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November 27, 2024
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November 27, 2024

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

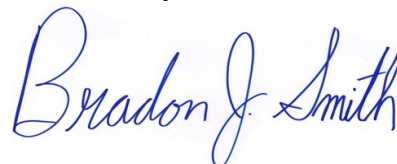
Re: **FD 36819**
MSE Holding Company — Intra-Corporate Family
Control Exemption — Mississippi Export Railroad
Company and Alabama Export Railroad, Inc.

Dear Ms. Brown:

Attached for filing in the above proceeding is a **Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(3) for the MSE Holding Company**, dated November 27, 2024. The sum of \$1,800, the filing fee, has been paid electronically via Pay.gov.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Yours truly,



Bradon J. Smith

Attorney for MSE Holding Company

bjs

FILED
November 27, 2024
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
November 27, 2024
SURFACE TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36819

MSE HOLDING COMPANY
— INTRA-CORPORATE FAMILY CONTROL EXEMPTION —
MISSISSIPPI EXPORT RAILROAD COMPANY AND
ALABAMA EXPORT RAILROAD, INC.

VERIFIED NOTICE OF EXEMPTION UNDER 49 C.F.R. § 1180.2(d)(3)

Bradon J. Smith
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(312) 252-1500

Attorneys for MSE Holding Company

Dated: November 27, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36819

MSE HOLDING COMPANY
— INTRA-CORPORATE FAMILY CONTROL EXEMPTION —
MISSISSIPPI EXPORT RAILROAD COMPANY AND
ALABAMA EXPORT RAILROAD, INC.

VERIFIED NOTICE OF EXEMPTION UNDER 49 C.F.R. § 1180.2(d)(3)

MSE Holding Company (“MSE Holding”), a non-carrier, files this Verified Notice of Exemption (the “Notice”) to authorize its proposed control of Class III rail common carriers Mississippi Export Railroad Company (“Mississippi Export”) and Alabama Export Railroad, Inc. (“Alabama Export”) (collectively, the “Export Roads”). MSE Holding is obtaining the control as part of a corporate reorganization (the “Reorganization”) of the existing Export Roads corporate family.

Currently, Alabama Export is a wholly-owned subsidiary of Mississippi Export,¹ which is the “top of the chain” entity in the corporate family. Mississippi Export shareholders desire to reorganize the corporate family so that the Export Roads are sister subsidiaries of a common non-carrier parent holding company.

Under the Reorganization, each shareholder of Mississippi Export—none of whom individually control Mississippi Export²—will become a shareholder

¹ *Mississippi Export Railroad Company — Control Exemption — Alabama Export Railroad, Inc.*, FD 36320 (STB served Aug. 30, 2019) (“*Ala. Export Control*”).

² See gen. *Ala. Export Control* at 1, n.1.

of a newly-incorporated holding company (MSE Holding) for the Export Roads.

Pursuant to the plan of merger, Mississippi Export will become a subsidiary of MSE Holding, and current Mississippi Export shares will be exchanged for shares of MSE Holding on a 1:1 basis such that no shareholder will control MSE Holding.

Mississippi Export also will transfer its Alabama Export shares to MSE Holding.

To accomplish the Reorganization, new top-of-the chain parent MSE Holding needs authorization to control Mississippi Export and Alabama Export.³

The Reorganization will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Current rail operations and service offerings of the Export Roads will not be affected by the Reorganization. MSE Holding does not intend to undertake any transactions to connect the Export Roads and its control of the Export Roads does not involve a Class I carrier. The Reorganization is thus eligible for the class exemption at 49 C.F.R. § 1180.2(d)(3).⁴

Description of Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

Mississippi Export is a Class III rail carrier which owns and operates approximately 42 miles of rail line between Evanston and Pascagoula, Mississippi.

³ The Export Roads are the only 2 rail carriers in the corporate family. See *Ala. Export Control* at 2, n.2; see also *id.* at 1, n.1 (identifying Illinois Central Railroad Company as minority, non-controlling shareholder of Mississippi Export).

