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227249

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DIRECT DIAL
859.354.4125

June 4, 2010

FEE RECEIVED
JUN - 4 2010
SURFACE
TRANSPORTATION BOARD

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

Re: Finance Docket No. 35363, R. J. Corman Railroad Property, LLC – Acquisition
Exemption – NC Railroad, Inc.

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a Petition for Waiver of R. J. Corman Railroad Property, LLC with respect to the five-year transfer limitations set forth at 49 U.S.C. § 10904(f)(4)(A) and 49 CFR § 1152.27(i)(2)(ii).

Please feel free to contact me if you have any questions. Thank you for your assistance on this matter.

Sincerely,



Elizabeth E. Darby

Attachments

ENTERED
Office of Proceedings
JUN 4 - 2010
Part of
Public Record

FILED
JUN - 4 2010
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

227249

STB FINANCE DOCKET NO. 35363

R. J. CORMAN RAILROAD PROPERTY, LLC
– ACQUISITION EXEMPTION –
NC RAILROAD, INC.

PETITION FOR WAIVER

David R. Irvin
Elizabeth E. Darby
Moynahan, Irvin, Mooney &
Stansbury, PSC
110 North Main Street
Nicholasville, KY 40356
(859) 887-1200

ATTORNEYS FOR R. J. CORMAN
RAILROAD PROPERTY, LLC

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35363

R. J. CORMAN RAILROAD PROPERTY, LLC
– ACQUISITION EXEMPTION –
NC RAILROAD, INC.

PETITION FOR WAIVER

R. J. Corman Railroad Property, LLC (“Railroad Property”), a Class III common carrier, hereby seeks a waiver of the statutory and regulatory five-year limitations on the transfer of a rail line under 49 U.S.C. § 10904(f)(4)(A) and 49 CFR § 1152.27(i)(2)(ii).

The transferor and the rail carrier from whom the transferor obtained the line do not intend or desire to own or operate the rail line. The requested waiver of the statutory and regulatory provisions allows an existing carrier – Railroad Property – to purchase the subject line and continue operations and service to the area. Accordingly, Railroad Property submits this Petition for Waiver and states as follows:

I. Statement of Facts

The subject rail line of this Finance Docket No. 35363 includes all of the land and property rights collectively constituting an active rail corridor located in Scott, Campbell, and Anderson Counties, Tennessee, extending from Milepost 0.95 at or near Oneida, Tennessee, to Milepost 42.0 at or near Devonia, Tennessee (the “Subject Line”). The total distance of the rail corridor is approximately 42 miles.

On February 28, 2006, NC Railroad, Inc (“NCRL”) purchased the Subject Line from Tennessee Railway Company (“TNR”), a wholly owned subsidiary of Norfolk

Southern Railway Company (“NS”), pursuant to the offer of financial assistance procedures under 49 U.S.C. § 10904. *See* STB Docket No. AB-290 (Sub-No. 259X), *Tennessee Railway Company – Abandonment Exemption – In Anderson and Campbell Counties, TN*, and STB Docket No. AB-290 (Sub-No. 260X), *Tennessee Railway Company – Abandonment Exemption – Between Oneida, Tennessee and Nicks Creek, Tennessee – In Scott County, Tennessee*.

NCRL is a wholly owned subsidiary of National Coal Corporation (“NCC”). At the time NCRL filed the offer of financial assistance in 2006, NCC owned mineral rights in the area of the Subject Line. Since that time NCC has sold its mining operations in that area and no longer needs or desires to own or operate a rail carrier subsidiary.

Pursuant to a purchase and sale agreement, Railroad Property recently acquired the Subject Line from NCRL. Railroad Property is a Class III common carrier by rail and a member of the R. J. Corman family of railroads, which includes eight other Class III rail carriers in the eastern United States. Railroad Property does not perform any rail operations; all the rail lines owned by Railroad Property are leased to and operated by other R. J. Corman rail carrier affiliates. R. J. Corman Railroad Company/Bardstown Line (“RJCR”), a Railroad Property affiliate, operates, maintains and provides all rail common carrier service on the Subject Line pursuant to a separate notice of operation and lease exemption. STB Finance Docket No. 35364, *R. J. Corman Railroad Company/Bardstown Line – Lease and Operation Exemption – R. J. Corman Railroad Property, LLC*.

