

237499

# FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832

Phone: (312) 252-1500  
Fax: (312) 252-2400  
www.fletcher-sippel.com

WILLIAM C. SIPPEL  
(312) 252-1505  
wsippel@fletcher-sippel.com

January 15, 2015

**VIA FEDERAL EXPRESS**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20006

ENTERED  
Office of Proceedings

JAN 16 2015

Part of  
Public Record

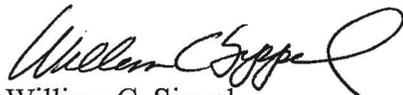
Re: **Finance Docket No. 35881**  
**South Carolina Division of Public Railways**  
**d/b/a Palmetto Railways -- Change in Operators**  
**Exemption -- North Charleston Terminal Company**

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of South Carolina Division of Public Railways d/b/a Palmetto Railways Pursuant to 49 C.F.R. § 1150.41(c)**, dated January 15, 2015. A check in the amount of \$1,800.00, representing the appropriate fee for this filing, and a compact disc containing the text of the Notice and the *Federal Register* caption summary in MS Word 2010 format are attached.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,



William C. Sippel  
Attorney for South Carolina Division of  
Public Railways d/b/a Palmetto Railways

WCS:tjl

Enclosures

**FEE RECEIVED**

JAN 16 2015

**SURFACE  
TRANSPORTATION BOARD**

**FILED**

JAN 16 2015

**SURFACE  
TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 35881

SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS  
D/B/A PALMETTO RAILWAYS  
-- CHANGE IN OPERATORS EXEMPTION --  
NORTH CHARLESTON TERMINAL COMPANY

---

**VERIFIED NOTICE OF EXEMPTION  
OF  
SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS  
d/b/a PALMETTO RAILWAYS  
PURSUANT TO 49 C.F.R. § 1150.41(c)**

William C. Sippel  
Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

**ATTORNEYS FOR  
SOUTH CAROLINA DIVISION OF PUBLIC  
RAILWAYS d/b/a PALMETTO RAILWAYS**

Dated: January 15, 2015

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 35881

SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS  
D/B/A PALMETTO RAILWAYS  
-- CHANGE IN OPERATORS EXEMPTION --  
NORTH CHARLESTON TERMINAL COMPANY

---

**VERIFIED NOTICE OF EXEMPTION  
OF  
SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS  
d/b/a PALMETTO RAILWAYS  
PURSUANT TO 49 C.F.R. § 1150.41(c)**

Pursuant to 49 C.F.R. § 1150.41, *et seq.*, South Carolina Division of Public Railways d/b/a Palmetto Railways ("Palmetto"), a Class III rail carrier, hereby files this Verified Notice of Exemption to assume operation of rail trackage in North Charleston, South Carolina (historically known as "Cosgrove Yard") currently leased to North Charleston Terminal Company ("NCTC") and operated by NCTC's owners CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR"). The current NCTC lease will expire on February 16, 2015, and NCTC, CSXT and NSR have agreed to assign their respective common carrier interest in Cosgrove Yard to Palmetto. Based on projected revenues for Cosgrove Yard, Palmetto expects to remain a Class III rail carrier after consummation of the transaction proposed herein.

In accordance with the requirements of 49 C.F.R. § 1150.43, Palmetto submits the following information:

**Name and Address of Applicant: 49 C.F.R. § 1150.43(a)**

The full name and address of the rail carrier applicant herein is as follows:

South Carolina Division of Public Railways d/b/a  
Palmetto Railways  
540 East Bay Street  
Charleston, South Carolina 29403  
(843) 727-2067

**Applicant's Representative: 49 C.F.R. § 1150.43(b)**

Palmetto's representative to whom correspondence regarding this transaction should be sent is as follows:

Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

**Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)**

NCTC's current lease of Cosgrove Yard is governed by a Supplemental Lease and Settlement Agreement dated May 30, 1995 between NCTC and Palmetto. That agreement expires by its terms on February 16, 2015. Palmetto, NCTC, CSXT and NSR are finalizing and will shortly execute an agreement providing for the assignment by NCTC, CSXT and NSR of their respective common carrier interest in Cosgrove Yard to Palmetto.

