

TRANSPORT COUNSEL PC

ATTORNEYS AT LAW

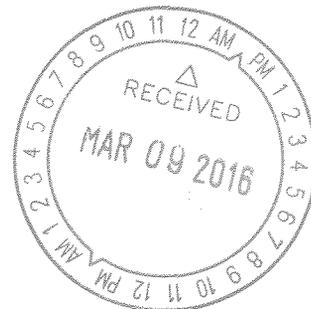
March 9, 2016

BY HAND DELIVERY

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

240270

ENTERED
Office of Proceedings
March 9, 2016
Part of
Public Record



Re: Finance Docket No. 36008, North Carolina & Atlantic Railroad Co., Inc. -- Lease and Operation Exemption -- North Carolina Department of Transportation

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding are an original and 10 copies of the notice of exemption of North Carolina & Atlantic Railroad Co., Inc., pursuant to 49 C.F.R. 1150.31. Also enclosed is a check in the amount of \$1,900 to cover the filing fee for this proceeding.

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

Sincerely,

Rose-Michele Nardi/EJY

Rose-Michele Nardi

Enclosures

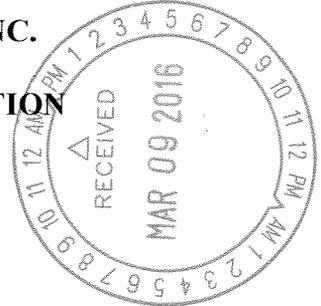
FEE RECEIVED
March 9, 2016
SURFACE
TRANSPORTATION BOARD

FILED
March 9, 2016
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36008

**NORTH CAROLINA & ATLANTIC RAILROAD CO., INC.
--LEASE AND OPERATION EXEMPTION--
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**



**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. SECTION 1150.31**

Pursuant to 49 C.F.R. section 1150.31, et seq., North Carolina & Atlantic Railroad Co., Inc. ("NCAR"), a newly-established company, hereby files this Verified Notice of Exemption to lease from North Carolina Department of Transportation ("NCDOT"), and to operate over, a certain rail line as described below (the "Subject Line").

In accordance with the requirements of 49 C.F.R. section 1150.33, NCAR submits the following information:

1. Applicant's Name and Current Mailing Address

North Carolina & Atlantic Railroad Co., Inc.
P.O. Box 2408
Knoxville, TN 37901
Tel (865) 525-9400

2. Applicant's Representative to Receive Correspondence

Rose-Michele Nardi
Transport Counsel PC
1701 Pennsylvania Ave., NW
Suite 300
Washington, DC 20006
Tel (202) 349-3660

3. Information Concerning Agreement

A lease and operating agreement has been executed regarding the Subject Line.

4. Operator

NCAR will conduct rail freight operations over the Subject Line.

5. Brief Summary of Proposed Transaction

NCDOT, the lessor of the Subject Line, may be contacted at: NCDOT, Rail Division, Attn: Paul Worley, Rail Division Director, 1153 Mail Service Center, Raleigh, NC 27699-1553.

As noted above, NCAR's mailing address is P.O. Box 2408, Knoxville, TN 37901. NCAR will not perform common carrier freight operations over the Subject Line until April 8, 2016 or thereafter. The Subject Line is approximately 5.7 miles of rail line, referred to as the Global Transpark rail corridor, between milepost GTP-0.0 (connection to the North Carolina Railroad Company track) and milepost GTP-5.7 (at the NC Global Transpark), at Kinston, North Carolina in Lenoir County.

6. Map

A map of the Subject Line is attached hereto as Exhibit A.

7. Certificate of Projected Revenue

A certificate of concerning NCAR's projected revenue is attached as Exhibit B.

8. Interchange Commitments

The lease and operating agreement regarding the Subject Line does not involve an interchange commitment, as that term is defined in 49 C.F.R. section 1150.33(h)(1).

9. Labor Notice

Because the projected annual revenue of NCAR is not expected to exceed 5 million dollars, no labor notice is required.

10. Environmental and Historic Reporting Requirements

In general, environmental documentation need not be prepared for a lease that does not "cause diversions from rail to motor carriage of more than: [(1)] 1,000 rail carloads a year; or [(2)] an average of 50 rail carloads per mile per year for any part of the affected line..." (49 C.F.R. section 1105.7(e)(4)), on the one hand, and that does not result in "(A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment..." (49 C.F.R. 1105.7(e)(5)), on the other hand. *See* 49 C.F.R. 1105.6(c)(2).

