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April 3, 2017

VIA FEDEX

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

242891

ENTERED
Office of Proceedings
April 3, 2017
Part of
Public Record

Re: Nebraska Northwestern Railroad, Inc. and Nebkota Railway, Inc. – Intra-
Corporate Family Transaction Exemption
STB Docket No. FD 36097

Dear Ms. Brown:

Enclosed on behalf of John D. Nielsen, Nebraska Northwestern Railroad, Inc. and Nebkota Railway, Inc. are an original and eleven copies of a Notice of Exemption ("Notice") filed pursuant to 49 C.F.R. § 1180.2(d)(3) for the merger of two commonly-controlled rail carriers. A computer disk containing the text of the Notice in electronic form (as separate files) is included herewith. A check in the amount of \$1,200 is enclosed to cover the applicable filing fee.

If there are any questions concerning this filing, please contact me by telephone at (312) 252-1518 or by e-mail at abrodick@fletcher-sippel.com.

Sincerely,

Audrey L. Brodrick

ALB/ekf
Enclosures

cc: Mr. John D. Nielsen (w/ encls.)

FILED
April 3, 2017
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 3, 2017
SURFACE
TRANSPORTATION BOARD



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36097

**NEBRASKA NORTHWESTERN RAILROAD, INC. AND
NEBKOTA RAILWAY, INC. –
INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

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**ATTORNEYS FOR JOHN D. NIELSEN,
NEBRASKA NORTHWESTERN RAILROAD,
INC., AND NEBKOTA RAILWAY, INC.**

April 3, 2017

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36097

NEBRASKA NORTHWESTERN RAILROAD, INC., AND
NEBKOTA RAILWAY, INC. COMPANY –
INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION

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

Nebraska Northwestern Railroad, Inc. (“NNW”) and Nebkota Railway, Inc., (“NRI”) (collectively, the “Parties”) hereby submit this notice filing pursuant to 49 C.F.R. § 1180.2(d)(3), for an exemption from the prior approval and authorization requirements of the Surface Transportation Board (“STB” or “Board”) in connection with a transaction within a corporate family. The subject transaction involves the merger of NNW and NRI– both Class III rail common carriers under the control of John D. Nielsen (“Mr. Nielsen”),¹ an individual – with NNW emerging as the surviving carrier. In support of this notice of exemption and in compliance with 49 C.F.R. § 1180.4(g), the Parties provide the following information:

49 C.F.R. §1180.6(a)(1)(i) – Description of Transaction and Parties Thereto

a. Description of Transaction

Mr. Nielsen has for several years controlled NNW and NRI. See John D. Nielsen– Control Exemption – Nebkota Railway, Inc. FD 35759 (STB Served November 25, 2013). Again, NNW and NRI are the only railroads under Mr. Nielsen’s control.

¹ Mr. Nielsen does not have a controlling interest in any other railroad common carriers aside from NNW and NRI.

Pursuant to 49 C.F.R. § 1180.2(d)(3), the Parties hereby invoke the Board's class exemption procedures for a transaction within the corporate family involving the merger of NNW and NRI, with NNW emerging as the surviving corporate entity. The proposed corporate family transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family as NRI has no current, active rail operations.

b. Names, Addresses, and Phone Numbers of Involved Parties

JOHN D. NIELSEN	NEBKOTA RAILWAY, INC.	NEBRASKA NORTHWESTERN
1220 Toluca	223 CLOVERLEAF AVENUE	RAILROAD, INC.
Alliance, NE 69301	CHADRON, NE 69337	223 CLOVERLEAF AVENUE
Phone: (308) 432-8378	308-432-8378	CHADRON, NE 69338
		308-432-8378

c. Name of Counsel to Whom Questions Can Be Addressed

Correspondence with respect to this verified notice of exemption should be addressed to:

Audrey L. Brodrick
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
Tel: (312) 252-1500
Fax: (312) 252-2400

49 C.F.R. §1180.6 (a)(1)(ii) – Consummation Schedule

The Parties propose to consummate the proposed transaction on or after May 3, 2017.

49 C.F.R. §1180.6(a)(1)(iii) – Purpose of the Transaction

The purpose of this transaction is to streamline administration and enhance the financial condition of two railroads that are already largely integrated by consolidating the two into a single company. The proposed merger will eliminate the need for the preparation of separate tax returns for NRI and NNW, and the need for the two companies to maintain separate corporate

records. There are also certain operational and other records-keeping advantages that will flow from the proposed merger.

