

ENTERED
Office of Proceedings
July 1, 2020
Part of
Public Record

CLARK HILL

Justin J. Marks
T 202.772.0916
F 202.772.0930
Email: jmarks@ClarkHill.com

Clark Hill
1001 Pennsylvania Avenue NW
Suite 1300
Washington, DC 20004
T 202.772.0909
F 202.772.0919

clarkhill.com

July 1, 2020

VIA E-FILING

EXPEDITED CONSIDERATION REQUESTED

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: STB Docket No. FD 36418
Alabama & Gulf Coast Railway LLC
-Temporary Trackage Rights Exemption-
The Kansas City Southern Railway Company

Dear Ms. Brown:

Enclosed for e-filing on behalf of Alabama & Gulf Coast Railway LLC ("AGR") is a Notice of Exemption being filed pursuant to 49 CFR 1180.2(d)(8) for temporary trackage rights for AGR to conduct emergency detour operations over a line of railroad of The Kansas City Southern Railway ("KCS"). Enclosed with this notice is a redacted trackage rights agreement. AGR is also submitting a motion for protective order and an unredacted version of the AGR/KCS trackage rights agreement.

In addition, enclosed is a petition for waiver for the trackage rights to become effective immediately. The requested waiver would accommodate AGR's immediate need to operate over portions of the KCS line in order to create an accessible route for AGR's traffic while service is being restored over AGR's line.

FILED
July 1, 2020
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
July 1, 2020
SURFACE
TRANSPORTATION BOARD

July 1, 2020
Page 2

The filing fee of \$1,400 was paid using Pay.gov. Please let me know if there are any questions regarding this filing.

Sincerely,

A handwritten signature in blue ink, appearing to read "Justin J. Marks".

Justin J. Marks
*Counsel for Alabama & Gulf Coast
Railway LLC*

Enclosures

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36418

ALABAMA & GULF COAST RAILWAY LLC
- TEMPORARY TRACKAGE RIGHTS EXEMPTION –
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

(includes color images)

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

*Attorneys for Alabama & Gulf Coast
Railway LLC*

Dated: July 1, 2020

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36418

ALABAMA & GULF COAST RAILWAY LLC
- TEMPORARY TRACKAGE RIGHTS EXEMPTION –
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

Alabama & Gulf Coast Railway LLC, (“AGR”), a Class III railroad, files this Verified Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(8) to exempt from the provisions of 49 U.S.C. §11323, the grant of temporary trackage rights by The Kansas City Southern Railway Company (“KCS”) over a portion of the KCS line from a point of connection between AGR and KCS in Columbus, MS (KCS Milepost 15.1) to Meridian, MS (KCS Milepost 135.2), including yard trackage at KCS Meridian Yard (KCS Milepost 135) as necessary to connect with the Meridian & Bigbee Railroad, L.L.C., a total distance of 100 miles (the “KCS Rail Line”). The proposed temporary trackage rights will provide for AGR’s emergency detour operations over the KCS Rail Line while AGR’s main line is repaired and a bridge is replaced near Aliceville, AL on AGR’s parallel line. AGR will cease use of the KCS Rail Line upon the completion of the repairs and the temporary trackage rights will expire no later than August 31, 2020.

The trackage rights are based on a written agreement between the parties, not sought in a responsive application, are for overhead operations, and have a term of less than one year. Accordingly, the temporary trackage rights covered by this Notice are exempt under 49 C.F.R. §1180.2(d)(8).

AGR is simultaneously filing a petition for waiver of the 30-day effectiveness period of 49

C.F.R. §1180.4(g) to permit the proposed temporary trackage rights to become effective immediately.

Notice

In accordance with 49 C.F.R. §1180.4(g), AGR hereby provides the following information:

49 C.F.R. §1180.6(a)(1)(i): AGR is a Class III carrier that operates over its own lines from Columbus, MS south through Alabama and terminating in Pensacola, FL. On June 24, 2020 an AGR train derailed damaging a bridge two miles north of Aliceville, AL rendering the bridge inoperable. As a result, AGR has been forced to suspend service between Pickensville and Boligee, AL and to seek emergency haulage agreements with AGR's interline partners.

