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November 19, 2018

VIA FEDEX

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024



Re: North Carolina & Virginia Railroad Company, LLC,
Chesapeake & Albemarle Railroad Division -
Lease Amendment and Operation Exemption
including interchange commitment -
Norfolk Southern Railway Company
STB Docket No. FD 36252

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Notice of Exemption being filed on behalf of North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division. Also enclosed is a check in the amount of \$2,000.00 representing the filing fee for this Notice.

Please time stamp the extra copy of the Notice provided herewith to indicate receipt of all of the foregoing, and return it to me in the stamped self-addressed envelope provided for your convenience.

FEE RECEIVED
November 20, 2018
SURFACE
TRANSPORTATION BOARD

FILED
November 20, 2018
SURFACE
TRANSPORTATION BOARD

November 19, 2018

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Please let me know if there are any questions regarding this filing.

Respectfully,

CLARK HILL PLC



Eric M. Hocky

EMH/dml
Encls.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36252



**NORTH CAROLINA & VIRGINIA RAILROAD COMPANY, LLC,
CHESAPEAKE & ALBEMARLE RAILROAD DIVISION
– LEASE AMENDMENT AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT–
NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902**

(includes color images)

ERIC M. HOCKY
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Dated: November 19, 2018

Attorneys for
North Carolina & Virginia Railroad
Company, LLC, Chesapeake & Albemarle
Railroad Division

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36252

**NORTH CAROLINA & VIRGINIA RAILROAD COMPANY, LLC,
CHESAPEAKE & ALBEMARLE RAILROAD DIVISION
– LEASE AMENDMENT AND OPERATION EXEMPTION
INCLUDING EXISTING INTERCHANGE COMMITMENT–
NORFOLK SOUTHERN RAILWAY COMPANY**



**VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902**

North Carolina & Virginia Railroad Company, LLC (“NCVA”), Chesapeake & Albemarle Railroad Division (“CA”), a Class III railroad, files this Notice of Exemption under 49 USC § 10902 to exempt from regulation, CA’s entry into a lease agreement (the “New Lease”) to supersede and replace the lease and option to purchase agreement dated February 28, 1990, as amended (the “Original Lease”), with Norfolk Southern Railway Company (“NSR”), and to govern the lease of the lines of railroad between (a) Providence Junction, VA, MP NS 4.0 and Butts, VA, MP NS 8.0, (b) Butts, VA, MP 8.0 and Edenton, NC, MP NS 73.59, and (c) Elizabeth City, NC, MP WK 0.0 and Weeksville, NC, MP WK 7.48 (together, the “Line”), as shown on the map attached as Exhibit A.

Notice

In accordance with 49 C.F.R. §1150.43, CA hereby provides the following information:

(a) The full name and address of Applicant are: North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division, 13901 Sutton Park Drive South, Suite 125, Jacksonville, FL 32224.

(b) The name, address and telephone number of the representative of CA who should receive correspondence are: Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

(c) CA is currently the operator of the Line under the Original Lease. *See North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division – Lease Amendment Exemption – Norfolk Southern Railway Company*, STB Docket No. FD 35564 (Sub-No. 1) (served December 16, 2011) (exempting the most recent amendment to the Original Lease).¹ The Original Lease has expired, and CA has continued to lease and operate the Line on a month-to-month tenancy under the terms of the Original Lease. CA and NSR have entered into the New Lease which will supersede and replace the Original Lease and extend the leasehold for an additional 10 years.

(d) The current operator of the Line is CA, and CA will continue to be the operator after the transaction.

