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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO. 35363

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

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STB FINANCE DOCKET NO. 35364

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R. J. CORMAN RAILROAD COMPANY/BARDSTOWN LINE  
- LEASE AND OPERATION EXEMPTION -  
R. J. CORMAN RAILROAD PROPERTY, LLC

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SUPPLEMENTAL INFORMATION AS REQUESTED  
IN THE BOARD'S DECISION DATED JANUARY 10, 2011

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On March 26, 2010, R. J. Corman Railroad Property, LLC (RJC Railroad Property), a Class III rail carrier filed a Verified Notice of Exemption (acquisition notice) pursuant to 49 C.F.R. § 1150.41 to acquire 42 miles of rail line from NC Railroad, Inc. (NCRL) in Scott, Campbell and Anderson Counties, Tennessee. FD 35363. The acquisition notice was served and published in the Federal Register on April 9, 2010 and became effective on April 25, 2010. Simultaneously, and in a related matter, R. J. Corman Railroad Company/Bardstown Line (RJCR) filed a notice of exemption under 49 C.F.R. § 1150.41 to lease the line from RJC Railroad Property. That lease, and the operation notice, became effective on April 25, 2010. Neither the acquisition notice nor the lease and operation notice discloses that NCRL had acquired the line through an Offer of Financial Assistance (OFA) or that transfer of the line by

NCRL was then restricted by the provisions of 49 U.S.C. § 10904(f)(4)(A) and 49 C.F.R. §1152.27(i)(2)(ii), and that the restriction period would not expire until February, 2011. Those facts were not formally brought to the attention of the Board until June 4, 2010, when RJC Railroad Property filed a petition for exemption from and waiver of the statutory and regulatory provisions.

In its Decision dated January 10, 2011, the Board directed NCRL and RJC Railroad Property to submit supplemental information regarding three specific areas of concern: (1) The acquisition of the line by RJC Railroad Property and the subsequent lease of the line from RJC Railroad Property to RJCR should not have occurred until after a Board decision on the merits of the petition granting the requested exemption and waiver; (2) The request for exemption and waiver should have been filed by the restricted party, NCRL; and (3) the fact that NCRL had acquired the line through an OFA and that transfer of the line was still restricted by the aforesaid statute and regulation should have been disclosed in the acquisition notice.

RJC Railroad Property first summarizes below the financial circumstances and transactional steps that led to the acquisition notice and waiver request. Following that background, RJC Railroad Property responds directly to the concerns set forth in the Board's January 11 Order.

**Background:**

For some time prior to the winter of 2010, RJCR had been providing services to NCRL, a wholly owned railroad subsidiary of National Coal Corporation. Substantially all of NCRL's business was the provision of rail service to its parent's coal preparation plant at Devonia, Tennessee. In March of 2010, National Coal and NCRL approached RJC Railroad Property, explaining that National Coal and NCRL were in dire financial circumstances and requesting that

RJC Railroad Property acquire and operate the NCRL railroad line in an effort to maintain rail service to its Devonia plant. The following financial information has been gathered from public sources, because National Coal Corp. is no longer an active entity.<sup>1</sup>

In 2009 National Coal Corp. had two credit facilities, a short-term \$5.0 million revolving credit facility, and a \$42.0 million senior secured debt having a maturity date of December 15, 2010. Its audit report for the period ended December 31, 2009 included a qualification as to National Coal's ability to continue as a going concern, and the inclusion of that qualification constituted a default of the revolving credit facility, thereby effectively destroying the parent company's ability to borrow short term working capital. It continued to consistently generate net operating losses, and, as of December 31, 2009, had a negative working capital of approximately \$54.8 million and a stockholders' deficit of \$12.3 million. During the first quarter of 2010, it became apparent to the management of National Coal that it would have to begin the immediate liquidation of assets to deal with the existing default of its revolving credit facility and to obtain further forbearance from its primary lender, and it also became apparent that the company would not be able to repay its senior secured debt at maturity.<sup>2</sup>

Accordingly, National Coal entered into negotiations with Ranger Energy Investments, LLC, which led to the sale to Ranger Energy, on April 20, 2010, of several assets of National Coal, including its coal preparation plant at Devonia, Tennessee.<sup>3</sup> The effect of that transaction was to delay further adverse creditor action, but as a condition of the transaction, Ranger Energy sought assurance that rail carrier service to the Devonia coal preparation plant would survive the uncertainties then facing National Coal and its subsidiaries, including NCRL.

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<sup>1</sup> On December 15, 2010, National Coal Corp. was merged into a privately held entity, Ranger Coal Holdings, LLC. National Coal Corp. SEC POST-EFFECTIVE AMENDMENT NO. 1 TO FORM S-3, filed December 16, 2010

<sup>2</sup> National Coal Corp. SEC FORM 10-K, filed March 31, 2010, pps 19, 42

<sup>3</sup> National Coal Corp. SEC FORM 10-Q, filed June 30, 2010, page 5.

