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**236415**

August 7, 2014

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

**ENTERED**  
**Office of Proceedings**  
**August 7, 2014**  
**Part of**  
**Public Record**

RE: Docket No. FD 35804 (Sub-No. 1), *CSX Transportation, Inc., The Baltimore & Ohio Chicago Terminal Railroad Company, and Norfolk Southern Railway Company—Joint Relocation Project Exemption—Gary-Chicago International Airport Authority*

Dear Ms. Brown:

Enclosed are the original and 10 copies a Petition for Exemption under 49 CFR 1121, a diskette containing a WORD and pdf version of the Petition, and a pdf version of the map that can be enlarged. The \$10,000 filing fee for the Petition is being paid by credit card using the STB Payment Form.

Please time and date stamp the extra copy of this letter and the Petition and return them with our messenger.

Sincerely yours,



Melanie B. Yasbin  
Attorney for CSX Transportation, Inc.

Enclosures

**FEE RECEIVED**  
**August 7, 2014**  
**SURFACE**  
**TRANSPORTATION BOARD**

**FILED**  
**August 7, 2014**  
**SURFACE**  
**TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 35804 (Sub-No. 1)

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CSX TRANSPORTATION, INC., THE BALTIMORE & OHIO CHICAGO TERMINAL  
COMPANY, AND NORFOLK SOUTHERN RAILWAY COMPANY  
–JOINT RELOCATION PROJECT EXEMPTION–  
GARY-CHICAGO INTERNATIONAL AIRPORT AUTHORITY

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PETITION FOR EXEMPTION

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**EXPEDITED HANDLING REQUESTED**

CSX Transportation, Inc. (“CSXT”) petitions the Surface Transportation Board (the “Board”) under 49 U.S.C. § 10502 and 49 CFR Part 1121, for an exemption from 49 U.S.C. 11323- 11325 to permit CSXT, Baltimore & Ohio Chicago Terminal Company, and Norfolk Southern Railway Company (“NSR”) to modify the joint relocation project that was exempted in *CSX Transportation, Inc., The Baltimore & Ohio Chicago Terminal Company, and Norfolk Southern Railway Company–Joint Relocation Project Exemption–Gary-Chicago International Airport Authority*, Docket No. FD 35804 (served May 21, 2014) (the “Notice”) by granting trackage rights to CSXT over a 1.7-mile portion of NSR’s Gary Branch between approximately milepost TC 244.90 and milepost TC 246.60 (the “Gary Branch”) on an expedited basis.<sup>1</sup> CSXT is filing this Petition for Exemption instead of a Notice of Exemption to amend the *Notice* because it is seeking expedited handling.

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<sup>1</sup> This is the same line that CSXT was authorized to acquire in the Notice. CSXT will still acquire the Gary Branch once NSR is ready to transfer it to CSXT. A draft of the Trackage Rights Agreement is in Exhibit 2.

## REQUEST FOR EXPEDITED HANDLING

CSXT respectfully requests the Board make the trackage rights effective seven days after this Petition is filed with the Board, instead of the 30 days provided at 49 C.F.R. §1180.4(g) for a notice of exemption. In granting this request for expedited handling, the Board will assist Gary-Chicago International Airport Authority (“Gary Airport”) in meeting its deadlines. Expedited handling of the trackage rights benefits Gary Airport. Once the Amended Notice becomes effective and the Trackage Rights Agreement is executed, CSXT will (1) relocate its common carrier obligations and rights from the Fort Wayne Line to the Gary Branch and (2) transfer the necessary portions of the Fort Wayne Line to Gary Airport so that it can complete critical construction prior to the onset of winter weather that will prevent Gary Airport from meeting certain deadlines.

In order to expedite the relocation of CSXT’s 1.9-mile portion its Fort Wayne Line between milepost QF 443.8 and milepost QF 445.7 (the “Fort Wayne Line”), and transfer substantially all of the Fort Wayne Line to Gary Airport for the Runway Expansion, CSXT has requested and NSR has agreed to grant CSXT “permanent” trackage rights over the Gary Branch. The trackage rights will remain in force and effect until NSR transfers the Gary Branch to CSXT. As described in the *Notice*, NSR will not transfer the Gary Branch to CSXT until several connections are constructed and NSR has determined that it can adequately serve the Indiana Sugars, Inc.

