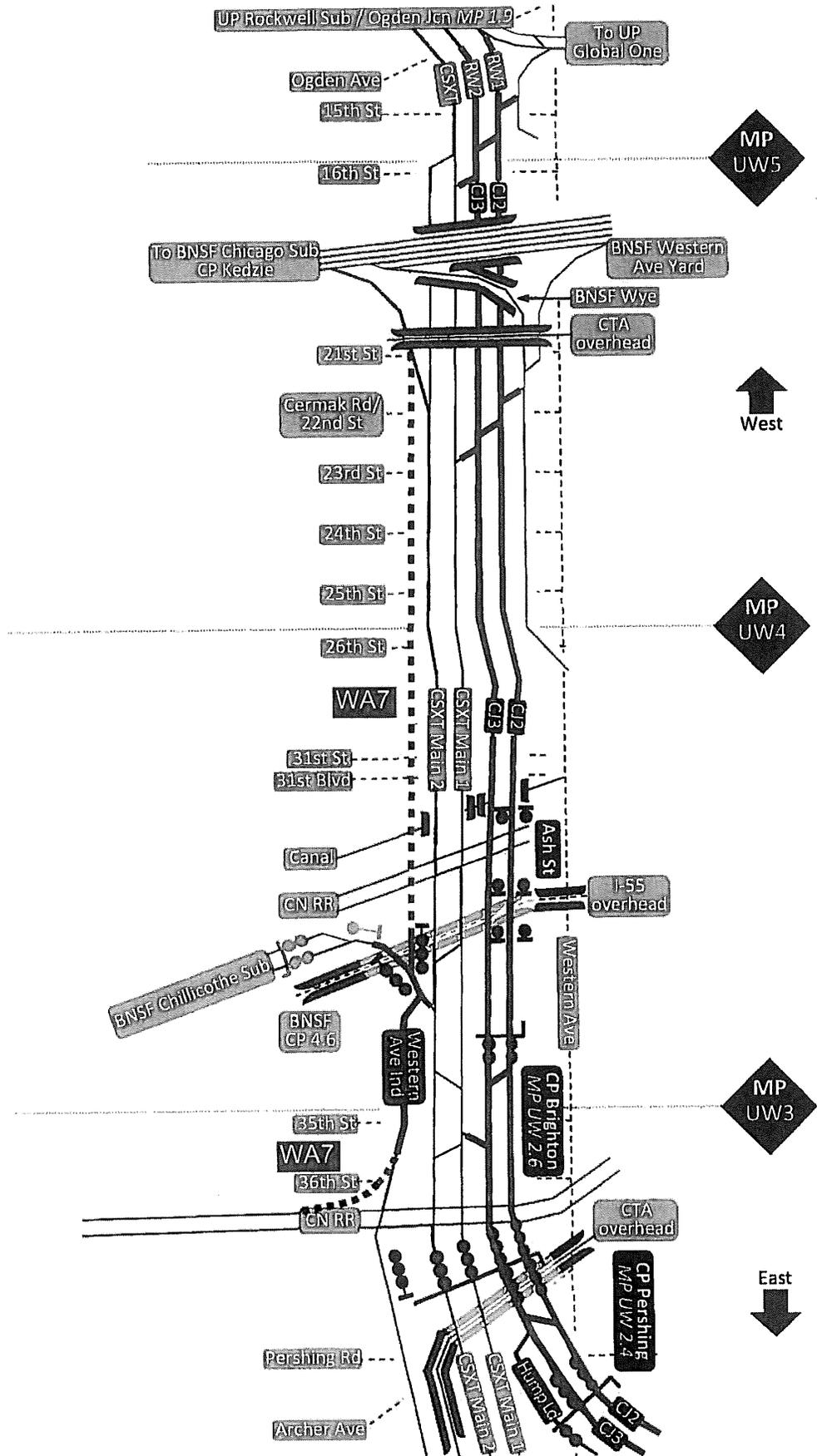
