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November 15, 2022

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 the Verified Notice of Exemption of Aberdeen Carolina and Western Railway Company pursuant to 49 C.F.R. § 1150.42. The \$2,200 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

FEE RECEIVED
November 15, 2022
SURFACE
TRANSPORTATION BOARD

FILED
November 15, 2022
SURFACE
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Kaplan Kirsch & Rockwell LLP
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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**

**VERIFIED NOTICE OF EXEMPTION OF
ABERDEEN CAROLINA AND WESTERN RAILWAY COMPANY**

Suzanne L. Silverman
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ssilverman@kaplankirsch.com
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COUNSEL FOR ABERDEEN CAROLINA
AND WESTERN RAILWAY COMPANY

Dated: November 15, 2022

CONTAINS COLOR IMAGES

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36648

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

**VERIFIED NOTICE OF EXEMPTION OF
ABERDEEN CAROLINA AND WESTERN RAILWAY COMPANY**

Aberdeen Carolina and Western Railway Company (“ACWR”), a Class III rail carrier, hereby files this Verified Notice of Exemption to acquire from Norfolk Southern Railway Company (“NSRR”) 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”). Since 1989, ACWR has operated the Line pursuant to a Lease and Option to Purchase Agreement (“Agreement”) with the owner of the Line, the Norfolk Southern Railway Company, and regulatory authority granted by the Board’s predecessor, the Interstate Commerce Commission (“ICC”). ACWR now seeks to exercise its option to purchase the Line under the Agreement and is seeking Board authorization to do so. Based on projected revenues from the Line, ACWR expects to remain a Class III rail carrier after the transaction is consummated.

In accordance with the requirements of 49 C.F.R. § 1150.43, ACWR submits the following information:

Name and Address of Applicant (49 C.F.R. § 1150.43(a)):

Aberdeen Carolina and Western Railway Company
967 NC Hwy 211 E
Candor, NC 27229

Name and Address of Applicant's Representative (49 C.F.R. § 1150.43(b)):

Suzanne L. Silverman
Christian L. Alexander
Kaplan Kirsch & Rockwell LLP
1634 I (Eye) Street NW
Suite 300
Washington, DC 20006
Tel: (202) 955-5600
Emails: ssilverman@kaplankirsch.com
calexander@kaplankirsch.com

Statement Concerning Agreement (49 C.F.R. § 1150.43(c)):

ACWR and NSRR have negotiated a Purchase and Sale Agreement and expect to close the transaction on or shortly after the effective date of the Notice of Exemption.

Operator of the Property (49 C.F.R. § 1150.43(d)):

ACWR will continue to operate the Line.

Brief Summary of the Transaction (49 C.F.R. § 1150.43(e)):

ACWR is a Class III rail common carrier providing shortline rail service in the State of North Carolina. Since 1989, ACWR has operated common carrier service on the Line, also known as the Piedmont Subdivision, pursuant to the Agreement with the owner of the Line, the Norfolk Southern Railway Company ("NSRR").¹ Pursuant to the Agreement, ACWR was granted an option to purchase the property that became exercisable five years after commencement of the Agreement.

In 1989 the Board's predecessor, the ICC, exempted ACWR's lease of the Line from NSRR's predecessor in interest, the Southern Railway Company, holding that detailed scrutiny

¹ In addition to the Line subject to these proceedings, ACWR also owns and operates a connected 34.5-mile rail line, known as the Sandhills Division, between Aberdeen, North Carolina, to Star, North Carolina, where it connects with the Line. The Sandhills Division runs through Moore and Montgomery Counties. See the map attached at **Exhibit A**.

was not necessary to carry out the rail transportation policy and that the transaction was both of limited scope and regulation, and was not necessary to protect shippers from the abuse of market power. *See Aberdeen Carolina and Western Ry Co. – Lease Exemption – S. Ry. Co. ’s Line Between Charlotte and Gulf, North Carolina*, ICC Finance Docket No. 31404 (Decided Mar. 20, 1989) (unreported). In that decision, the ICC noted that ACWR did not request an exemption for exercise of the option to purchase the Line as provided in the Agreement, and that therefore future authorization from the ICC would be necessary to exercise this right. ACWR is now exercising its option, and therefore is seeking such authorization from the Board.