In March of 2010, RJC Railroad Property entered into negotiations with National Coal for the purchase and sale of the line which is the subject of this proceeding. By March 26, 2010 those negotiations had finalized to the point that it was appropriate for RJC Railroad Property to file the Acquisition Notice of Exemption and for RJCR to file the Lease and Operation Notice of Exemption. On April 22, 2010, three days before the effective date of the NOEs, in response to RJC Railroad Property's request for documents from which to begin its examination of NCRL's title to the subject line, NCRL produced copies of the deeds to NCRL from Tennessee Railway Company, a Norfolk Southern subsidiary (TNR) revealing that further transfer of the line was restricted by 49 U.S.C. § 10904(f)(4)(A) as well as by an express right of first refusal retained by TNR.

Immediately upon becoming aware of this restriction, counsel for RJC Railroad Property and RJCR telephonically contacted Surface Transportation Board staff and explained the situation. In that communication the staff recommended that counsel file a petition for exemption from and waiver of the restrictive statute and regulation. Although it was carefully explained to counsel that the granting of such a petition was not certain and was a matter for the discretion of the Board, counsel was not made aware of any other procedural vehicle by which a more immediate Board decision might be obtained, nor was counsel advised to attempt to defer the transaction until a ruling on such a petition could be had.

Accordingly, counsel immediately undertook to obtain from TNR its consent to the transfer and its waiver of its right of first refusal, which consent was a threshold prerequisite to a petition for exemption and waiver. The executed and recorded waivers of TNR's right of first refusal were returned to counsel from the local recorders' offices on June 1, 2010, and RJC Railroad Property's petition for exemption and waiver was filed on June 4, 2010.

The sale of the subject line to RJC Railroad Property closed on May 20, 2010, and the line has since then been operated by RJCR as lessee. Following the closing of the sale of the line and during the pendency of the subject petition, National Coal Corp. was merged into Ranger Coal Holdings, LLC, a privately held entity. Its railroad subsidiary, NCRL, was converted to a single member limited liability company which now apparently engages in no business activities other than those associated with the winding up of its affairs. The net effect of closing the transaction on May 20, 2010, was to enable NCRL to transfer the subject line while its parent's relationships with its creditors still left it with sufficient control over its assets to do so and to thereby permit the continuation of uninterrupted rail carrier service to what is now Ranger Energy Investments, LLC's coal preparation plant at Devonia, Tennessee.

**The Board's Concerns:**

RJC Railroad Property and RJCR fully understand the concerns raised by the Board in its January Decision and regret that their formal filings evidently did not convey the full detail that should have been included. We respond to the Board's specific concerns, in reverse order, as follows:

**A. Disclosure of the OFA acquisition and restriction in the Acquisition NOE**

RJC Railroad Property and RJCR would have disclosed in the Acquisition NOE that the line had been acquired by NCRL as a result of an Offer of Financial Assistance and that further transfer was still restricted if they had been aware of those facts at the time the NOEs were filed. As soon as counsel for the R. J. Corman parties became aware of those facts, counsel contacted the Board's staff and followed the suggested procedure. RJC Railroad Property and RJCR have attempted to be completely forthright in their filings with this Board and regret any appearance to the contrary.

**B. Petition for Exemption/Waiver filing by NCRL**

By April of last year when RJC Railroad Property became aware that NCRL had acquired its line under an OFA, it was apparent that National Coal was exclusively focused on avoiding insolvency. While it would have been preferable for NCRL to have filed the exemption petition, counsel for the R. J. Corman parties undertook to make the filing in an effort to bring this matter to the Board's attention as quickly as possible. Since Norfolk Southern and NCRL had formally agreed to waive and release their rights, and National Coal was absorbed in the process of selling itself, counsel for the R. J. Corman parties concluded that awaiting a pleading signed by NCRL was not necessary. If that conclusion was erroneous, we apologize.

**C. Acquisition Prior to Exemption/Waiver**

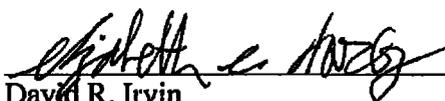
Counsel understands that it was not the proper sequence of events to file the Acquisition NOE before the petition for exemption was filed and decided by this Board. At the time the Acquisition NOE was filed the R. J. Corman parties were not aware that it was going to be necessary to obtain the exemption from the statute. In a good faith effort to close the transaction while NCRL still had sufficient control over its assets to do so, and with counsel's understanding of counsel's communication with the Board's staff, the parties proceeded with the acquisition transaction while petitioning the Board for the necessary exemption and waiver. In retrospect, counsel should have requested emergency relief or taken some other steps to preserve the Board's oversight. This was a mistake in judgment for which we apologize.

**Conclusion:**

RJC Railroad Property and RJCR renew their request to the Board to waive the last nine months of the statutory waiting period for transfer of an OFA property. We are not aware of any

way to obtain the participation of NCRL in this request, beyond the consent previously filed in this proceeding. The OFA seller and purchaser both consented to this transaction. Neither RJC Railroad Property nor RJCR have undertaken to circumvent the purpose of the OFA procedures and have only endeavored to maintain uninterrupted rail service on the line in question. Counsel regrets not having sought emergency relief before closing the acquisition and intends no disrespect of the Board and its procedures.

Respectfully Submitted,



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Dated: January 31, 2011