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ENTERED
Office of Proceedings
July 6, 2022
Part of
Public Record

Crystal M. Zorbaugh

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July 6, 2022

VIA E-FILING

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

Re: Norfolk Southern Railway Company – Trackage Rights Exemption
– Union County Industrial Railroad Company, FD 36614

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding is a verified notice of exemption (“Notice”) for Norfolk Southern Railway Company’s (“NSR”) acquisition of trackage rights over a line leased by Union County Industrial Railroad Company and owned by West Shore Railroad Corporation pursuant to 49 C.F.R. § 1180.2(d)(7). Concurrently, NSR files in the above-captioned proceeding a Motion for Protective Order.

In accordance with 49 C.F.R. § 1002.2(f)(40)(4), the requisite filing of \$1,400.00 has been paid on pay.gov. If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7831 or by e-mail: czorbaugh@bakerandmiller.com.

Sincerely,

/s/ *Crystal M. Zorbaugh*

Crystal M. Zorbaugh
Attorney for Norfolk Southern Railway Company

cc: Hanna Chouest

FILED
July 6, 2022
SURFACE
TRANSPORTATION BOARD

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36614

**NORFOLK SOUTHERN RAILWAY COMPANY – TRACKAGE RIGHTS EXEMPTION
– UNION COUNTY INDUSTRIAL RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

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July 6, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36614

**NORFOLK SOUTHERN RAILWAY COMPANY – TRACKAGE RIGHTS EXEMPTION
– UNION COUNTY INDUSTRIAL RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

Norfolk Southern Railway Company (“NSR”), a wholly-owned subsidiary of Norfolk Southern Corporation (“NS”), submits this Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7) and the procedures at 49 C.F.R. § 1180.4(g), for NSR’s acquisition of trackage rights over a 3.1-mile rail line leased by Union County Industrial Railroad Company (“UCIR”)¹ and owned by West Shore Railroad Corporation located between the connection with NSR at/or near Milton, PA (NSR Milepost BR 246.9) and New Columbia, PA (UCIR Milepost 172.62) (the “Line”), which will allow NSR to serve the Clemens Food Group Facility, or their successor or assignee.

**SECTION 1180.2 (d)(7)
GROUND FOR EXEMPTION**

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal, or modification of trackage rights by a rail carrier over the lines owned or operated by any other rail carrier is exempt if the rights are: (i) based on written agreement(s), and (ii) not filed or sought in a responsive

¹ UCIR acquired acquisition and operation authority for the approximate 3.9-mile rail line between milepost 169.7, at or near New Columbia, and milepost 173.6, at or near Milton, in Union County, PA from Consolidated Rail Corporation in 1995. See Union Cty. Indus. R.R. Co. – Acquisition and Operation Exemption – Consolidated Rail Corp., FD 32686 (ICC served Apr. 20, 1995).

application in rail consolidation proceedings. The trackage rights at issue in this proceeding are based upon a written agreement,² a redacted version of which is attached hereto as Exhibit 1, and are not being sought in a responsive application in a rail consolidation proceeding.³ Thus, the Section 1180.2(d)(7) class exemption is applicable.

For a railroad to qualify for an exemption, it must file a verified notice of the transaction with the Board at least 30 days before the transaction is consummated indicating the proposed consummation date, and the notice must include the information required in § 1180.6(a)(1)(i)-(iii), (a)(5)-(6), and (a)(7)(ii), indicate the level of labor protection to be imposed,⁴ and whether there is an interchange commitment.

SECTION 1180.6 (a)(1)(i)
BRIEF SUMMARY OF PROPOSED TRANSACTION

NSR and UCIR have entered into the Agreement, which upon STB approval provides NSR overhead trackage rights over an approximately 3.1-mile UCIR rail line between the connection with NSR at/or near Milton, PA (NSR Milepost BR 246.9) and New Columbia, PA (UCIR Milepost 172.62) to serve the Clemens Food Group Facility, or their successor or assignee. The trackage rights granted by UCIR to NSR will begin on August 5, 2022 (30 days after NSR's filing of the Notice).

² Per Article 16.2, the agreement shall remain in full force and effect until terminated by the either NSR or UCIR. The Initial Term of this Agreement shall be five (5) years from the Commencement Date, and shall be renewable continuously thereafter for additional periods of five (5) years ("Additional Term(s)"); provided, however, that either party shall have the right to terminate this Agreement upon giving sixty (60) days' advance written notice to the other party.