(1) The name and address of the railroad transferring the subject property to the Class III rail carrier applicant;

Norfolk Southern Railway Company
650 West Peachtree Street, NW
Atlanta, Georgia, 30308.

(2) The proposed time schedule for consummation of the transaction;

Shortly after the effective date of the Notice of Exemption, which is estimated to be December 15th 2022.

(3) The mileposts of the subject property, including any branch lines; and

MP 282.63 (Gulf) to MP 386.91 (Charlotte).

(4) The total route miles being acquired;

Approximately 104 miles.

Map (49 C.F.R. § 1150.43(f)):

A map depicting the Line and the surrounding area is attached as **Exhibit A** to this Notice.

Certification of Compliance (49 C.F.R. § 1150.43(g)):

A Certificate of Compliance certifying that ACWR's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier is attached as **Exhibit B** to this Notice.

Interchange Commitments (49 C.F.R. § 1150.43(h)):

ACWR's proposed acquisition of the Line does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

Advance Notice to Employees (49 C.F.R. § 1150.42(e)):

ACWR has leased and operated the Line for over 30 years from NSRR, and the proposed transaction will not result in any change in operations or transfer, reduction, or expansion of employees. The proposed transaction will merely convert ACWR's leasehold interest in the subject line into an ownership interest. Accordingly, and consistent with precedent, ACWR is filing concurrently herewith a petition for waiver of the requirements of Section 1150.42(e).

In compliance with Section 1150.42(e), on August 15, 2022, ACWR posted a notice of the proposed acquisition transaction at the workplaces of ACWR employees who already work on the Line and certified that action to the Board. A copy of the notice and certification of posting, which is also being filed concurrently with the Board, is attached as **Exhibit C** to this Notice. None of ACWR's employees are represented by a union. ACWR is concurrently filing a petition for partial waiver of the requirements of Section 1150.42(e) regarding the 60-day prior certification to the Board.

Environmental and Historic Preservation Data (49 C.F.R. § 1105):

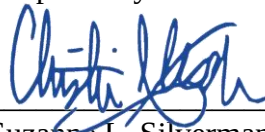
Under 49 C.F.R. § 1105.6(c)(2), ACWR's proposed acquisition of the Line does not require preparation of environmental documentation. The proposed transaction will not result in significant changes in carrier operations, i.e. changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), ACWR's acquisition of the Line also is excepted from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Further Surface Transportation Board approval is required to abandon or discontinue any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary (49 C.F.R. § 1150.44):

A caption summary of the proposed transaction is attached as **Exhibit D** to this Notice.