Construction of the connections is under way, but will not be completed in time for the Gary Airport to complete certain projects necessary to meet the deadlines set forth in the

legislation authorizing the expansion of Gary Airport's existing Runway 12-30 and related construction (the "Runway Expansion").

Making the trackage rights effective in 7 days from the date of filing of this Petition is very much in the public interest. It allows CSXT and NSR to partially consummate the joint relocation project expeditiously with CSXT transferring its common carrier obligation and rights from the Fort Wayne Line to the Gary Branch pursuant to these trackage rights and CSXT transferring the necessary portion of the Fort Wayne Line to Gary Airport allowing Gary Airport to meet the legislatively imposed deadlines.

The Board exempted this joint relocation project in the *Notice*. The modification of adding trackage rights to the joint relocation project will not disrupt service to shippers or expand service into new territory. By expediting the effectiveness of the trackage rights, the Board will allow CSXT to expeditiously transfer the necessary portion of the Ft. Wayne Line to Gary Airport and remove an obstacle to the timely completion of the Runway Project.

### **BACKGROUND**

In *CSX Transportation, Inc., The Baltimore & Ohio Chicago Terminal Company, and Norfolk Southern Railway Company—Joint Relocation Project Exemption—Gary-Chicago International Airport Authority*, Docket No. FD 35804 (served May 21, 2014), CSXT, BOCT, and NSR were granted authority for a joint relocation project to facilitate activities necessary to permit the relocation of various rail lines and facilities to accommodate the expansion of Gary Airport's existing Runway 12-30, and to preserve the operation, capacity, and utility of the freight lines of the Elgin, Joliet and Eastern Railway Company ("EJ&E"), CSXT, and NSR in the vicinity of Gary Airport.

As part of the joint relocation, CSXT, BOCT, and NSR, will relocate portions of their various rail lines and facilities to accommodate the Runway Expansion. To accommodate the Runway Expansion, less than 2 miles of CSXT's existing Fort Wayne Line must be transferred to Gary Airport. CSXT will acquire trackage rights and then ownership of NSR's Gary Branch between milepost TC 244.90 and milepost TC 246.60, in order to relocate CSXT's Fort Wayne Line less than one-fourth of a mile from its current location.

To accomplish this relocation, CSXT and NSR will need to construct four connections starting with the northern most connection: (1) at Clarke Jct. at or near milepost DC 0.4, connecting NSR's Fort Wayne Line with the BOCT's Barr Subdivision and the relocated CSXT Fort Wayne Line; (2) between CSXT's Fort Wayne Line at milepost QF 443.8 and NSR's Gary Branch at milepost 244.9; (3) near Tolleston, IN, between CSXT's Fort Wayne Line at milepost QF 442.0 and CSXT's Porter Branch at milepost QFP 256.1 to allow NSR to serve Indiana Sugars Plant Lead from CSXT's Porter Branch; and (4) between CSXT's Porter Branch at milepost QFP 255.4 and NSR's Gary Branch at milepost 241.4 to allow NSR to continue to serve Indiana Sugars.

CSXT will relocate its common carrier obligation and rights from an approximately 1.9-mile portion of its Fort Wayne Line between milepost QF 443.8 and milepost QF 445.7, to the Gary Branch between milepost TC 244.9 and milepost TC 246.6. NSR will discontinue service over its Gary Branch Line between milepost TC 244.90 and milepost TC 241.4, and will abandon and reclassify the portion of the Gary Branch Line between milepost TC 241.4 and milepost 240.3 as spur track (the Indiana Sugars industrial track) in order to continue to serve Indiana Sugars, albeit via trackage rights over CSXT's Porter Branch.