**Operation of the Property: 49 C.F.R. § 1150.43(d)**

Palmetto will operate and provide rail common carrier service to shippers located on the trackage of Cosgrove Yard pursuant to the transaction proposed herein. Palmetto's operations will replace those of NCTC and its owners CSXT and NSR, which will have no further common carrier obligation with respect to the property.

**Summary of the Transaction: 49 C.F.R. § 1150.43(e)**

Palmetto is a Class III common carrier by rail and a division of the South Carolina Department of Commerce. Palmetto and its predecessors have provided rail service in the Charleston, South Carolina area since 1926. It currently owns and operates port-related and other trackage in and around the Charleston area, and conducts operations previously provided under the names of three separate Class III railroads. See South Carolina Division of Public Railways, d/b/a Palmetto Railways -- Intra-Corporate Family Transaction Exemption -- The Port Utilities Commission of Charleston, S.C., Port Terminal Railroad of South Carolina, and East Cooper and Berkeley Railroad Company, Finance Docket No. 35762 (STB served September 13, 2013). NCTC is a terminal railroad that is jointly owned by CSXT and NSR, and is operated on an alternating basis by those two companies.

Cosgrove Yard consists of approximately 9.3 miles of track on 20.17 acres of property north of Interstate 526 in North Charleston, South Carolina. Despite its name and the fact that certain yard functions are performed there, the Cosgrove Yard trackage is used to serve several shippers with significant traffic volumes and is historically and presently considered a line of railroad subject to the Board's jurisdiction.

When the first tracks in what became Cosgrove Yard were constructed is unclear. According to the Petition for Exemption dated November 21, 1995 filed by NCTC with the Interstate Commerce Commission in Finance Docket No. 32691, North Charleston Terminal Company -- Lease and Operation -- South Carolina Division of Public Railways' Cosgrove Yard, North Charleston, South Carolina, the current Cosgrove Yard was constructed during World War II with NCTC labor, and was originally owned by the City of Charleston. While predecessors of Palmetto have owned Cosgrove Yard since 1947, NCTC has leased and operated the Yard since

its construction. Palmetto and its predecessors have not previously served shippers at Cosgrove Yard or held authority to do so, although Palmetto does operate through the Yard to reach trackage beyond that is owned and exclusively served by Palmetto.

In 1996, the Board granted NCTC's Petition for Exemption to extend NCTC's lease of Cosgrove Yard through February of 2015. North Charleston Terminal Company -- Lease Exemption -- South Carolina Division of Public Railways, Cosgrove Yard, North Charleston, SC, STB Finance Docket No. 32691 (STB served June 5, 1996). That existing lease expires by its terms on February 16, 2015, and Palmetto intends to assume operation of Cosgrove Yard in its own name at that time. In connection with the expiration of the existing lease, NCTC, CSXT and NSR have agreed to assign their respective remaining common carrier interest in Cosgrove Yard to Palmetto. As part of the transaction, NCTC, CSXT and NSR will retain the right to use a portion of the Cosgrove Yard tracks for through movements to and over the track known as the "TC Lead" in order to continue to directly serve the Joint Base Charleston TC Dock rail yard operated by the U.S. Department of Defense in North Charleston.<sup>1</sup> Post-transaction, Palmetto will interchange traffic with both CSXT and NSR in Cosgrove Yard.

The complete name and address of the current operator of Cosgrove Yard to be replaced by Palmetto pursuant to this change in operators class exemption notice is as follows:

North Charleston Terminal Company  
c/o Norfolk Southern Corporation  
Transportation – Operations  
1200 Peachtree Street, NE Box 141  
Atlanta, Georgia 30309

Palmetto intends to consummate its operation of Cosgrove Yard on February 16, 2015.

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<sup>1</sup> In addition, NCTC has agreed to lease to Palmetto a segment of a stub-ended side track south of Cosgrove Yard (known as the "River Track") for use by Palmetto as a switching lead.

**Map: 49 C.F.R. § 1150.43(f)**

A map showing Cosgrove Yard and the surrounding area is attached as Exhibit A to this Notice.