(e) Brief Summary of the Proposed Transaction:

CA and NSR entered into the Original Lease in 1990, which covered the main line between NS 8.0 and NS 84.0, and the branch line between MP WK 0.0 (NS 46.7) and MP WK

¹ The 2011 STB notice inadvertently did not specifically include all of the leased lines that CA had previously been authorized to lease and operate. *See Chesapeake and Albemarle Railroad Company, Inc. – Lease, Acquisition and Operation Exemption – Southern Railway Company*, ICC Finance Docket No. 31617 (served April 17, 1990), 1990 WL 287903 (ICC) (including the branch line between MP WK 0.0 (NS 46.7) and MP WK 7.48, as well as the main line between MP NS 8.0 and MP NS 74.0); *North Carolina & Virginia Railroad, Inc. – Lease and Operation Exemption – Norfolk Southern Railway Company*, STB Finance Docket No. 34272 (served January 22, 2003) (adding the 4.0 mile line between MP NS 4.0 and MP NS 8.0). The 2011 STB notice also did not reflect two small discontinuances that had been exempted by the STB. *See North Carolina & Virginia Railway Company, Inc., Chesapeake and Albemarle Division – Discontinuance of Service Exemption – In Chowan County, NC*, STB Docket No. AB-866X (served July 16, 2004); and *North Carolina & Virginia Railway Company, Inc., Chesapeake and Albemarle Division – Discontinuance of Service Exemption – In Chowan County, NC*, STB Docket No. AB-866 (Sub-No. 1X) (served August 9, 2007).

7.48, and an Amendment No. 1 in 2003, which added the additional main line between MP NS 4.0 and MP NS 8.0. CA has been the exclusive freight operator of the Line since the Original Lease and Amendment No. 1 became effective. In 2011, CA and NSR entered into Amendment No. 4 to the Original Lease (the “2011 Lease Amendment”), which extended the term of the Original Lease and struck all provisions relating to the option to purchase.

When the term of the Original Lease, as extended under the 2011 Lease Amendment expired, CA continued operating under the terms of the Original Lease on a month-to-month tenancy until CA and NSR could negotiate a new lease agreement. CA and NSR have now reached agreement on the New Lease, which will supersede and replace the Original Lease and extend the leasehold for an additional 10 years. The New Lease includes an interchange commitment that is similar in structure to the interchange commitment that was included in the Original Lease.

(1) The name and address of the railroad leasing the Line: Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.

(2) The New Lease will be effective upon the effective date of this Notice of Exemption, thirty days after filing, subject to the Board granting the waiver of labor notice requirement as requested below. CA is currently operating the Line under the terms of the Original Lease, and will continue to do so until the New Lease becomes effective.

(3) The mileposts of the Line are between (a) Providence Junction, VA, MP NS 4.0 and Butts, VA, MP NS 8.0, (b) Butts, VA, MP 8.0 and Edenton, NC, MP NS 73.59, and (c) Elizabeth City, NC, MP WK 0.0 and Weeksville, NC, MP WK 7.48. The Line is located in North Hampton County, Virginia, and Chowan County, North Carolina.

(4) The total route miles to be leased and operated are approximately 77.07 miles.

(f) Attached as Exhibit A to this Notice of Exemption is a map of the Line.

(g) CA certifies that both its projected revenues as a result of the transaction, and those of NCVA, will not result in the creation of a Class II or Class I rail carrier.

(h) CA certifies that the New Lease contains an interchange commitment that is similar in structure to the interchange commitment that was included in the Original Lease. The following additional information is provided by CA with respect to the interchange commitment:

(i) The New Lease (like the Original Lease) contains an interchange commitment that affects interchange with carriers other than NSR at the interchange point shown on the map attached as Exhibit A.

(ii) A confidential complete version of the New Lease² is being submitted under separate cover as part of a Confidential Appendix governed by 49 CFR 1104.14(a).

(iii) A list of the shippers who currently use or who have used the Line in the last two calendar years, and whose traffic is subject to the interchange commitment is attached hereto as Exhibit B.

(iv) The aggregate number of carloads originated or terminated within the last two calendar years by the shippers identified in subparagraph (iii) above is included as part of the Confidential Appendix.

(v) CA hereby certifies that, as set forth in the certificate of service, it has provided notice of the proposed transaction and the interchange commitment by serving a copy of this Notice of Exemption on the shippers identified in subparagraph (iii) above.

² Because the New Lease supersedes all prior leases, only the New Lease is being provided.

(vi) Norfolk & Portsmouth Belt Line Railroad Co. could physically interchange with the Line.

