



Norfolk Southern Corporation
 Law Department
 Three Commercial Place
 Norfolk, Virginia 23510-9241

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 Office of Proceedings

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Daniel G. Kruger
 Attorney

227 135

Writer's Direct Dial Number

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NOTICE: FILING CONTAINS MAP APPENDIX

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



Re: STB F.D. No. 35357, Norfolk Southern Railway Company –
 Trackage Rights Exemption – The West Tennessee Railroad, LLC

Dear Ms. Brown:

Enclosed for filing please find an original and ten copies of the Verified Notice of Exemption submitted in the above-referenced proceeding, together with twenty additional copies of the map that appears as Exhibit 1 thereto. Also enclosed is a check for \$1,700.00 covering the costs set forth in 49 C.F.R. Section 1002.2(f)(40)(iv).

The original of this filing is clipped, but all copies have been stapled. Also submitted are three IBM-compatible diskettes, each with an electronic copy of this filing in PDF format and a file capable of being read by WordPerfect 9.0. These diskettes are labeled with the Docket Number as well as the title to the proceeding.

An additional copy of the Notice also is enclosed. Please indicate receipt and filing by time-stamping this extra copy and returning it in the enclosed self-addressed stamped envelope.

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Sincerely,

 Daniel G. Kruger

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35357

NORFOLK SOUTHERN RAILWAY COMPANY
- TRackage RIGHTS EXEMPTION
THE WEST TENNESSEE RAILROAD, LLC

VERIFIED NOTICE OF EXEMPTION

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Pursuant to 49 C.F.R. Parts 1180.2(d)(7) and 1180.4(g), Norfolk Southern Railway Company ("Norfolk Southern") hereby files this Verified Notice of Exemption from the prior approval requirements of 49 U.S.C. Section 11323, et seq., to permit Norfolk Southern to exercise overhead trackage rights over approximately 118.9 miles of rail line controlled by The West Tennessee Railroad, LLC ("WTNN"), between MP IC-406.1, near Fulton, Kentucky, and MP IC-525.0, near Ruslor Junction (Corinth), Mississippi. The trackage rights are based upon a written agreement and are not filed or sought in a responsive application to a rail consolidation proceeding. Accordingly, they are exempt from the prior approval requirements of 49 U.S.C. Section 11323.

In furtherance of this, Norfolk Southern hereby files this notice of exemption for the proposed transaction, and submits the following information in support thereof:

- a. Correspondence.

The person to whom correspondence with respect to this Notice should be addressed (49 C.F.R. Section 1180.6(a) is:

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Daniel G. Kruger
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Norfolk, VA 23510-2191
(757) 533-4939
(757) 629-2607 (Fax)

b. Transaction Summary.

The following is a summary of the transaction, its proposed timing, and the purpose of the proposed transaction (49 C.F.R. Sections 1180.6(a)(1)(i)-(iii)):

Norfolk Southern (with its consolidated subsidiaries) is a Virginia corporation with its business address of Three Commercial Place, Norfolk, VA 23510. It is a Class I railroad and a wholly-owned subsidiary of Norfolk Southern Corporation, a holding company. Norfolk Southern Corp. – Control – Norfolk & W. Ry. Co., 366 ICC 173 (1982). Norfolk Southern (with its subsidiaries) operates a rail system that extends throughout 22 states and the District of Columbia in the eastern United States, except New England.

The other rail carrier involved in this transaction is WTNN, a New Jersey limited liability company.

Under the proposed transaction, Norfolk Southern will be authorized to use overhead trackage rights over approximately 118.9 miles of the WTNN main line, generally between a connection with MP IC-406.1, near Fulton, Kentucky and a connection with NS at Ruscor Junction near Corinth, Mississippi. The basic purpose sought to be accomplished by the proposed transaction is to enable Norfolk Southern to efficiently route traffic between Fulton and Corinth for further transportation beyond said endpoints.

The proposed transaction described herein will be consummated no sooner than the latter of (1) the effective date of this Notice, or (2) the expiration of any labor notice period to which the carriers may be subject. Although the trackage rights agreement is dated February 6, 2008, no traffic has moved pursuant to the agreement.

c. Applicant's location.

The Applicant operates in the following locations (49 C.F.R. Section 1180.6(a)(5):

In addition to the District of Columbia, Norfolk Southern operates in the States of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia.

d. Map.