CSXT, BOCT, and NSR will amend five existing trackage rights agreements to reflect the use of the relocated track, as follows: (1) NSR's rights to operate over CSXT's Fort Wayne Line will be amended to allow NSR to operate over the new connection between CSXT's Fort Wayne Line and CSXT's Porter Branch in the northeast quadrant at Tolleston, IN, as well as the continued right to enter and exit CSXT's Fort Wayne Line at the existing connection to the CFER leased portion of the CSXT Fort Wayne Line in the southwest quadrant at Tolleston, IN; (2) NSR's rights to operate over CSXT's Porter Branch will be amended to allow NSR to operate between: (i) the new connection to CSXT's Ft. Wayne Line in the northeast quadrant at Tolleston, IN; (ii) the existing connection to the CFER leased portion of the CSXT Fort Wayne Line in the southwest quadrant at Tolleston, IN; and (iii) the new connection to the portion of the Gary Branch to be re-classified as the Indiana Sugars Industrial Track, at or near MP QFP 255.4 (3) NSR's rights to operate over BOCT's Barr Subdivision will be amended to allow NSR to enter or exit BOCT'S Barr Subdivision between, between Clarke Junction, IN, at or near milepost DC 0.4, to access both the NSR Fort Wayne Line and the CSXT Fort Wayne Line; (4) CSXT's rights to operate over NSR's Fort Wayne Line will be amended to allow CSXT to enter and exit the NSR Fort Wayne Line at: (i) the connection to NSR's Chicago Line at CP501, Buffington, IN; and (ii) the new connection to BOCT's Barr Subdivision at Clarke Junction, IN; and (5) CSXT's rights to operate over NSR's Gary Branch will be amended to allow CSXT to provide overhead and local service between milepost TC 244.90 and milepost TC 246.60 .

In order to assist Gary Airport and expedite the transfer of the Fort Wayne Line, CSXT has agreed to seek trackage rights from NSR over the Gary Branch, the same line that NSR has agreed to transfer to CSXT under the joint relocation and which transfer was approved in the

*Notice.*

Once the trackage rights take effect (requiring exemption from the Board and execution of the agreement by CSXT and NSR), CSXT will relocate its common carrier obligations and rights from the Fort Wayne Line to the Gary Branch under the trackage rights. Once NSR is satisfied that it will be able to continue to serve Indiana Sugars as a result of the joint relocation project, NSR will transfer ownership of the Gary Branch to CSXT, where CSXT's common carrier obligations and rights that were relocated from the Fort Wayne Line will continue to reside.

If the request for expedited handling of the trackage rights over the Gary Branch is granted, CSXT and NSR will partially consummate the joint relocation project on that date, or upon execution of the trackage rights agreement, with CSXT then transferring its common carrier obligation and rights from the Fort Wayne Line to the Gary Branch pursuant to trackage rights and CSXT transferring the necessary portion of the Fort Wayne Line to Gary Airport.

All other actions described in the *Notice* will remain unchanged. Modifying the joint relocation project to include a trackage rights element, will not disrupt service to shippers or expand service into new territory by any of the three railroads involved.

Petitioners seek an exemption from the 30 day effective dated provided in 49 C.F.R. 1180.4(g) in order to assist Gary Airport in meeting its deadlines.

#### **JURISDICTION**

Acquisition by a rail carrier of trackage rights over a railroad line owned or operated by another rail carrier may be carried out only with the approval and authorization of the Board. See 49 U.S.C. 11323(a)(6).

## ARGUMENT

### A. THE TRACKAGE RIGHTS SHOULD BE EXEMPTED FROM THE PRIOR APPROVAL REQUIREMENTS OF 49 U.S.C. §§ 11323-25.

Pursuant to 49 U.S.C. § 10502, the Board must exempt a transaction from regulation when it finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either: (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the Board's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation—Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984) (the “*Boxcar Exemption*”). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995,

Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

In *Railroad Consolidation Procedures*, 1 I.C.C.2d 270( 1985), the Interstate Commerce Commission (“ICC”) adopted a class exemption for trackage rights based on written agreements not sought in responsive applications in rail consolidation proceedings. A category that these trackage rights would fall into but for the request for expedited handling. The ICC found that exempting trackage rights proposals as a class would promote the Rail Transportation Policy and competition because trackage rights facilitate operating efficiencies.

