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BRADON J. SMITH
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December 19, 2022

305834

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
December 19, 2022
Part of
Public Record

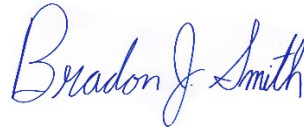
Re: **FD 36028 (Sub-No. 1)**
Kanawha River Railroad, L.L.C. — Lease Renewal and
Operation Exemption with Interchange Commitment—
Norfolk Southern Railway Company

Dear Ms. Brown:

Kanawha River Railroad, L.L.C. ("KRR") has attached a **Verified Notice of Exemption Pursuant to 49 C.F.R. § 1150.42** and a **Petition for Waiver**, each dated as of December 19, 2022, for filing in the above-captioned matter according to a Board-supplied docket number. KRR has tendered the filing fee electronically via Pay.gov.

If you have any questions about this filing, please feel free to contact me. Thank you for your assistance.

Respectfully submitted,



Bradon J. Smith
Kanawha River Railroad, L.L.C.

BJS:bs

Attachment
FILED
December 19, 2022
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
December 19, 2022
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36028 (SUB-NO. 1)

KANAWHA RIVER RAILROAD, L.L.C.
— LEASE RENEWAL AND OPERATION EXEMPTION WITH
INTERCHANGE COMMITMENT—
NORFOLK SOUTHERN RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
KANAWHA RIVER RAILROAD, L.L.C.
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR KANAWHA RIVER
RAILROAD, L.L.C.**

Dated: December 19, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36028 (SUB-NO. 1)

KANAWHA RIVER RAILROAD, L.L.C.
— LEASE RENEWAL AND OPERATION EXEMPTION WITH
INTERCHANGE COMMITMENT —
NORFOLK SOUTHERN RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
KANAWHA RIVER RAILROAD, L.L.C.
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

Pursuant to 49 C.F.R. Part 1150, Subpart E, Kanawha River Railroad, L.L.C. (“KRR”), a Class III rail carrier, hereby files this Verified Notice of Exemption (the “Notice”) to amend the terms of its lease and operation for nine segments of railroad line located in West Virginia and Ohio (the “Lines” – identified below). The Lines are owned by Norfolk Southern Railway Company (“NSR”), and are currently leased and operated by KRR pursuant to past Surface Transportation Board (“Board”) authorization.¹ In accordance with 49 C.F.R. § 1150.43, KRR submits the following information:

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

The full name and address of the applicant is:

Kanawha River Railroad, L.L.C.
315 W. Third Street
Pittsburg, KS 66782

¹ *Kanawha River Railroad — Lease and Operation Exemption with Interchange Commitment — Norfolk Southern Railway Company*, FD 36028 (STB served July 15, 2016, Aug. 1, 2016, and Aug. 5, 2016) (collectively, “*Kanawha Lease*”).

Applicant's Representative: 49 C.F.R. § 1150.43(b)

Correspondence on this transaction should be sent to:

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606
(312) 252-1500

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

KRR and NSR have executed a First Amendment to Lease Agreement (the “First Amendment”) which will govern KRR operations going forward as of the effective date of this Notice.

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

KRR will operate and provide all rail common carrier service to shippers on the Lines, as it has done since 2016.

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

KRR is the current operator of the Lines under a lease transaction (with NSR) consummated in 2016.² KKR and NSR are amending the lease to take effect as of the effective date of this Notice. The Lines constitute 309.45 miles of railroad over 9 segments³ between: (1) mileposts V 381.8 at Maben, West Virginia, and V 435.0 at DB (Deepwater Bridge), West

² *Id.*

³ The notice filed in *Kanawha Lease* misstated the total mileage (an error of .6 miles) and the limits of segments (1) and (7)) from what the underlying lease identified. The total mileage for the original lease, and the lease as amended, is 309.45, not 308.85; the Maben milepost (segment (1)) is 381.8, not 382.0; and the Bolt milepost (segment (7)) is 12.5, not 12.1. No shipper is affected by these corrections as KRR has operated consistent with the correct mileposts the lease identifies.