Considering that it is anticipated that the bridge will remain inoperable for the next few weeks, AGR has entered into a trackage rights agreement with KCS from a point of connection between AGR and KCS in Columbus, MS (KCS Milepost 15.1) to Meridian, MS (KCS Milepost 135.2), including yard trackage at KCS Meridian Yard (KCS Milepost 135) as necessary to connect with the Meridian & Bigbee Railroad, L.L.C., a total distance of 100 miles. Traffic will be moved by the Meridian & Bigbee Railroad, L.L.C. back to AGR's line at Linden.

Due to the emergency, AGR is concurrently filing a petition for waiver of the 30-day effectiveness period specified by 49 C.F.R. §1180.4(g) to permit the proposed emergency trackage rights to become effective immediately.

Pursuant to 49 C.F.R. §1180.4(g), and as provided in the proposed temporary trackage rights agreement, the trackage rights will automatically expire no later than August 31, 2020.

- (a) The full name and address of Applicant: Alabama & Gulf Coast Railway LLC
734 Hixon Road (Fountain) Monroeville, AL 36460.

(b) Applicant's Representatives:

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916

49 C.F.R. §1180.6(a)(1)(ii): AGR intends to commence operations under the temporary trackage rights on or after the effective date of this notice, or upon the granting of the concurrently filed petition for waiver. The petition requests that the Board make the temporary trackage rights effective immediately, waiving the 30-day effectiveness period of 49 C.F.R. §1180.4(g).

49 C.F.R. §1180.6(a)(1)(iii): The purpose of the temporary trackage rights is to route AGR trains around an out-of-service bridge. AGR experienced a derailment that damaged a bridge two miles north of Aliceville, AL and that has disrupted its main line operations. The temporary trackage rights will allow AGR to move its trains around the site of the derailment via the KCS Rail Line which runs parallel to AGR's line.

49 C.F.R. §1180.6(a)(5): AGR operates in Alabama, Florida, and Mississippi. The KCS Rail Line is located in Mississippi.

49 C.F.R. §1180.6(a)(6): A map showing the KCS Rail Line is attached as Exhibit A.

49 C.F.R. §1180.6(a)(7)(ii): A redacted public version of the temporary trackage rights agreement is attached as Exhibit B. (Applicant is filing a Motion for a Protective Order to protect

the confidentiality of the commercial terms of the agreement. A highly confidential version of the temporary trackage rights agreement is being filed under seal.)

Labor Protection

AGR understands that 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). Any employees adversely affected by the discontinuance of these temporary trackage rights will be entitled to protection under the conditions imposed in *Oregon Short Line Railroad Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

Environmental and Historic Reports

Under 49 C.F.R. §1105.6(c)(4) and 49 C.F.R. §1105.8(b)(3), no environmental or historic documentation is required.

Caption Summary

Attached as Exhibit C is the caption summary required by 49 C.F.R. §1180.4(g)(2)(ii).

Conclusion

Based on the information provided above, AGR requests that the Board issue a notice of exemption for the temporary trackage rights that are the subject of this Notice.

Respectfully submitted,



Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

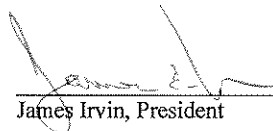
*Attorneys for Attorneys for Alabama & Gulf
Coast Railway LLC*

Dated: July 1, 2020

VERIFICATION

I hereby verify on behalf of Alabama & Gulf Coast Railway LLC, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on 6-20-2020



James Irvin, President

EXHIBIT A

MAP

KCS MP 15.1

KCS
MP
135.2



Alabama & Gulf Coast Railway LLC
734 Hixon Road (Fountain)
Monroeville, Alabama 36460
251-575-8911

Genesee & Wyoming Railroads

- **AGR** Alabama & Gulf Coast Railway LLC
- **BAYL** The Bay Line Railroad, L.L.C.
- **CAGY** Columbus and Greenville Railway Company
- **COEH** Conecuh Valley Railway, L.L.C.
- **EARY** Eastern Alabama Railway, LLC
- **LXVR** Luxapalila Valley Railroad, Inc.
- **MNBR** Meridian & Bigbee Railroad, L.L.C.
- **TNHR** Three Notch Railway, L.L.C.
- **WGR** Wiregrass Central Railway, L.L.C.