⁴ Because the Export Roads do not connect with each other, and the Reorganization is not part of a series of anticipated transactions that would connect them and does not involve a Class I carrier, the present transaction would also qualify for the class exemption at 49 C.F.R. § 1180.2(d)(2).

Alabama Export is a Class III rail carrier which leases and operates approximately 12 miles of rail in Mobile, Alabama. Alabama Export is currently a wholly-owned subsidiary of Mississippi Export. Per above, under the Reorganization Mississippi Export and Alabama Export will become sister subsidiaries of a new, non-carrier holding company, MSE Holding.

The business address of MSE Holding Company is:

4519 McInnis Ave.
Moss Point, Miss. 39563
(228) 475-3322

Questions may be directed to MSE Holding's counsel:

Bradon J. Smith
Fletcher & Sippel LLC
29 N. Wacker Drive, Suite 800
Chicago, Ill. 60606
bsmith@fletcher-sippel.com
(312) 252-1500

Proposed Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

MSE Holding intends to complete the Reorganization when authorization under this Notice is effective and no later than the end of the year.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

Reorganization under MSE Holding will permit Mississippi Export's shareholders to invest in new ventures without necessarily using rail common carriers as vehicles for the enterprises.

States in Which Property of Applicants' Carriers is Located: 49 C.F.R. § 1180.6(a)(5)

Alabama and Mississippi.

Maps - Exhibit A: 49 C.F.R. § 1180.6(a)(6)

Exhibit A to this Notice are maps of the Export Roads' respective lines of railroad; there is no change from their prior submission in *Ala. Export Control*.

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

Exhibit B to this Notice is an executed Plan of Reorganization and Agreement of Merger, dated November 26, 2024, pursuant to which the Reorganization will be carried out.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

The Export Roads are Class III railroads and thus no labor protective conditions may be imposed on the Reorganization.⁵

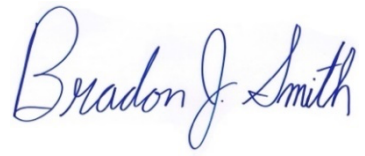
Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(2)

The Reorganization will not result in changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5). 49 C.F.R. § 1105.6(c)(i) and (ii). The Reorganization is therefore exempt from environmental reporting requirements.

The Reorganization will also not substantially change the level of maintenance of any railroad property. Accordingly, under 49 C.F.R. § 1105.8(b)(3), the Reorganization is exempt from historic preservation reporting requirements.

⁵ 49 U.S.C. § 11326(c).

Respectfully submitted,



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Thomas J. Litwiler

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Chicago, Illinois 60606-3208