In reviewing an exemption petition under Section 10502, the Board does not undertake a broader analysis than it would apply to a transaction under the statutory provision applicable in the absence of the exemption. See *Blackstone Capital Partners -- Cont. Exemp. -- Chicago & N.W. Trans. Co.*, ICC Finance Docket No. 31493 (ICC served July 5, 1989), slip op. at 2; *Village of Palestine v. I.C.C.*, 936 F. 2d 1335 (D.C. Cir. 1991).

The trackage rights do not involve the merger or control of at least two Class I rail carriers. There is no merger or control. Therefore, absent an exemption, the trackage rights would be subject to Board review under the standards set forth in 49 U.S.C. § 11324(d). Section 11324(d) provides that the Board “shall approve” the transaction unless it finds both that:

- (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and
- (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. § 11324(d).

In transactions subject to Section 11324(d), the primary focus is on the probable competitive effects of the proposed transaction. *See, e.g., Norfolk Southern Railway Company, Pan Am Railways, Inc. et al. –Joint Control and Operating/Pooling Agreements—Pan Am Southern LLC*, STB Finance Docket No. 35147 (STB served March 10, 2009) at 4-5; *Canadian National, et al.—Control—Wisconsin Central Transp. Corp. et al.*, 5 S.T.B. 890, 899 (2001), and *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C. 2d 799, 803 (1990), *pet. for review denied sub nom. Railway Labor Executives' Ass'n v. ICC*, 930 F.2d 511 (6th Cir. 1991). The public interest factors are considered only where significant anticompetitive effects are found. *Id.* These trackage rights would be part of a joint relocation project that's goal is to accommodate the expansion of Gary Airport's existing Runway 12-30 while preserving the operation, capacity and utility of the freight lines of EJ&E, CSXT and NSR in the vicinity of the Gary Airport.

A finding of competitive harm under Section 11324(d)(1) must be grounded on a showing that any adverse competitive effects are both “likely” and “substantial.” *Wisc. Central Transportation Corporation, Et Al.*, 9 I.C.C.2d 233, 238 (1992). Examples of adverse competitive impacts that would trigger the balancing of the public interest factors under Section 11324(d)(2) “would be the likelihood of significantly higher rates or significantly worsened service, or the likelihood of a combination of the two.” *Blackstone Cap. Partners—Cont. Exempt.—CNW Corp. Et Al.*, 5 I.C.C.2d 1015, 1019 (1989). The trackage rights will not lead to higher rates or worsened service. The trackage rights will have no adverse horizontal effects on competition and will not result in any vertical foreclosure of competition in the transportation corridors served by the individual carriers. Service options available to shippers will not be

diminished. There are no interline routes to close or existing divisions with connecting carriers to cancel. The trackage rights will have no adverse impact on competition.

Since the trackage rights meet the criteria of Section 11324(d), they also meets the criteria of Section 10502, as discussed below. Indeed, in creating a class exemption for trackage rights, the ICC found that trackage rights met the exemption criteria.

**1. The Application of 49 U.S.C. § 11323(a)(6) Is Not Necessary To Carry Out The Rail Transportation Policy.**

Detailed scrutiny of the trackage rights is not necessary to carry out the rail transportation policy. As previously noted, absent an exemption, the primary substantive issue the Board would need to address is the effect of the trackage rights on competition. Consequently, the provisions of the rail transportation policy most relevant in this exemption proceeding are 49 U.S.C. § 10101(4) and (5), which encourage the preservation of effective competition. That objective is fully satisfied by the trackage rights.

The requested exemption will foster other objectives of the Rail Transportation Policy. The trackage rights will foster the development and continuation of a sound rail transportation system. *See* 49 U.S.C. § 10101 (4).