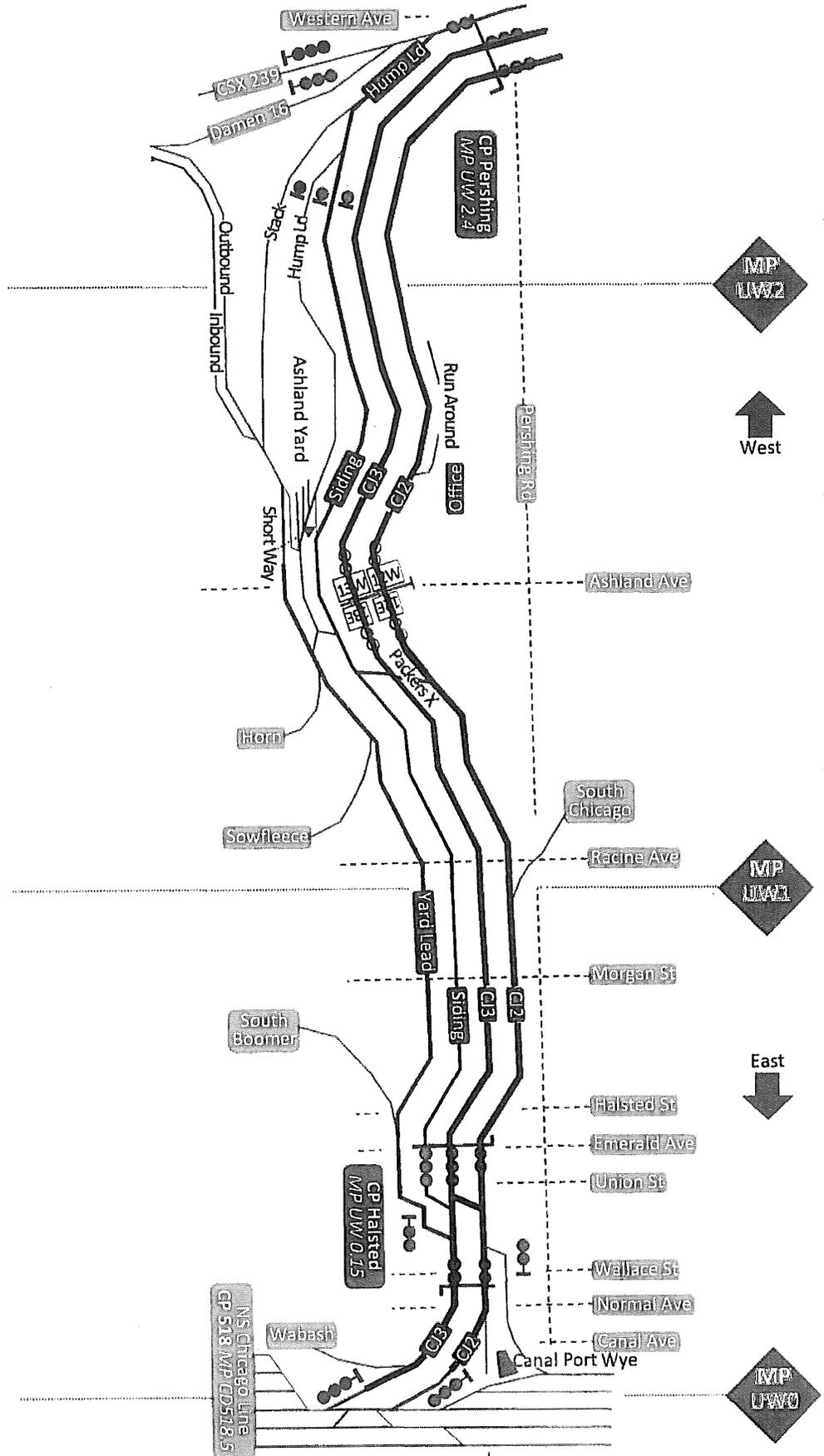