**Certificate of Compliance: 49 C.F.R. § 1150.43(g)**

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.43(g) is attached as Exhibit B to this Notice.

**Interchange Commitments: 49 C.F.R. § 1150.43(h)**

The proposed change of operators at Cosgrove Yard does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

**Shipper Notice: 49 C.F.R. § 1150.42(b)**

Palmetto has provided notice of the proposed change in operators to shippers on the Cosgrove Yard trackage. A list of the shippers served is attached as Exhibit C to this Notice. A copy of the form notice letter sent to the first three shippers on the list is attached as Exhibit C-1. A copy of the letter sent to the fourth shipper on the list is attached as Exhibit C-2.

**Advance Notice: 49 C.F.R. § 1150.42(e)**

Palmetto posted the 60-day notice of this transaction required by 49 C.F.R. § 1150.42(e) at the workplaces of current NCTC/CSXT/NSR employees at Cosgrove Yard on December 15, 2014, served the notice on the national offices of the labor unions for those employees' unions on December 17 and 18, 2014, and certified both actions to the Board on December 18, 2014. A copy of the 60-day notice and certification as filed with the Board is attached as Exhibit D to this Notice.

**Environmental and Historic Preservation Data: 49 C.F.R. § 1105**

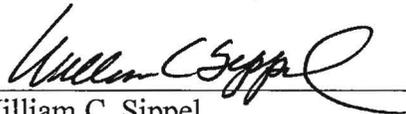
Under 49 C.F.R. § 1105.6(c)(2), Palmetto's proposed operation of Cosgrove Yard is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), Palmetto's assumption of operations at Cosgrove Yard also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Further Surface Transportation Board approval is required to abandon or discontinue any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

**Caption Summary: 49 C.F.R. § 1150.44**

A caption summary in appropriate form is attached as Exhibit E to this Notice.