³ A redacted copy of the Trackage Rights Agreement ("Agreement") is attached as Exhibit 1. An unredacted version of the Agreement is being filed under seal and NSR has concurrently sought a protective order to protect highly confidential and proprietary information contained therein.

⁴ See 49 C.F.R. § 1180.4(g).

Name, business address, and telephone number of Applicant(s):

Norfolk Southern Railway Company
650 West Peachtree St. NW
Atlanta, GA 30308
Tel: (470) 463-6314

Questions regarding this transaction are to be addressed to Applicant's representatives:

William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

SECTION 1180.6 (a)(1)(ii)
PROPOSED TIME SCHEDULE FOR CONSUMMATION

NSR intends to consummate this transaction on August 5, 2022 (the anticipated effective date of the transaction).

SECTION 1180.6 (a)(1)(iii)
PURPOSE SOUGHT TO BE ACCOMPLISHED BY TRANSACTION

NSR has sought trackage rights over the Line to provide direct NSR service to the recently-announced feed mill expansion project by Clemens Food Group Facility.⁵

SECTION 1180.6 (a)(5)
LIST OF STATES IN WHICH ANY PART OF THE PROPERTY OF EACH APPLICANT CARRIER IS SITUATED

NSR operates and owns property in the states of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.

⁵ See, e.g., <https://www.governor.pa.gov/newsroom/gov-wolf-country-view-family-farms-chooses-pennsylvania-for-47-3-million-expansion-that-will-create-51-new-jobs-in-union-county/>

UCIR operates and/or owns property in the Commonwealth of Pennsylvania.

The trackage rights involved in this proceeding are located in the Commonwealth of Pennsylvania.

SECTION 1180.6 (a)(6)
MAP

A map of the proposed trackage rights over the Line is attached hereto as Exhibit 2.

SECTION 1180.6 (a)(7)(ii)
AGREEMENT

A redacted version of the Agreement is attached as Exhibit 1. An unredacted version of the Agreement is being filed under seal and NSR has concurrently sought a protective order to protect highly confidential and proprietary information contained therein.

SECTION 1180.4(g)(1)(i)
LABOR PROTECTION

Any employees who are adversely affected by the trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in Norfolk and Western Ry. Co. – Trackage Rights – BN, 354 I.C.C. 605 (1978), as modified by Mendocino Coast Ry., Inc. – Lease and Operate, 360 I.C.C. 653 (1980).

SECTION 1180.4(g)(2)(i)
CAPTION SUMMARY

A caption summary of this transaction suitable for publication in the Federal Register is attached hereto as Exhibit 3.

SECTION 1180.4(g)(3)
ENVIRONMENTAL AND HISTORIC PRESERVATION MATTERS

Under 49 C.F.R. §§ 1105.6(c)(1)(i) and 1105.8(b)(3), NSR's proposed acquisition of trackage rights is exempt from environmental reporting requirements, and historic preservation reporting requirements.

SECTION 1180.4(g)(4)
NO INTERCHANGE COMMITMENTS

NSR certifies that the proposed trackage rights do not involve a provision or agreement that may limit future interchange with a third-party connecting railroad.

Respectfully submitted,

/s/ ***Crystal M. Zorbaugh***

Hanna M. Chouest
Deputy General Counsel
NORFOLK SOUTHERN CORPORATION
650 West Peachtree St NW
Atlanta, GA 30308
Tel: (470) 571-5208

July 6, 2022

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Attorneys for Norfolk Southern Railway
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36614

**NORFOLK SOUTHERN RAILWAY COMPANY – TRACKAGE RIGHTS EXEMPTION
– UNION COUNTY INDUSTRIAL RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT 1

**AGREEMENT
(REDACTED IN THE
PUBLIC VERSION. A
HIGHLY CONFIDENTIAL
VERSION OF THE
AGREEMENT WAS FILED
UNDER SEAL.)**

TRACKAGE RIGHTS AGREEMENT

Between

NORFOLK SOUTHERN RAILWAY COMPANY

And

UNION COUNTY INDUSTRIAL RAILROAD COMPANY

THIS TRACKAGE RIGHTS AGREEMENT, (“Agreement”), entered into as of this 24th day of March, 2022 (the “Effective Date”), by and between UNION COUNTY INDUSTRIAL RAILROAD COMPANY, an affiliate of Susquehanna Union Railroad Company (hereinafter referred to as “UCIR”) and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter referred to as “NSR”). Each of UCIR and NSR shall individually be referred to as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, UCIR leases and operates a rail line from Milton, PA to New Columbia, PA; and

WHEREAS, NSR has requested, and UCIR is agreeable to granting NSR trackage rights for the movement of traffic over UCIR’s line, subject to the terms and conditions set forth herein.