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(312) 252-1500

Attorneys for MSE Holding Company

Dated: November 27, 2024

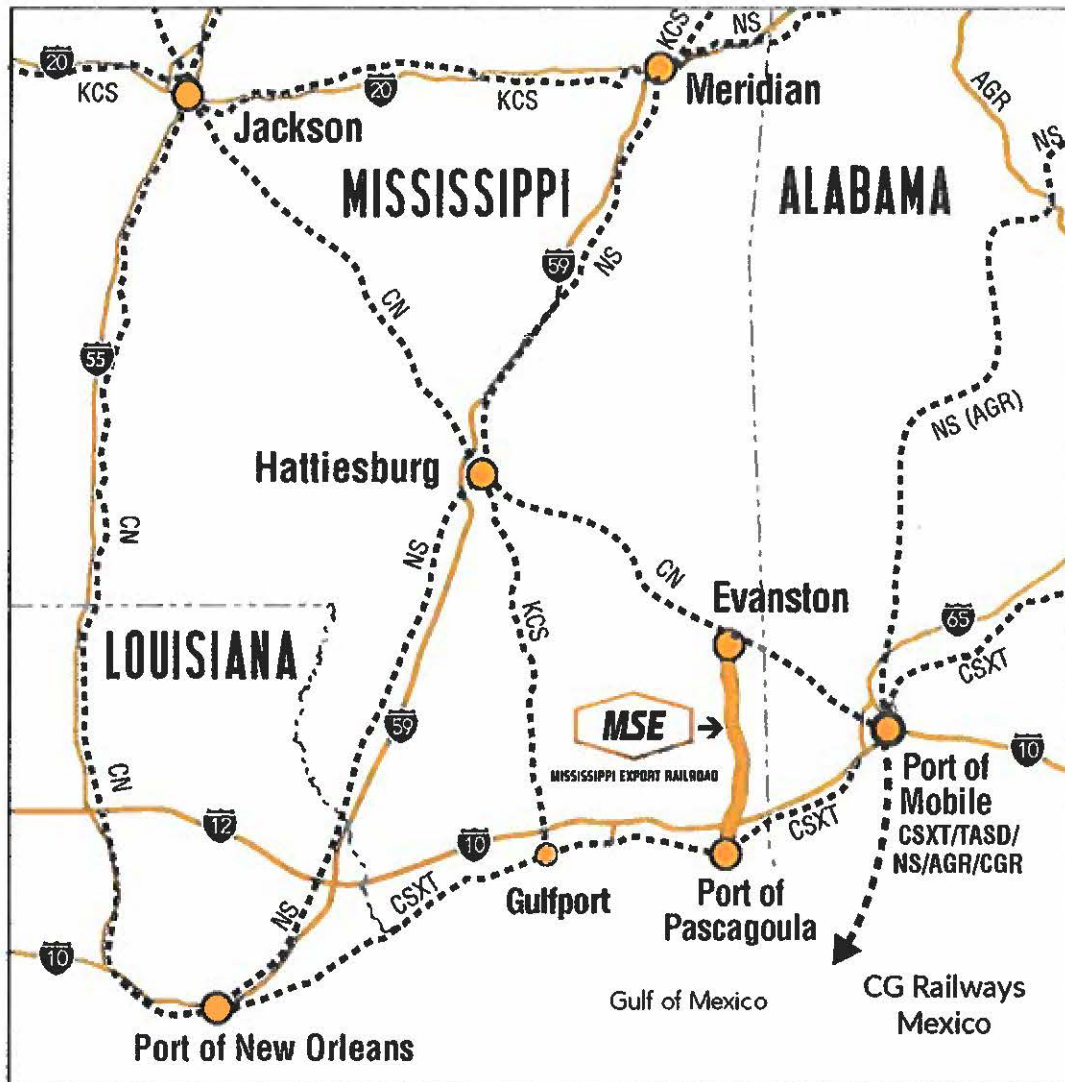
FD 36819

**MSE HOLDING COMPANY
— INTRA-CORPORATE FAMILY CONTROL EXEMPTION —
MISSISSIPPI EXPORT RAILROAD COMPANY AND
ALABAMA EXPORT RAILROAD, INC.**

