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August 23, 2021

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, Re:

Docket No. FD 36542
NCSR, LLC d/b/a New Castle Southern Railroad — Lease and
Operation Exemption With Interchange Commitment — Norfolk
Southern Railway Company

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding is a **Petition for Waiver and to Expedite Effective Date**, dated August 23, 2021.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

Respectfully submitted,

Thomas J. Healey

Thomas J. Healey
Attorney for NCSR, LLC d/b/a
New Castle Southern Railroad

TJH:th

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36542

NCSR, LLC D/B/A NEW CASTLE SOUTHERN RAILROAD
— LEASE AND OPERATION EXEMPTION WITH INTERCHANGE COMMITMENT—
NORFOLK SOUTHERN RAILWAY COMPANY

**PETITION FOR WAIVER AND
TO EXPEDITE EFFECTIVE DATE**

EXPEDITED CONSIDERATION REQUESTED

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**ATTORNEYS FOR NCSR, LLC d/b/a
NEW CASTLE SOUTHERN RAILROAD**

Dated: August 23, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36542

NCSR, LLC D/B/A NEW CASTLE SOUTHERN RAILROAD
— LEASE AND OPERATION EXEMPTION WITH INTERCHANGE COMMITMENT—
NORFOLK SOUTHERN RAILWAY COMPANY

**PETITION FOR WAIVER AND
TO EXPEDITE EFFECTIVE DATE**

NCSR, LLC, d/b/a New Castle Southern Railroad (“NCSR”) hereby petitions the Board to partially waive the 30-day effectiveness period as specified by 49 C.F.R. § 1150.32(b) as necessary to allow the notice of exemption (the “Notice”) concurrently filed in this docket by NCSR to become effective on September 13, 2021, twenty-one days after the filing of the notice of exemption and nine days earlier than otherwise provided by rule. An expedited effective date will allow NCSR to commence operations earlier to customers affected by the recent service irregularities on the Lines (as defined below) and is consistent with the desires of the Lines’ owner, Norfolk Southern Railway Company (“NSR”).

In the Notice, NCSR seeks authority to operate approximately twenty-one (21) miles of rail line from M.P. CB 5.40 at Beesons, IN, to M.P. CB 25.30 at New Castle, IN, and from M.P. R 0.09 to M.P. R 1.16 at New Castle, IN (collectively, the “Lines”). C&NC Railroad, LLC (“C&NC”) is currently authorized to provide service on the Lines.¹ As the Board is aware,

¹ *C&NC Railroad — Lease Renewal Exemption — Norfolk Southern Railway Company*, FD 35529 (STB served July 1, 2011).

A.F. Gelhar Co. (“Gelhar”)² recently initiated a service complaint against C&NC,³ and, during the pendency of that complaint proceeding, C&NC obtained authorization to discontinue operations on the Lines, consistent with the termination of its lease with NSR.⁴

NSR and NCSR have negotiated the terms of a lease pursuant to which NCSR would commence common carrier operations over the Lines. NCSR is undertaking all of the preparations necessary for replacement operations to begin as soon as practicable. NSR and NCSR are working diligently to assure that customers will not be adversely affected by the transition in operations.⁵ Shortening the standard thirty-day period for the effectiveness of NCSR’s operating exemption will allow NCSR and NSR to implement NCSR’s operations on the Lines as soon as it is feasible to do so.

Pursuant to the Order, NSR will be filing a letter with the Board in this docket advising of the planned restoration of service on the Lines. NCSR anticipates that NSR will express its support of the present waiver request in the interest of protecting railroad customers.

In appropriate circumstances, and where good cause has been established, the Board has granted similar waiver requests as is sought here to facilitate a smooth and necessary transition protecting the interests of affected shippers.⁶

² Gelhar is an originator of sand that arranges for the rail transportation of sand to Neal Scrap Metals, which provides transloading services to Grede Holdings, LLC (“Grede”), a receiver located at New Castle.

³ *A.F. Gelhar Co. v. C&NC R.R.*, NOR 42172.

⁴ *C&NC Railroad, LLC — Discontinuance Exemption — In Wayne and Henry Counties, Indiana*, Docket No. AB-1093 (Sub-No. 2X) (STB served August 20, 2021) (the “Order”).

⁵ Grede currently arranges to receive shipments of sand through a temporary transload operation that NSR has set up at Muncie, Indiana. This provisional transload operation will continue until NCSR initiates common carrier operations on the Lines.

⁶ See, e.g., *Northeast Texas Connector, LLC — Operating Exemption — Northeast Texas Rural Rail Transportation District*, FD 36410 (STB served June 22, 2020); *Spokane, Spangle & Palouse Railway, L.L.C. — Lease and Operation Exemption — Washington State*

Partial waiver of the full 30-day effectiveness period in the limited circumstances presented here would avoid further disruption of rail service on the Lines, and is fully consistent with the Rail Transportation Policy of 49 U.S.C. § 10101. Furthermore, granting the waiver would be consistent with the Board's observation that restoring rail service on the Lines as soon as possible is in the public interest. *Order*, at 3.

WHEREFORE, NCSR respectfully requests that the Board partially waive the provision of 49 C.F.R. § 1150.32(b) in this docket and allow NCSR's authority to provide common carrier operations over the Lines to become effective on September 13, 2021.

Respectfully submitted,

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**ATTORNEYS FOR NCSR, b/b/a NEW CASTLE
SOUTHERN RAILROAD**

Dated: August 23, 2021

Department of Transportation, FD 36325 (STB served Aug. 2, 2019); Delmarva Central Railroad Company – Change in Operators Exemption – Cassatt Management, LLC d/b/a Bay Coast Railroad, FD 36196 (STB served Jun. 8, 2018); Washington State Department of Transportation – Acquisition Exemption – Palouse River and Coulee City Railroad, Inc., FD 35024, et al. (STB served May 30, 2007).