Respectfully submitted,

By:   
William C. Sippel  
Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

**ATTORNEYS FOR  
SOUTH CAROLINA DIVISION OF PUBLIC  
RAILWAYS d/b/a PALMETTO RAILWAYS**

Dated: January 15, 2015

# COSGROVE YARD CHARLESTON S.C.

Cosgrove Yard  
track in red

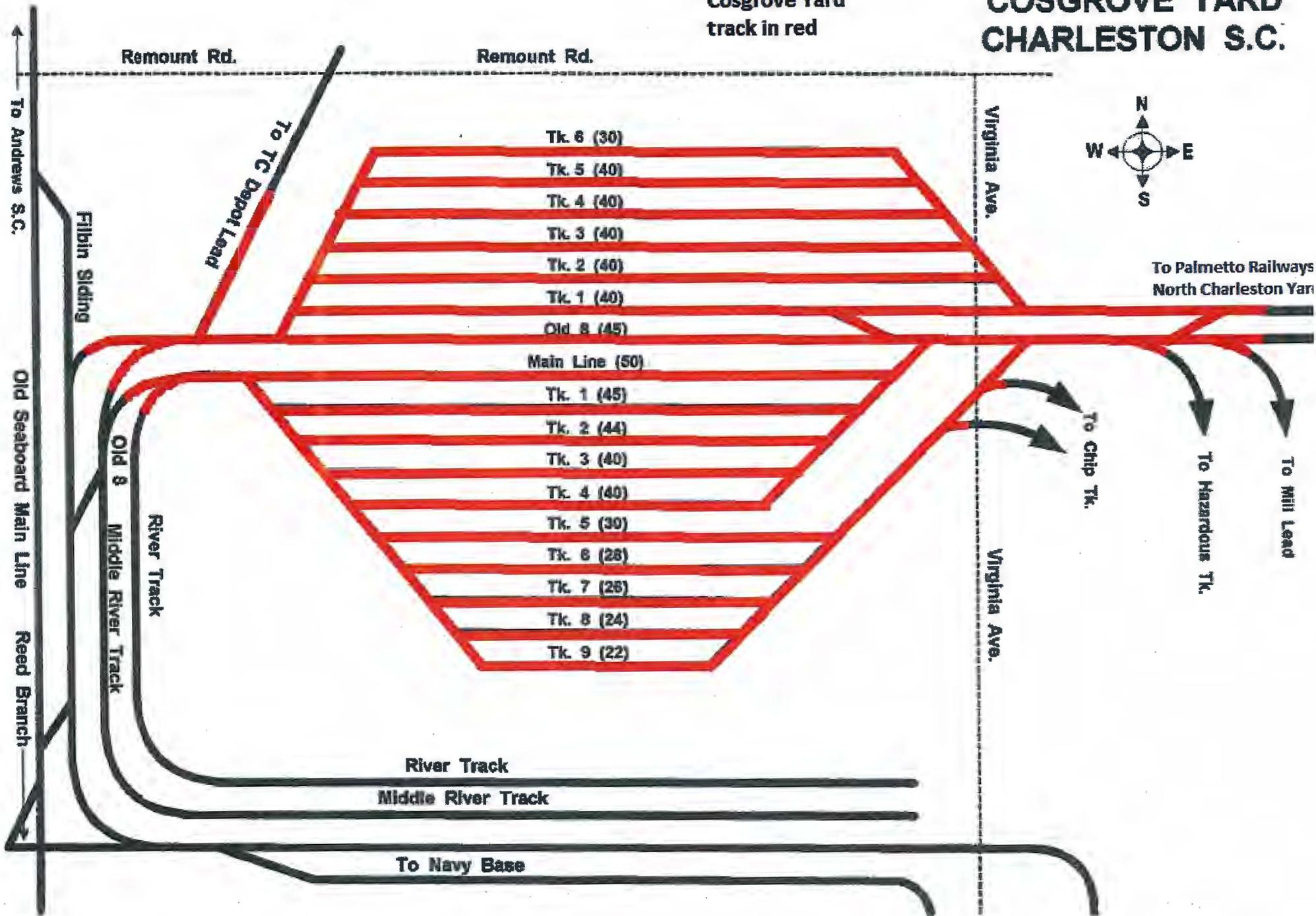


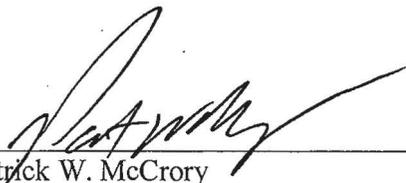
EXHIBIT A

CERTIFICATION

State of South Carolina     )  
  )  
County of Charleston        )

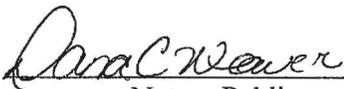
SS:

Patrick W. McCrory, being duly sworn, hereby certifies that the projected annual rail revenues of South Carolina Division of Public Railways d/b/a Palmetto Railways as a result of the transaction proposed herein will not result in the creation of a Class II or a Class I rail carrier under the provisions of 49 C.F.R. § 1201 (1-1).

  
\_\_\_\_\_  
Patrick W. McCrory  
Vice President & Chief Operating Officer

8-23-17

SUBSCRIBED AND SWORN TO  
before me this 12 day  
of January, 2015.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 8-23-2017

**LIST OF SHIPPERS SERVED  
AT COSGROVE YARD**

Kapstone Paper Mill  
5600 Virginia Avenue  
North Charleston, SC 29406

Meadwestvaco  
5255 Virginia Avenue  
North Charleston, SC 29406

New Orleans Cold Storage  
3411 Jourdan Road  
New Orleans, LA 70126

Department of the Air Force  
Headquarters 628<sup>th</sup> Air Base Wing (AMC)  
210 West Stewart Avenue  
Joint Base Charleston, SC 29404-5004

## FLETCHER & SIPPEL LLC

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Fax: (312) 252-2400  
www.fletcher-sippel.com

WILLIAM C. SIPPEL  
(312) 252-1505  
wsippel@fletcher-sippel.com

January 15, 2015

Meadwestvaco  
5255 Virginia Avenue  
North Charleston, SC 29406

Re: Palmetto Railways - Operation of Cosgrove Yard

To Whom It May Concern:

South Carolina Division of Public Railways, d/b/a Palmetto Railways, is today filing a notice of exemption at the Surface Transportation Board for a "change in operators" at Cosgrove Yard in North Charleston. Effective February 16, 2015, Palmetto Railways will assume operation of Cosgrove Yard from North Charleston Terminal Company and will be responsible for providing rail service to your facility.