Railroad Property’s Notice of Acquisition Exemption was effective as of April 26, 2010, the sale and purchase of the line was consummated on or about May 18, 2010,

and RJCR thereafter commenced operations on behalf of Railroad Property and currently provides service to the present owner of the mining operations in the area.

II. Basis for Granting the Petition

NCRL purchased the subject line in February 2006 from TNR pursuant to the offer of financial assistance procedures under 49 U.S.C. § 10904. The regulatory and statutory provisions related to such a transaction state that the purchaser may not transfer the rail line for a period of five years following consummation of the sale, except to the rail carrier from whom it was purchased. The applicable provisions are as follows:

“No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.” 49 U.S.C. § 10904(f)(4)(A).

“[A] purchaser under this section may not: . . . Transfer the line, except to the carrier from whom the line was purchased, prior to the end of the fifth year after consummation.” 49 CFR § 1152.27(i)(2)(ii).

According to those regulatory and statutory provisions, NCRL is restricted from transferring the subject line to any entity other than TNR until five years from the date of consummation of the sale, or February 2011.

NCRL no longer desires to operate the rail line and TNR has declined to repurchase the line and consents to this Petition for Waiver. As stated above, NCRL's parent company previously owned the mineral rights in the area of the Subject Line. Since NCC sold its mining operations in that area, it no longer needs or desires to own or maintain a rail carrier subsidiary. TNR, as the rail carrier from whom the line was purchased by NCRL, has expressly released any regulatory or statutory right to repurchase the subject line. *See* Letter from Norfolk Southern Corporation, with enclosed

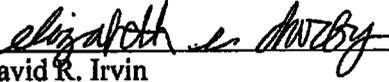
releases, dated May 13, 2010, attached hereto as Exhibit 1. TNR, as a subsidiary of Norfolk Southern, additionally expressly consents to this request for relief from the regulatory and statutory provisions in order to facilitate the immediate transfer of the Subject Line from NCR to Railroad Property. *Id.* Neither TNR, nor its parent Norfolk Southern, desire to re-assume responsibility for the Subject Line. The purchase of the Subject Line by Railroad Property, as an affiliate of a group of rail carriers, will facilitate maintenance of the right-of-way as an active rail corridor to serve the purchaser of the aforesaid mining operations.

As this Petition demonstrates, a waiver of the transfer limitations in this matter will not thwart the intended purposes of the requirements of 49 U.S.C. § 10904(f)(4)(A) and 49 CFR § 1152.27(i)(2)(ii). The waiver will enable operations and service to continue on the Subject Line. The public interest in the preservation of rail service will be served best by granting the requested waiver.

III. Conclusion

For all the foregoing reasons, Railroad Property respectfully requests that the Board issue an order granting this Petition for Waiver with respect to the five-year transfer limitations under 49 U.S.C. § 10904(f)(4)(A) and 49 CFR § 1152.27(i)(2)(ii), to allow for Railroad Property's purchase of the subject line from NCRL within the five-year time period.

Respectfully Submitted,



David R. Irvin
Elizabeth E. Darby
Moynahan, Irvin, Mooney &
Stansbury, PSC
110 North Main Street
Nicholasville, KY 40356
(859) 887-1200

ATTORNEYS FOR R. J. CORMAN
RAILROAD PROPERTY, LLC

Dated: June 4, 2010

VERIFICATION

I, Elizabeth E. Darby, declare under penalty of perjury that I am an attorney for R. J. Corman Railroad Property, LLC and 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 file this Petition for Wavier.

Executed on June 4, 2010.

Elizabeth E. Darby

STATE OF KENTUCKY)
COUNTY OF JESSAMINE)

The foregoing was subscribed and sworn to before me by Elizabeth E. Darby on this the 4 day of June, 2010.

Courtney S. Lawrence
NOTARY PUBLIC

My commission expires: 10-1-12

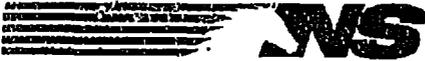
CERTIFICATION OF SERVICE

I hereby certify that I have served all parties of record in this proceeding with this document by United States mail on this the 4th day of June 2010.