NOW, THEREFORE, NSR and UCIR, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein provided, UCIR hereby grants to NSR the non-exclusive right to operate its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the “Trackage Rights”) over the following segments of UCIR’s railroad (hereinafter referred to as the “Subject Trackage”), as shown on the drawing attached hereto, made a part hereof and marked Exhibit “A”:

(a) Over the UCIR line between the connection with NSR at/or near Milton, PA (NSR Milepost BR 246.9) and New Columbia, PA (UCIR MP 172.62), a distance of approximately 3.1 miles.

1.2 Such rights shall include the right to enter and exit the Subject Trackage at the connection with NSR at Milton, PA (NSR Milepost BR 246.9)

1.3 The Trackage Rights herein granted are intended to permit overhead operations by NSR on the Subject Trackage through movements between NSR Milepost BR 246.9 and UCIR MP 172.62.

ARTICLE 2. USE OF LINE

- 2.1 NSR's use of the Subject Trackage shall be in common with UCIR and any other user of the Subject Trackage and UCIR's right to use the Subject Trackage shall not be diminished by this Agreement. UCIR shall retain the exclusive right to grant to other persons rights of any nature on the Subject Trackage.
- 2.2 Except as may be otherwise provided by this Agreement, NSR 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 UCIR, preclude the emergency use by NSR of such auxiliary tracks as may be designated by UCIR for such purposes.
- 2.3 UCIR shall have exclusive control of the management and operation of the Subject Trackage. NSR shall not have any claim against UCIR for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by NSR is interrupted or delayed at any time from any cause.
- 2.4 NSR shall have the right to operate in either direction over the Subject Trackage.

ARTICLE 3. RESTRICTIONS ON USE

- 3.1 The Trackage Rights herein granted are limited to NSR right to operate train service to/from the Clemens Food Group Facility, or their successor or assignee, in New Columbia, PA, between NSR Milepost BR 246.9 and UCIR MP 172.62.

ARTICLE 4. COMPENSATION

- 4.1 On or before the 15th day of each calendar month during the term of this Agreement, NSR shall prepare and deliver to UCIR a statement setting forth the [REDACTED]
[REDACTED] (hereinafter referred to as the "Current Charge").

- 4.2 The Current Charge set forth in Section 4.1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ARTICLE 5. PAYMENT OF BILLS

- 5.1 All payments called for under this Agreement shall be made by NSR 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 three (3) years from the date of billing.
- 5.2 Bills rendered pursuant to the provisions of this Agreement, if any, other than those set forth in Article 4, 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 three (3) 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 three (3) 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, UCIR 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. UCIR shall maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but UCIR 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, NSR shall not by reason of failure or neglect on the part of UCIR to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against UCIR 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, UCIR shall with reasonable diligence restore the Subject Trackage for the movement of cars.

ARTICLE 7. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

- 7.1 Existing connections or facilities which are jointly used by the Parties hereto under existing agreements or practices 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 or practices.
- 7.2 Any new or upgraded connections to the Subject Trackage at a point of permitted entry or exit which may be required shall be subject to UCIR's approval (including design) and shall be constructed, maintained, repaired, and renewed as follows:
- (a) NSR or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability, and expense such portions of the tracks located on the right of way of NSR or others which connect the respective lines of the Parties hereto; and
 - (b) UCIR shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability, and expense of NSR such portions of the tracks located on the right of way of UCIR which connect the respective lines of the Parties hereto.

ARTICLE 8. ADDITIONS, RETIREMENTS, AND ALTERATIONS

- 8.1 UCIR, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.
- 8.2 If NSR requests UCIR make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate NSR's operations beyond that required for UCIR's operation, UCIR shall have the option to either make such changes in or additions and betterments to the Subject Trackage, in which case NSR shall pay to UCIR the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request.