There is no current rail traffic on the Subject Line. Under similar circumstances, the Surface Transportation Board (the "Board") has held that the 100 percent threshold does not

apply to anticipated increases in rail traffic; instead, exceeding eight trains per day¹ is "the applicable threshold when there have been no operations over a rail line". See STB Finance 35073, *Northwestern Pacific Railroad Company -- Change in Operators Exemption -- Northcoast Railroad Authority, Sonoma-Marín Area Rail Transit District and Northwestern Pacific Railway Co., LLC*, served Feb. 1, 2008.² NCAR anticipates that the traffic over the Subject Line is unlikely to exceed 2 trains per day (5 days per week) for the foreseeable future. The other thresholds noted above should not be exceeded. Therefore, no environmental documentation should be required for this Verified Notice of Exemption.

Transactions involving "a sale, lease or transfer of a rail line for the purpose of continued rail operations" are exempt from the historic report requirement of 49 C.F.R. section 1105.8(a) if abandonment of such operations requires further approval by the Board and "there are no plans to dispose of or alter properties subject to [the Board's] jurisdiction that are 50 years old or older". See 49 C.F.R. section 1105.8(b)(1).

Although no common carrier freight operations have previously moved over the Subject Line, NCAR intends to commence providing such operations over the line. Therefore, discontinuance by NCAR of its rail operations over the Subject Line would require prior approval or an exemption from the Board. In addition, NCAR does not have any plans to dispose of or alter properties subject to Board jurisdiction that are 50 or more years old. Accordingly, no historic report should be required for this filing.

Respectfully submitted,

Rose-Michele Nardi / ENY

Rose-Michele Nardi
Transport Counsel PC
1701 Pennsylvania Ave., NW
Suite 300
Washington, DC 20006

Attorneys for:

NORTH CAROLINA & ATLANTIC
RAILROAD CO., INC.

Dated: March 9, 2016

¹ NCDOT has advised NCAR that NCAR's operations over the Subject Line will not affect any nonattainment areas or class 1 areas under the Clean Air Act.

² Similarly, the Board has stated that the 100 percent threshold regarding yard activity increases is inappropriate to apply when the traffic base is zero. See STB Finance Docket No. 33508, *Missouri Central Railroad Company -- Acquisition and Operation Exemption -- Lines of Union Pacific Railroad Company*, 4 STB 391, served Sept. 14, 1999, *notion for judicial review denied*, *Lee Summit, Missouri v. Surface Transportation Board*, 231 F.3d 39 (DC Cir. 2000).

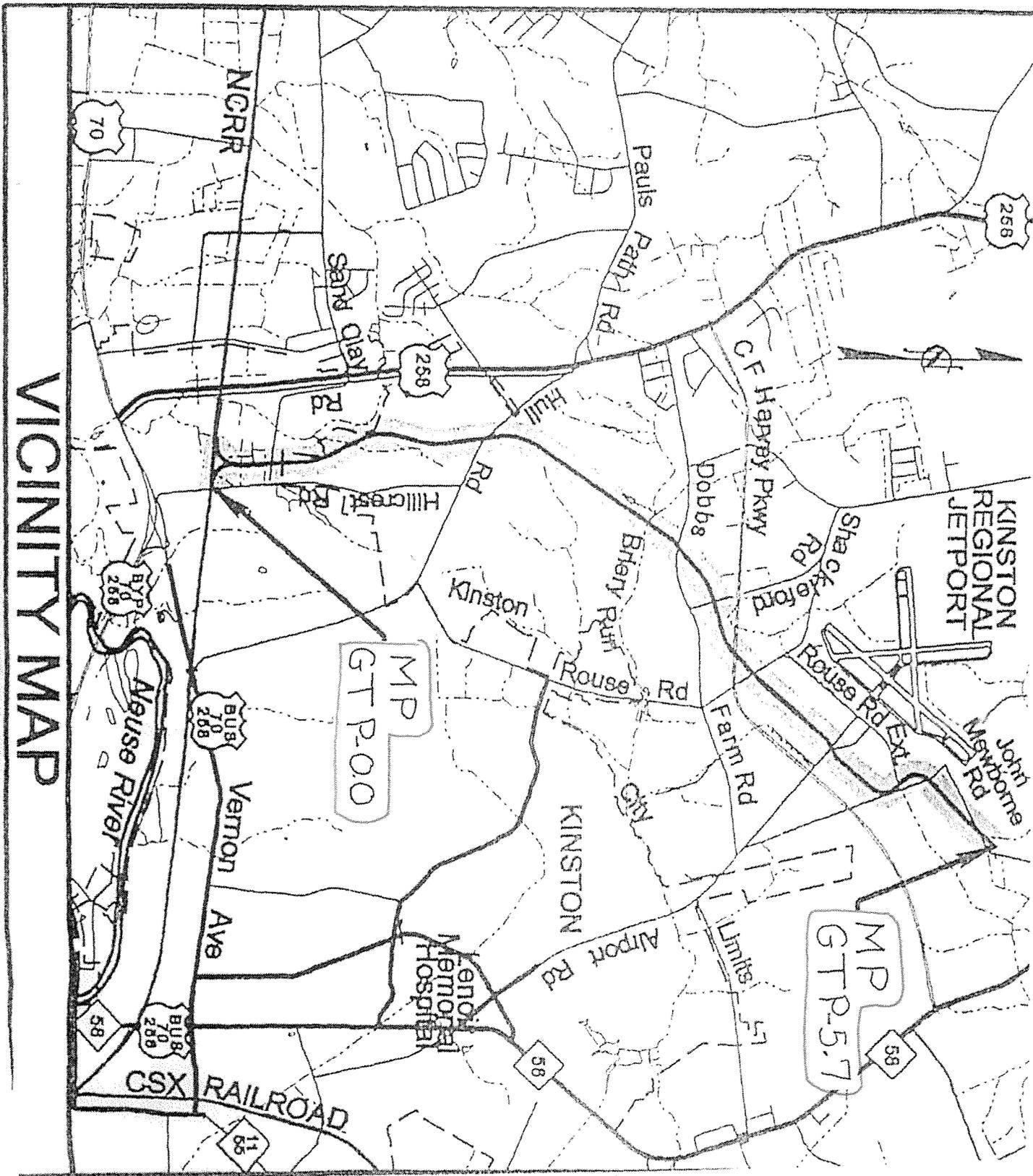
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36008