David R. Irvin
Elizabeth E. Darby
Moynahan, Irvin, Mooney &
Stansbury, PSC
110 North Main Street
Nicholasville, KY 40356
(859) 887-1200

ATTORNEYS FOR R. J. CORMAN
RAILROAD PROPERTY, LLC



Norfolk Southern Corporation
Real Estate
1200 Peachtree Street, NE - 12th Floor
Atlanta, GA 30309-3579

Telephone: (404) 962-5807
Telecopier: (404) 897-3037
E-mail: lvhill@nscorp.com

Linda V. Hill
General Attorney - Real Estate

May 13, 2010

Activity No. 1087739

David R. Irvin
Moynahan, Irvin, Mooney & Stansbury, PSC
110 North Main Street
Nicholasville, Kentucky 40356

Re: Rights to Repurchase and of First Refusal;
Former Tennessee Railway Company Right-of-Way
Milepost 0.95 to Milepost 42; Scott, Campbell and
Anderson Counties, Tennessee

Dear Mr. Irvin:

Pursuant to your request, enclosed are duly executed instruments releasing the statutory and regulatory rights, pursuant to 49 U.S.C. §10904(f)(4)(A) and 49 CFR §1152.27(i)(2) to repurchase and the right of first refusal, with respect to the subject right-of-way, as retained and reserved by Tennessee Railway Company in its Deeds to NC Railroad, Inc., dated February 27, 2006, of record in Scott County Deed Register's Book WD 269, Page 653; Campbell County Deed Register's Book 452, Page 659; and Anderson County Deed Register's Book 1506, Page 461.

We are providing these instruments to facilitate the immediate transfer of the right-of-way from NC Railroad, Inc., to R. J. Corman Railroad Property, LLC.

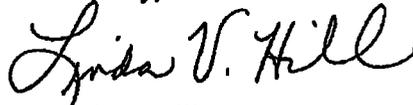
We understand that R. J. Corman Railroad Property, LLC will be filing a Motion before the United States Surface Transportation Board to shorten the repurchase period set out in 49 U.S.C. §10904(f)(4)(A) and 49 CFR §1152.27(i)(2) or to grant other relief necessary to permit



the immediate transfer of the right-of-way from NC Railroad, Inc., to R. J. Corman Railroad Property, LLC, and you are authorized to include a copy of this letter with that filing as evidencing the consent of Tennessee Railway Company to the granting of such relief.

With kind regards, I am

Sincerely,



Linda V. Hill

LVH/vlm

Enclosures

728752v1

RELEASE OF RIGHT TO REPURCHASE AND RIGHT OF FIRST REFUSAL
STATE OF TENNESSEE
COUNTY OF SCOTT

THIS RELEASE OF RIGHT TO REPURCHASE AND RIGHT OF FIRST REFUSAL, made this 13th day of May, 2010, by and between TENNESSEE RAILWAY COMPANY, a Tennessee corporation, Grantor, and NC RAILROAD, INC., a Tennessee corporation, Grantee:

WITNESSETH:

THAT Grantor, by Deed dated February 27, 2006, and of record in Book WD 269, Page 653, in the office of the Scott County Register of Deeds, having quitclaimed unto Grantee certain real property located in Scott County, Tennessee, described in said Deed as the "RAIL LINE", and having reserved in said Deed, at Book WD, Pages ²⁰⁹ ~~656-658~~ ⁶⁵³⁻⁶⁶¹, both a statutory and regulatory right, pursuant to 49 U.S.C. 10904(f)(4)(A) and 49 CFR 1152.27(i)(2), to repurchase the RAIL LINE and a right of first refusal to repurchase the RAIL LINE, does now hereby, for One Dollar (\$1.00) and other good and valuable consideration, including the benefit to Grantor from the continued operation of the RAIL LINE by parties other than Grantor and Grantee, the receipt and sufficiency of all of which is hereby acknowledged, fully release and relinquish unto Grantee, its successors and assigns, said right to repurchase and said right of first refusal.

PROVIDED, HOWEVER, that all other rights and interests reserved to and retained by Grantor in said Deed, are hereby retained by and reserved to Grantor, as fully as if set out at length herein.