The STB proceeding is Finance Docket No. 35811. If you have any questions regarding this matter, or would like a copy of the notice of exemption filed at the STB, please feel free to contact me. You may also contact Patrick McCrory, Palmetto Railways' Vice President and Chief Operating Officer, at (843) 727-2067.

Kind regards.

Very truly yours,



William C. Sippel  
Attorney for South Carolina Division of  
Public Railways d/b/a Palmetto Railways

WCS:tjl

cc: Mr. Patrick W. McCrory

## FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832

Phone: (312) 252-1500  
Fax: (312) 252-2400  
www.fletcher-sippel.com

WILLIAM C. SIPPEL  
(312) 252-1505  
wsippel@fletcher-sippel.com

January 15, 2015

Department of the Air Force  
Headquarters 628<sup>th</sup> Air Base Wing (AMC)  
210 West Stewart Avenue  
Joint Base Charleston, SC 29404-5004

Re: Palmetto Railways - Operation of Cosgrove Yard

To Whom It May Concern:

South Carolina Division of Public Railways, d/b/a Palmetto Railways, is today filing a notice of exemption at the Surface Transportation Board for a "change in operators" at Cosgrove Yard in North Charleston. Effective February 16, 2015, Palmetto Railways will assume operation of Cosgrove Yard from North Charleston Terminal Company ("NCTC"). However, by agreement with NCTC's owners, CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR"), CSXT and NSR will continue to have the right to provide rail service to your facility in addition to Palmetto Railways.

The STB proceeding is Finance Docket No. 35811. If you have any questions regarding this matter, or would like a copy of the notice of exemption filed at the STB, please feel free to contact me. You may also contact Patrick McCrory, Palmetto Railways' Vice President and Chief Operating Officer, at (843) 727-2067.

Kind regards.

Very truly yours,



William C. Sippel  
Attorney for South Carolina Division of  
Public Railways d/b/a Palmetto Railways

WCS:tjl

cc: Mr. Patrick W. McCrory

# COPY

EXHIBIT D

## FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832

THOMAS J. LITWILER  
(312) 252-1508  
tlitwiler@fletcher-sippel.com

December 18, 2014

Phone: (312) 252-1500  
Fax: (312) 252-2400  
www.fletcher-sippel.com

### VIA ELECTRONIC FILING

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20423-0001

Re: **Finance Docket No. 35881**  
**South Carolina Division of Public Railways**  
**d/b/a Palmetto Railways -- Change in Operator**  
**Exemption -- North Charleston Terminal Company**

Dear Ms. Brown:

Pursuant to 49 C.F.R. § 1150.42(e), South Carolina Division of Public Railways d/b/a Palmetto Railways ("Palmetto") hereby certifies that on December 15, 2014, the attached Notice was posted at the following workplace of Norfolk Southern Railway Company and CSX Transportation, Inc. employees at the rail facility in North Charleston, South Carolina currently leased to North Charleston Terminal Company ("Cosgrove Yard") that is the subject of the above-captioned exemption proceeding:

NCTC Yard Office  
Cosgrove Yard  
Mill Road  
North Charleston, SC 29406

Palmetto also certifies that on December 17 and 18, 2014, the attached Notice was served by first class mail, postage prepaid, on the national offices of the labor unions representing employees at Cosgrove Yard, at the following addresses:

Mr. Dennis R. Pierce  
National President  
Brotherhood of Locomotive Engineers & Trainmen, IBT  
1370 Ontario Street, Mezzanine  
Cleveland, OH 44113

# FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown  
December 18, 2014  
Page 2

Mr. John Previsich  
President, Transportation Division  
International Association of Sheet Metal, Air, Rail  
and Transportation Workers  
24950 County Club Boulevard, Suite 340  
North Olmsted, OH 44070-5333

Mr. Freddie N. Simpson  
President  
Brotherhood of Maintenance of Way Employes, IBT  
41475 Gardenbrook Road  
Novi, MI 48375-1328