ARTICLE 9. MANAGEMENT AND OPERATIONS

- 9.1 When operating over the Subject Trackage, NSR's locomotives and crews will be equipped to communicate with UCIR on radio frequencies normally used by UCIR in directing train movements on the Subject Trackage.
- 9.2 Before its locomotives enter onto the Subject Trackage, NSR shall request permission from UCIR's dispatcher or other designated representative at UCIR's rail traffic control center or such other location as UCIR may designate. Further, NSR shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow NSR's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, NSR will notify UCIR's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once NSR has notified UCIR's representatives that it has cleared the Subject Trackage, NSR will not reenter the Subject Trackage without again obtaining permission from UCIR's representative. NSR shall provide and maintain at its expense all communication facilities needed as may be required by UCIR to permit NSR to use UCIR'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 NSR 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, NSR shall comply in all respects with the operating rules, timetables, and special instructions of UCIR, and the movement of NSR's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of UCIR; provided, however, that such operating rules, timetables, and special instructions and orders of the transportation officers of UCIR shall not unjustly discriminate between the Parties. UCIR will not make any rule or restriction applying to NSR's trains that does not apply equally to UCIR's trains. NSR'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 UCIR's operating rules and regulations, without the prior consent of UCIR. The Parties shall make proper accommodation for exceptions, should that be reasonable, necessary and practicable. All NSR trains shall be powered to permit operation at the maximum track speed allowed for the Subject Trackage's class of track.

- 9.5 NSR shall make such arrangements with UCIR 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 NSR shall pay to UCIR, upon receipt of bills therefor, any reasonable cost incurred by UCIR in connection with the qualification of such employees of NSR, as well as the reasonable cost of pilots furnished by UCIR, until such time as such employees are deemed by the appropriate examining officer of UCIR to be properly qualified for operation as herein contemplated, such determination not to be unreasonably withheld, conditioned or delayed.
- 9.6 UCIR shall have the right to exclude from its tracks any employee of NSR, except officers, determined by UCIR to be in violation of UCIR's rules, regulations, orders, practices, or instructions promulgated in the normal course of business in writing by UCIR in its timetable or otherwise, and provided in advance to NSR. The decision to bar any employee of NSR from its tracks will not be interpreted as a request for NSR to fire the individual(s). NSR shall release, indemnify, defend, and save harmless UCIR from and against any and all claims and expenses resulting from such exclusion.
- 9.7 The trains, locomotives, cars and equipment of NSR, UCIR, 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 NSR shall ensure that its locomotives are fueled to a capacity that enables NSR's trains to traverse the Subject Trackage without having to be fueled.
- 9.9 In the event that (i) one of NSR's trains is forced to stop on the Subject Trackage and is unable to proceed due to mechanical failure of NSR's equipment or any other cause not resulting from an accident or derailment, (ii) one of NSR's trains fails to maintain the speed required by UCIR on the Subject Trackage; or (iii) in emergencies, crippled or otherwise defective cars are set out of NSR's trains on the Subject Trackage, UCIR will have the option to furnish motive power or such other assistance (including but not limited to the right to recrew NSR'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 NSR will reimburse UCIR for the cost incurred by UCIR 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, UCIR will have the option to perform such work, and NSR will reimburse UCIR for the cost incurred by UCIR with respect thereto.

- 9.11 In the event UCIR and NSR agree that UCIR should retain employees or provide additional employees for the sole benefit of NSR, the Parties will enter into a separate agreement under which NSR 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 UCIR 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 NSR's trains on the Subject Trackage shall be assumed by NSR and reported and paid by NSR directly to the owner(s) of such cars.

ARTICLE 11. CLEARING OF WRECKS

- 11.1 Whenever NSR's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, UCIR 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 UCIR and NSR 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 NSR at the time of such wreck, shall be promptly delivered to NSR.