Virginia; (2) milepost RR 7.0 at Refugee, Ohio, and milepost RR 116.5 at Hobson Yard, Ohio; (3) milepost WV 125.6 at Conco, Ohio and milepost WV 253.4 at Cornelia, West Virginia; (4) milepost 0.0 VC at Vaco Junction, West Virginia, and milepost 0.84 VC at Deepwater West Virginia; (5) Hitop RT at milepost TP 0.0 at Charleston, West Virginia and the end of the track at milepost TP 1.0; (6) Jones IT at milepost JT 0.0 at Jones, W. Va., and the end of the track at milepost JT 1.3; (7) milepost VG 0.0 at Virwest, West Virginia, and milepost VG 12.5 at Bolt, West Virginia; (8) milepost MY 0.0 at Milam, West Virginia, and the end of the track at MY 1.01; and (9) milepost PE 0.0 at Putt, West Virginia, and milepost PE 2.3 at Putt End Branch, West Virginia.⁴

The name and address of the railroad leasing the Line to KRR is:

Norfolk Southern Railway Company
650 W. Peachtree St.
Atlanta, Georgia 30308.

Maps: 49 C.F.R. § 1150.43(f)

Attached as Exhibit A are maps of the Lines.

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

KRR certifies below that its projected revenues as a consequence of the proposed transaction will not result in KRR becoming a Class II carrier under *Indexing the Annual Operating Revenues of Railroads*, EP 748 (STB served June 29, 2022). See Certification and Verification appended hereto.

⁴ *Kanawha Lease*. This lease renewal transaction does not involve, and has no bearing on, the KRR's authorization under this docket to conduct trackage rights operations over a certain line of railroad owned by CSX Transportation, Inc. ("CSXT") incidental to the original lease transaction. KRR's trackage rights operations will continue pursuant to existing terms and under the prior authorization.

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

The lease, as amended, includes an interchange commitment, the terms of which, under the amended lease, remain as they were when the original lease was tendered to the Board under seal in the FD 36028 proceeding. Accordingly:

(i) The interchanges and carriers affected remain the same: CSXT at Deepwater/Vaco Jct., West Virginia; Vaughn Rail Road at Fola, West Virginia; CSX at Point Pleasant, Ohio; Ohio Southern Railroad at New Lexington, Ohio; and Charleston, Blue Creek & Sanderson at Charleston, West Virginia;

(ii) KRR tendered the original lease document including the interchange commitment in *Kanawha Lease* under seal; it now re-supplies it and includes the amendment subject of this Notice as Highly Confidential Exhibit B.

(iii) Customers located on the Lines having made use of KRR rail service over the past two years are as follows: AC&S Inc.; Altivia Keotones & Additives; Appalachian Railcar Services; Brenntag Mid-South; Corey Brothers Inc.; CSXT; Dana Transport; Duke Energy Progress LLC; Green Metals Inc.; Interstate Commodities Inc; Kanawha River Terminal; Lehigh Hanson Inc.; Lehigh Hanson Materials South, LLC; Lexycon; Lucite International; Mammoth; Norfolk Southern Corporation; Power Mountain; Protrade Transportation Services; Reagent Chemical & Research Inc.; RJ Recycling; The Chemours Company; Union Carbide; Waste Management-Fly Ash Direct; Wells Fargo Rail; West Virginia Army National Guard; West Virginia Cashin Recyclables; and WVA Manufacturing LLC;

(iv) The confidential aggregate number of carloads originated or terminated on the Lines by the above-listed shippers is as follows:

REDACTED

(v) KKR certifies it has provided notice of the proposed transaction and interchange commitment to the above-listed customers via email or, where email notice was not possible, via U.S. Mail (first class postage prepaid). See Exhibit C.