Mr. Richard A. Johnson  
General President  
Brotherhood of Railway Carmen Division, TCU/IAM  
3 Research Place  
Rockville, MD 20850

Mr. W. Dan Pickett  
President  
Brotherhood of Railroad Signalmen  
917 Shenandoah Shores Road  
Front Royal, VA 22630

This letter updates a previous letter dated December 17, 2014 and reflects service on an additional labor union. If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,



Thomas J. Litwiler  
Attorney for South Carolina Division of  
Public Railways d/b/a Palmetto Railways

TJL:tl

Attachment

SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS  
d/b/a PALMETTO RAILWAYS  
540 East Bay Street  
Charleston, South Carolina 29403

**NOTICE**

Pursuant to regulations of the Surface Transportation Board (“STB”) at 49 C.F.R. § 1150.42(e), South Carolina Division of Public Railways d/b/a Palmetto Railways, a Class III rail carrier (“Palmetto Railways”), hereby gives notice to employees of CSX Transportation, Inc. (“CSXT”) and Norfolk Southern Railway Company (“NSR”) that on or about February 16, 2015, Palmetto Railways intends to commence operating the Cosgrove Yard property in North Charleston, South Carolina currently leased to North Charleston Terminal Company (“NCTC”) and operated by NCTC’s owners CSXT and NSR. The NCTC lease will expire by its terms on February 16, 2015, at which time NCTC/CSXT/NSR operation of Cosgrove Yard will cease.

A notice of exemption to authorize the proposed change in operators transaction will be filed with the STB on or before January 16, 2015 in Finance Docket No. 35881.

Palmetto Railways has no future plans to hire additional employees as a result of the change in operators. Employees desiring further information regarding the transaction may contact Patrick McCrory, Palmetto Railways Vice President and Chief Operating Officer, at (843) 727-2067.

November 24, 2014

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION**

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FINANCE DOCKET NO. 35881

SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS  
D/B/A PALMETTO RAILWAYS  
-- CHANGE IN OPERATORS EXEMPTION --  
NORTH CHARLESTON TERMINAL COMPANY

---

South Carolina Division of Public Railways d/b/a Palmetto Railways ("Palmetto"), a Class III rail carrier, has filed a Verified Notice of Exemption to assume operation of approximately 9.3 miles of rail trackage in North Charleston, South Carolina ("Cosgrove Yard") currently leased to North Charleston Terminal Company ("NCTC") and operated by NCTC's owners CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR"). Palmetto's operation of Cosgrove Yard will replace the operations currently conducted by NCTC/CSXT/NSR, which will have no further common carrier obligation with respect to the property. As part of the transaction, NCTC, CSXT and NSR will retain the right to use a portion of the Cosgrove Yard tracks for through movements to and over the track known as the "TC Lead" to directly serve the Joint Base Charleston TC Dock rail yard in North Charleston, and NCTC will lease a side track known as the "River Track" to Palmetto for use as a switching lead.

Palmetto expects to consummate the change in operators transaction and commence operation of Cosgrove Yard on February 16, 2015.

Comments must be filed with the Board and served on:

Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

This Notice is filed under 49 C.F.R. § 1150.41(c). If the Notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: February \_\_, 2015

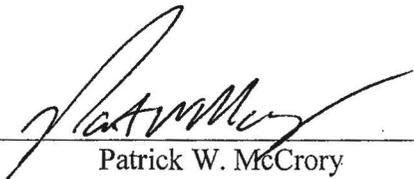
By the Board

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings

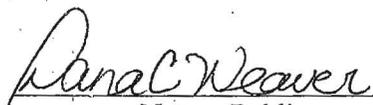
**VERIFICATION**

State of South Carolina     )  
  ) ss:  
County of Charleston        )

Patrick W. McCrory, being duly sworn, deposes and says that he is Vice President and Chief Operating Officer of South Carolina Division of Public Railways d/b/a Palmetto Railways, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.

  
\_\_\_\_\_  
Patrick W. McCrory

SUBSCRIBED AND SWORN TO  
before me this 12 day  
of January, 2015.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 8-23-2017

8-23-17