Exhibit A - CN Trackage Rights on NS



# **Chicago Train Operations Protocol Guidelines**

**Effective May 1, 2003**

## *Preface*

The railroad industry in Chicago has made great strides in the communications, processes, and procedures by which we operate throughout the entire terminal. The Chicago Train Operations Protocol Guidelines are designed to further enhance the relationships and etiquette by which all Rail Carriers conduct operations through Chicago. The philosophy towards this document was to first understand that the Owner road controls the line, and second to ensure Users will have access to a line, and be treated equitably. CTCO purposely avoided too much detail concerning the definition of scheduled trains, operating windows, slots, etc., as these Protocols are simple guidelines. It must be understood that all circumstances that can occur in day-to-day operations can not be foreseen, and therefore included in a Protocol Guideline document. The Protocol Guidelines basically ensures three points. First, that all Rail Carriers will continue to work together for the development of integrated operating plans for the terminal, second, that the execution of the plans are done on an equal basis, and third, that effort will be given to operate Passenger Service to meet the published schedules. While the Protocol is used as a guideline, when weather, service interruptions, maintenance activities, unplanned increases in train volume, or trains operating significantly outside their schedules occurs, a need may arise to deviate from the service "Plan". With this in mind, the involved Rail Carriers and CTCO will coordinate with each other to:

1. Identify and facilitate the utilization of alternate routes over all rail lines (including freight corridors that are part of the CREATE project);
2. Ensure that delays to all trains are minimized; and,
3. Protect the performance of those trains that are operating at times and over routes that are contained in the service "Plan".

# Chicago Train Operations Protocol Guidelines

Mainline Dispatching Operations - Effective May 1, 2003

**Scope:** These protocols are guidelines that apply on all segments of Trackage used by all Rail Carriers operating within the Chicago Switching District.

**Purpose:** To ensure that Users and Owners trains are given equal dispatch without any prejudice, partiality, or discrimination in promptness, quality of service or efficiency, and in such manner as will afford the most economical and efficient manner for movement of all trains.

**Train Operations:** Trains will be dispatched on the basis of an operating and service "Plan" developed jointly through the Interline Service Management process with all Freight Rail Carriers operating in Chicago, taking individual service plans and designated routes into account. The Plan may be modified from time to time as traffic and service commitments require. Owners will be responsible for establishing train operating parameters over their line with respect to passenger operations windows, time required prior to HOS before entering line, Users acceptance of trains at end of line, etc. Users will provide current reliable information, including train arrival time and train characteristics, preferably through the Line-up System, electronic data interchange, or dispatching visibility of adjoining lines, sufficiently in advance to allow for efficient dispatching. Decisions as to terminal departure times, priorities for meeting and passing trains and destination terminal receiving times shall be made on a non-discriminatory basis.

**Priorities:** While it is understood that the Owner has full control of a line, all Rail Carriers agree that the dispatching of trains will respect the schedule of trains, as contained in the service "Plan". As day-to-day events may dictate, the Owner will dispatch trains consistent with the following train priorities:

- |                |                 |                           |
|----------------|-----------------|---------------------------|
| (1) Passenger  | (3) Automotive  | (5) All Other Unscheduled |
| (2) Intermodal | (4) Merchandise |                           |

With respect to scheduled passenger service, trains will be dispatched to meet the schedules of the passenger service. Where passenger trains are operating outside of normal schedules, the lines will be dispatched consistent with the priorities listed above, and reasonable effort will be given to maintain the scheduled run-time of a passenger train across the line.

**Entry to Owner's Trackage:** At points where User's train enters Owner's track, entry will be provided by Owner based on the trains performance against it's schedule, and then, on a first-come, first-served basis, taking into consideration the relative priorities of affected trains and the specific needs and operating characteristics of individual trains of all railroads. If operating circumstances make strict application of the principle difficult or uncertain, CTCO will work with Users and Owners to establish standards for determining sequence of entry to such Trackage. The Rail Carriers will communicate daily on any conflicts concerning entry to Trackage to gain resolution.