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 UCIR and NSR, then: (A) each Party shall be solely responsible for any Loss to its own employees, trains, Locomotives, equipment, and cars in its own account 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 UCIR and NSR's trains, Locomotives, cars, and/or equipment, then as between themselves, (A) UCIR 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 UCIR's cars and equipment and/or UCIR's Locomotive(s) from which there is a release, (B) NSR 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 NSR's cars and equipment and/or NSR's Locomotive(s) from which there was a release, and (C) UCIR and NSR 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 revenue waybill and car hire accounts or Locomotives of both UCIR and NSR 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 UCIR or NSR, then each of UCIR and NSR 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 Except as provided in Section 9.11, each party agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries and affiliates, and any or all their respective directors, officers, agents and employees from and 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 its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the Parties 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 employee arising under its collective bargaining agreements with its employees. Similarly, 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 NSR or UCIR, 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 UCIR to NSR pursuant to this Agreement shall be considered as the employees of NSR while such employees are on duty as pilots for NSR.
- 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 UCIR and/or NSR, 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), 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 UCIR 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 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. INSURANCE

- 15.1 NSR shall procure and maintain in effect during the life of this Agreement a policy or policies of insurance covering the liability to which it is or may be subject under this Agreement. Such insurance shall provide minimum limits of Twenty-Five Million Dollars (\$25,000,000) per occurrence but may be subject to an annual aggregate limit of Twenty-Five Million Dollars (\$25,000,000) and a per occurrence deductible not in excess of Two Million Dollars (\$2,000,000)
- 15.2 If the insurance provided under this Article 15 takes the form of a Claims Made Policy, NSR agrees to purchase whatever supplemental coverage may be necessary to provide continuous coverage of its potential liability under this Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least five (5) years following the termination of this Agreement. NSR further agrees to immediately give written notice to the Union County Industrial Railroad Company, 356 Priestley Avenue, Northumberland, PA 17857, of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company.

- 15.3 On or before any anniversary date of this, UCIR may require an increase in the amount of insurance coverage required by this Article 15, or changes in the terms and conditions of the policy or policies, provided the amount of the increase does not exceed an average of Two Million Dollars (2,000,000) for each year that this Agreement has been in effect.
- 15.4 Every policy of insurance obtained by NSR pursuant to the requirements of this Article 15 shall contain provisions requiring that the insurance carriers give NSR at least thirty (30) days' notice, in writing, of any proposed policy cancellation and of any material modification of the terms and conditions of the policy. In addition, said policy or policies shall be endorsed to name UCIR (including UCIR's parent, affiliated and subsidiary companies) as an additional insured and shall include a severability of interests provision. The terms and conditions of each policy of insurance obtained by NSR to satisfy the requirements of this Article 15 will be subject to the approval of UCIR.
- 15.5 NSR may self-insure any of the requirements of Article 15, Insurance, at its sole discretion. NSR further certifies that it maintains insurance coverage above its self-insured retention.
- 15.6 Within thirty (30) days of execution of this Agreement, NSR will furnish to the above referenced Union County Industrial Railroad Company, 356 Priestley Avenue, Northumberland, PA 17857, an accurate copy of insurance obtained pursuant to the requirements of this Agreement. Compliance with this requirement will not relieve NSR of any other obligation under this Agreement and will in no way limit or modify NSR's obligation to provide the specific insurance coverage required by this Agreement. Evidence of subsequent renewal of such insurance or of any material change must be furnished to UCIR.

ARTICLE 16. TERM, TERMINATION, AND DEFAULT

- 16.1 This Agreement shall become effective as of the Effective Date. However, NSR operations over the Subject Trackage shall not commence until a date (the "Commencement Date") mutually agreed in writing between NSR and UCIR, which date shall not occur until the effective date of any required Surface Transportation Board ("STB") authorization or exemption of NSR'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 This Agreement shall remain in full force and effect until terminated by the either NSR or UCIR. The Initial Term of this Agreement shall be five (5) years from the Commencement Date, and shall be renewable continuously thereafter for additional periods of five (5) years ("Additional Term(s)"); provided, however, that either party shall have the right to terminate this Agreement upon giving sixty (60) days' advance written notice to the other party.
- 16.3 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.

- 16.4 In the event of any material failure on the part of NSR 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 UCIR, UCIR 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 UCIR of any prior breach thereof, to terminate the Agreement and NSR'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 UCIR will not impair its rights under this Agreement or any cause or causes of action it may have against NSR 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, NSR, at its own cost and expense, will initiate and thereafter diligently pursue such approval and authorization or an exemption therefrom. Prior to making any submission to the STB, NSR shall present said submission to UCIR for UCIR's review and comment, which review shall not be unreasonably withheld or delayed.
- 17.2 NSR shall, within sixty (60) days of the date of termination or non-renewal of this Agreement or the date that the obligation to discontinue the Trackage Rights arises for any other reason under the terms of this Agreement, initiate and thereafter diligently prosecute any action to obtain approval from STB or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If NSR fails to file within (60) days, NSR hereby expressly authorizes UCIR to file with the STB, or other regulatory body having jurisdiction, on behalf of NSR to abandon or discontinue the Trackage Rights granted hereunder, and NSR further agrees to reimburse UCIR for all costs incurred.

