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VIA ELECTRONIC FILING

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

Re: *Aberdeen Carolina and Western Railway Company – Acquisition Exemption – Norfolk Southern Railway Company*, STB Docket No. FD 36648

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a Petition for Partial Waiver of Requirements of 49 C.F.R. § 1150.42(e) submitted by Aberdeen Carolina and Western Railway Company. The \$750 fee for this filing has been tendered electronically via Pay.gov.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Christian L. Alexander'.

Christian L. Alexander
Counsel for Aberdeen Carolina and
Western Railway Company

Enclosures

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36648

**ABERDEEN CAROLINA AND WESTERN RAILWAY COMPANY—ACQUISITION
EXEMPTION—NORFOLK SOUTHERN RAILWAY COMPANY**

**PETITION FOR PARTIAL WAIVER OF
REQUIREMENTS OF 49 C.F.R. §1150.42(e)**

EXPEDITED CONSIDERATION REQUESTED

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COUNSEL FOR ABERDEEN CAROLINA
AND WESTERN RAILWAY COMPANY

Dated: November 15, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36648

**ABERDEEN CAROLINA AND WESTERN RAILWAY COMPANY—ACQUISITION
EXEMPTION—NORFOLK SOUTHERN RAILWAY COMPANY**

**PETITION FOR PARTIAL WAIVER OF
REQUIREMENTS OF 49 C.F.R. § 1150.42(e)**

Aberdeen Carolina and Western Railway Company (“ACWR”) hereby petitions the Board for a partial waiver of the 60-day labor notice certification requirement of 49 C.F.R. § 1150.42(e) with regard to ACWR’s proposed acquisition from Norfolk Southern Railway Company (“NSRR”) of approximately 104 miles of rail line between Milepost 282.63 at Gulf, Chatham County, and Milepost 386.91 at Charlotte, Mecklenburg County, and running through Mecklenburg, Cabarrus, Stanly, Montgomery, and Chatham Counties, North Carolina (the “Line”) in the above finance docket proceeding. That transaction will result in no operational changes on the Line, which ACWR has been operating for over 30 years pursuant to a Lease and Option to Purchase Agreement (“Agreement”) with NSRR. There are no NSRR “employees on the affected lines” and ACWR’s own employees will not be affected by the change of ACWR’s interest in the Line from leasehold to ownership. Allowing the proposed transaction to proceed upon 30 days’ notice to ACWR’s own employees fully satisfies the purpose of 49 C.F.R. § 1150.42(e) in this context.

This petition for partial waiver is being filed concurrently with a verified notice of exemption pursuant to 49 C.F.R. § 1150.41, *et seq.* to acquire the Line. ACWR has leased and

provided all rail freight service on the Line since 1989, when it received authorization to do so from the Board's predecessor, the Interstate Commerce Commission ("ICC").

Because ACWR's annual rail-related revenues exceed \$5 million, 49 C.F.R. § 1150.42(e) would otherwise require ACWR to post a notice of its proposed acquisition of the Line at the workplace of the "employees on the affected line(s)" and serve the notice on labor unions "with employees on the affected line(s)." The purpose of the 60-day notice requirement is to ensure that employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. *Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice*, 2 S.T.B. 592 (1997) ("Advance Notice"). As indicated in the rulemaking implementing this rule, the notice requirement was intended to provide notice to a *seller's* employees in a line-sale transaction. *See id.* 2 S.T.B. at 592, 599. Here, however, the seller, NSRR, does not employ any workers or conduct any operations or maintenance on the Line, which has been exclusively operated by ACWR for over 30 years.

Furthermore, the proposed acquisition will not result in any change in rail service that ACWR provides and will not have any effect on ACWR's employees. The proposed transaction will not foreseeably result in any transfer, reduction, or increase in employment at ACWR. ACWR's employees are already employed by the buyer and therefore the purpose for notifying them is not applicable here. *See Advance Notice*, 2 S.T.B. at 597 (discussing impact on employees and motivation for advance notice).

In specific circumstances similar to these, the Board has previously found that a complete waiver of the advance notice requirement is appropriate. *E.g., Reading Blue Mountain and Northern Railroad Company – Acquisition and Operation Exemption – Locust Valley Coal*

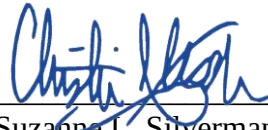
Company d/b/a/ Locust Valley Line, STB Docket No. FD 36033 at 2 (Service Date June 7, 2016); *Kansas & Oklahoma Railroad, Inc. – Acquisition Exemption – Rail Line of Union Pacific Railroad Company*, STB Docket No. FD 34746 at 2 (Service Date Sept. 15, 2005).

The Board has also granted partial waivers allowing for shortened notice where warranted and appropriate. *See, e.g., Southwest Pennsylvania Railroad Company – Acquisition Exemption – Lines of Westmoreland County Industrial Development Corporation [Request for Waiver of 49 C.F.R. § 1150.42(e)]*, STB Docket No. FD 36515 (Service Date June 2, 2021); *Allegheny Valley Railroad Company – Acquisition Exemption – Lines of CSX Transportation, Inc. [Request for Waiver of 49 C.F.R. § 1150.42(e)]*, STB Docket No. FD 36282 (Service Date May 14, 2019); *Portland & Western Railroad, Inc. – Acquisition and Operation Exemption – Union Pacific Railroad Company*, STB Docket No. FD 34792 (Service Date Nov. 22, 2006).

Although the purpose of the requirement in 49 C.F.R. § 1150.42(e) is inapplicable with respect to the proposed transaction, ACWR nevertheless posted notice of the proposed transaction on August 15, 2022, more than 60 days ahead of the transaction’s consummation, at the workplaces of ACWR’s existing employees on the Line. ACWR did not file a certification of posting at that time, but is now concurrently filing a certification of this posting.

Considering the purpose and intent of 49 C.F.R. § 1150.42(e) and the Board’s precedent in granting waivers in similar circumstances, ACWR hereby respectfully requests expedited consideration of this petition, and issuance of the requested waiver to correspond with the December 15, 2022 effective date of ACWR’s acquisition notice of exemption. This is consistent with prior practice and will allow the parties to proceed with the proposed transaction on the schedule otherwise contemplated by the Board’s regulations.

Respectfully submitted,



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Dated: November 15, 2022