(vii) CA does not have the information to estimate the difference between the rent with and without the interchange agreement. Accordingly, CA requested an estimate of the difference from NSR as permitted by the Board. *Information Required in Notices and Petitions Containing Interchange Commitments*, STB Docket No. EP 714 (served September 5, 2013), slip op. at 5-6. A copy of the NSR response is included in the Confidential Appendix.

(viii) The caption of this proceeding reflects the existence of the interchange commitment.

(i) In addition to the information set forth above, CA certifies that while its total revenues will not exceed \$5,000,000 after the transaction, the total annual revenues of NCVA, of which CA is a division, will exceed \$5,000,000. However, since CA will continue to be the operator of the Line both before and after the transaction, NCVA/CA is requesting a waiver of the labor notice requirements under 49 C.F.R. §1150.42(e). *See* request for waiver set forth below.

Labor Protection

NCVA/CA is a Class III carrier, and pursuant to 49 U.S.C. §10902(d), approval of this transaction may not be subjected to labor protection conditions. Additionally, since CA is already the operator of the Line, there will be no employees adversely affected by the new lease arrangements.

Environmental and Historic Reports

This is an amendment and extension of a lease for continued rail operations that will not result in changes in carrier operations that will exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Further Board approval is required for CA to discontinue or abandon service, or to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required. *See* 49 C.F.R. §1105.6(c)(2); 49 C.F.R. §1105.8(b)(1).

Caption Summary

Attached hereto as Exhibit C is the caption summary required by 49 C.F.R. §1150.44.

Request for Waiver of Notice Requirements of 49 C.F.R. §1150.42(e)

As noted above, while CA's total revenues will not exceed \$5,000,000 after the transaction, the total annual revenues of NCVA, of which CA is a division, will exceed \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), CA would be required to give sixty days' notice to employees working on the Line (and the national offices of their collective bargaining representatives). However, the Board has held: "The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation." *Belt Line Division of Tacoma Public Utilities – Operation Exemption – In Pierce, Thurston and Lewis*

Counties, WA, STB Finance Docket No. 33666 (served October 30, 1998) at 2. *See also Acquisition of Leased Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions* (“*Advanced Notice of proposed Transactions*”), 2 STB 592 (1997). In adopting the notice requirement, the Board specifically recognized that “exceptional situations may occur necessitating acquirer requests for waiver of the 60 day notice provision ...” *Advanced Notice of Proposed Transactions, supra* at 601.

In this instance, CA should not be required to comply with the requirements of Section 1150.42(e) because there will be no changes for any employees working on the Line. CA already leases the rail facilities and has been the sole common carrier operator of the Line since 1990 (or the remainder since 2003). The New Lease extends the term of CA’s leasehold under restated terms, and CA will continue to be the sole common carrier operator of the Line. No employees of the transferring carrier, NSR or its predecessor, have worked on most of the Line since 1990 (or the remainder since 2003), and there are no employees of NSR who will be affected or have to make any career choices as a result of the sale. Posting notices on the Line would not provide notice to any NSR employees since none work on the Line. Further, there will be no operational changes, and no employees of CA will be affected.³ Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the purposes of the rule and should be waived. Granting CA a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements when a common carrier has filed to extend the term of its operation of a line it was previously leasing and to remain as the common carrier operator on the line, including when the Original Lease

³ Notwithstanding that there will be no effect on employees of CA, CA is providing notice of the New Lease to the national office of the union that represents employees working on the Line by serving it with a copy of this Notice of Exemption.

was last amended by NCVA/CA in 2011. *See North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division – Lease Amendment Exemption – Norfolk 7 Southern Railway Company*, STB Docket No. FD 35564 (Sub-No. 1) (served December 23, 2011). *See also Louisiana Southern Railroad, LLC – Lease Exemption containing Interchange Commitment – The Kansas City Southern Railway Company*, STB Docket No. FD 35983 (served February 18, 2016); *San Joaquin Valley Railroad Co. – Lease Amendment and Operation Exemption including Interchange Commitment – BNSF Railway Company*, STB Docket No. FD 35772 (served May 28, 2015); *Southwestern Railroad, Inc. – Lease and Operation Exemption – NSR Railway Company*, STB Docket No. FD 35855 (served October 15, 2014); *Piedmont & Atlantic Railroad Co., Inc., d/b/a Yadkin Valley Railroad Company - Lease Exemption Containing Interchange Commitment - Norfolk Southern Railway Company*, STB Docket No. FD 35841 (served July 11, 2014).