IN WITNESS WHEREOF, Tennessee Railway Company has caused these presents to be executed, and its corporate seal to be affixed and attested by its respective officers thereunto duly authorized, the day and year first above written.

Signed, sealed and delivered
in presence of:

A. S. Powell
Witness A. S. Powell

TENNESSEE RAILWAY COMPANY

By
LVH

P. G. Carroll
Real Estate Manager P. G. Carroll

L.S. ATTEST:

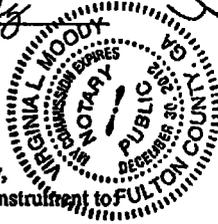
Virginia L. Moody
Notary Public

[Signature]
Assistant Corporate Secretary

My commission expires:

This instrument prepared by,
and please return recorded instrument to

David R. Irvin
Moynahan, Irvin, Mooney &
Stansbury, PSC
110 North Main Street
Nicholasville, Kentucky 40356



STATE OF GEORGIA)

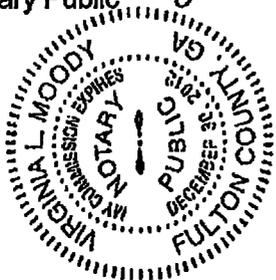
COUNTY OF Fulton)

Before me, the undersigned authority, a Notary Public of the State and County aforesaid, personally appeared P. S. Canell, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged him/herself to be the Real Estate Manager of Tennessee Railway Company, the within named bargainor, a corporation, and that s/he as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by him/herself as such officer.

WITNESS my hand and Official Seal at office this the 13th day of May, 2010.

Virginia L. Moody
Notary Public

My Commission Expires: 12-30-2012



STATE OF TENNESSEE, SCOTT COUNTY

Received May 20, 2010 at 1:28 P.M.
and recorded in Misc. Book 175 Page 10
and entered in Note Book 0 Page 395
State Tax \$ — Fee — Recording Fee \$ 15.00
Data Fee 2.00 Total \$ 17.00 Receipt No. 33947

Porter B. Rector, Jr.
By: M.N.D.R. Registrar

BK/PG: 1522/973-976

10004273

3 PGS : AL - RELEASES	
VEVA BATCH: 68650	09/21/2010 - 03:05 PM
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	16.00
ARCHIVE FEE	0.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	17.00
STATE OF TENNESSEE, ANDERSON COUNTY	
TIM SHELTON	
REGISTER OF DEEDS	

RELEASE OF RIGHT TO REPURCHASE AND RIGHT OF FIRST REFUSAL

STATE OF TENNESSEE

COUNTY OF ANDERSON

THIS RELEASE OF RIGHT TO REPURCHASE AND RIGHT OF FIRST REFUSAL, made this 13th day of May 2010, by and between TENNESSEE RAILWAY COMPANY, a Tennessee corporation, Grantor, and NC RAILROAD, INC., a Tennessee corporation, Grantee;

WITNESSETH:

THAT Grantor, by Deed dated February 27, 2006, and of record in Book 1506, Page 461, in the office of the Anderson County Register of Deeds, having quitclaimed unto Grantee certain real property located in Anderson County, Tennessee, described in said Deed as the "RAIL LINE", and having reserved in said Deed, at Book 1506, Pages 464-466, both a statutory and regulatory right, pursuant to 49 U.S.C. 10904(f)(4)(A) and 49 CFR 1152.27(i)(2), to repurchase the RAIL LINE and a right of first refusal to repurchase the RAIL LINE, does now hereby, for One Dollar (\$1.00) and other good and valuable consideration, including the benefit to Grantor from the continued operation of the RAIL LINE by parties other than Grantor and Grantee, the receipt and sufficiency of all of which is hereby acknowledged, fully release and relinquish unto Grantee, its successors and assigns, said right to repurchase and said right of first refusal.

PROVIDED, HOWEVER, that all other rights and interests reserved to and retained by Grantor in said Deed, are hereby retained by and reserved to Grantor, as fully as if set out at length herein.

IN WITNESS WHEREOF, Tennessee Railway Company has caused these presents to be executed, and its corporate seal to be affixed and attested by its respective officers thereunto duly authorized, the day and year first above written.