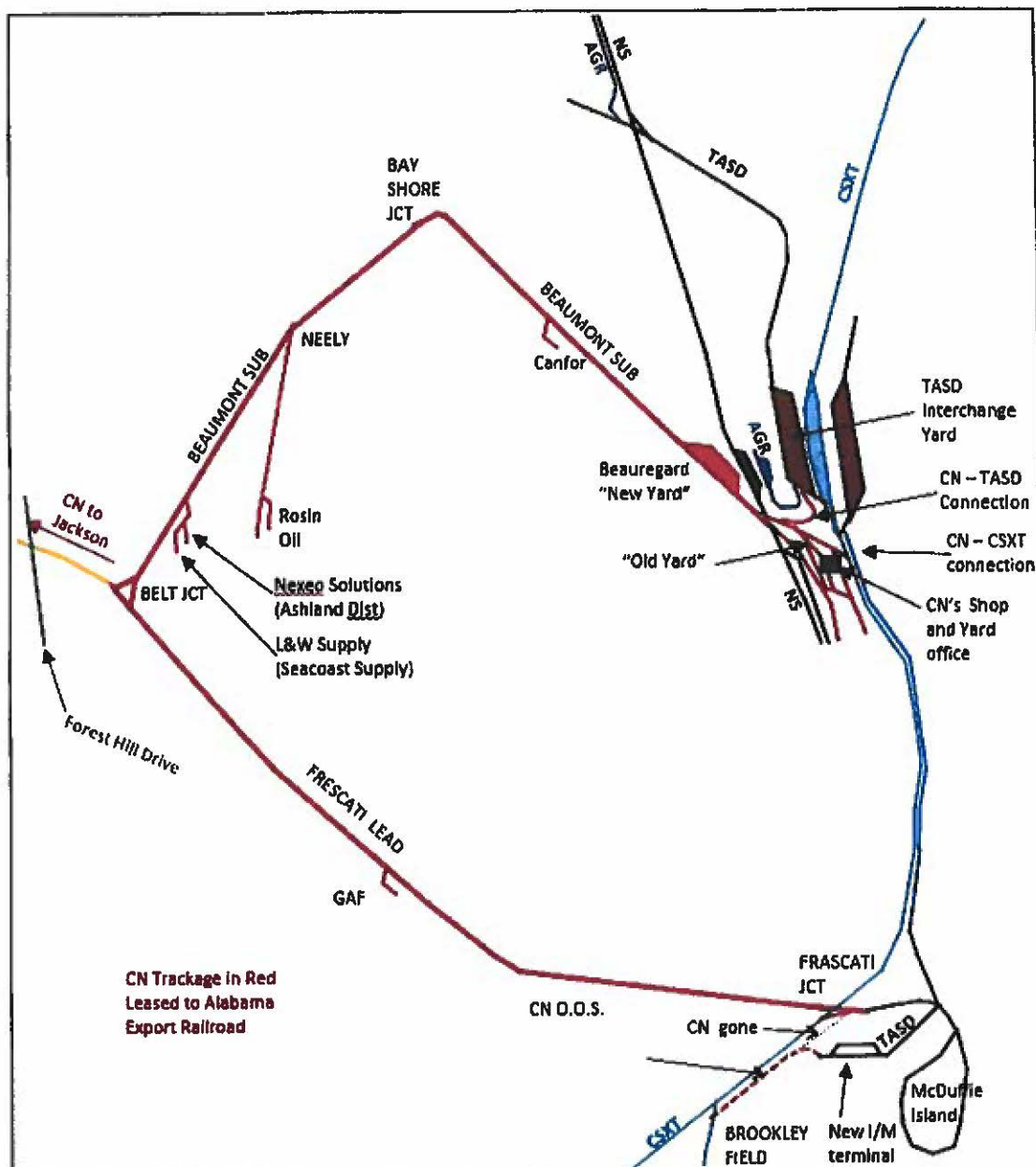
EXHIBIT A

MAPS

Mississippi Export Railroad Company Lines



**Alabama Export Railroad Lines
(leased from Illinois Central Railroad Company
(identified as CN))**

CN/ALE Leased Track

FD 36819

MSE HOLDING COMPANY
— INTRA-CORPORATE FAMILY CONTROL EXEMPTION —
MISSISSIPPI EXPORT RAILROAD COMPANY AND
ALABAMA EXPORT RAILROAD, INC.

