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Office of Proceedings
February 16, 2022
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February 16, 2022

By Electronic Submission

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

RE: *Virginia Passenger Rail Authority – Acquisition and Operation of Certain Assets of Norfolk Southern Railway Company In Montgomery And Roanoke Counties, And The Cities Of Salem And Roanoke, Virginia*, STB Docket No. 36588

Dear Ms. Brown:

Enclosed please find, submitted on behalf of the Virginia Passenger Rail Authority (“VPRA”) of the Commonwealth of Virginia, a Petition for Exemption for the acquisition of a rail line currently owned by Norfolk Southern Railway Company and a Motion to Dismiss the Petition for Exemption.

I have also enclosed a Motion for Protective Order to file Confidential and Highly Confidential documents relating to the proceeding under seal, particularly the exhibit to the Motion to Dismiss. A complete, unredacted version of the exhibit to the Motion to Dismiss will be filed simultaneously but separately under seal.

VPRA has submitted a filing fee in the amount of \$15,400 through Pay.gov. However, VPRA hereby requests a waiver of the filing fee based on the fact that it is a state government entity and it is filing the Petition for Exemption and Motion to Dismiss on behalf of the general public. See 49 C.F.R. § 1002.2(e)(1).

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

Respectfully submitted,

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FILED
February 16, 2022
SURFACE

TRANSPORTATION BOARD

FEE RECEIVED
February 16, 2022
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36588

**VIRGINIA PASSENGER RAIL AUTHORITY
– ACQUISITION AND OPERATION OF CERTAIN ASSETS OF
NORFOLK SOUTHERN RAILWAY COMPANY IN MONTGOMERY AND ROANOKE
COUNTIES, AND THE CITIES OF SALEM AND ROANOKE, VIRGINIA**

PETITION FOR EXEMPTION

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Dated: February 16, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**VIRGINIA PASSENGER RAIL AUTHORITY
– ACQUISITION AND OPERATION OF CERTAIN ASSETS OF
NORFOLK SOUTHERN RAILWAY COMPANY IN MONTGOMERY AND ROANOKE
COUNTIES, AND THE CITIES OF SALEM AND ROANOKE, VIRGINIA**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502 and 49 C.F.R. Part 1121, the Commonwealth of Virginia, acting by and through its Virginia Passenger Rail Authority (“VPRA”), petitions the Surface Transportation Board (“Board”) for an exemption from the requirements of 49 U.S.C. § 10901 for the acquisition by VPRA of certain real property, equipment, fixtures and improvements currently owned by Norfolk Southern Railway Company (“Norfolk Southern”) located in Montgomery County, Roanoke County, and the Cities of Salem and Roanoke, all in the Commonwealth of Virginia.¹ Specifically, VPRA and Norfolk Southern have reached an agreement pursuant to which VPRA will acquire from Norfolk Southern (1) certain real property, equipment, fixtures and improvements of Norfolk Southern Railway between a point near the Salem Crossovers (at or about MP V-250.9304) in the City of Salem and Merrimac (Christiansburg), Virginia at MP V-279.0 (the “Subject Line”) and (2) an easement for rail passenger purposes (“Passenger Rail Easement”) between the passenger platform in the City of

¹ VPRA has concurrently filed a Motion to Dismiss this Petition for Exemption (the “Motion to Dismiss”), because the transaction described in the Petition does not require Board authorization under 49 U.S.C. § 10901. *See, e.g., Commonwealth of Virginia – Acquisition Exemption – Certain Assets of CSX Transportation, Inc.*, FD 36441 (STB served Dec. 14, 2020), citing *Maine, DOT – Acq. Exemption – ME Central R. Co.*, 8 I.C.C. 2d 835 (1991).