Respectfully submitted,



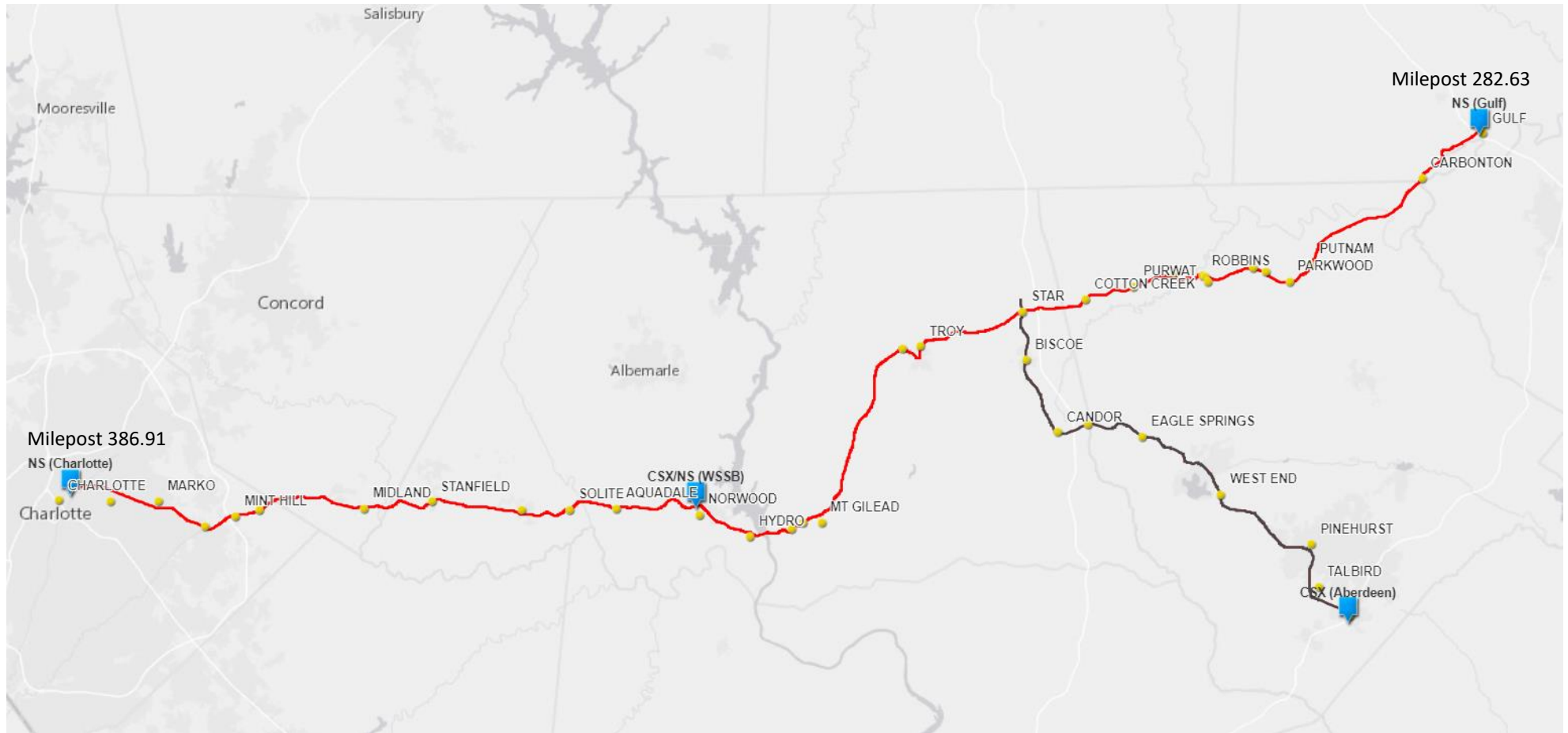
Suzanne L. Silverman
Christian L. Alexander
Kaplan Kirsch & Rockwell LLP
1634 I (Eye) Street NW
Suite 300
Washington, DC 20006
Tel: (202) 955-5600
Emails: ssilverman@kaplankirsch.com
calexander@kaplankirsch.com

COUNSEL FOR ABERDEEN CAROLINA AND
WESTERN RAILWAY COMPANY

Dated: November 15, 2022

EXHIBIT A

MAP OF THE LINE



Legend



Interchanges with other railroads



ACWR Piedmont Division
(Proposed Acquisition)

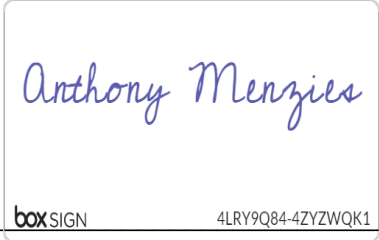


ACWR Sandhills Division
(Connection in Star)

EXHIBIT B

CERTIFICATE OF COMPLIANCE

I, Anthony Menzies, under penalty of perjury, hereby certify that the projected annual rail revenues of Aberdeen Carolina and Western Railway Company as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under 49 C.F.R. § 1150.45.