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.

ARTICLE 19. ABANDONMENT

19.1 Notwithstanding the provisions of Article 16 of this Agreement, UCIR may abandon all or part of the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving NSR not less than ninety (90) days' written notice of UCIR's intent to abandon. In the event regulatory authority is required to effect such abandonment, NSR will not interfere with or oppose UCIR's actions to seek and to exercise such authority. In the event regulatory authority is required for NSR to discontinue its own operations over the Subject Trackage, NSR will seek and diligently pursue such regulatory authority at the same time that UCIR seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as NSR may do so in accordance with applicable statutes and regulations, unless NSR intends to acquire the Subject Trackage from UCIR pursuant to 49 U.S.C. § 10904 or other similar provision. NSR hereby expressly reserves the right pursuant to 49 U.S.C. § 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless NSR or another party acquires the Subject Trackage for continued rail use or subsidizes UCIR's operations thereon, NSR shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by UCIR for abandonment of the Subject Trackage by its aforesaid notice to NSR, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of NSR's operations is not required, NSR shall discontinue its operations hereunder on the date that UCIR is authorized to abandon the Subject Trackage. Upon discontinuance of NSR's operations, this Agreement shall terminate and be of no further force and effect, except that 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 prior to said termination As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

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 as the Parties may mutually agree, and shall be addressed as follows:

If to UCIR:

Union County Industrial Railroad Company
Attn: President
356 Priestley Avenue
Northumberland, PA 17857

If to NSR:

Norfolk Southern Railway Company
c/o Norfolk Southern Corporation
Attn: Executive Vice President Operations
650 W. Peachtree St. NW
Atlanta, GA 30308

with a copy to:

Norfolk Southern Railway Company
c/o Norfolk Southern Corporation
Attn: Sr. Director – Interline Services
650 W. Peachtree St. NW – Box 38
Atlanta, Georgia 30308

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 Commonwealth of Pennsylvania without giving effect to any choice or conflict of laws provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the Commonwealth of Pennsylvania.
- 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 UCIR or NSR 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 UCIR:

Diana D. Williams

UNION COUNTY INDUSTRIAL RAILROAD COMPANY

By: *[Signature]* CEO

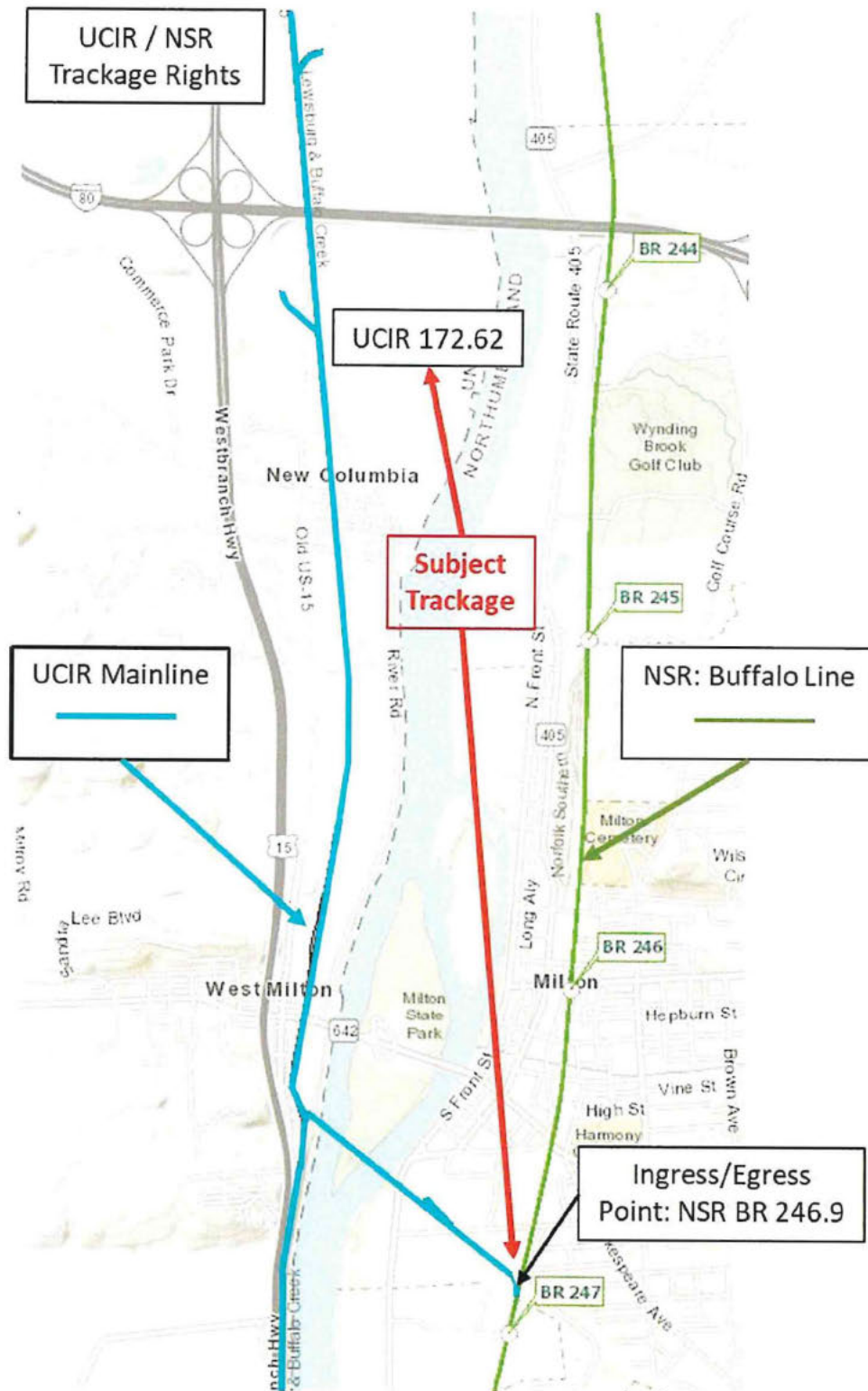
Witness for NSR:

[Signature]