This exemption proceeding provides the Board with all the information necessary to evaluate the proposed transaction, and will minimize regulatory delay and expedite decision making. *See Chicago West Pullman Corp.—Control Exemption—Chicago Rail Link*, ICC Finance Docket No. 31390 (ICC served February 24, 1989); *Itel Rail Corp.—Continuance in Control Exemption—FRVR Corp.*, ICC Finance Docket No. 31206 (ICC served February 5,

1988). While regulatory delay would be minimized, the interests of shippers, employees and the general public are fully protected.

Requiring the filing of an application would serve no useful purpose in this proceeding. In the *Notice*, the Board exempted the transfer of the Gary Branch from NSR to CSXT. Here, CSXT is seeking an exemption for the acquisition of trackage rights to expedite the transfer of a portion of the Fort Wayne Line to Gary Airport in order to assist Gary Airport in meeting it's obligations.

As the information in this Petition demonstrates, the trackage rights readily satisfy the requirements of Section 11324(d), which, absent the granting of the exemption, would govern the trackage rights. As previously noted, under Section 11324(d), the Board must approve a proposed transaction unless it finds there is likely to be a substantial lessening of competition and the anticompetitive effects outweigh the public benefits. The trackage rights will not result in any, much less in a substantial, lessening of competition. Consequently, if the trackage rights were brought before the Board in a full application proceeding, the Board would be required to approve the trackage rights.

Other aspects of the rail transportation policy are not adversely affected.

## **2. The Trackage Rights Will Not Result In An Abuse of Market Power**

There will be no competitive harm as the result of the trackage rights. The trackage rights will not subject shippers to an abuse of market power. In fact, modification of adding trackage rights to the joint relocation project will not disrupt service to shippers or expand service into new territory. By expediting the effectiveness of the trackage rights, the Board will allow CSXT to expeditiously transfer the necessary portion of the Ft. Wayne Line to Gary

Airport and remove an obstacle to the timely completion of the Runway Project while at the same time protecting shippers.

### **3. The Proposed Transaction Is Of Limited Scope**

Because regulation is not needed to protect shippers from abuse of market power, the Board need not address whether the trackage rights are of limited scope. It should be noted that once the connections required for NSR to serve Indiana Sugars via use of a portion of CSXT's Porter Branch are completed and operational, NSR will transfer the portion of NSR's Gary Branch between milepost TC 244.90 and milepost TC 246.60 (the same segment that is the subject of this trackage rights petition) to CSXT under the *Notice*.

### **4. Labor Protection.**

As a condition to this exemption, any employees affected by the line acquisitions encompassed by the Amended Notice will be protected by the conditions imposed in *Norfolk and Western Railway Co.—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605, 610-15 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease & Operate—California Western Railroad*, 360 I.C.C. 653, 664 (1980), which are the same conditions imposed in the *Notice*.

**5. Interchange Commitments.** There are no interchange commitments in the agreements between CSXT, BOCT, and NSR.

### **6. Environmental and Historical documentation.**

This transaction qualifies for classification under 49 C.F.R. §§ 1105.6(c)(2) and 1105.8(b), and thus neither an Environmental Assessment nor a Historic Report need be filed.

## **CONCLUSION**

CSXT respectfully requests the Board to exempt the trackage rights over the Gary Branch

in order to amend the joint relocation project to permit CSXT to permanently transfer its common carrier obligations and rights from the Fort Wayne Line to the Gary Branch, through the trackage rights until such time as NSR transfers the Gary Branch to CSXT at which time the common carrier obligations and rights from the Fort Wayne Line will continue on the Gary Branch once it is owned by CSXT. CSXT also requests the Board to expedite handling of this petition so that CSXT can transfer the necessary portion of the Fort Wayne Line to Gary Airport so that it can meet the deadlines imposed on the Runway Expansion.