● Port Operations

Dashed line indicates Trackage Rights; gray line indicates Out of Service.

EXHIBIT B

**TEMPORARY TRACKAGE RIGHTS
AGREEMENT**

(“PUBLIC” VERSION)

TEMPORARY TRACKAGE RIGHTS AGREEMENT

Between

ALABAMA & GULF COAST RAILWAY LLC

And

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

THIS TEMPORARY TRACKAGE RIGHTS AGREEMENT, (“Agreement”), entered into as of this 1st day of July, 2020 (the “Effective Date”), by and between THE KANSAS CITY SOUTHERN RAILWAY COMPANY (hereinafter referred to as “KCS” or “Owner”) and ALABAMA & GULF COAST RAILWAY LLC, a Delaware limited liability company (hereinafter referred to as “AGR” or “User”). Each of KCS and AGR shall individually be referred to as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, KCS owns and operates a rail line from Columbus, MS to Meridian, MS; and

WHEREAS, AGR owns and operates a rail line from Columbus, MS to Pensacola, FL (“AGR Line”); and

WHEREAS, AGR’s railroad lines and infrastructure have been adversely impacted by a recent derailment at or near Aliceville, AL, prompting an emergency need for use of alternative trackage to maintain AGR’s railroad operations and service to shippers while AGR’s trackage and structures are restored; and

WHEREAS, AGR has requested, and KCS is agreeable to granting temporary overhead trackage rights over portions of the KCS Line for the movement of AGR’s traffic, subject to the terms and conditions set forth herein.

NOW, THEREFORE, KCS and AGR, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

- 1.1 Subject to the terms and conditions herein provided, KCS hereby grants to AGR the right to operate in overhead service, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the “Trackage Rights”) over the following segments of KCS’s railroad, as shown on the plan attached hereto, made a part hereof and marked Exhibit “A”:
 - a. Portion of the KCS Line from point of connection between AGR and KCS in Columbus, MS (KCS Milepost 15.1) to Meridian, MS (KCS Milepost 135.2), including yard trackage at KCS Meridian Yard (KCS Milepost 135) as necessary to connect with the Meridian and Bigbee Railroad, a total

distance of 100 miles (altogether, "KCS Line" or "Subject Trackage"). Such rights shall include the right to enter and exit only at these designated endpoints.

ARTICLE 2. USE OF LINE

- 2.1 User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature on the Subject Trackage; provided that the rights granted to such other users do not unreasonably interfere with the exercise of User's rights hereunder.
- 2.2 Except as may be otherwise provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage, or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein will, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purposes.
- 2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.
- 2.4 At the direction and under the supervision of Owner's Transportation Department, User shall arrange to have all necessary User's employees qualified to operate over the Subject Trackage prior to commencement of User's operation over the Trackage Rights without KCS pilots.
- 2.5 Before any dimensional load or excess clearance traffic is tendered by User for movement over the Subject Trackage, User shall first notify Owner in writing, giving measurements and dimensions of the shipment, and requesting permission to tender the dimensional shipment for movement over the Subject Trackage. Owner shall respond promptly either confirming that the physical characteristics of the Subject Trackage will permit movement of the dimensional shipment, or specifically identifying the physical characteristics of the Subject Trackage which would interfere with the planned move.
- 2.6 User shall not use any part of the Subject Trackage to transport any shipments of Toxic by Inhalation or Poisonous by Inhalation commodities.
- 2.7 User shall have the right to operate in either direction over the Subject Trackage.

ARTICLE 3. HAULAGE PROHIBITED

User shall not, under the guise of doing its own business, contract or make any agreement to handle as its own equipment over or upon the Subject Trackage, or any portion thereof,

the equipment of any third party which, in the normal course of business would not be considered the equipment of User; provided, however, that the foregoing shall not prevent User, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under these terms.