49 C.F.R. §1180.6(a)(5) – List of States in Which the Parties’ Property is Located

The railroad lines of both NRI and NNW are located in the State of Nebraska.

49 C.F.R. §1180.6(a)(6) – Map (Exhibit A)

A map showing the location of the lines of NRI and NNW is attached as Exhibit A.

49 C.F.R. §1180.6(a)(7)(ii) – Agreement (Exhibit B)

The proposed merger transaction will be governed by an as-yet-unexecuted agreement. A draft copy of this agreement, the terms of which have not yet been finalized, is attached as Exhibit B.

49 C.F.R. §1180.4(g)(1)(i) – Level of Labor Protection

Because the proposed transaction involves only Class III carriers, employee protective conditions may not be imposed as a condition of this exemption. See 49 U.S.C. § 11326(c).

49 C.F.R. § 1180.4(g)(4) – Interchange Commitments

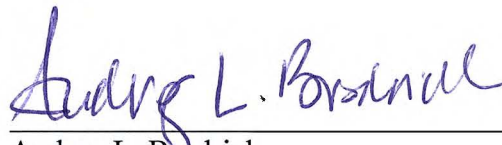
The proposed merger agreement between NNW and NRI contains no provision or agreement that would limit NNW’s interchange with a third-party connecting carrier.

49 C.F.R. §1105.6 through 1105.8 – Environmental and Historic Report

The NNW-NRI merger will not result in material changes to the operations over the rail lines of either carrier. Accordingly, the transaction will not result in significant changes in carrier operation (i.e., changes that exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5)), and the transaction is thus exempt from the requirement to provide environmental documentation pursuant to 49 C.F.R. §1105.6(c)(2) and (4).

Because rail operations will continue, separate Board approval would be required if NNW later were to discontinue operations and/or abandon service. Furthermore, there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Hence, pursuant to 49 C.F.R. §1105.8(b)(2-3), the transaction is exempt from historic preservation reporting requirements.

Respectfully submitted this 3rd day of April, 2017



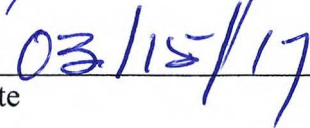
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ATTORNEY FOR JOHN D. NIELSEN, NEBRASKA
NORTHWESTERN RAILROAD, INC., AND NEBKOTA
RAILWAY, INC. COMPANY

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, John D. Nielsen, declare under the penalty of perjury that I am authorized to make this verification on behalf of myself, Nebraska Northwestern Railroad, Inc., and Nebkota Railway, Inc., and that I have read the foregoing intra-corporate family transaction notice of exemption, know the contents thereof, and attest that the same are true and correct to the best of my knowledge, information, and belief.



John D. Nielsen

Date

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

EXHIBIT A

MAP

MP 412

DOCKET NO. FD 36097
NEBRASKA NORTHWESTERN RAILROAD, INC. AND
NEBKOTA RAILWAY, INC. —
INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION
Chadron, NE
EXHIBIT A

MP 404.6

Chadron

MP 400

23D

385

1st St

Gold Rush Byway

20

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36097

**NEBRASKA NORTHWESTERN RAILROAD, INC. AND
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PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

EXHIBIT B

AGREEMENT

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is made as of _____, 2017, by and between Nebkota Railway, Inc., a Nebraska corporation (the "Merging Entity"), and Nebraska Northwestern Railroad, Inc., also a Nebraska corporation (the "Surviving Entity"). This Agreement has been approved, adopted, certified, executed and acknowledged by each of the undersigned in accordance with the requirements of the Nebraska Model Business Corporation Act.

WHEREAS, the Merging Entity is wholly owned by John D. Nielsen and the Surviving Entity is majority owned and controlled by John D. Nielsen;

WHEREAS, John D. Nielsen desires that the Merging Entity be merged with and into the Surviving Entity pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, and other good and valuable consideration, and further in accordance with the Nebraska Model Business Corporation Act, it is agreed by and between the parties hereto that the Merging Entity shall be merged into the Surviving Entity upon the terms and conditions set forth herein.

1. Merger. On the Effective Date, as defined (as hereinafter defined), the Merging Entity shall be merged with and into the Surviving Entity pursuant to the Nebraska Model Business Corporation Act, with the Surviving Entity continuing as the surviving entity (the "Merger").

2. Effective Date. Upon the execution of this Agreement, the Merging Entity and the Surviving Entity shall be and hereby are directed to file Articles of Merger in the office of the Secretary of State of the State of Nebraska. The Merger shall become effective on the date that said Articles of Merger are filed with Nebraska Secretary of State (the "Effective Date") as defined by Neb.Rev. St. § 21-206.