Anthony Menzies
Chief Executive Officer

Aberdeen Carolina and
Western Railway Company

Dated: November 15, 2022

EXHIBIT C

NOTICE TO EMPLOYEES AND CERTIFICATION LETTER

[ATTACHED TO FOLLOWING PAGES]

November 15, 2022

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:

Pursuant to 49 C.F.R. 1150.42(e), Aberdeen Carolina & Western Railway Company (“ACWR”) hereby certifies that on August 15, 2022, the attached Notice was posted at the following workplaces of the ACWR employees:

967 NC Hwy 211 E Candor, NC 27229
321 West 2nd Street, Oakboro, NC 28129

ACWR employees are not represented by any labor union.

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,



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

Enclosure

**ABERDEEN CAROLINA & WESTERN RAILWAY
COMPANY**

NOTICE

August 15, 2022

Pursuant to regulations of the Surface Transportation Board (“STB”) at 49 C.F.R. 1150.42(e), Aberdeen Carolina & Western Railway Company (“ACWR”), a Class III rail carrier, hereby gives notice to its employees that on or after October 15, 2022, ACWR intends to acquire and thereafter continue operation of the Piedmont Subdivision, between Milepost 282.63 at Gulf, Chatham County, North Carolina, and Milepost 386.91 at Charlotte, Mecklenburg County, North Carolina, and running through Mecklenburg, Cabarrus, Stanly, Montgomery, and Chatham Counties (the “Line”). The Line will be acquired from its current owner, the Norfolk Southern Railway Company (“NSRR”).

ACWR has leased and provided all rail freight service on the Line since 1989. ACWR’s acquisition of the Line will have no effect on existing rail operations or on employees of ACWR or NSRR.

A notice of exemption to authorize the proposed transaction will be filed with the STB on or shortly after September 15, 2022, in Docket No. FD 36636.

ACWR does not expect to hire any additional employees because of the proposed transaction. Employees desiring further information regarding the transaction may contact:

Anthony Menzies, 910 783 6554, 967 NC Hwy 211 E Candor, NC 27229 or
Jennifer White, 910 322 4847, 967 NC Hwy 211 E Candor, NC 27229.

EXHIBIT D

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No. FD 36648

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

The Aberdeen Carolina and Western Railway Company (“ACWR”) has filed a notice of exemption to acquire from the Norfolk Southern Railway Company’s approximately 104 miles of rail line between Milepost 282.63 at Gulf, Chatham County, and Milepost 386.91 at Charlotte, Mecklenburg County, North Carolina. Comments must be filed with the Board and service on ACWR’s representatives:

Suzanne L. Silverman
Christian L. Alexander
Kaplan Kirsch & Rockwell LLP
1634 I (Eye) Street NW
Suite 300
Washington, DC 20006
(202) 955-5600
ssilverman@kaplankirsch.com
calexander@kaplankirsch.com

Counsel for Aberdeen Carolina and Western Railway Company

The Notice is filed under 49 C.F.R. § 1150.41. If the Notice contains false or misleading information, the exemption is void *ab initio*. 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.

Board decisions and notices are available at www.stb.gov.

Decided December __, 2022

By the Board, Allison C. Davis, Director, Office of Proceedings

VERIFICATION

I, Anthony Menzies, under penalty of perjury, declare and verify that I am Chief Executive Officer of the Aberdeen Carolina and Western Railway Company, that I have read the foregoing Notice of Exemption and know the facts asserted therein, and that the same are true as stated.

Sincerely,



Anthony Menzies
Chief Executive Officer

boxSIGN

4LRV9Q84-4ZYZWQK1

Aberdeen Carolina and
Western Railway Company

Dated: November 15, 2022