EXHIBIT B

PLAN OF REORGANIZATION AND AGREEMENT OF MERGER

PLAN OF REORGANIZATION AND AGREEMENT OF MERGER

This Plan of Reorganization and Agreement of Merger (the “**Agreement**”), made and entered into this 26th day of November, 2024 (the “**Effective Date**”) by and amongst MSE Holding Company, a Delaware corporation (“**HoldCo**”); MSE Merger Sub, Inc., a Mississippi corporation (“**Merger Sub**”); and Mississippi Export Railroad Company, a Mississippi railroad corporation (“**MSE**”, and together with HoldCo and Merger Sub, each a “**Constituent Company**” and collectively the “**Constituent Companies**”), all of which have their principal office at 4519 McInnis Avenue, Moss Point, Mississippi 39563.

RECITALS

WHEREAS, MSE is a Mississippi railroad corporation existing under the laws of the State of Mississippi;

WHEREAS, HoldCo is a corporation existing under the laws of the State of Delaware that is a wholly-owned subsidiary of MSE;

WHEREAS, Merger Sub is a corporation existing under the laws of the State of Mississippi that is a wholly-owned subsidiary of HoldCo;

WHEREAS, the board of directors of MSE (the “**Board**”) has determined it is in the best interest of the stockholders of MSE and of MSE to operate MSE through a holding company structure, and, therefore, the Board directed HoldCo to be incorporated;

WHEREAS, the Board deems it advisable and for the benefit of each Constituent Company and their respective stockholders that MSE contribute all of its current stock in Alabama Export Railroad, Inc, an Alabama corporation (“**ALE**”), to HoldCo;

WHEREAS, the Board authorized and directed HoldCo to form Merger Sub and MSE Railcar Services, Inc. (“**Non-Carrier Sub**”), two (2) new Mississippi corporations, as wholly-owned subsidiaries of HoldCo, with the sole purpose of Merger Sub existing to effectuate a merger of it with and into MSE to accomplish the formation of a holding company structure with HoldCo as the senior most entity to own MSE;

WHEREAS, the respective boards of directors of the Constituent Companies deem it advisable and for the benefit of each Constituent Company and their respective stockholders that Merger Sub merge with and into MSE, with MSE being the surviving entity;

WHEREAS, the respective boards of directors of the Constituent Companies deem it advisable and for the benefit of each Constituent Company and their respective stockholders that as a result of the merger of Merger Sub with and into MSE that all of the common stock of the MSE, par value \$100 per share (the “**MSE Common Stock**”), be automatically converted into and exchanged for an equivalent number of shares of common stock of the HoldCo, par value \$100 per share (the “**HoldCo Common Stock**”);

WHEREAS, each of the respective boards of directors of the Constituent Companies have, by resolutions, approved and authorized the execution and delivery of this Agreement and the reorganization and merger of the Constituent Companies (the “**Reorganization**”) on the terms and conditions set forth herein; and

WHEREAS, the Constituent Companies desire to reorganize in a transaction intended to qualify as a tax-deferred reorganization under Section 368(a)(2)(E) of the Internal Revenue Code of 1986, as amended (the “**Code**”).

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements and provisions contained herein and subject to the satisfaction of the terms set forth herein, and intending to be legally bound hereby, the Constituent Companies agree as follows:

ARTICLE I PRINCIPAL TERMS OF THE REORGANIZATION AND MERGER

1.1 The Reorganization and Merger. Upon the terms and conditions of this Agreement, including the receipt of all requisite government approval and stockholder approvals, and in accordance with the Mississippi Business Corporation Act, as amended (the “**Mississippi Code**”) the Reorganization will be carried out in the following manner:

(a) MSE shall call a meeting of its Stockholders to approve the Reorganization and shall solicit proxies to vote in favor of the Reorganization. The Stockholders shall be offered appraisal rights in connection with the Reorganization.

(b) Following receipt of approval of the Reorganization by the holders of a majority of the MSE Common Stock, MSE would contribute all of the stock in ALE to HoldCo, after which MSE would continue to own all of the outstanding shares in HoldCo.