Pursuant to 49 C.F.R. Section 1180.6(a)(6), a map, showing the lines subject to the proposed transaction, together with those of relevant short line connections and other rail lines in the region, together with the principal geographic points in the region traversed, is attached hereto as Exhibit 1.

e. Agreement.

Pursuant to 49 C.F.R. Section 1180.6(a)(7)(ii), a copy of the executed agreement showing the significant terms of the proposed transaction (and redacting the confidential business terms) is attached hereto as Exhibit 2. Norfolk Southern has today submitted a petition for protective order. Separately Norfolk Southern has today submitted – on a confidential basis – an unredacted version of the executed agreement.

f. Labor Protection.

Any employees adversely affected by the trackage rights are entitled to protection under the conditions imposed in *Norfolk and Western Railway Company – Trackage Rights – Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc. – Lease and Operate – California Western Railroad*, 360 I.C.C. 653 (1980).

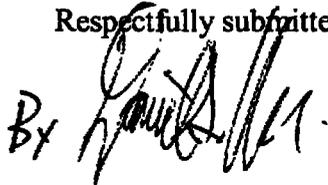
g. Environmental and History Documentation.

The proposed transaction qualifies under 49 C.F.R. Section 1105.6(c)(4) and as such, no environmental documentation is required. Likewise, the proposed transaction qualifies under 49 C.F.R. Section 1105.8(b)(3) and as such, no historic report will be prepared.

h. Caption Summary.

A caption summary suitable for publication in the Federal Register is attached hereto as Exhibit No. 3.

Respectfully submitted,

By 

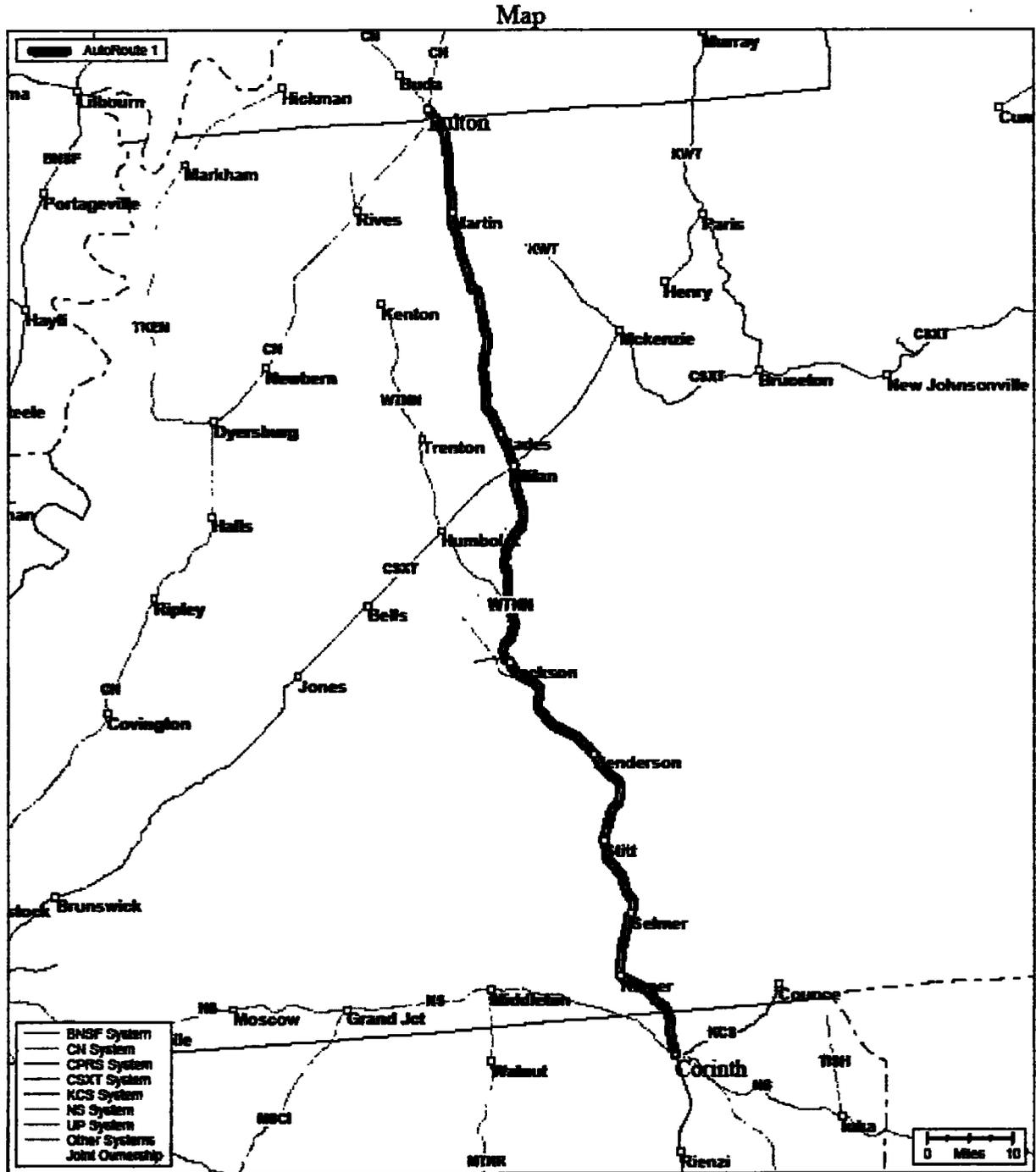
NORFOLK SOUTHERN RAILWAY COMPANY
Three Commercial Place
Norfolk, Virginia 23510