(vi) See (i).

(vii) NSR has informed KKR that NSR would not undertake the lease (as now amended) absent the interchange commitment, and thus the value of the interchange commitment is inestimable.

(viii) The caption identifies the interchange commitment.

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

KRR is an existing Class III carrier with rail revenues greater than \$5 million annually. However, given KRR has operated the Line since 2016, the proposed transaction does not give rise to the concerns the workforce advance notice requirement 49 C.F.R. § 1150.42(e) is intended to remedy; thus, KRR is asking for a waiver of this advance notice requirement in a concurrently-filed petition.

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

Under 49 C.F.R. § 1105.6(c)(1), this transaction is exempt from environmental reporting requirements because it 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).

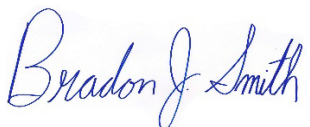
Under 49 C.F.R. § 1105.8(b)(1) the transaction—which is intended for the purpose of continued rail operations—is exempt from historic preservation reporting requirements. Separate Surface Transportation Board approval is required to discontinue service, and there are

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. § 1150.42(a)

A caption summary in appropriate form is attached as Exhibit D to this Notice.

Respectfully submitted,



Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR KANAWHA RIVER
RAILROAD, L.L.C.**

Dated: December 19, 2022

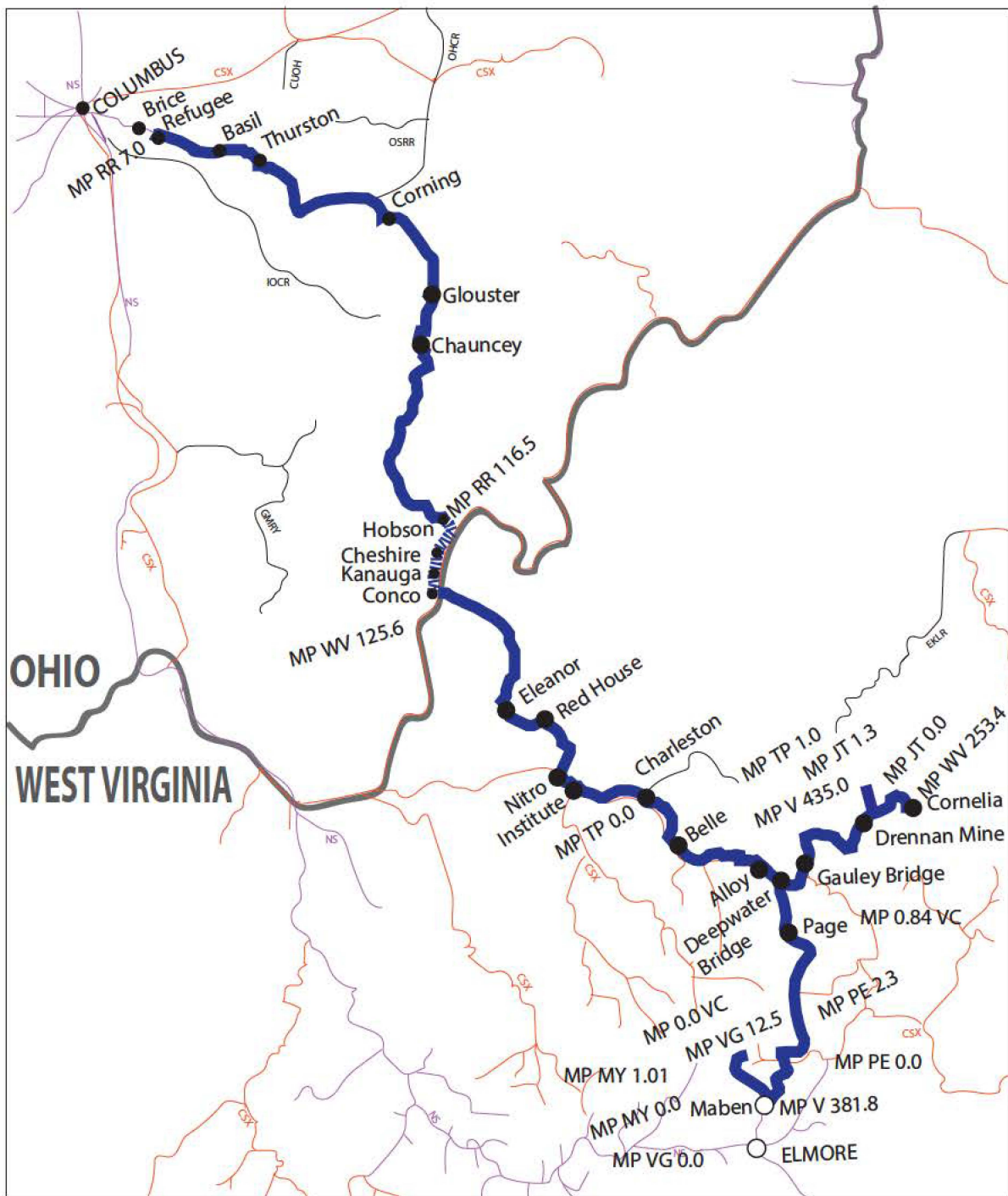
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36028 (SUB-NO. 1)