(c) Subject to the provisions of this Agreement, Articles of Merger (the “**Articles of Merger**”) shall be prepared, duly executed and filed with the Secretary of State of the State Mississippi in accordance with the Mississippi Code. The Reorganization shall become effective upon the filing of the Articles of Merger with the Secretary of State of the State Mississippi (the “**Effective Time**”).

(d) At the Effective Time, Merger Sub shall be merged with and into MSE with all of the MSE Common Stock held by the Stockholders being converted into and exchanged for all of the HoldCo Common Stock (the “**Merger**”). All of the shares in HoldCo owned by MSE prior to the Merger would be cancelled in the Merger. As a result of the Merger, (i) the Stockholders would become all of the stockholders of HoldCo, (ii) Merger Sub would cease to exist as a separate entity (MSE, in its capacity as the corporation surviving such merger, is hereinafter sometimes referred to as the “**Surviving Company**”); (iii) MSE would become a wholly-owned subsidiary of HoldCo, and (iv) ALE and Non-Carrier Sub would continue to be wholly owned subsidiaries of HoldCo.

(e) The name of the Surviving Company shall continue to be “Mississippi Export Railroad Company” until changed, as provided by law.

(f) The Charter of Incorporation of MSE shall continue to be the Charter of Incorporation of the Surviving Company, and the Bylaws of MSE in existence on the effective date of the Reorganization, shall continue to be the Bylaws of the Surviving Company until repealed or amended, as provided by law.

1.2 Effect of Merger. As a result of the Merger, the separate existence of Merger Sub shall cease and all of the rights, privileges, powers, franchises, properties, assets, liabilities and obligations of Merger Sub shall be vested in and assumed by the Surviving Entity. The Merger shall have all other effects set forth in the applicable provisions of the Mississippi Code specifically and Mississippi Code of 1972 generally. The Surviving Company shall thenceforth be responsible and liable for all the liabilities and

obligations of the Merger Sub. Any claim existing or action or proceeding pending by or against either of Merger Sub or MSE may be prosecuted as if such merger had not taken place, or the Surviving Company may be substituted in its place. Neither the rights of creditors nor any liens upon the property of either of Merger Sub or MSE shall be impaired by such merger.

1.3 Necessary Approvals. This Reorganization and Merger is contingent upon approval and consent of:

(a) MSE Stockholders owning at least a majority of the issued and outstanding shares of MSE Common Stock;

(b) the Surface Transportation Board (“STB”), which is the federal regulator of railroads;

(c) subject to confirmation and if necessary, the attorney general and governor of the State of Mississippi under Title 77 Chapter 9 of the Mississippi Code; and

(d) the final decision of the Board to pursue the Reorganization, which the Constituent Companies understand and acknowledge must be obtained prior to the closing of this Agreement and which can be withheld or withdrawn by the Board for any reason up to and prior to the Effective Time.

1.4 Conditions Precedent. Consummation of the Reorganization is conditioned upon the satisfaction of the following conditions:

(a) consent of MSE Stockholders owning at least a majority of the issued and outstanding shares of MSE Common Stock, and who are entitled to vote thereon at the meetings of such Stockholders to be held for such purpose have approved the Reorganization, provided that if more than 20% of the aggregate amount of issued and outstanding shares of MSE Common Stock are submitted for the exercise of appraisal rights in accordance with Sections 79-4-13.01 through 79-4-13.40 of the Mississippi Code (the “**Appraisal Rights Statutes**”) and such excess is not withdrawn and/or the rights to exercise such appraisal rights terminated prior to the completion of the annual meeting, the condition precedent of this Section 1.4(a) shall not have been met;

(b) consent of the Surface Transportation Board (“**STB**”), the federal regulator of railroads, to approve reorganization under this plan shall have been obtained; provided that MSE anticipates submitting the plan for approval on a so-called “exempt” basis—whereby the plan is approved as a matter of course within 30 days of filing—consistent with 49 C.F.R. § 1180.2(d); otherwise, MSE will petition the STB to provide expedited approval under 49 U.S.C. § 10502;

(c) the consummation of the Reorganization has not been restrained, enjoined or prohibited by any law, legal action or order (whether temporary, preliminary or permanent) of a court of competent jurisdiction or any other governmental entity;

(d) all approvals and conditions to closing deemed necessary by the Board have been obtained; and

(e) the final decision of the Board to pursue the Reorganization has been given.