By: Daniel G. Kruger
Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
(757) 533-4939
(757) 629-2607 (Fax)

Dated: May 20, 2010

Exhibit 1

Map



PC*MLER, Rail for Windows © ALK Technologies, Inc. 2009 4/1/2010

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TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT made this 6th day of February, 2008 by and between **THE WEST TENNESSEE RAILROAD, LLC**, a New Jersey limited liability company, hereinafter called "**WTNN**", and **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation, hereinafter called "**NSR**" or "**USER**";

WITNESSETH:

WHEREAS, the parties entered into a Lease Agreement dated June 27, 2001 whereby, among other things, NSR leased the line of railroad from Milepost IC-406.1 at the Fulton, Kentucky station, to milepost IC-525.0, one mile north of Ruslor Junction (Corinth), Mississippi, and the Bemis to Poplar Corner, Tennessee branch line from milepost GW-0.0 to GW-15.0, and the Jackson, Tennessee connection track from milepost GH-0.0 to GH-2.2, and the Lawrence and Carroll, Tennessee branch line from milepost MM-388.5 to MM-394.5 to WTNN for continued operation of rail services ("Original Lease"); and

WHEREAS, the parties entered into an amendment to the Lease dated August 2, 2001 whereby NSR delegated to WTNN all responsibilities and obligations and assigned to WTNN all rights under a trackage rights agreement dated June 30, 1980 originally between the Illinois Central Gulf Railroad Company and the Louisville and Nashville Railroad Company; (together with the Original Lease, and any subsequent amendments to the Original Lease, the "Lease") and

WHEREAS, WTNN is willing to allow User the right to use the Subject Trackage, as that term is defined below, on the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

Section 1. GRANT OF SUBJECT TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, WTNN hereby grants to User the right to operate trains, locomotives, and equipment with its own crews, to handle cars in its own account, (hereinafter referred to as "Subject Trackage Rights") over the mainline of WTNN's railroad from Milepost IC-406.1 at the Fulton, Kentucky station to milepost IC-525.0, one mile north of Ruslor Junction (Corinth), Mississippi, a distance of approximately 118.9 miles, including sidings on the mainline at Martin, TN, Lawrence, TN and Ramer, TN, as illustrated on the map attached hereto, made a part hereof and marked Exhibit "I"

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(hereinafter referred to as the "Subject Trackage"). All trains, locomotives, cars and equipment operated by User pursuant to this Agreement shall hereinafter be referred to as User's trains, locomotives, cars and equipment.

Section 2. USE OF SUBJECT TRACKAGE

- (A) User's use of Subject Trackage shall be in common with WTNN, and WTNN's right to use the Subject Trackage shall not be diminished by this Agreement.
- (B) Except as may otherwise be provided by this Agreement, User shall not use any part of the Track for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains, except that nothing contained herein, upon prior approval of WTNN, shall preclude the emergency use by User of such auxiliary tracks as may be designated by WTNN for such purposes.
- (C) User shall have the right to operate in either direction of the Subject Trackage.
- (D) User shall not use the trackage rights to effect an interchange with Kansas City Southern at Corinth, MS or use the trackage rights to bridge traffic between CN at Fulton, KY and KCS at Corinth, MS.