NORFOLK SOUTHERN RAILWAY COMPANY

By: *[Signature]* Paul Duncan

Exhibit A



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36614

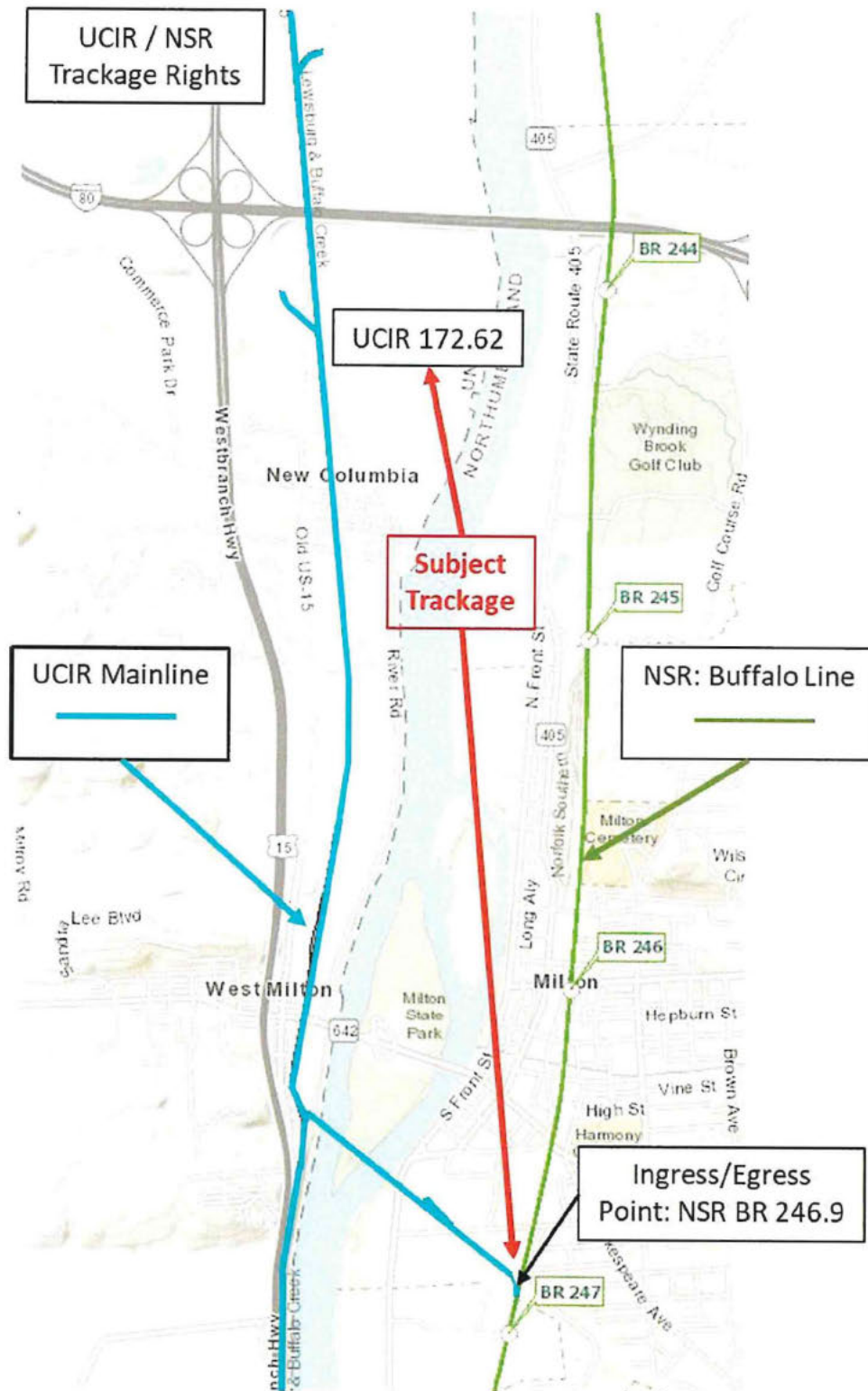
**NORFOLK SOUTHERN RAILWAY COMPANY – TRACKAGE RIGHTS EXEMPTION
– UNION COUNTY INDUSTRIAL RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT 2

MAP

Exhibit A



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36614

**NORFOLK SOUTHERN RAILWAY COMPANY – TRACKAGE RIGHTS EXEMPTION
– UNION COUNTY INDUSTRIAL RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT 3

**DRAFT CAPTION SUMMARY
FEDERAL REGISTER NOTICE**

Surface Transportation Board
Notice of Exemption
FD 36614

Norfolk Southern Railway Company – Trackage Rights Exemption – Union County Industrial Railroad Company

Norfolk Southern Railway Company (“NSR”), a wholly-owned subsidiary of Norfolk Southern Corporation (“NS”), submits this Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7) and the procedures at 49 C.F.R. § 1180.4(g), for NSR’s acquisition of overhead trackage rights over a 3.1-mile rail line leased by Union County Industrial Railroad Company (“UCIR”)¹ and owned by West Shore Railroad Corporation located between the connection with NSR at/or near Milton, PA (NSR Milepost BR 246.9) and New Columbia, PA (UCIR Milepost 172.62) (the “Line”), which will allow NSR to serve the Clemens Food Group Facility, or their successor or assignee.

This Notice is filed pursuant to 49 C.F.R. § 1180.2(d)(7). 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 automatically stay the transaction.

Dated: _____

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

¹ UCIR acquired acquisition and operation authority for the approximate 3.9-mile rail line between milepost 169.7, at or near New Columbia, and milepost 173.6, at or near Milton, in Union County, PA from Consolidated Rail Corporation in 1995. See Union Cty. Indus. R.R. Co. – Acquisition and Operation Exemption – Consolidated Rail Corp., FD 32686 (ICC served Apr. 20, 1995).

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36614

**NORFOLK SOUTHERN RAILWAY COMPANY – TRACKAGE RIGHTS EXEMPTION
– UNION COUNTY INDUSTRIAL RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

VERIFICATION

VERIFICATION

I, Paul Duncan, Vice President for Norfolk Southern Railway Company (“NSR”) hereby verify under penalty of perjury that to the best of my knowledge the foregoing trackage rights notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of NSR in connection with this proceeding before the Surface Transportation Board.

Executed this 30 day of June, 2022



Paul Duncan
Vice President
Norfolk Southern Railway Company