1.5 Surviving Company Board of Directors. At the Effective Time and until thereafter changes in accordance with the Charter of Incorporation and By-Laws of the Surviving Company, the Board of Directors of the Surviving Company shall continue to be the Board of Directors of MSE immediately prior

to the Effective Time, and the officers of the Surviving Company shall continue to be officers of MSE serving in such positions immediately prior to the Effective Time. If at the Effective Time any vacancy shall exist on the board of directors of the Surviving Company, such vacancy shall be filled in the manner specified in the in accordance with the Charter of Incorporation and By-Laws of the Surviving Company.

ARTICLE II DISTRIBUTION TO MSE STOCKHOLDERS

2.1 Conversion of Stock.

(a) At the Effective Time, and without any action on the part of any of the Constituent Companies or the holders of any of the MSE Common Stock, each share of MSE Common Stock issued and outstanding (other than (i) shares held by MSE as treasury stock or held directly by HoldCo or Merger Sub or any direct or indirect wholly owned subsidiary of MSE, HoldCo or Merger Sub and (ii) shares of MSE Common Stock held by Stockholders who have not voted in favor of the adoption and approval of the Reorganization, or consented thereto in writing and who have properly exercised and validly perfected appraisal rights for such shares in accordance with, and who have complied with, the Appraisal Rights Statutes (the “**Dissenting Shares**”)) will be converted automatically into an equivalent number of validly issued, fully paid, and nonassessable shares of HoldCo Common Stock. Subject to notice from the Surviving Company from and after the Effective Date of a need to exchange your currently issued and outstanding certificates, you will not be required to take any further action to represent your ownership of HoldCo Common Stock, and your certificates reflecting your ownership in MSE Common Stock will instead represent your ownership of HoldCo Common Stock.

(b) Each share of HoldCo Common Stock owned by MSE immediately prior to the Effective Time shall be automatically cancelled and cease to exist, and no consideration shall be delivered in exchange therefor.

(c) From and after the Effective Time, the certificates which represented shares of MSE Common Stock immediately prior to the Effective Time shall be deemed to represent shares of HoldCo Common Stock. HoldCo may elect to exchange such MSE Common Stock certificates for new HoldCo Common Stock certificates at some point in the future, but no such exchange shall be required or necessary.

2.3 Dissenting Stockholders. Any shares of MSE Common Stock held by persons who have perfected and retain their appraisal rights under the Appraisal Rights Statutes, shall not be converted pursuant to this Agreement but shall be entitled only to seek appraisal of their Dissenting Shares and to receive payment in cash of the Corporation's estimate of the fair value of such Dissenting Shares, exclusive of any element of value arising from the accomplishment or expectation of the Reorganization, as determined by the Corporation, together with interest, if any, to be paid upon the amount determined to be the fair value and otherwise in accordance with the Appraisal Rights Statutes.

ARTICLE III TERMINATION, AMENDMENT AND WAIVER; OTHER OBLIGATIONS

3.1 Termination. This Agreement may be terminated and abandoned by MSE at any time prior to the date the Reorganization becomes effective, whether before or after any stockholder action in the event of the occurrence of any one or more of the following circumstances:

(a) the holders of more than 20% of the aggregate amount of issued and outstanding shares of MSE Common Stock are submitted for the exercise of appraisal rights as discussed herein prior

to the vote for the Reorganization and such excess is not withdrawn and/or the rights to exercise such appraisal rights terminated prior to the completion of the annual meeting;

(b) any act, suit, proceeding or claim relating to the Reorganization is instituted before any court or administrative body or threatened to be instituted before such court or body; or

(c) any other event or occurrence occurs or is present which, in the sole judgment of the Board, makes the Reorganization undesirable for MSE or its Stockholders.