Roanoke and a connection with the Subject Line in the City of Salem (the “Passenger Rail Easement Area”) (together, the “VPRA-NS Transaction”).²

I. Statement of Facts

VPRA is a public authority created under the laws of the Commonwealth of Virginia and is a non-carrier. Norfolk Southern is a Class I common carrier by rail that owns the rail line within the Passenger Rail Easement Area and the Subject Line.

a. Sale of Subject Line and Reservation of Freight Easement

VPRA and Norfolk Southern have agreed that Norfolk Southern will convey real property, equipment, fixtures, and improvements of the Subject Line to VPRA by quitclaim deed.³ With respect to the Subject Line, VPRA will only provide passenger service. Specifically, VPRA may provide Intercity Passenger Rail Service, Excursion Passenger Rail Service, and Commuter Rail Service (all as defined in the Comprehensive Rail Agreement) at frequencies that do not unreasonably interfere with Norfolk Southern’s freight common carrier obligations.⁴ VPRA is prohibited from using the Subject Line “for any freight rail purposes

² See Comprehensive Rail Agreement §§ 2.1(a), (b), (c). A map of the Subject Line and the Passenger Rail Easement Area is provided as Exhibit A. The Comprehensive Rail Agreement is provided as Exhibit A to the concurrently filed Motion to Dismiss. A public, redacted version of the Comprehensive Rail Agreement is filed in the public docket and a confidential, unredacted version is concurrently filed under seal pursuant to an accompanying Motion for Protective Order. What is referred to in this Petition and the Motion as the “Subject Line” is referred to as the “Purchased V-Line” in the Comprehensive Rail Agreement. What is referred to in this Petition and the Motion as “Passenger Rail Easement Area” is referred to as the “Roanoke Easement Area” in the Comprehensive Rail Agreement.

³ See Comprehensive Rail Agreement § 5.3.

⁴ See Comprehensive Rail Agreement § 8.1(a)(iii). For the purposes of the Motion and this Petition, the term “freight common carrier service” is used to describe what the Comprehensive Rail Agreement terms “Freight Rail Service.” The Comprehensive Rail Agreement preserves not only Norfolk Southern’s common carrier rights and obligations, but also Norfolk Southern’s rights and obligations under transportation agreements, so the Comprehensive Rail Agreement uses the term “Freight Rail Service” to describe both types of freight service in one term.

other than for the movement of VPRA company material (including any maintenance materials).”⁵

The Comprehensive Rail Agreement requires, and the quitclaim deed includes, the reservation by Norfolk Southern on the Subject Line of “an exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable” easement for freight service by Norfolk Southern (the “Freight Easement”).⁶ Norfolk Southern will reserve the Freight Easement to (among other things) facilitate “bridging its freight trains, connecting with other freight railroads, serving existing and future freight industries located along, adjacent and near the Purchased V-Line, having connections made to the Purchased V-Line to serve existing and future industries, operating freight trains and other equipment over the Purchased V-Line and haulage rights for freight operations over the Purchased V-Line.”⁷ Norfolk Southern has the right to provide freight service on the Subject Line “at such levels of activity that Norfolk Southern Railway deems to be appropriate. . .”⁸ Additionally, Norfolk Southern may “expand, modify, discontinue or abandon freight service as is reasonable or necessary to respond to market demands and conditions. . .”⁹

b. Passenger Rail Easement in the Passenger Rail Easement Area

Norfolk Southern has also agreed to grant a non-exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable easement for rail passenger purposes to VPRA in the Passenger Rail Easement Area.¹⁰ This Passenger Rail Easement will not transfer any

⁵ See Comprehensive Rail Agreement § 5.4; *see also* Comprehensive Rail Agreement, Exhibit C-1.

⁶ See Comprehensive Rail Agreement § 5.3(e); *see also* Comprehensive Rail Agreement, Exhibit C-1.

⁷ *Id.* References in the quoted language to the “Purchased V-Line” are equivalent to the Subject Line as defined in this Motion and the Petition.

⁸ See Comprehensive Rail Agreement § 8.3(c).

⁹ See Comprehensive Rail Agreement § 8.3(d).

¹⁰ See Comprehensive Rail Agreement § 5.2; Comprehensive Rail Agreement, Exhibit C-3.

ownership rights or any rights other than the non-exclusive right to perform passenger rail operations from Norfolk Southern to VPRA.