Section 3. RESTRICTION ON USE

User shall not perform any passenger service or any local freight service whatsoever at any point located on Subject Trackage; however, User shall be allowed to operate a company inspection train over Subject Trackage, provided that User coordinates said operation with WTNN.

Section 4 MISCELLANEOUS SPECIAL PROVISIONS

- (A) When operating over Subject Trackage, User's locomotives and crews will be equipped at user's cost to communicate with WTNN on radio frequencies normally used by WTNN in directing train movements on Subject Trackage.
- (B) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of WTNN's representative or his designee.

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- (C) User shall not progress north of the siding at approximately IC-417 at Martin, TN, until User has verified with Canadian National that User has the ability to make a complete and continuous, uninterrupted movement over the Subject Trackage and onto the Canadian National trackage at Fulton, KY, upon which User has trackage rights.
- (D) Dispatching.
1. WTNN shall have exclusive control over the management and dispatching of the Subject Trackage. Notwithstanding the foregoing, WTNN shall provide dispatching services 24 hours, 7 days per week. For the purposes of dispatching, Norfolk Southern overhead trains moving pursuant to this Agreement shall have priority over the trains of WTNN and others receiving equality of treatment with those of WTNN in dispatching priority.
 2. NSR shall provide WTNN with proposed train schedules for NSR use of Subject Trackage. NSR shall provide reasonable notification to WTNN of anticipated deviations in their arrival times at WTNN tracks.
 3. NSR and WTNN will jointly coordinate changes to the train schedules, reflecting the operating demands and traffic levels of both parties.
 4. The parties will develop metrics, such as estimated NSR transit time, concerning traffic moving pursuant to this Agreement that each party will seek to meet. Notwithstanding the foregoing Section 4(D)(2), if WTNN, by its actions or inaction in dispatching, or its failure to adhere to the requirements of Section 4(D)(1), causes NSR to fail to adhere to the schedules described in accordance with Section 5(D)(2), and with the metrics developed by the parties pursuant to this subsection, NSR may advise WTNN in writing that it believes WTNN is deficient in its performance of the dispatching function. WTNN shall have 30 days from the date it receives such notice to remedy the situation. If the situation is not remedied within 30 days, WTNN will provide NSR a two hour buffer for each of NSR's scheduled overhead trains – such buffer essentially providing for a rolling window of time during which WTNN will clear its lines in front of each of NSR's scheduled overhead trains. WTNN and NSR acknowledge that delays may occur as a result of scheduled capital improvement work or required maintenance work, including but not limited to bridge rehabilitation. WTNN shall use its best efforts to schedule all such work during such work windows as may be reasonable or necessary to permit adherence to the NSR schedule and transit time,

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but unexpected delays, and delays attributable to NSR's trains arriving late on Subject Trackage, shall not be attributable to WTNN.

Section 5. MAINTENANCE OF SUBJECT TRACK

- (A) Existing connections, which are jointly used by the parties hereto under existing agreements, shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- (B) WTNN shall be solely responsible for the performance of maintenance, repair, and renewal of the Subject Trackage.

[REDACTED]

Notwithstanding the foregoing, WTNN shall arrange to keep and maintain the Subject Trackage in reasonably good condition as hereinafter contemplated by this paragraph, such condition not to be less than that required by the Lease.

[REDACTED]



Section 6. Miscellaneous Provisions

With reference to the trackage rights agreement dated June 30, 1980, originally between the Illinois Central Gulf Railroad Company and the Louisville and Nashville Railroad Company and assigned to WTNN, NSR agrees to permit WTNN to: (1) interchange with CSXT in Jackson, TN at Iselin yard and (2) enter into a haulage agreement with CSXT for the movement of CSXT traffic between said Iselin Yard and Humboldt, TN for the sole purpose of serving the CSXT Jackson customers during the Lease. Upon expiration or termination of the Lease, NSR agrees to allocate a track in Iselin Yard at Jackson, TN, for WTNN to use for interchange with CSXT and agrees to give WTNN trackage rights from Jackson to Carroll, TN (to WTNN's owned track), pursuant to an agreement ("WTNN Trackage Rights Agreement") that includes standard terms and conditions, with the compensation as set forth hereinafter for the purpose of moving CSXT traffic between Jackson and Carroll.