**KANAWHA RIVER RAILROAD, L.L.C.
— LEASE RENEWAL AND OPERATION EXEMPTION WITH
INTERCHANGE COMMITMENT —
NORFOLK SOUTHERN RAILWAY COMPANY**

EXHIBIT A

MAP

**LEGEND:**

Kanawha River RR (KNWA)
 Kanawha River RR (KNWA) Trackage Rights
 Norfolk Southern
 CSX
 Other Short Lines



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36028 (SUB-NO. 1)

**KANAWHA RIVER RAILROAD, L.L.C.
— LEASE RENEWAL AND OPERATION EXEMPTION WITH
INTERCHANGE COMMITMENT —
NORFOLK SOUTHERN RAILWAY COMPANY**

HIGHLY CONFIDENTIAL EXHIBIT B

LEASE AND AMENDMENT

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36028 (SUB-NO. 1)

**KANAWHA RIVER RAILROAD, L.L.C.
— LEASE RENEWAL AND OPERATION EXEMPTION WITH
INTERCHANGE COMMITMENT —
NORFOLK SOUTHERN RAILWAY COMPANY**

EXHIBIT C

TEXT OF NOTICE TO CUSTOMERS

Re: **FD 36028 (Sub-No. 1)**
Kanawha River Railroad, L.L.C. — Lease Renewal and Operation Exemption with
Interchange Commitment— Norfolk Southern Railway Company

Kanawha River Railroad, L.L.C. (“KRR”), a Class III carrier, has filed a notice of exemption (the “Notice”) to amend its lease with Norfolk Southern Railway Company governing KRR’s operation of nine segments of railroad lines between: (1) mileposts V 381.8 at Maben, West Virginia, and V 435.0 at DB (Deepwater Bridge), West Virginia; (2) milepost RR 7.0 at Refugee, Ohio, and milepost RR 116.5 at Hobson Yard, Ohio; (3) milepost WV 125.6 at Conco, Ohio and milepost WV 253.4 at Cornelia, West Virginia; (4) milepost 0.0 VC at Vaco Junction, West Virginia, and milepost 0.84 VC at Deepwater West Virginia; (5) Hitop RT at milepost TP 0.0 at Charleston, West Virginia and the end of the track at milepost TP 1.0; (6) Jones IT at milepost JT 0.0 at Jones, W. Va., and the end of the track at milepost JT 1.3; (7) milepost VG 0.0 at Virwest, West Virginia, and milepost VG 12.5 at Bolt, West Virginia; (8) milepost MY 0.0 at Milam, West Virginia, and the end of the track at MY 1.01; and (9) milepost PE 0.0 at Putt, West Virginia, and milepost PE 2.3 at Putt End Branch, West Virginia (collectively, the “Lines”).

