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ENTERED
Office of Proceedings
October 11, 2022
Part of
Public Record

Crystal M. Zorbaugh

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October 11, 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, Tennessee Railway
Company, and Tennessee, Alabama & Georgia Railway
Company— Corporate Family Exemption, FD 36634

Dear Ms. Brown:

Enclosed for filing is a Verified Notice of Exemption (“Notice”) under 49 C.F.R. §1180.2(d)(3) for a Corporate Family transaction involving Norfolk Southern Railway Company, Tennessee Railway Company, and Tennessee, Alabama & Georgia Railway Company. Pursuant to 49 C.F.R. § 1002.2(f)(38)(iv), the filing fee of \$2,100.00 has been paid. 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*

FILED
October 11, 2022
SURFACE
TRANSPORTATION BOARD

Crystal M. Zorbaugh
Attorney for Norfolk Southern Railway
Company, Tennessee Railway Company,
and Tennessee, Alabama & Georgia
Railway Company

FEE RECEIVED
October 11, 2022
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36634

**NORFOLK SOUTHERN RAILWAY COMPANY, TENNESSEE RAILWAY COMPANY,
AND TENNESSEE, ALABAMA & GEORGIA RAILWAY COMPANY
— CORPORATE FAMILY EXEMPTION —**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1180.2(d)(3)**

**Hanna Chouest
Norfolk Southern Corporation
650 W. Peachtree Street, N.W.
Atlanta, GA 30308
Tel: (470) 571-5208**

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

**Attorneys for Norfolk Southern Railway
Company, Tennessee Railway Company,
and Tennessee, Alabama & Georgia
Railway Company**

October 11, 2022

**BEFORE THE
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FD 36634

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PURSUANT TO 49 C.F.R. §1180.2(d)(3)**

Norfolk Southern Railway Company (“NSR”), Tennessee Railway Company (“TRC”) and Tennessee, Alabama & Georgia Railway Company (“TAG”) (collectively, the “Parties”) hereby submit this notice, pursuant to 49 C.F.R. §1180.2(d)(3), for an exemption from the prior approval and authorization requirements of the Surface Transportation Board (“STB” or “Board”) of a transaction within a corporate family. The transaction, subject to this Notice of Exemption, involves NSR’s [successor to Southern Railway Company] acquisition of TRC and TAG.

Pursuant to 49 C.F.R. §1180.2(d), certain types of transactions are presumed exempt: among them: “[t]ransactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.”¹ The Board’s regulations at 49 C.F.R. § 1180.4(g)(1) provide that, to qualify for such an exemption, a rail carrier must file a verified notice of the

¹ See 49 C.F.R. §1180.2(d)(3).

transaction. Accordingly, NSR, TRC, and TAG hereby file this notice and submit the following information:

49 C.F.R. §1180.6(a)(1)(i) – Description of Transaction and Parties Thereto:

Applicants.

NSR is a Class I railroad that, together with the rail subsidiaries (including TRC and TAG), operates approximately 19,300 route miles in 22 states and the District of Columbia. TRC is a Class III railroad that operates over approximately .95 miles of rail line in Tennessee.² TAG is also a Class III railroad that owns and/or operates over approximately 19.7 miles of rail line in Tennessee, Alabama & Georgia.³

NSR is controlled through stock ownership by Norfolk Southern Corporation (“NSC”), a non-carrier holding company. NSC was formed in 1982 when the ICC authorized NSC to control Norfolk and Western Railway Company (“N&W”) and Southern Railway Company (“SRC”) directly and Norfolk Southern Railway Company (“Norfolk Southern”)⁴ indirectly.⁵ At the time

² MP 0.95 to MP 42.0 of TRC’s original 42-mile line from Oneida to Devonia, TN was acquired by National Coal Corporation through an OFA in 2006. See Tennessee Railway Company – Abandonment Exemption – In Scott County, TN, AB-290 (Sub-No. 260X); Tennessee Railway Company – Abandonment Exemption – In Anderson and Campbell Counties, TN, AB-290 Sub-No. 259X) (STB served March 3, 2006).

³ In 1970, Southern Railway Company acquired the TAG line, which included approximately 86.78 miles of rail line. See FN 6, *infra*. In 1982 and 1987, TAG abandoned approximately 67.2 miles of rail line from Hedges, GA (MP 23.1) to Gadsen, AL (MP 90.3). See Tennessee, Alabama & Georgia Railway Company – Abandonment Exemption – Between Hedges, GA and Ewing, AL, AB 26 (Sub-No. 26) (ICC served March 16, 1982); Tennessee, Alabama & Georgia Railway Company – Between Gadsen and Ewing, In Etowah and Cherokee Counties, AL, AB-26 (Sub-No. 38) (ICC served November 6, 1987.) TAG is currently comprised of approximately 19.7 miles of rail line.

⁴ The use of "Norfolk Southern" is intended to reference the entity that was in existence in 1982 and was a Class II subsidiary of SRC. The use of "NSR" is intended to refer to the entity that has been in existence since December 31, 1990, when SRC merged Norfolk Southern into SRC and SRC changed its name to NSR.