- (A) The trackage rights fee payable by WTNN to NSR pursuant to the WTNN Trackage Rights Agreement shall be based on an August 2008 rate of [REDACTED] per car-mile revised upward or downward, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of chargeout Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the association of American Railroads ("AAR"). In making such a determination, the Final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East district shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year and applying that percentage to the Current Charge.
- (B) In the event the base for the Annual Indexes of Charge-out Prices and Wage Rates issued by the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under terms of Section 17 of this Agreement.
- (C) Under no circumstances shall the rate paid to NSR by WTNN be less than [REDACTED] per car-mile.

SECTION 7. INVOICES AND PAYMENT OF BILLS

(A) Generally.

On or before the 30th day of each calendar month during the term of this Agreement, WTNN shall prepare and deliver to NSR a statement setting forth the charges due to WTNN by NSR pursuant to this Agreement for the immediately preceding month (the "Monthly Statement"). The Monthly Statement shall be delivered to NSR's designee in a format to be mutually agreed upon by the Parties prior to the initiations of operations, and shall contain such information relating to the charges covered that NSR may reasonably request in connection with accounting for the use of the services and rights provided hereunder. NSR shall make payment to WTNN within thirty (30) days after the date of such Monthly Statement.

(B) Disputes.

Any dispute regarding the amount of, or justification for any charge contained within, a Monthly Statement shall be reconciled between the Parties, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Monthly Statement. If NSR disputes any portion of a Monthly Statement, it shall nevertheless pay such Monthly Statement in full (unless such dispute involves a material amount in relation to the total amount of such Monthly Statement), subject to adjustment upon resolution of the dispute; provided, however, that (i) no exception to any charge in a Monthly Statement shall be honored, recognized or considered if filed after the expiration of three (3) years from the date of the Monthly Statement, and (ii) no invoice shall be rendered more than three (3) years (a) after the last day of the calendar month in which the expense covered thereby is incurred, or (b) in the case of charges disputed as to amount or liability, after the amount owed or liability therefore is established. Any claim for the adjustment of a Monthly Statement shall be deemed to be waived if not made in writing within three (3) years after the date of the relevant Monthly Statement.

(C) Audits.

WTNN and NSR shall each have the right, at its own expense, to audit the records of the other Party pertaining to the use of the Subject Trackage under this Agreement, and any Monthly Statement or other invoice issued by WTNN or NSR, respectively, pursuant to this Agreement, provided such audit is initiated at any time within three (3) years of the date of the relevant Monthly Statement or other invoice (as applicable) relating to this Agreement. All such audits shall be conducted at reasonable intervals, locations and

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times. All such audits shall be prosecuted with reasonable due diligence. Each Party agrees that all information disclosed to it or its representatives in connection with such an audit will be held in strictest confidence and will not be disclosed to any third party (other than to an arbitrator in connection with an arbitration conducted pursuant this Agreement or as required by applicable law). Any adjustment resulting from an audit conducted pursuant to this Section 7(C) with respect to which the Parties are in concurrence shall be reflected in a subsequent Monthly Statement.

(D) Labor and Material.

Invoices rendered pursuant to the provisions of this Agreement shall consist of actual costs and expenses.

Section 8. ADDITIONS, RETIREMENTS AND ALTERATIONS

- (A) NSR, from time to time, may request WTNN to make changes in, additions and betterment to, or retirements from, the Subject Trackage ("Subject Trackage Improvements") as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof, otherwise necessary or desirable for NSR's operations, or required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. WTNN shall cause the Subject Trackage Improvements to be constructed, and NSR shall fund these improvements.

[REDACTED]

WTNN and NSR shall cooperate in the construction to minimize or mitigate interference with operations on the Subject Trackage. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage. WTNN shall cause a contractor to effectuate any construction covered by this Section 8(A), the choice of contractor being subject to NSR's consent, not to be unreasonably withheld or delayed.

[REDACTED]

[REDACTED]

(B) WTNN and User note that when WTNN began operating the leased line, WTNN petitioned the Federal Railroad Administration ("FRA") to remove the then-existing automatic block signal system. If the FRA determines that the signal system must be restored as a result of NSR's operating over the Subject Trackage, NSR shall fund any restoration cost the new automatic block signal system. It is anticipated that WTNN, unless agreed to the contrary by NSR and WTNN, shall complete any signal restoration work required on the Subject Trackage.