KRR is already providing common carrier service over the Lines, and, as such, the scope of KRR’s operations will be unaffected by the proposed amendment to the lease. KRR anticipates that its operations will be subject to the amended lease terms as of the effective date of the Notice (expected on or about January 20) or as soon thereafter as possible, KRR will continue providing rail service to your facility.

We are providing you with this information in keeping with STB shipper-notice requirements. You are not required (or expected) to respond or to this notice or otherwise participate in the STB proceeding. If you have any questions on this, please feel free to contact me.

Very truly yours,

Bradon J. Smith
Attorney for Kanawha River Railroad, L.L.C.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36028 (SUB-NO. 1)

**KANAWHA RIVER RAILROAD, L.L.C.
— LEASE RENEWAL AND OPERATION EXEMPTION WITH
INTERCHANGE COMMITMENT —
NORFOLK SOUTHERN RAILWAY COMPANY**

EXHIBIT D

DRAFT FEDERAL REGISTER NOTICE

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

KANAWHA RAILROAD, L.L.C.
— LEASE RENEWAL AND OPERATION EXEMPTION WITH
INTERCHANGE COMMITMENT—
NORFOLK SOUTHERN RAILWAY COMPANY

Kanawha River Railroad, L.L.C., a Class III carrier, has filed a notice of exemption (the “Notice”) to amend its lease from Norfolk Southern Railway Company on nine lines of railroad between (1) mileposts V 381.8 at Maben, West Virginia, and V 435.0 at DB (Deepwater Bridge), West Virginia; (2) milepost RR 7.0 at Refugee, Ohio, and milepost RR 116.5 at Hobson Yard, Ohio; (3) milepost WV 125.6 at Conco, Ohio and milepost WV 253.4 at Cornelia, West Virginia; (4) milepost 0.0 VC at Vaco Junction, West Virginia, and milepost 0.84 VC at Deepwater West Virginia; (5) Hitop RT at milepost TP 0.0 at Charleston, West Virginia and the end of the track at milepost TP 1.0; (6) Jones IT at milepost JT 0.0 at Jones, W. Va., and the end of the track at milepost JT 1.3; (7) milepost VG 0.0 at Virwest, West Virginia, and milepost VG 12.5 at Bolt, West Virginia; (8) milepost MY 0.0 at Milam, West Virginia, and the end of the track at MY 1.01; and (9) milepost PE 0.0 at Putt, West Virginia, and milepost PE 2.3 at Putt End Branch, West Virginia.

Comments must be filed with the Board and served on:

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606
(312) 252-1500

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*. The filing of a petition to revoke will not automatically stay the transaction.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36028 (SUB-NO. 1)

**KANAWHA RIVER RAILROAD, L.L.C.
— LEASE RENEWAL AND OPERATION EXEMPTION WITH
INTERCHANGE COMMITMENT —
NORFOLK SOUTHERN RAILWAY COMPANY**

CERTIFICATION AND VERIFICATION

VERIFICATION AND CERTIFICATION

Rick D. Baden, Executive Vice-President and Chief Financial Officer for Kanawha River Railroad, L.L.C. ("KRR"), being duly sworn, states as follows:

1. I am Executive Vice-President and Chief Financial Officer of KRR.
2. I certify that KRR is not now a Class I or II rail common carrier, and that the expected annual revenues of KRR will exceed \$5 million, but will not result in KRR becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201 (1-1).
3. I certify that the proposed transaction contains an interchange commitment.
4. I am qualified and authorized to tender this Verification and Certification.
5. I have read the foregoing Notice of Exemption and know that the facts stated herein are true and correct to the best of my information and belief.

Dated: December 14, 2022


Rick D. Baden