

227666

August 18, 2010

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

ENTERED  
Office of Proceedings

AUG 19 2010

Part of  
Public Record

Re: Finance Docket No. 35402, Piedmont & Northern Railway, Inc.—  
Operation Exemption—North Carolina Department of Transportation

Dear Ms. Brown:

Attached with this letter are the agreement with NCDOT and the certification and verification. The Line was acquired in 1991 from CSX Transportation, Inc., after CSXT consummated the abandonment of the line.

Thank you for your assistance. If you have any questions, please contact me.

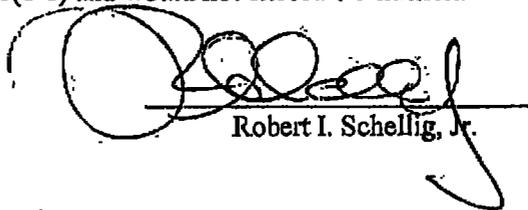
Sincerely yours,

/s/Louis E. Gitomer  
Louis E. Gitomer  
Attorney for Piedmont & Northern Railway, Inc.

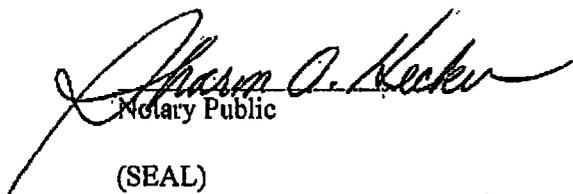
**CERTIFICATION**

State of Florida            )  
  ) ss:  
County of Palm Beach    )

I, Robert I. Schellig, Jr., being duly sworn, deposes and says that he is Vice-President Law of the Piedmont & Northern Railway, Inc., a Delaware corporation, and that the projected annual revenues from the rail operations would not exceed those that would make it a Class III carrier under 49 CFR Part 1201(1-1) and would not exceed \$ 5 million.

  
\_\_\_\_\_  
Robert I. Schellig, Jr.

Subscribed and sworn to before me this 11<sup>th</sup> day of August 2010.

  
Notary Public  
(SEAL)

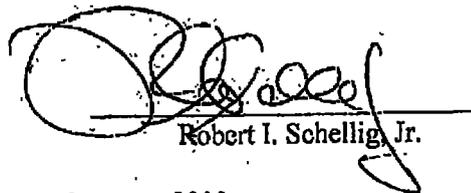
My Commission Expires: Nov. 29, 2011



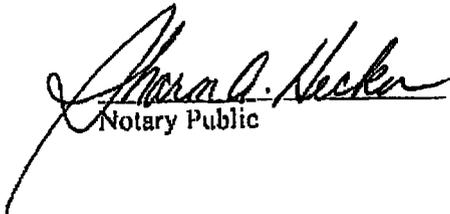
VERIFICATION

State of Florida            )  
  ) ss  
County of Palm Beach    )

I, Robert I. Schellig, Jr., being duly sworn, deposes and says that he is Vice-President Law of the Piedmont & Northern Railway, Inc., a Delaware corporation, and that I have read the foregoing notice of exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information and belief.

  
Robert I. Schellig, Jr.

Subscribed and sworn to before me this 11<sup>th</sup> day of August 2010.

  
Notary Public



FD-35402

July 23, 2010

**PRINCIPAL TERMS AND CONDITIONS FOR RAILROAD LICENSE AND  
OPERATING AGREEMENT ("License") OF NCDOT-OWNED P&N RAIL  
CORRIDOR TO PATRIOT RAIL CORP. (PATRIOT RAIL)**

The following are principal terms and conditions of agreement between the North Carolina Department of Transportation (NCDOT) and a subsidiary or affiliate of Patriot Rail Corp. Company (hereinafter referred to as Patriot Rail), covered by the license for reactivating the P&N Rail Corridor owned by NCDOT. Patriot Rail desires to license and operate the corridor for railroad use and NCDOT agrees to have Patriot Rail operate the corridor as a rail carrier under the terms and conditions set forth below.