(C) [REDACTED]

Section 9. MANAGEMENT AND OPERATIONS

(A) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless WTNN and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon WTNN or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.

(B) User in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of WTNN, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of WTNN. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum

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authorized freight speeds as provided by WTNN's operating rules and regulations without the prior consent of WTNN.

- (C) User shall make such arrangements with WTNN as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover. WTNN shall provide reasonable cooperation and assistance in the qualification of NSR operating (train and engine) crews for service over the Subject Trackage. NSR supervisory personnel who have been qualified to operate over the Subject Trackage may qualify other Norfolk Southern employees for operation of trains over the Subject Trackage. User shall pay to WTNN, upon receipt of bills therefor, any cost incurred by WTNN in connection with the qualification of such employees of User, as well as the cost of pilots furnished by WTNN.
- (D) If any employee of User shall neglect, refuse or fail to abide by WTNN's rules, instructions and restrictions governing the operation on or along WTNN's property, such employee shall, upon written request of WTNN, be prohibited by WTNN from working on WTNN's property. If any party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, User shall promptly hold an investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If the result of such investigation warrants, such employee shall, upon written request by WTNN, be withdrawn by User from service on WTNN's property and User shall release and indemnify WTNN from and against any and all claims and expenses because of such withdrawal.
- (E) Notwithstanding the result of any investigation conducted pursuant to the User's collective bargaining agreement or rules, WTNN shall have the right to exclude from the Subject Trackage any employee of User determined by it to be in violation of WTNN's rules, regulations, orders, practices, or instructions. User shall release, indemnify, defend, and save harmless WTNN and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- (F) The trains, locomotives, cars and equipment of User, WTNN, and any other present or future user of the Subject Trackage or any portion thereof, shall

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be operated without prejudice or partiality to either party and in such manner as will afford the most economical and efficient movement of all traffic.

- (G) In the event that a train of User shall be forced to stop on the Subject Trackage, due to mechanical failure of User's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by WTNN on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, WTNN shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse WTNN for the cost of rendering any such assistance.
- (H) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by WTNN, and User shall reimburse WTNN for the cost thereof.

Section 10. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

Section 11. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, WTNN shall be notified immediately and then, unless agreed to the contrary by the local transportation supervisors of NSR and WTNN shall cause such service to be provided, including the repair and restoration of roadbed, track and structures. User will notify WTNN of any hazardous material involved and User will provide all notices required by law or contract as well as inform WTNN of all such requirements and that they have been fully complied with and of the identity of any entity other than User, the FRA and local emergency agencies which will seek access to the wreck site. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 14 hereof. All locomotives, cars,

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and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it when and if rendered safe to move.

Section 12. LIABILITY

The responsibility of the parties hereto as between themselves for all claims, liabilities, demands, actions at law or equity, judgments, settlements, losses, damages and expenses of every character, including any loss of, damage to, or destruction of any property whatsoever, and any injury to or death of any person or persons whomsoever (including employees of the parties hereto), resulting from, arising out of, incidental to, or occurring in connection with the Subject Trackage Rights granted in this Agreement ("Loss or Damage"), shall be determined as follows, without regard to considerations of fault or negligence (except as otherwise specifically provided for hereinafter):

- (A) Whenever any Loss or Damage occurs with the trains, locomotives, cars, or equipment of, or in the account of, WTNN (or any other user other than NSR) being involved, without the trains, locomotives, cars, or equipment of, or in the account of, NSR being involved, as between NSR and WTNN, WTNN shall assume all liability therefor, and shall forever protect, defend, indemnify, and save harmless NSR and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of NSR or its directors, officers, agents or employees.
- (B) Whenever any Loss or Damage occurs with the trains, locomotives, cars, or equipment of, or in the account of, NSR being involved, without the trains, locomotives cars, or equipment of, or in the account of, WTNN (or any other user other than NSR) being involved, as between NSR and WTNN, NSR shall assume all liability therefor, and shall forever protect, defend, indemnify, and save harmless WTNN and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of WTNN or its directors, officers, agents, or employees including, but not limited to, any failure of WTNN to properly construct or maintain trackage, grade crossings or other fixtures or equipment.
- (C) Whenever any Loss or Damage occurs with the trains, locomotives, cars, or equipment of, or in the account of, both WTNN (or other user other than

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NSR) and NSR being involved, as between WTNN and NSR, WTNN and NSR shall separately assume and bear all Loss or Damage to said trains, locomotives, cars (including without limitation lading), and equipment of each of WTNN (or other user other than NSR) and NSR, respectively, and for all Loss or Damage of each of their directors, officers, agents, and employees, and persons in each of their care and custody (the directors, officers, agents and employees and persons in the care and custody of users other than NSR being considered those of WTNN for purposes of this section). All other Loss or Damage (including without limitation Loss or Damage to the Subject Trackage) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, so occurring shall be borne equally by NSR and WTNN as between WTNN and NSR.