3. Surviving Entity. On the Effective Date, the Merging Entity shall be merged with and into the Surviving Entity, and the separate corporate existence of the Merging Entity shall thereupon cease. The Surviving Entity shall (a) be the surviving corporation in the Merger and shall possess all the rights, privileges, claims, demands, property, powers, franchises and authority, both public and private, and all debts due to the Merging Entity and the Surviving Entity, (b) be subject to all the restrictions, disabilities and duties of both the Merging Entity and the Surviving Entity, (c) be vested with all assets and property, real, personal and mixed, and every interest therein, wherever located, belonging to the Merging Entity and the Surviving Entity, and (d) be liable for all of the obligations and liabilities of the Merging Entity and the Surviving Entity. On and after the Effective Date, the title to any real estate vested by deed or otherwise in the Merging Entity shall be vested in the Surviving Entity, all rights of creditors and all liens upon property of the Merging Entity shall be preserved unimpaired, and all debts, liabilities and duties of the Merging Entity shall thenceforth attach to the Surviving Entity and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it. The title to any such real estate, or any interest therein, vested in the Merging Entity or Surviving Entity shall not revert or be in any way impaired by reason of the

Merger.

4. Additional Actions. If, at any time after the Effective Date, the Surviving Entity shall consider or be advised that any deeds, bills of sale, assignment, assurance or any other actions or things are necessary or desirable (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Entity its right, title or interest in, to or under any of the rights, properties or assets of the Merging Entity or the Surviving Entity acquired or to be acquired by the Surviving Entity as a result of, or in connection with, the Merger, or (b) or otherwise carry out the purposes of this Agreement, the Merging Entity and its officers and directors shall be deemed to have granted to the Surviving Entity an irrevocable power of attorney to execute and deliver all such deeds, bills of sale, assignments and assurances and to take and do all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Entity and otherwise to carry out the purposes of this Agreement; and the officers and directors of the Surviving Entity are fully authorized in the name of the Merging Entity or the Surviving Entity, or otherwise to take any and all such actions.

5. Cancellation of Stock of Merging Entity. On the Effective Date, and without any further action on the part of the Merging Entity or the Surviving Entity, (a) each of the shares of common stock of the Surviving Entity issued and outstanding immediately prior to the Effective Date shall remain issued and outstanding immediately subsequent to the Effective Date as shares of common stock of the Surviving Entity, (b) each of the shares of the common stock of the Merging Entity issued and outstanding immediately prior to the Effective Date shall be cancelled without payment of any consideration therefor and cease to exist and be outstanding.

6. Name. The name of the Surviving Entity immediately prior to the Effective Date shall be the name of the Surviving Entity following the Effective Date.

7. Articles of Incorporation. The Articles of Incorporation of the Surviving Entity immediately prior to the Effective Date shall be the Articles of Incorporation of the Surviving Entity following the Effective Date, unless and until the same shall be amended or repealed in accordance with the provisions thereof.

8. By-laws. The by-laws of Surviving Entity immediately prior to the Effective Date shall be the by-laws of Surviving Entity following the Effective Date, unless and until the same shall be amended or repealed in accordance with the provisions thereof.

9. Board of Directors and Officers. The members of the board of directors and the officers of Surviving Entity immediately prior to the Effective Date shall be the members of the board of directors and the officers of Surviving Entity following the Effective Date, unless and until the same shall be terminated or replaced in such positions as provided in the by-laws.

10. Termination/Abandonment. This Agreement may be abandoned by the mutual consent of the Merging Entity and the Surviving Entity any time prior to the filing of the Articles of Merger in the State of Nebraska. In the event of any termination of this Agreement, this Agreement shall become wholly void and of no effect and there shall be no further liability or obligation hereunder on the part of either party.

11. Counterparts. This Agreement may be executed in multiple counterparts.

[Signature page follows]

DRAFT

IN WITNESS WHEREOF, each of the Surviving Entity and the Merging Entity, pursuant to authority duly granted by its shareholder and its board of directors, has caused this Agreement to be executed by its duly authorized officers.

Surviving Entity:

**NEBRASKA NORTHWESTERN
RAILROAD COMPANY, INC.,** a Nebraska
Corporation

By: _____
Name: _____
Its: _____

Merging Entity:

NEBKOTA RAILWAY, INC., a Nebraska
Corporation

By: _____
Name: _____
Its: _____