ARTICLE 4. COMPENSATION

4.1. 

ARTICLE 5. PAYMENT OF BILLS

- 5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties shall be adjusted in the accounts of a subsequent month. The records of each Party, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other Party for a period of two (2) years from the date of billing.
- 5.2 Bills rendered pursuant to the provisions of this Agreement, if any, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by the performing party at the time any work is performed by one Party for the other Party.
- 5.3 With the exception of any claims arising out of or related to any indemnification obligation herein, no bill shall be rendered, honored, recognized, or considered if filed later than two (2) years after the last day of the calendar month in which the expense covered thereby is incurred. No exception to any bill shall be honored, recognized, or considered if filed after the expiration of two (2) years from the last day of the calendar month during which the bill was rendered.

ARTICLE 6. MAINTENANCE OF LINE

- 6.1 Except as provided by this Article, Owner shall be responsible for all maintenance of the Subject Trackage, including but not limited to track, bridges, signals, detectors and highway grade crossing equipment as applicable. Owner shall maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage, or that operation thereover will not be interrupted. Furthermore, except as may be otherwise provided in Article 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries and affiliates and any or all of their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages

of any nature suffered by a party resulting from any such failure or neglect. If the use of the Subject Trackage shall at any time be interrupted or traffic thereon is delayed for any cause, Owner shall with reasonable diligence restore the Subject Trackage for the movement of cars. Nevertheless, User shall not have any claim against Owner for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

ARTICLE 7. INTENTIONALLY OMITTED

ARTICLE 8. INTENTIONALLY OMITTED

ARTICLE 9. MANAGEMENT AND OPERATIONS

- 9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.
- 9.2 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User will not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.
- 9.3 Both Parties shall comply with the provisions of the Federal Railroad Safety Act, 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. Each Party shall indemnify, protect, defend, and save harmless the other and its respective 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 such Party and its respective parent corporation, subsidiaries, and affiliates, and all of their respective directors, officers, agents and employees under such laws, rules, and regulations by any public agency, authority, or court having jurisdiction over the Subject Trackage or over operations on the Subject Trackage, when attributable to the failure of that Party to comply with its obligations in this regard.
- 9.4 User in its use of the Subject Trackage shall comply in all respects with its own safety and

general conduct rules, equipment operation and train handling rules, and hazardous materials instructions. While using the Subject Trackage, User shall comply in all respects with the operating rules, timetables, and special instructions of Owner, 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 Owner; provided, however, that such operating rules, timetables, and special instructions and orders of the transportation officers of Owner shall not unjustly discriminate between the Parties. Owner will not make any rule or restriction applying to User's trains that does not apply equally to Owner's trains. 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, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Owner's operating rules and regulations, without the prior consent of Owner. The Parties shall make proper accommodation for exceptions, should that be reasonable, necessary and practicable. All User trains shall be powered to permit operation at the maximum track speed allowed for the Subject Trackage's class of track.

- 9.5 User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Subject Trackage qualified for operation thereover, and User shall pay to Owner, upon receipt of bills therefor, any reasonable cost incurred by Owner in connection with the qualification of such employees of User, as well as the reasonable cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated, such determination not to be unreasonably withheld, conditioned or delayed.
- 9.6 Owner shall have the right to exclude from its tracks any employee of User, except officers, determined by Owner to be in violation of Owner's rules, regulations, orders, practices, or instructions promulgated in the normal course of business in writing by Owner in its timetable or otherwise, and provided in advance to User. The decision to bar any employee of User from its tracks will not be interpreted as a request for User to fire the individual(s). User shall release, indemnify, defend, and save harmless Owner from and against any and all claims and expenses resulting from such exclusion.
- 9.7 The trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof, will be operated without prejudice or partiality to any party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- 9.8 User shall ensure that its locomotives are fueled to a capacity that enables User's trains to traverse the Subject Trackage without having to be fueled. User shall ensure that its employees assigned to operate User's trains over the Subject Trackage have sufficient hours of service remaining available when beginning movement of a train on the Subject Trackage to, under normal operating conditions, complete the entire movement of that train over the Subject Trackage without their hours of service expiring.