**NORTH CAROLINA & ATLANTIC RAILROAD CO., INC.
--LEASE AND OPERATION EXEMPTION--
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**

EXHIBIT A

MAP



North Carolina & Atlantic Railroad Co., Inc.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36008

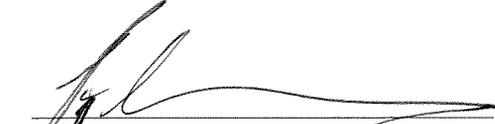
**NORTH CAROLINA & ATLANTIC RAILROAD CO., INC.
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NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**

EXHIBIT B

CERTIFICATE OF REVENUE

CERTIFICATE OF REVENUE

In accordance with 49 C.F.R. section 1150.33(g), I do hereby certify that the revenue projected as a result of this transaction will not exceed that which would qualify North Carolina & Atlantic Railroad Co., Inc. as a class III carrier.



Peter V. Claussen, President
North Carolina & Atlantic Railroad Co., Inc.

Dated: March 9, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NOTICE OF EXEMPTION

STB FINANCE DOCKET NO. 36008

**NORTH CAROLINA & ATLANTIC RAILROAD CO., INC.
--LEASE AND OPERATION EXEMPTION--
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**

North Carolina & Atlantic Railroad Co., Inc. has filed a notice of exemption pursuant to 49 C.F.R. section 1150.31 to lease from North Carolina Department of Transportation, and to operate over, the following rail line which totals approximately 5.7 miles, referred to as the Global Transpark rail corridor, between milepost GTP-0.0 (connection to the North Carolina Railroad Company track) and milepost GTP-5.7 (at the NC Global Transpark), at Kinston, North Carolina in Lenoir County.

Comments must be filed with the Surface Transportation Board, Chief, Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423-001, and served on Rose-Michele Nardi, Transport Counsel PC, 1701 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20006, (202) 349-3660. This proceeding is related to STB Finance Docket No. 36009, *Gulf & Ohio Railways, Inc., H. Peter Claussen and Linda C. Claussen - Continuance in Control Exemption -- North Carolina & Atlantic Railroad Co., Inc.*

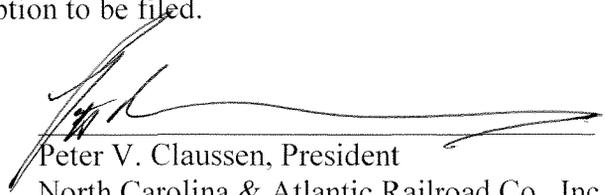
This notice is filed under 49 C.F.R. 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided:

By the Board,

VERIFICATION

I, Peter V. Claussen certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to cause this Verified Notice of Exemption to be filed.



Peter V. Claussen, President
North Carolina & Atlantic Railroad Co., Inc.

Dated: March 9, 2016