**Identification of NCDOT-owned rail corridor to be licensed:**

1. The "Rail Line" is defined as that portion of the former P&N Railroad presently owned by NCDOT, and known as the P&N Rail Corridor, between Milepost SFC 11.39 at Mt. Holly, NC and Milepost SFC 23.0 at Gastonia, NC and the Belmont Spur between Milepost SFC 13.6/SFF 0.13 and Milepost SFF 1.56. The license includes the real property, right of way, roadbed, main track, sidings, industrial tracks, yards, storage areas, culverts, bridges, fixtures, and all other railroad appurtenances located between the railroad mileposts described above.
2. NCDOT continues to explore the feasibility of extending the Belmont Branch portion of the license from Milepost SFF-1.56 to its terminus in downtown Belmont at Milepost SFF-3.13. If the decision is made to move forward with extending license parameter to downtown Belmont, NCDOT shall have the right to incorporate this extension into the license.

**Type of service under this license:**

1. License of the Rail Line for rail freight service is the priority and basis for the reactivation and for this license agreement and, as such, property shall be licensed for railroad freight purposes only under this agreement.
2. Rail passenger service (excursion, tourist, dinner trains, and private passenger car storage) provided by the operator may be included in this license agreement if desired by all parties.
3. Any potential commuter rail service proposed/initiated by NCDOT or others and operated for public transportation over the Rail Line will preserve freight service operations and will not unreasonably interfere with or cause an expense to the freight service with respect to scheduling or for improvements required to operate such commuter rail service.

**Inspections and minimal maintenance on remaining segment of Belmont Branch line not covered in license agreement:**

1. Southernmost 1.5 miles of the Belmont Branch Spur from Belmont/Mt. Holly Road (Milepost SFF-1.56) to downtown Belmont (Milepost SFF- 3.13) are not covered in license agreement. This segment of the P&N rail line will remain inactive at this time, but will require routine inspections and minimal maintenance. Patriot Rail will perform routine inspections and minimal maintenance on this segment, with compensation from NCDOT, with any extensive maintenance still performed and paid for by NCDOT.

**Property Upgrades to FRA Class 2 Conditions and Routine Maintenance**

1. Per Provision Number 4 of RFP # 54-DO-01282010, the first four miles of track under license from Milepost SFC 23.0 at Gastonia to Milepost SFC 19.0 at Ranlo have been upgraded to FRA Class 2 conditions. The remaining portions of the rail line from Ranlo to Mt. Holly and from Belmont Jct. to north of Woodlawn Avenue at Milepost SFF 0.98 on the Belmont Branch will be upgraded by NCDOT to FRA Class 2 conditions beginning in 2010. Upgrade on the Belmont Spur beyond SFF 0.98 will occur at such time that Carus receives support from local government agencies to expand their facility and commits to build an industrial track. This work will include replacement of bridge ties on South Fork Catawba River Bridge and any agreed upon storage tracks for interchange with CSX on the Mt. Holly end of licensed property. All work may not be completed until Spring 2011.
2. In conjunction with upgrading the remaining portion of the line, NCDOT shall construct and complete the following rail sidings to FRA Class 2 conditions:
  - a. Milepost SFC-23 (Gastonia): Rebuild stub end track for locomotive storage, should be at least 170 feet to accommodate two locomotives.
  - b. Milepost SFC 18: Construct stub-end track or, if possible, a runaround track of approximately 5 car lengths if environmental and right-of-way issues are not involved.
  - c. Milepost SFC 16.8 (Lowell): Install signals at Power Drive and restore former siding.
  - d. Milepost SFC 13.7: Reinstall approximately 1,400 feet of main line track and create runaround track.
3. After all upgrades have been completed, property is to be licensed on an "AS IS, WHERE IS" condition and without any expressed or implied warranties.
4. Patriot Rail shall perform routine maintenance items as listed in Attachment A to RFP # 54-DO-01282010.
5. Patriot Rail shall maintain the reactivated portion of the rail line covered by this license at no less than FRA Class 2 condition.