- 9.9 In the event that (i) one of User's trains is forced to stop on the Subject Trackage and is unable to proceed due to mechanical failure of User's equipment or any other cause not resulting from an accident or derailment, (ii) one of User's trains fails to maintain the speed required by Owner on the Subject Trackage, or (iii) in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner will have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) 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 will reimburse Owner for the cost incurred by Owner in rendering any such assistance.
- 9.10 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, Owner will have the option to perform such work, and User will reimburse Owner for the cost incurred by Owner with respect thereto.
- 9.11 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the Parties will enter into a separate agreement under which User will bear all cost and expense for any such retained or additional employees provided, including recruitment and training cost, and including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 10. MILEAGE AND CAR HIRE

- 10.1 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 User directly to the owner(s) of such cars.

ARTICLE 11. CLEARING OF WRECKS

- 11.1 Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall be responsible for the provision of such service, including the repair and restoration of roadbed, track and structures so as to minimize the impact on Owner and User operations. 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 Article 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to User.

ARTICLE 12. LIABILITY

- 12.1 Without changing the responsibility for the provision of emergency services as set forth in Article 11, the responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the Parties and third persons), (ii) any real or personal property damage of any person (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgments, litigation expenses, and reasonable attorneys' fees resulting from the use of the Subject Trackage by either Party as described herein, all of which are collectively referred to as a "Loss", shall be allocated as follows:
- (a) If a Loss results from use of the Subject Trackage involving the trains, locomotives or other units of motive power (hereinafter in Article 12, "Locomotives"), cars, and/or equipment of only one Party, then such Party shall be solely responsible for the Loss, even if caused partially or completely by the other Party.
 - (b) Losses involving the trains, Locomotives, cars, and/or equipment of both Parties.
 - (i) Except as otherwise provided in Section 12.1(b)(ii), if a Loss results from use of the Subject Trackage involving the trains, Locomotives, cars, and/or equipment of both Owner and User, then: (A) each Party shall be solely responsible for any Loss to its own employees, trains, Locomotives, equipment, and cars in its possession including lading and (B) responsibility for any Loss to the Subject Trackage and Loss sustained by third parties shall be divided equally between the two Parties, regardless of the proportionate responsibility between them as to the cause of the Loss.
 - (ii) If any damage of the environment, including without limitation land, air, water, wildlife, and vegetation, results from use of the Subject Trackage involving both Owner and User's trains, Locomotives, cars, and/or equipment, then as between themselves, (A) Owner shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in such Owner's cars and equipment and/or Owner's Locomotive(s) from which there is a release, (B) User shall be solely responsible for any damage or destruction to the environment and to third parties that results solely from a substance transported in such User's cars and equipment and/or User's Locomotive(s) from which there was a release, and (C) Owner and User shall be responsible, in proportion to the total number of Locomotives, cars, and/or equipment of each Party from which there was a release, for any damage or destruction to the environment (including exacerbation of existing conditions) and to third parties that results from one or more substances transported in cars or equipment in the possession of or Locomotives of both Owner and User from which there were releases.

- (c) If a Loss results from use of the Subject Trackage involving the trains, Locomotives, cars, and/or equipment only one of the Parties and one or more third parties, then such Party hereto shall be solely responsible for such Loss as between the Parties.
- 12.2 If a Loss occurs other than one resulting from the use of the Subject Trackage by the trains, Locomotives, cars, and/or equipment of either Owner or User, then each of Owner and User is solely responsible for any Loss to its own employees, trains, Locomotives, cars, and/or equipment, even if caused partially or completely by the other Party.
- 12.3 Each Party agrees to indemnify and hold harmless the other Party against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, 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.
- 12.4 Whenever any Loss is assumed by or apportioned to a Party under the foregoing provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party and its parent corporation, subsidiaries and affiliates, and any and all of their respective directors, officers, agents, and employees from and against such Loss 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.
- 12.5 In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' 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.
- 12.6 For purposes of determining liability, pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such employees are on duty as pilots for User.
- 12.7 If any suit or action shall be brought against either Party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said other Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