Respectfully submitted,



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INC., and THE BALTIMORE &  
OHIO CHICAGO TERMINAL  
COMPANY

Dated: August 7, 2014



**EXHIBIT 1-MAP**

**EXHIBIT 2-CSXT AND NSR DRAFT AGREEMENT**

**TRACKAGE RIGHTS AGREEMENT  
TO CSXT OVER NSR GARY BRANCH**

This Trackage Rights Agreement (“Agreement”), entered into this \_\_\_\_\_ day of July 2014, by and between Norfolk Southern Railway Company, a Virginia Corporation, including its subsidiaries and affiliates (hereinafter referred to as “NSR”) and CSX Transportation, Inc., a Virginia Corporation, including its subsidiaries and affiliates (hereinafter referred to as “CSXT”), hereby constitutes a grant of trackage rights for that portion of the NSR Gary Branch from milepost TC 244.9 to TC 246.6.

**WHEREAS**, Gary-Chicago International Airport Authority (“Gary Airport”) has asked CSXT, as a participating railroad in the Gary, Indiana Airport Runway Expansion Project (the “Runway Expansion Project”) (which project is described in more detail in the next paragraph), to amend the Joint Relocation Project and transfer the CSXT portion of the Ft. Wayne Line to the Gary Airport prior to transfer of the relevant portion of the Gary Branch to CSXT from NSR. In order for this CSXT property transfer to occur, CSXT must first permanently relocate its common carrier obligations and rights to that portion of the Gary Branch that the NSR will transfer to CSXT as part of the Joint Relocation Project (a copy of the STB Filing for the Joint Relocation Project attached hereto for reference).

**WHEREAS**, *inter alia*, NSR and CSXT have entered into an agreement dated May 1, 2014 (the “Transaction Agreement”) for the Runway Expansion Project which will result in the relocation and removal of tracks and installation of new connections between tracks including but not restricted to the NSR Gary Branch, as well as a Purchase and Sale Agreement dated May 1, 2014 (the “PSA”) for the conveyance of the noted Norfolk Southern Gary Branch segment to CSXT; and

**WHEREAS**, NSR and CSXT are parties to a June 1, 1999 Master Trackage Rights Agreement (the “Master Trackage Rights Agreement”) governing CSXT operation over various NSR routes related to the acquisition of substantially all of Consolidated Rail Corporation’s assets by NSR and CSXT.

**NOW, THEREFORE**, CSXT requests NSR to grant to CSXT overhead trackage rights over the 1.7-mile portion of the Gary Branch which is to be conveyed to CSXT pursuant to the terms of the Transaction Agreement and the PSA (defined above) between approximately milepost TC 244.9 and milepost TC 246.6 in order to amend the Joint Relocation Project and for CSXT to immediately (subject to any needed regulatory approvals, which will be sought by CSXT at its sole expense) relocate CSXT’s common carrier obligations and rights from the approximately 1.9-mile portion of CSXT’s Fort Wayne Line between milepost QF 443.8 and milepost QF 445.7 to the 1.7-mile portion of the Gary Branch without waiting for the transfer of the Gary Branch under the PSA.

**SECTION 1 DESCRIPTION OF RIGHTS**

CSXT shall have overhead and local trackage rights upon only the portion of the NSR Gary Branch which is to be transferred to CSXT by NSR pursuant to the terms of the Transaction Agreement and the PSA, which is between milepost TC 244.9 and milepost TC 246.6.

**SECTION 2 NEW CONNECTIONS**

CSXT shall bear all costs associated with the design and construction of any new connections requested by CSXT to fulfill the trackage rights obligation, and the design of the same must be acceptable to NSR.

**SECTION 3 TERM AND TERMINATION**

The effective date of this Agreement shall be the latter of (a) the date first above written, or (b) when regulatory approval is received, and shall continue in effect until the conveyance of the underlying property by NSR to CSXT, as spelled out in the Transaction Agreement and the PSA,.

**SECTION 4 MISCELLANEOUS PROVISIONS**

Unless specifically addressed and modified by this Agreement, all terms and conditions of the Master Trackage Rights Agreement between CSXT and NSR are hereby incorporated by reference.

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

**WITNESS:**

**NORFOLK SOUTHERN RAILWAY  
COMPANY**

\_\_\_\_\_

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

Vice President Network & Service Management

**WITNESS:**

**CSX TRANSPORTATION, INC.**