**South Fork River Catawba River Bridge and I-85 Underpass**

1. Engineering inspections of the South Fork Catawba River Bridge at Milepost SFC-16.2 and the I-85 Underpass at Milepost SFC- 21.5 have been completed. This also includes analyzing and rating all structural members and components of

bridge. A copy of the inspection and rating reports will be provided to Patriot Rail when completed by NCDOT's consultant. Inspection and rating analysis will determine if bridges are 286k compliant:

2. Beginning in 2011, all required annual FRA inspections on the South Fork Catawba River Bridge will be responsibility of Patriot Rail.
3. After all bridge ties and associated work has been completed by NCDOT on the South Fork Catawba Bridge, all future general maintenance work on the bridge shall be the responsibility of Patriot Rail, per Attachment A to RFP # 54-DO-01282010.

**Pre-execution of Agreement Conditions:**

1. As outlined in Patriot Rail's bid proposal dated April 19, 2010, Patriot Rail has provided NCDOT with its economic development and operating plan for the Rail Line. A more definitive business plan shall be provided by Patriot Rail within 30 days of commencement of rail service.
2. Patriot Rail shall provide a financial disclosure statement to support their ability for startup operations and to sustain operations of the Rail Line over the initial term of the License.

**Terms and Rental:**

1. Term of the initial license shall include, but not be limited to, an initial term of five (5) years with three (3) five-year renewable options, with 180 days notice for renewal by Patriot Rail.
2. Patriot Rail shall pay to NCDOT a monthly license (rental) fee in the amount of \$1,000 beginning the first full month following commencement of the Agreement (License) until such time as the entire line is upgraded, at which time the monthly fee shall increase to \$2,500 with adjustment for inflation (based on agreed upon method of measurement) at the end of each term. All such monthly license (rental) fees paid shall be credited against payments made by Patriot Rail pursuant to Section 3 hereof.
3. Beginning with license commencement and for each year through the initial five-year base period and any renewal thereof, Patriot Rail shall pay NCDOT 5% of line-haul revenue collected by Patriot Rail.
4. Also at time entire Rail Line upgrade is completed, and as a return on \$5 million upgrade investment and reduced maintenance costs to be realized over the Rail Line in the near future, a monthly fee shall be paid to NCDOT as noted in Table 1 below. All such payments shall be credited against payments made by Patriot Rail pursuant to Section 3 hereof.

**TABLE 1**

<b>Time Period</b>	<b>Monthly Payment</b>
Year 1	\$0
Years 2 -5	\$1,500
Years 6 -10	\$1,000
Years 11 -20	\$0

5. The above reflects return on costs of capital for purchase of the Rail Line and \$5 million outlay for the upgrade project as well as credit for jobs created and other benefits derived from the project and reactivation of the Rail Line. Patriot Rail shall be prepared to provide rail service within 120 days of signing license and thereafter provide rail service to industrial customers on those portions of the rail line that have been upgraded. If no customers exist after 30 months of upgrade completion on the entire rail corridor to be licensed, as identified above, NCDOT shall have the right to terminate the License.

**Capital Improvement projects that may be pursued following initial upgrades to FRA Class 2 condition by NCDOT:**

1. NCDOT and Patriot Rail shall agree to any capital improvement projects following upgrades to FRA Class 2 condition by NCDOT as provided in Provision Number 4 of RFP # 54-DO-01282010. Future capital projects may be pursued by NCDOT, Patriot Rail, or other party(ies), separately or jointly, to support rail traffic needs with responsibility for costs to be negotiated.

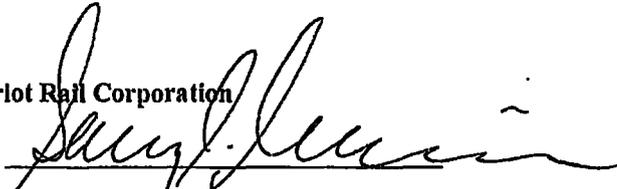
**Other Obligations by NCDOT and PATRIOT RAIL:**

1. Once initial upgrades are completed, Patriot Rail shall be responsible for all corridor maintenance such as inspections, grade crossing signals, vegetation spraying, brush cutting, and ditch drainage as contained on Attachment A to RFP # 54-DO-01282010.
2. Patriot Rail shall operate and maintain the reactivated portion of the Rail Line covered by this license at no less than FRA Class 2 track. Any repairs required to maintain this level of service shall be made within 90 days of determination or notification of needed repairs.
3. Patriot Rail shall enter into and provide interchange agreements with connecting railroads as may be required to fulfill Patriot Rail's common carrier obligations. Copies of interchange agreements shall be provided to NCDOT.
4. Patriot Rail, as part of its interchange agreement, shall develop guidelines for potential handling of any run-through trains with CSX and NS.
5. Patriot Rail and NCDOT shall meet with the Federal Railroad Administration (FRA) to discuss/determine obligations of both parties and federal regulations associated with the start-up of rail operations. Patriot Rail shall comply with FRA regulations in regard to start-up and operation of rail service.
6. Patriot Rail shall comply with all applicable local, state, and federal laws and regulations in its operation of the Rail Line.