- 12.8 In the event of a Loss as set out herein, the Parties shall be bound by the Freight Claim Rules, Principles, and Practices of the AAR as to the handling of any claims for the loss or damage to lading.
- 12.9 Notwithstanding any provision of this Agreement to the contrary, for the purpose of this Article 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 maintenance or repair thereof or the clearing of wrecks thereon.
- 12.10 Notwithstanding any and all of the forgoing provisions of this Article 12, in the event a Loss occurs while the Subject Trackage is being used by Owner and/or User, and such Loss is attributable solely to the willful or wanton negligence of only one of the Parties to this Agreement, then the Party which was so willfully or wantonly negligent shall be solely responsible for such Loss. The Parties shall submit disputes involving the determination of whether a Loss is attributable solely to the willful or wanton negligence of one of the Parties to this Agreement, but no other disputes under this Agreement, to binding arbitration under the commercial arbitration rules of the American Arbitration Association.
- 12.11 Notwithstanding any provision of this Agreement to the contrary and regardless of the nature of the cause of action (whether in contract, tort or otherwise), but without limiting any Party's indemnification obligations with respect to a Loss of a third party under this Article 12, in no event shall either Party be liable to the other Party for any incidental, special, indirect, consequential or punitive damages whatsoever (including but not limited to lost profits, business interruption expenses, lost use of equipment, liability to a Party's customers for liquidated damages or other damages) arising out of or related to the activities contemplated by this Agreement, even if advised of the possibility of such damages. Except as otherwise provided in Sections 12.7 and 13.1(c) hereof, under no circumstances shall either Party be entitled to recover its attorneys' fees and legal cost and expenses from the other Party for a dispute arising out of this Agreement.

ARTICLE 13. CLAIMS

- 13.1 Except as provided in Section 13.1(a) below, all claims, injuries, death, property damages, and losses arising out of or connected with this Agreement will be investigated, adjusted, and defended by the Party bearing the liability, cost, and expense therefor under Article 12 of this Agreement.
- (a) Each Party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. § 11706 and 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. § 10709.
- (b) In the event a claim or suit is asserted against Owner or User 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 investigation, adjustment, and defense of such claim or suit.

- (c) 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 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.
- (d) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. § 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. § 10709, 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 [REDACTED]

13.2 It is understood that nothing in this Article 13 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 12.

ARTICLE 14. INDEMNITY COVERAGE

14.1 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 Party shall also extend to and indemnify the parent corporation, subsidiaries, and affiliates of such other Party, and all of their respective directors, officers, agents, and employees.

ARTICLE 15. INTENTIONALLY OMITTED

ARTICLE 16. TERM, TERMINATION, AND DEFAULT

16.1 This Agreement shall become effective as of the Effective Date and continue until August 31, 2020, at which time the underlying right of movement as granted by this Agreement shall terminate. However, User operations over the Subject Trackage pursuant to this Agreement will not commence until the effective date of any required Surface Transportation Board ("STB") authorization or exemption of User's trackage rights granted by this Agreement (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption).

16.2 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.

- 16.3 In the event of any material failure on the part of User to perform its obligations under this Agreement and the continuation of such failure for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option and after first giving thirty (30) days' written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Agreement and User's use of the Subject Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right by Owner will not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

ARTICLE 17. REGULATORY APPROVAL

- 17.1 Should implementation of this Agreement require the prior approval and authorization of the STB or other regulatory authority, AGR will initiate and thereafter diligently pursue such approval and authorization or an exemption therefrom under 49 C.F.R. § 1180.2(d)(8). Prior to making any submission to the STB, AGR and KCS shall both review and comment on the filing(s). AGR will pay all cost and expense of any required filing for such approval, authorization, or exemption.
- 17.2 Should the STB impose labor protective conditions upon its approval or exemption of this Agreement, User shall be responsible for all payments imposed on KCS or AGR under said conditions, involving either the conduct or cessation of the operations authorized by this Agreement.

ARTICLE 18. FORCE MAJEURE

- 18.1 The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (including Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the Parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders, or regulations, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take all reasonable measures to restore performance of its obligations in a timely manner.