⁵ See Norfolk S. Corp. – Control – Norfolk and W. Ry. Co. and S. Ry. Co., 366 ICC 173, FD

of the 1982 transaction, TRC and TAG were both direct subsidiaries of SRC.⁶ As such, TRC and TAG are now wholly owned direct subsidiaries of NSR.

The proposed transaction, which is designed to further the goal of corporate simplification, will be accomplished as a direct merger of TRC and TAG into NSR pursuant to the short-form merger provisions of the laws of the Commonwealth of Virginia.⁷

Description of the Proposed Transaction.

NSR, TRC, and TAG will enter into an Agreement and Plan of Merger (yet to be executed), which will provide, among other things, that, subject to necessary regulatory approval or exemption, TRC and TAG will be merged with and into NSR. All shares of the capital stock of TRC and TAG will be canceled and retired, and no consideration will be paid in respect of such shares.

At the effective time of the merger, TRC and TAG will be merged with and into NSR and the separate corporate existence of TRC and TAG will cease. NSR, as the surviving corporation, will succeed in ownership of all the assets of TRC and TAG and will be responsible for all the debts and obligations of TRC and TAG.⁸

The proposed transaction will not result in any significant changes in rail operations over the properties owned by TRC and TAG. Service levels and customers' access to rail service will not be affected by the transaction.

24930 (Sub-No.1), at 48. (I.C.C. served March 19, 1982) ("1982 Transaction").

⁶ Id. at Appendix A; see also Southern Railway Company – Control – Tennessee, Alabama & Georgia Railway Company, Finance Docket No. 25860 (I.C.C. served December 8, 1970); Southern Railway Company – Control – Tennessee Railway Company, Finance Docket No. 27313 (I.C.C. served July 3, 1973)

⁷ Va. Code Ann. § 13.1-719

⁸ TAG has an obligation to NSR in the amount of \$1,532,681.00 (the "Receivable"). On July 27, 2022, NSR's Board of Directors consented to contribute the Receivable to the capital of TAG. This was formalized in a letter from Claiborne L. Moore, Vice President & Controller at NSR, and accepted on behalf of TAG by Michael F. Cox, Vice President at TAG. See Exhibit A.

Names, Addresses, and Phone Numbers of Involved Parties.

This notice is filed on behalf of Norfolk Southern Railway Company, Tennessee Railway Company, and Tennessee, Alabama & Georgia Railway Company, each having a business address at 650 West Peachtree Street, NW, Atlanta, GA 30308. The telephone number for the Parties is (855) 667-3655.

Name of Counsel to Whom Questions Can Be Addressed.

Correspondence on this Verified Notice of Exemption should be addressed to:

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

49 C.F.R. §1180.6 (a) (1) (ii) --Consummation Schedule.

The Parties propose to consummate the proposed transaction on or about November 10, 2022 (30 days after filing this Verified Notice of Exemption), or upon the effective date of this exemption, if later, and operations under this exemption will begin thereafter.

49 C.F.R. §1180.6 (a) (1) (iii) -- Purpose of the Transaction.

The purpose sought to be accomplished through this transaction is to improve operating and administrative efficiencies within the corporate family.

49 C.F.R. §1180.6 (a) (5) -- List of States in Which the Parties' Property is Located.⁹

NSR and its consolidated railroad subsidiaries own or operate lines of railroad in the District of Columbia and 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, and West Virginia. TRC's Line to be transferred to NSR and to be operated by NSR is in the State of Tennessee. TAG's Line to be transferred to NSR and to be operated by NSR are in the States of Tennessee, Alabama, and Georgia.

49 C.F.R. §1180.6 (a) (6) -- Map Exhibit.

A map showing the lines of railroad owned by TRC and TAG in relation to the NSR rail system is included in Exhibit B. Maps showing the lines of TRC and TAG are also included in Exhibit B.¹⁰

49 C.F.R. §1180.6 (a) (7) (ii) -- Agreement.

Pursuant to a written agreement (yet to be executed), NSR will merge two of its affiliates, Tennessee Railway Company (TRC) and the Tennessee, Alabama & Georgia Railway Company (TAG) into NSR. The Agreement will contain no restrictions on interchange with railroads outside

⁹ Consistent with 49 C.F.R. §1180.3 and 49 C.F.R. §1180.6 (a) (5), NSR has listed all states in which any part of the property of an applicant carrier is situated. The term applicant carrier is defined as any applicant that is a rail carrier; any rail carrier operating in the United States, Canada, and/or Mexico in which an applicant holds a controlling interest; and all other rail carriers involved in the transaction.

¹⁰ Because of the size of the maps, Exhibit B can be accessed via this link: <https://spaces.hightail.com/space/zOOQShKGso>.

the corporate family.