Passenger rail operations may commence in the Passenger Rail Easement Area after the completion of certain improvements detailed in the Comprehensive Rail Agreement.¹¹ The Passenger Rail Easement includes passenger rail service performed by VPRA, Amtrak, or other parties providing passenger rail service pursuant to an agreement with VPRA.¹² Such passenger operations will be subject to the Norfolk Southern Operating Rules.¹³ Norfolk Southern has determined that after the completion of the corresponding improvements, the rail line in the Passenger Rail Easement Area will be able to accommodate the Extended First Frequency and the Extended Second Frequency, as defined in the Comprehensive Rail Agreement.¹⁴ Excursion service and the Third Frequency (as defined in the Comprehensive Rail Agreement) are only permitted if Norfolk Southern and VPRA agree they do not interfere with Norfolk Southern freight common carrier service.¹⁵

II. Argument

Pursuant to 49 U.S.C. § 10502, the Board shall exempt a transaction from regulation when: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power. 49 U.S.C. § 10502.

¹¹ See Comprehensive Rail Agreement § 8.1(a)(ii).

¹² See Comprehensive Rail Agreement § 8.1(a)(ii); Comprehensive Rail Agreement, Exhibit A (“Extended First Frequency,” “Intercity Passenger Rail Service – Commonwealth-Supported,” “Intercity Passenger Rail Service – Long Distance,” “VPRA User”). See also Comprehensive Rail Agreement, Exhibit C-3.

¹³ See Comprehensive Rail Agreement § 8.1(a).

¹⁴ See Comprehensive Rail Agreement §§ 8.1(a)(ii)(1), (2).

¹⁵ See Comprehensive Rail Agreement §§ 8.1(a)(ii)(3), (4); 8.1(g).

Regulation of the VPRA-NS Transaction is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (“RTP”). The VPRA-NS Transaction does not involve a transfer of freight rights or freight operations, so many elements of the RTP (§§ 10101(1), (3), (4), (5), (6), (10) and (12)) are not relevant. In fact, relieving VPRA from the otherwise-applicable requirements of 49 U.S.C. § 10901 would advance RTP principles such as expeditious regulatory decisions, reduced regulatory barriers to entry and expeditious handling of proceedings before the Board. See 49 U.S.C. §§ 10101(2), (7), and (15).

Regulation is not necessary to protect shippers from the abuse of market power because the VPRA-NS Transaction does not involve a transfer of freight rights or freight operations to VPRA. There will be no reduction in competition, because Norfolk Southern will continue to provide common carrier freight service. 49 U.S.C. § 10502(2)(b). Although this factor alone satisfies the requirement of § 10502(2), it is worth noting that the VPRA-NS Transaction is a transaction of limited scope. On the Subject Line, VPRA is acquiring real estate and trackage only for passenger rail service and subject to the Norfolk Southern freight easement. In the Passenger Rail Easement Area, VPRA is acquiring the Passenger Rail Easement, which only confers operational rights.

III. Rail Exemption Procedural Requirements

a. Environmental and Historic Preservation 49 C.F.R. § 1121.3(b)

The VPRA-NS Transaction does not require the preparation of environmental documentation under 49 C.F.R. § 1105.6(c)(1) because it will not result in changes in freight carrier operations that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) and (5).

The VPRA-NS Transaction is excepted from historic preservation reporting requirements of 49 C.F.R. § 1105.8(b)(1) because there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older.

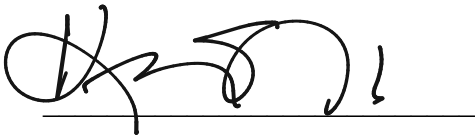
b. Interchange Commitments 49 C.F.R. § 1121.3(d)

The VPRA-NS Transaction does not involve a transfer of freight rights or freight operations and therefore does not include a provision or agreement that would limit future interchange with a third party connecting carrier.

IV. Conclusion

For the reasons stated above, VPRA respectfully requests that the Board grant VPRA's Petition for Exemption.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Sheys', is written over a horizontal line.

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Dated: February 16, 2022

Exhibit A

Map of the Subject Line and Passenger Rail Easement Area

VPRA - NS Transaction: Roanoke to Merrimac
City of Roanoke - Montgomery County, VA
Milepost: N-257.7045 - V-279.0

Exhibit A