CA asks that the waiver of the labor notice requirements be granted expeditiously so that this Notice of Exemption can become effective as scheduled 30 days after it is filed.

Conclusion

Accordingly, CA requests that the Board grant the waiver and permit the transaction to close at any time after 30 days from the filing of this Notice of Exemption.

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

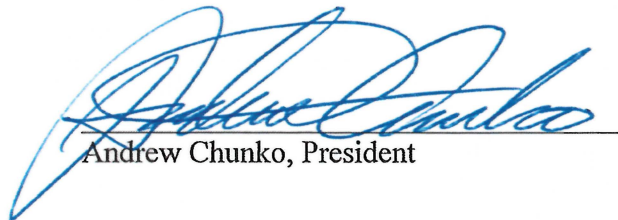
Attorneys for
North Carolina & Virginia Railroad
Company, LLC, Chesapeake & Albemarle
Railroad Division

Dated: November 19, 2018

VERIFICATION

I hereby verify on behalf of North Carolina & Virginia Railway Company, LLC, Chesapeake & Albemarle Railroad Division, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on November 19, 2018.



Andrew Chunko, President

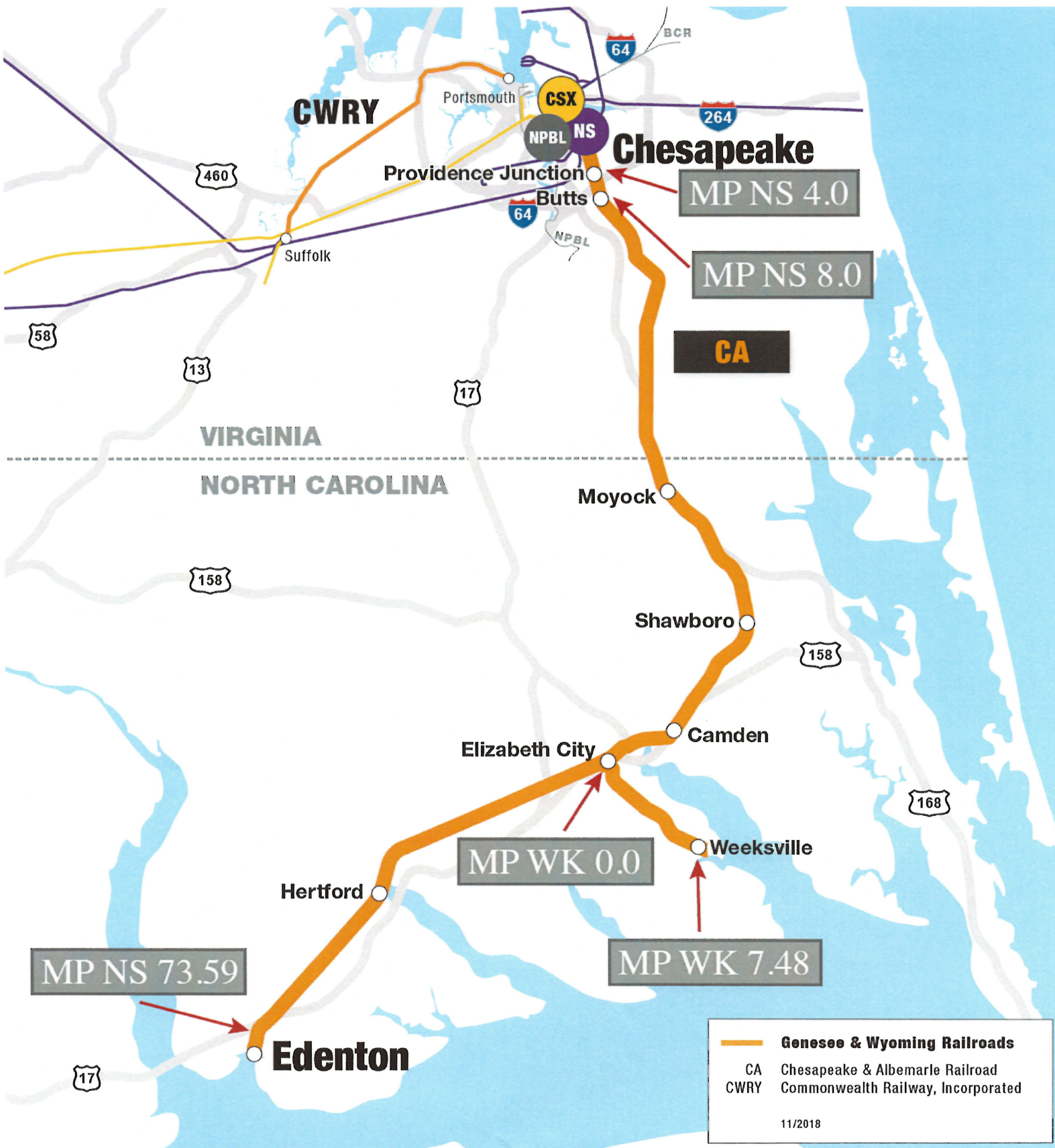


EXHIBIT B

LIST OF SHIPPERS

AREVA TN
115 Windchaser Way
Moyock NC 27958

Builders First Source
404 Green Tree Road
Chesapeake VA 23320

CA Perry and Son
102 Greenhall Road
Edenton NC 27932

Commercial Ready Mix
115 US-158
Winton NC 27986

Tyson Foods
1262 US-17
Elizabeth City NC 27909

Parkway Ag
647 Chapanoke Road
Hertford NC 27944

Southern States
330 Ballahack Road
Hertford NC 27944

Universal Forest Products
141 Knobbs Creek Drive
Elizabeth City NC 27909

Vulcan Materials
174 Knobbs Creek Drive
Elizabeth City NC 27909

Yupo Corp.
800 Yupo Court
Chesapeake VA 23320

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36252

NORTH CAROLINA & VIRGINIA RAILROAD COMPANY, LLC, CHESAPEAKE & ALBEMARLE RAILROAD DIVISION – LEASE AMENDMENT AND OPERATION EXEMPTION INCLUDING EXISTING INTERCHANGE COMMITMENT– NORFOLK SOUTHERN RAILWAY COMPANY