49 C.F.R. §1180.4 (g) (1) (i) -- Level of Labor Protection.

No effects on employees are anticipated. However, the interest of any rail employees will be addressed by imposition, pursuant to 49 U.S.C. § 10502(g) and § 11326 of standard labor protective provisions, as set forth in New York Dock Ry. – Control – Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

49 C.F.R. §1105.6 through 1105.8--Environmental Report.

The proposed corporate family transaction will not have a significant effect on the quality of the human environment or consumption of energy. Because the proposed merger involves only a change of ownership and does not involve a change in carrier operations, the proceeding is exempt from environmental review under 49 CFR §1105.6(c)(2)(i). In fact, the incumbent operator will continue to operate the Line; thus, operational changes, if any, would be de minimis.

Respectfully submitted,

/s/ Crystal M. Zorbaugh

William A. Mullins
Crystal M. Zorbaugh
Spencer M. Naake
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Washington, DC 20037
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36634

**NORFOLK SOUTHERN RAILWAY COMPANY, TENNESSEE RAILWAY COMPANY,
AND TENNESSEE, ALABAMA & GEORGIA RAILWAY COMPANY
— CORPORATE FAMILY EXEMPTION —**

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PURSUANT TO 49 C.F.R. §1180.2(d)(3)**

EXHIBIT A

**NSR'S BOARD OF DIRECTOR'S
CONSENT LETTER**

CLAIBORNE L. MOORE LETTER

NORFOLK SOUTHERN RAILWAY COMPANY
(A Virginia Corporation)

Consent of Board of Directors

The undersigned, being all the members of the Board of Directors of Norfolk Southern Railway Company (the "Company"), acting pursuant to Section 13.1-685 of the Virginia Stock Corporation Act, in lieu of calling and holding a meeting, do hereby consent to, approve and adopt the following preambles and resolutions:

WHEREAS, Tennessee, Alabama & Georgia Railway Company ("TAG"), a wholly owned subsidiary of the Company, has an obligation to the Company in the amount of \$1,532,681.00 (the "Receivable"); and

WHEREAS, the Company is willing to contribute the Receivable to the capital of TAG for its face amount; therefore be it

RESOLVED, that the contribution of the Receivable to TAG be and the same hereby is authorized, ratified and approved effective July 29, 2022;

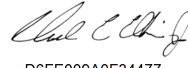
FURTHER RESOLVED, that the proper officers of the Company are severally authorized in the name and on behalf of the Company to take such other action as in their judgment may be necessary or desirable in order to fully carry out the intent and to accomplish the purposes of the foregoing resolution; and,

FURTHER RESOLVED, that all actions taken by the proper officers of the Company in connection with the foregoing resolutions be, and the same hereby is, authorized, approved, ratified and confirmed.

7/27/2022

Date Executed

DocuSigned by:



B6FE009A0F34477...

Claude E. Elkins

7/27/2022

Date Executed

DocuSigned by:



05A8EABF73E8412...

Mark R. George

7/27/2022

Date Executed

DocuSigned by:



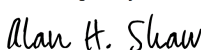
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Cynthia M. Sanborn

8/9/2022

Date Executed

DocuSigned by:



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Alan H. Shaw

NORFOLK SOUTHERN RAILWAY COMPANY
650 West Peachtree Street NW
Atlanta, Georgia 30308

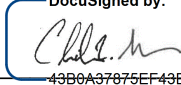
July 29, 2022

Michael F. Cox
Vice President
Tennessee, Alabama & Georgia Railway Company
650 West Peachtree Street NW
Atlanta, Georgia 30308

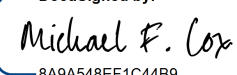
Dear Mr. Cox:

This will acknowledge the contribution by Norfolk Southern Railway Company ("NSR") to the Capital of Tennessee, Alabama & Georgia Railway Company ("TAG"), a wholly owned subsidiary of NSR, of a receivable owing to NSR from TAG in the amount of \$1,532,681.

NORFOLK SOUTHERN RAILWAY COMPANY

DocuSigned by:

By: _____
43B6A37875EF43E...
Name: Claiborne L. Moore
Title: Vice President & Controller

ACCEPTED ON BEHALF OF
TENNESSEE, ALABAMA & GEORGIA RAILWAY COMPANY

DocuSigned by:

By: _____
8A9A548EF1C44B9...
Name: Michael F. Cox
Title: Vice President
Date: 7/29/2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36634

**NORFOLK SOUTHERN RAILWAY COMPANY, TENNESSEE RAILWAY COMPANY,
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EXHIBIT B

MAPS

The maps can be accessed at the following link:

<https://spaces.hightail.com/space/zOOQShKGso>

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VERIFICATION

VERIFICATION

I, Nabanita Nag, hereby verify under penalty of perjury on behalf of Norfolk Southern Railway Company (“NSR”), Tennessee Railway Company (“TRC”), and Tennessee, Alabama and Georgia Railway Company (“TAG”) to the best of my knowledge the foregoing notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of NSR, TRC, and TAG in connection with this proceeding before the Surface Transportation Board.

Executed this 7th day of October 2022

A handwritten signature in blue ink that reads "Nabanita Chatterjee Nag".

Nabanita C. Nag
Executive Vice President & Chief Legal Officer