3.2 Amendment and Waiver. Subject to applicable law, at any time prior to the Effective Time (whether before or after receipt of the requisite approval of the holders of MSE Common Stock), the parties hereto by action of their respective boards of directors, may (a) amend this Agreement, or (b) waive compliance with any of the agreements or conditions contained herein; provided, however, that after any approval of this Agreement and the transactions contemplated hereby by the Stockholders of MSE, there may not be, without further approval of such Stockholders, any amendment of this Agreement which (i) changes the amount or kind of shares the MSE Stockholders shall receive under this Agreement, or (ii) changes any of the other terms or conditions of this Agreement if the change would adversely affect such Stockholders in any material respect. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

3.3 Other Obligations. The Constituent Companies agree that all rights to indemnification and exculpation from liability for acts or omissions occurring at or prior to the Effective Time and rights to advancement of expenses relating thereto existing prior to the Effective Time in favor of current or former directors or officers of MSE as provided in MSE's Charter of Incorporation, By-laws, under law or by any existing indemnification agreements or arrangements of MSE shall survive the Merger and become the obligations of the Surviving Company.

3.4 Federal Petition for Appraisal. Each of the Constituent Companies agree not to seek or support dissenting stockholder appraisal of the MSE Common Stock or MSE at the STB as could be requested or otherwise necessary or desirable under federal rail transportation policy.

ARTICLE IV MISCELLANEOUS

4.1 Entire Agreement. Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement between the Parties hereto with respect to the transactions contemplated hereby and supersedes all prior arrangements or understandings with respect thereto, written or oral.

4.2 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

4.3 Severability. In the event that any one or more provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, by any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement and the Parties hereto shall use their reasonable efforts to substitute a valid, legal and enforceable provision which, insofar as practical, implements the purposes and intents of this Agreement.

4.4 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Mississippi.

4.5 Headings; Articles and Sections. The descriptive headings contained in this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. Unless otherwise indicated, all references to particular Articles or Sections shall mean and refer to the referenced Articles and Sections of this Agreement.

4.6 Interpretations. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against any party hereto, whether under any rule of construction or otherwise. No party to this Agreement shall be considered the draftsman. The parties hereto acknowledge and agree that this Agreement has been reviewed, negotiated and accepted by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as fairly to accomplish the purposes and intentions of all parties hereto.

[End of Page]

IN WITNESS WHEREOF, the undersigned have executed this Plan of Reorganization and Agreement of Merger to be effective as of the date first set forth above.

MISSISSIPPI EXPORT RAILROAD COMPANY

Signed by:
Kate Luce Bourgeois
By:  _____
F9320EA0CD3345C...
Kate Luce Bourgeois
President & Chief Executive Officer

MSE HOLDING COMPANY

Signed by:
Kate Luce Bourgeois
By:  _____
F9320EA0CD3345C...
Kate Luce Bourgeois
President & Chief Executive Officer

MSE MERGER SUB, INC.

Signed by:
Kate Luce Bourgeois
By:  _____
F9320EA0CD3345C...
Kate Luce Bourgeois
President & Chief Executive Officer

FD 36819

**MSE HOLDING COMPANY
— INTRA-CORPORATE FAMILY CONTROL EXEMPTION —
MISSISSIPPI EXPORT RAILROAD COMPANY AND
ALABAMA EXPORT RAILROAD, INC.**

VERIFICATION

VERIFICATION

I, Kate Luce Bourgeois, President and Chief Executive Officer of MSE Holding Company, verify that the above is true and correct to the best of my knowledge and belief.

A handwritten signature in cursive script, reading "Kate Luce Bourgeois", positioned above a horizontal line.

Kate Luce Bourgeois

Dated: November 27, 2024