- (D) Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.
- (E) In every case of death or injury suffered by an employee of either WTNN or NSR, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- (F) For the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon. For the purposes of this Section 12, the trains, cars and equipment other than User's trains, cars and equipment, and the officers, directors, employees and agents other than User's officers, directors, employees and agents, shall be considered the trains, cars, equipment,

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officers, directors, employees and agents of WTNN except for non-WTNN equipment operating on the public highway, or on a private road or equipment of trespassers.

- (G) Notwithstanding anything to the contrary, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, or to third parties from substances transported in cars or contained in locomotives occurs with one or more trains being involved, then, as between themselves, (i) WTNN shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in cars or equipment of WTNN (or that of another user other than NSR) and/or contained in a WTNN locomotive (or that of another user other than NSR) transported in which was released, (ii) NSR shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in cars or equipment of NSR and/or contained in a NSR locomotive which was released, and (iii) responsibility for damage or destruction to the environment and to third parties which results from one or more substances which was (or were) being transported in Cars, Equipment or locomotives in the revenue waybill account and car hire accounts of both WTNN (or another user other than NSR) and NSR which was (or were) released shall be borne by the Participant Parties in proportion to the total number of such cars, equipment or locomotives in that Party's revenue waybill account or car hire account from which there was (or were) such a release, with cars, equipment and locomotives of users other than NSR being counted as if they were WTNN cars, equipment and locomotives.

Section 13. INVESTIGATION

- (A) Except as provided in Subsection 13(B) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.
- (B) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.
- (C) In the event a claim or suit is asserted against WTNN or NSR which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the

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investigation, adjustment, and defense of such claim or suit.

- (D) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time claim agents, full-time attorneys, and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.
- (E) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Thirty-Five Thousand Dollars (\$35,000).
- (F) It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 14 hereof.

Section 14. CLAIMS

- (A) The parties shall agree between themselves on the fairest, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that each party shall be responsible for losses occurring to lading in its possession for the account of such party.
- (B) Each party shall indemnify and hold harmless the other parties against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the parties' intention that each party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees. Similarly, each party agrees to indemnify and hold harmless the other parties against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses,

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arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement.

Section 15. TERM, DEFAULT AND TERMINATION

- (A) This Agreement shall become effective following the latest of: (a) the date first written above; (b) the receipt of any regulatory approvals or exemptions; and (c) the expiration of any time periods required by the issuance of labor notices by the parties, should such labor notices be required ("Commencement Date"). The parties shall determine the Commencement Date through an exchange of written correspondence which shall remain in full force and effect as long as the Lease remains in effect. Operations pursuant to this Agreement shall be initiated on no less than three (3) months advanced notice by NSR to WTNN.
- (B) Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to termination thereof.
- (C) The rights, benefits, duties and obligations running from or to User under this Agreement shall in all events expire, other than the rights and obligations set forth in Section 6 and other than liabilities incurred prior to termination, upon termination of this Agreement.
- (D) Either Party may terminate this Agreement without payment or penalty to the other Party if NSR has not initiated infrastructure improvements as provided for in Section 8A within the first five (5) years following execution of this Agreement or if NSR has not utilized the trackage rights granted pursuant to this Agreement within the first eight (8) years following execution of this Agreement.

Section 16. REGULATORY APPROVAL

The parties agree that this Agreement will be submitted at NSR's sole expense, to the STB for approval, at a time to be determined by NSR. WTNN agrees to support NSR's submission to the STB.