North Carolina & Virginia Railroad Company, LLC , Chesapeake & Albemarle Railroad Division (“CA”), has filed a Notice of Exemption to exempt its entry into a replacement lease amendment governing its lease of the lines of railroad between (a) Providence Junction, VA, MP NS 4.0 and Butts, VA, MP NS 8.0, (b) Butts, VA, MP 8.0 and Edenton, NC, MP NS 73.59, and (c) Elizabeth City, NC, MP WK 0.0 and Weeksville, NC, MP WK 7.48 (collectively, the “Line”). The Line is located in North Hampton County, Virginia, and Chowan County, North Carolina. CA is the current operator of the Line.

Comments must be filed with the Board and served on CA’s representative, Eric M. Hocky, Esquire, Clark Hill. PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

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.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by U.S. first class mail, postage pre-paid on the following national representative of labor working on the lines:

The International Association of Machinists
and Aerospace Workers
9000 Machinists Place
Upper Marlboro, Maryland 20772-2687

and on the shippers shown on the attached list.



Eric M. Hocky

Dated: November 19, 2018

AREVA TN
115 Windchaser Way
Moyock NC 27958

Builders First Source
404 Green Tree Road
Chesapeake VA 23320

CA Perry and Son
102 Greenhall Road
Edenton NC 27932

Commercial Ready Mix
115 US-158
Winton NC 27986

Tyson Foods
1262 US-17
Elizabeth City NC 27909

Parkway Ag
647 Chapanoke Road
Hertford NC 27944

Southern States
330 Ballahack Road
Hertford NC 27944

Universal Forest Products
141 Knobbs Creek Drive
Elizabeth City NC 27909

Vulcan Materials
174 Knobbs Creek Drive
Elizabeth City NC 27909

Yupo Corp.
800 Yupo Court
Chesapeake VA 23320