7. NCDOT shall, as owner of the property, manage rail corridor encroachments and retain all existing encroachment fees. Fees associated with future encroachments recruited to and developed on the Rail Line by Patriot Rail shall be shared on a 50-50 basis as long as Patriot Rail licenses the corridor. The encroaching party shall be responsible for engineering drawings, permits, construction, and costs related to such. NCDOT shall have the right to review and approve, at its costs, any encroachments developed by Patriot Rail to ensure compliance with engineering standards and that future rail transportation use of the corridor is preserved. Patriot Rail shall have the right to review proposed encroachments for potential impacts on their rail operations.
8. Agreements with third parties for long term storage of empty railcars on mainline track are subject to NCDOT approval which shall not be unreasonably withheld and shall be forthcoming within 7 days of notification from Patriot Rail. Storage of rail freight cars on southernmost portion of the Belmont Spur from Belmont/Mt. Holly Road to downtown Belmont will not be allowed without prior NCDOT approval.
9. Patriot Rail will negotiate all new side and industrial track agreements associated with restoration of service. Patriot Rail or industry shall assume all design, construction and maintenance costs associated with any new sidings or industrial tracks. NCDOT shall be included in the early planning process for such projects. If such projects are located on NCDOT property, then such agreements shall be submitted to NCDOT, prior to execution, for its review and approval, which shall not be unreasonably withheld and shall be forthcoming within 15 days of notification from Patriot Rail.
10. Patriot Rail shall, in conjunction with NCDOT and Operation Life Saver, develop and implement a community outreach program to educate the public on railroads and train safety prior to commencement of and during operations.
11. Patriot Rail shall procure and maintain in effect for the duration of the license a policy or policies of liability insurance in an amount adequate to cover any occurrence to which Patriot Rail or NCDOT may be subject to liability in connection with the operation, use or maintenance of the P&N, including personal injury or death. The minimum limits of the total coverage once freight service begins will be \$5,000,000.00 per occurrence for freight purposes. The subject insurance policy or policies shall specify NCDOT as an additional insured, as its interests may appear.
12. NCDOT will retain the right at its sole cost and expense to inspect P&N rail line and operations.
13. At the termination of license agreement, Patriot Rail shall return railroad to NCDOT in FRA Class 2 condition, and cleanup of the corridor shall be performed to the satisfaction of NCDOT. Patriot Rail shall be responsible for all costs associated therein.
14. Any subsequent assignment or sale by Patriot Rail of the license shall require the approval of NCDOT.

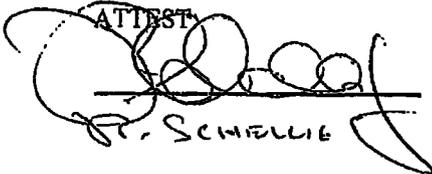
IN WITNESS WHEREOF, these Terms & Conditions have been developed and executed by the Department of Transportation, an agency of the State of North Carolina, and Patriot Rail Corporation by and through duly authorized representatives, and is effective the date and year first set forth hereinabove.

Patriot Rail Corporation

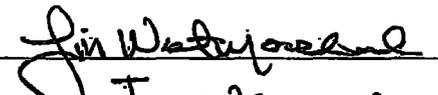
BY: 

Name (Print): GARY O. MARINO

Title: PRESIDENT & CEO

ATTEST:  
  
P. SCHELLIE

North Carolina Department of Transportation

BY: 

Name (Print): JIM WESTMORELAND

Title: DEP. SECRETARY FOR TRANSIT

ATTEST:

  
Secretary to the Board of Transportation  
and Custodian of the Seal of the Department  
of Transportation