Section 17. ARBITRATION

Any irreconcilable dispute arising between the parties hereto with respect to any of the provisions of this Agreement that cannot be settled by the parties themselves shall be settled through binding arbitration by a sole, disinterested arbitrator to be selected jointly by the parties. If the parties fail to select such arbitrator within sixty (60) days after demand for arbitration is made by either party hereto, then they shall jointly submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The Arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal laws or antitrust laws. The decision of the arbitrator shall be final and conclusive upon the parties hereto, and shall be enforceable in a court of competent jurisdiction. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne equally by the parties hereto.

Section 18. SUCCESSORS AND ASSIGNS

- (A) Except as provided herein, neither this Agreement nor any of the rights, interests or obligations hereunder, shall be assigned by any party, including by operation of law, without the prior written consent of the other parties, except to a controlled subsidiary.
- (B) Any party without the consent of the other parties may assign all of its rights and obligations under this Agreement only to any successor in the event of a merger, consolidation, sale of all or substantially all its assets, if such assignee executes and delivers to the other parties hereto an agreement reasonably satisfactory in form and substance to such other parties under which such assignee, assumes and agrees to perform and discharge all the obligations and liabilities of the assigning party; provided that any such assignment shall not relieve the assigning party from the performance and discharge of such obligations and liabilities that accrued prior to such assignment.

Section 19. NOTICE

Any notice required or permitted to be given by one party to another under this Agreement shall be deemed given on the date sent by certified mail, or by such other

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means as the parties may agree, and shall be addressed as follows:

If to User: Vice President Transportation Operations
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-2191

With a copy to:
Vice President Strategic Planning
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

If to WTNN: President
West Tennessee Railroad
11 East Church Street
Sea Bright, NJ 07760
Fax Number 732-530-7270
E-mail address wtnrr@aol.com

Any party may provide changes in the above addresses to the other parties by personal service or U.S. mail.

Section 20. GENERAL PROVISIONS

- (A) This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- (B) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all parties to this Agreement.
- (C) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words terms and phrases in the railroad industry.
- (D) All Article headings are inserted for convenience only and shall not affect any interpretation of this Agreement.
- (E) As used in this Agreement, whenever reference is made to the trains,

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locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of another party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.

- (F) This Agreement is the result of mutual negotiations of the parties hereto; none of whom shall be considered the drafter for purposes of contract construction.
- (G) No party hereto may disclose the provisions of this Agreement to an outside party, excluding a parent, subsidiary or affiliate company that: (1) has a need to know and (2) agrees to keep any information so disclosed confidential, without the written consent of the other parties, except as otherwise required by law, regulation or ruling. Notwithstanding anything to the contrary, any party may disclose this Agreement to the party's attorneys or in connection with an audit by its external auditors, the Internal Revenue Service or other tax authority.
- (H) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right of any other party to recover by way of damages or otherwise against any of the parties hereto.
- (I) In the event that any of the terms of this Agreement conflict with the Lease, the provisions of this Agreement shall govern.

Section 21. INDEMNITY COVERAGE

As part of the consideration hereof, each party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other parties shall also extend to and indemnify the parent corporation, subsidiaries and affiliates of such other parties, and all of their respective directors, officers, agents and employees.

Remainder of Page Intentionally Blank – Signature Page Follows

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

WITNESS

WEST TENNESSEE RAILROAD, LLC

By _____

Title

WITNESS

NORFOLK SOUTHERN RAILWAY COMPANY

By _____

Title

Exhibit 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 35357

Norfolk Southern Railway Company – Trackage Rights Exemption – The West Tennessee Railroad, LLC

The West Tennessee Railroad, LLC (“WTNN”) has agreed to grant overhead trackage rights to Norfolk Southern Railway Company (“NSR”) to permit NSR to operate over approximately 118.9 miles of rail line controlled by WTNN between MP IC-406.1, near Fulton, Kentucky, and MP IC-525.0, near Ruslor Junction (Corinth), Mississippi. The trackage rights will be effective no sooner than the latter of (1) the effective date of this Notice, or (2) the expiration of any labor notice period to which the carriers may be subject.

As a condition to this exemption, any employee affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway Company – Trackage Rights – Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc. – Lease and Operate – California Western Railroad*, 360 I.C.C. 653 (1980).

This notice is filed under Section 1180.2(d)(7). If it 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 stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35357, must be filed with the Surface Transportation Board, 295 E Street, S.W., Washington, D.C. 20423-0001. In addition, a copy of each pleading must be served on Daniel G. Kruger, Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia, 23510.

Dated:

Rachel D. Campbell, Director, Office of Proceedings