ARTICLE 19. INTENTIONALLY OMITTED

ARTICLE 20. SUCCESSORS AND ASSIGNS

- 20.1 Neither Party hereto may assign this Agreement, in whole or in part, or any rights granted herein, or delegate to another party any duties hereunder, except a subsidiary, or an affiliate, without the prior written consent of the other party. Any transfer, assignment, or delegation of this Agreement, or of any rights or duties herein granted or imposed, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void, and at the option of the party whose written consent should have been obtained, this Agreement may be terminated. Subject to this Article, this Agreement shall be binding upon and inure to the benefits of the Parties hereto, their successors and assigns.

ARTICLE 21. NOTICE

- 21.1 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 means of giving written notice as the Parties may mutually agree, and shall be addressed as follows:

If to KCS:

The Kansas City Southern Railway Company
Attn: Director Interline Operations
427 West 12th Street
Kansas City, MO 64105-1403
E-mail: SSimmons@KCSouthern.com

If to AGR:

Alabama & Gulf Coast Railway LLC
13901 Sutton Park Drive S., Suite 270
Jacksonville, FL 32224
Attn: President
E-Mail: LegalNotices@gwrr.com
Facsimile #: (203) 656-1148

Either Party may provide changes in the above addresses to the other Party by personal service or U.S. mail.

ARTICLE 22. GENERAL PROVISIONS

- 22.1 This Agreement and each and every provision hereof is for the exclusive benefit of the Parties and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the Parties.

- 22.2 This Agreement contains the entire understanding of the Parties and supersedes any and all oral understandings between the Parties.
- 22.3 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing and signed by both Parties.
- 22.4 No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.
- 22.5 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.
- 22.6 All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 22.7 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the Parties, 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 and are in the possession or account of the other Party, such locomotives, cars, and equipment shall be considered those of that other Party in whose possession or train such locomotives, cars and equipment are located.
- 22.8 This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.
- 22.9 This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri without giving effect to any choice or conflict of laws provision or rule (whether of the State of Missouri or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the State of Missouri.
- 22.10 If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner which produces a result which

is substantially equivalent to the terms of this Agreement in all material respects.

- 22.11 This Agreement may be executed in several counterparts, each of which will be deemed an original, and such counterparts shall constitute one and the same instrument.

ARTICLE 23. CONFIDENTIALITY

- 23.1 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a Party to enforce its rights under this Agreement, during the term of this Agreement and during a period of three (3) years subsequent to termination of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or obtained hereunder shall be kept confidential and shall not be disclosed by either Owner or User to any party other than each Party's respective parent corporation, subsidiaries, and affiliates, and their respective directors, officers, agents, employees and attorneys, without the prior written approval of the other Party.

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

Witness for KCS:

Nr K

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY

By:

Steve Simon
Director Interline Operations

Witness for AGR:

Lauren Roberts

ALABAMA & GULF COAST RAILWAY LLC

By:

James E. [Signature]
Its: President

Exhibit A

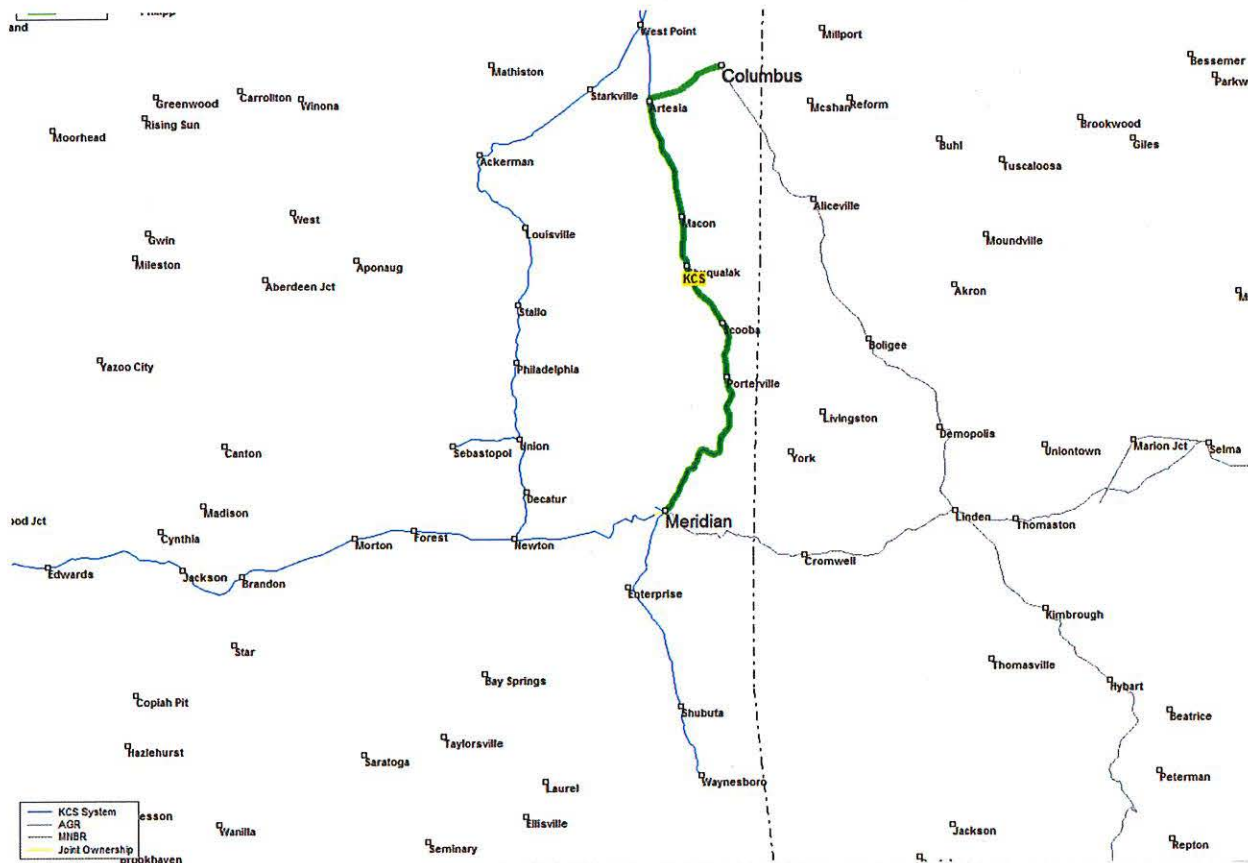


EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Docket No. FD 36418

**ALABAMA & GULF COAST RAILWAY LLC
- TEMPORARY TRACKAGE RIGHTS EXEMPTION –
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

Alabama & Gulf Coast Railway LLC, (“AGR”), a Class III railroad, files this Verified Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(8) to exempt from the provisions of 49 U.S.C. §11323, the grant of temporary trackage rights by The Kansas City Southern Railway Company (“KCS”) over a portion of the KCS line from a point of connection between AGR and KCS in Columbus, MS (KCS Milepost 15.1) to Meridian, MS (KCS Milepost 135.2), including yard trackage at KCS Meridian Yard (KCS Milepost 135) as necessary to connect with the Meridian & Bigbee Railroad, L.L.C., a total distance of 100 miles (the “KCS Rail Line”). The proposed temporary trackage rights will provide for AGR’s emergency detour operations over the KCS Rail Line while repairs are conducted on a bridge on AGR’s parallel line. AGR will cease use of the KCS Rail Line upon the completion of the repairs and the temporary trackage rights will expire no later than August 31, 2020.

As a condition to this exemption, any employees adversely affected by the trackage rights will be protected 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). Any employees adversely affected by the discontinuance of these temporary trackage rights will

be entitled to protection under the conditions imposed in Oregon Short Line Railroad Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

Comments must be filed with the Board and served on AGR’s representative, Eric M. Hockey, Esq., Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103; (215) 640-8523.

The Notice is filed under 49 C.F.R. §1180.2(d)(8). 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.

Board decisions and notices are available at www.stb.gov.

Decided: _____, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.