**Review:** Rail Carriers will review quarterly, through the ISM process, the performance of operations over the lines. During the ISM meetings, Rail Carriers will make adjustments bi-laterally with the Owners, where necessary, to operating plans over the lines to ensure that all lines are being utilized properly to optimize train operations in Chicago.

**Modifications:** The ultimate objective of these protocol guidelines is the equal, flexible, and efficient handling of all trains of Users and Owners within the Chicago Switching District, and these protocol guidelines may be modified at any time by mutual agreement between the Rail Carriers.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 35961

CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY,  
GRAND TRUNK WESTERN RAILROAD COMPANY,  
ILLINOIS CENTRAL RAILROAD COMPANY, AND  
WISCONSIN CENTRAL LTD.  
-- TRACKAGE RIGHTS EXEMPTION --  
NORFOLK SOUTHERN RAILWAY COMPANY

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**VERIFIED NOTICE OF EXEMPTION OF  
CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY,  
GRAND TRUNK WESTERN RAILROAD COMPANY,  
ILLINOIS CENTRAL RAILROAD COMPANY, AND  
WISCONSIN CENTRAL LTD.  
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

## **EXHIBIT C**

## **CAPTION SUMMARY**

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION**

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DOCKET NO. FD 35961

CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY,  
GRAND TRUNK WESTERN RAILROAD COMPANY,  
ILLINOIS CENTRAL RAILROAD COMPANY, AND  
WISCONSIN CENTRAL LTD.  
-- TRACKAGE RIGHTS EXEMPTION --  
NORFOLK SOUTHERN RAILWAY COMPANY

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Norfolk Southern Railway Company (“NSR”) has agreed to grant overhead trackage rights to Chicago Central & Pacific Railroad Company (“CCP”), Grand Trunk Western Railroad Company (“GTW”), Illinois Central Railroad Company (“IC”), and Wisconsin Central Ltd. (“WCL”), over a line of railroad located in Chicago, Cook County, Illinois, consisting of NSR’s portion of a rail route known as the CREATE Western Avenue Corridor extending between milepost UW 0.0 (CP 518) and milepost UW 5.3 (Ogden Junction), a distance of approximately 5.3 miles, and over that portion of NSR’s CREATE project WA7 track, when built, extending between Brighton Park and 21<sup>st</sup> Street, including that portion connecting to BNSF’s Chillicothe Subdivision. The terms of the governing trackage rights agreement entitle CCP, GTW, IC and WCL to enter and exit at Ogden Junction, 21st Street, Ash Street, Brighton Park, and any current or future connections and crossovers along the trackage rights route that may be constructed or reconstructed. The trackage rights will become effective on or after March 25, 2016.

This Notice is filed under 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: March \_\_, 2016

By the Board

Director, Office of Proceedings

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 35961

CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY,  
GRAND TRUNK WESTERN RAILROAD COMPANY,  
ILLINOIS CENTRAL RAILROAD COMPANY, AND  
WISCONSIN CENTRAL LTD.  
-- TRACKAGE RIGHTS EXEMPTION --  
NORFOLK SOUTHERN RAILWAY COMPANY

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**VERIFIED NOTICE OF EXEMPTION OF  
CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY,  
GRAND TRUNK WESTERN RAILROAD COMPANY,  
ILLINOIS CENTRAL RAILROAD COMPANY, AND  
WISCONSIN CENTRAL LTD.  
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

## **VERIFICATION**

VERIFICATION

I, Paul E. Ladue, Region Director, Contracts and Administration for Chicago Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, and Wisconsin Central Ltd., declare under penalty of perjury that I have read the foregoing Notice of Exemption, that I know the facts asserted therein, and that the same are true as stated. Further, I certify that I am qualified to and authorized to provide this verification on behalf of Chicago Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, and Wisconsin Central Ltd.

Executed this 22<sup>nd</sup> day of February, 2016.



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Paul E. Ladue