Signed, sealed and delivered in presence of:

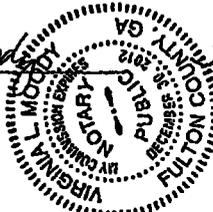
A. S. Powell
Witness A. S. Powell

TENNESSEE RAILWAY COMPANY

By PG Carroll
with
Real Estate Manager PG Carroll

L.S. ATTEST:

Virginia L. Moynahan
Notary Public



[Signature]
Assistant Corporate Secretary

My commission expires:

This instrument prepared by,
and please return recorded instrument to:

David R. Irvin
Moynahan, Irvin, Mooney &
Stansbury, PSC
110 North Main Street
Nicholasville, Kentucky 40356



STATE OF GEORGIA)

COUNTY OF Fulton)

Before me, the undersigned authority, a Notary Public of the State and County aforesaid, personally appeared P. G. Orvell, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged him/herself to be the Real Estate Manager of Tennessee Railway Company, the within named bargainor, a corporation, and that s/he as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by him/herself as such officer.

WITNESS my hand and Official Seal at office this the 13th day of May, 2010.

Virginia L. Moody My Commission Expires: 12-30-2012
Notary Public



BK/PG: R91/176-178
10002602

3 PGS : AR - RELEASE	
LINE BATCH 80804	05/21/2010 - 08:00 AM
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	15.00
ARCHIVE FEE	0.00
CP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	17.00

STATE OF TENNESSEE, CAMPBELL COUNTY
DORMAS MILLER
REGISTER OF DEEDS

RELEASE OF RIGHT TO REPURCHASE AND RIGHT OF FIRST REFUSAL

STATE OF TENNESSEE

COUNTY OF CAMPBELL

THIS RELEASE OF RIGHT TO REPURCHASE AND RIGHT OF FIRST REFUSAL, made this 13th day of May, 2010, by and between TENNESSEE RAILWAY COMPANY, a Tennessee corporation, Grantor, and NC RAILROAD, INC., a Tennessee corporation, Grantee:

WITNESSETH:

THAT Grantor, by Deed dated February 27, 2006, and of record in Book 452, Page 659, in the office of the Campbell County Register of Deeds, having quitclaimed unto Grantee certain real property located in Campbell County, Tennessee, described in said Deed as the "RAIL LINE", and having reserved in said Deed, at Book 452, Pages ⁶⁵⁹ 662-664, both a statutory and regulatory right, pursuant to 49 U.S.C. 10904(f)(4)(A) and 49 CFR 1152.27(i)(2), to repurchase the RAIL LINE and a right of first refusal to repurchase the RAIL LINE, does now hereby, for One Dollar (\$1.00) and other good and valuable consideration, including the benefit to Grantor from the continued operation of the RAIL LINE by parties other than Grantor and Grantee, the receipt and sufficiency of all of which is hereby acknowledged, fully release and relinquish unto Grantee, its successors and assigns, said right to repurchase and said right of first refusal.

PROVIDED, HOWEVER, that all other rights and interests reserved to and retained by Grantor in said Deed, are hereby retained by and reserved to Grantor, as fully as if set out at length herein.

IN WITNESS WHEREOF, Tennessee Railway Company has caused these presents to be executed, and its corporate seal to be affixed and attested by its respective officers thereunto duly authorized, the day and year first above written.

Signed, sealed and delivered
in presence of:

A. S. Powell
Witness A. S. Powell

TENNESSEE RAILWAY COMPANY

By
LVH

P. G. Carroll
Real Estate Manager P. G. Carroll

L.S. ATTEST:

Virginia L. Moody

Notary Public

David R. Irvin

Assistant Corporate Secretary

My commission expires:

This instrument prepared by,
and please return recorded instrument to:

David R. Irvin
Moynahan, Irvin, Mooney &
Stansbury, PSC
110 North Main Street
Nicholasville, Kentucky 40356



STATE OF GEORGIA)

COUNTY OF Fulton)

Before me, the undersigned authority, a Notary Public of the State and County aforesaid, personally appeared P. G. Carroll, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged him/herself to be the Real Estate Manager of Tennessee Railway Company, the within named bargainor, a corporation, and that s/he as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by him/herself as such officer.

WITNESS my hand and Official Seal at office this the 13th day of May, 2010.

Virginia L. Moody My Commission Expires: 12-30-2012
Notary Public

