



Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241

210084

ENTERED
Office of Proceedings

John V. Edwards
General Attorney

FEB 18 2004

Writer's Direct Dial Number

(757) 629-2838
(757) 533-4872 (Fax)
john.edwards@nscorp.com

Part of
Public Record

February 13, 2004

NOTICE: FILING CONTAINS MAP APPENDIX

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

FEE RECEIVED

FEB 18 2004

Surface
TRANSPORTATION BOARD

Re: STB F.D. No. 34470, Norfolk Southern Railway Company –
Trackage Rights Exemption – Western New York & Pennsylvania
Railroad, LLC

Dear Secretary Williams:

Enclosed for filing please find an original and ten copies of the Verified Notice of Exemption submitted in the above-referenced proceeding, together with twenty additional copies of the map that appears as Exhibit 1 thereto. Also enclosed is a check for \$1,300.00 covering the costs set forth in 49 C.F.R. Section 1002.2(f)(40)(iv).

The original of this filing is clipped, but all copies have been stapled. Also submitted are three 3.5-inch IBM-compatible floppy diskettes, each with an electronic copy of this filing capable of being read by WordPerfect 9.0. These diskettes are labeled with the Docket Number as well as the title to the proceeding.

An additional copy of the Notice also is enclosed. Please indicate receipt and filing by time-stamping this extra copy and returning it in the enclosed self-addressed stamped envelope.

Enclosures



Sincerely,

John V. Edwards

FILED

FEB 18 2004

1 SURFACE
TRANSPORTATION BOARD

210084

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34470

NORFOLK SOUTHERN RAILWAY COMPANY
– TRACKAGE RIGHTS EXEMPTION –
WESTERN NEW YORK & PENNSYLVANIA RAILROAD, LLC

VERIFIED NOTICE OF EXEMPTION

ENTERED
Office of Proceedings

FEB 18 2004

Part of
Public Record

FEE RECEIVED

FEB 18 2004

SURFACE
TRANSPORTATION BOARD

Pursuant to 49 C.F.R. Parts 1180.2(d)(7) and 1180.4(g), Norfolk Southern Railway Company ("Norfolk Southern") hereby files this Verified Notice of Exemption from the prior approval requirements of 49 U.S.C. Section 11323, et seq., to permit Norfolk Southern to exercise overhead trackage rights over approximately 186.5 miles of rail line controlled by the Western New York & Pennsylvania Railroad, LLC ("WNYP"), between Hornell, New York and Meadville, Pennsylvania, Mileposts OS332.0-OS394.9, OS395.2-OS414.0, SA1.4-SA47.0, CE0.0-CE13.2, SA56.3-SA102.3. The trackage rights are based upon a written agreement and are not filed or sought in a responsive application to a rail consolidation proceeding. Accordingly, they are exempt from the prior approval requirements of 49 U.S.C. Section 11323.

In furtherance of this, Norfolk Southern hereby files this notice of exemption for the proposed transaction, and submits the following information in support thereof:

- a. Correspondence.

The person to whom correspondence with respect to this Notice should be addressed (49 C.F.R. Section 1180.6(a) is:

FILED

FEB 18 2004

John V. Edwards
General Attorney
Norfolk Southern Corp.
Three Commercial Place
Norfolk, VA 23510-2191
(757) 629-2838
(757) 533-4872 (fax)

b. Transaction Summary.

The following is a summary of the transaction, its proposed timing, and the purpose of the proposed transaction (49 C.F.R. Sections 1180.6(a)(1)(i)-(iii):

Norfolk Southern (with its consolidated subsidiaries) is a Virginia corporation with its business address of Three Commercial Place, Norfolk, VA 23510. It is a Class I railroad and a wholly-owned subsidiary of Norfolk Southern Corporation, a holding company. Norfolk Southern Corp. – Control – Norfolk & W. Ry. Co., 366 ICC 173 (1982). Norfolk Southern (with its subsidiaries) operates a rail system that extends throughout 23 states and the District of Columbia in the eastern United States, except New England.

The other rail carrier involved in this transaction is WNYP, a New York limited liability company, located in Lakeville, NY.

Under the proposed transaction, Norfolk Southern will be authorized to use overhead trackage rights over approximately 186.5 miles of the WNYP main line, together with ingress and egress rights at Hornell, NY, Olean, NY, Corry, PA and Meadville, PA. The basic purpose sought to be accomplished by the proposed transaction is to enable Norfolk Southern to efficiently route traffic between Meadville, PA and Hornell, NY for further transportation beyond said endpoints, substantially

reducing the traffic's current route through the congested Buffalo, NY terminal area, including CP Draw.

The proposed transaction described herein will be consummated no sooner than the latter of (1) the effective date of this Notice, or (2) the expiration of any labor notice period to which the carriers may be subject.

c. Applicant's location.

The Applicant operates in the following locations (49 C.F.R. Section 1180.6(a)(5):

In addition to the District of Columbia, Norfolk Southern operates in the States of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia.

d. Map.

Pursuant to 49 C.F.R. Section 1180.6(a)(6), a map, showing the lines subject to the proposed transaction, together with those of relevant short line connections and other rail lines in the region, together with the principal geographic points in the region traversed, is attached hereto as Exhibit 1.

e. Agreement.

Pursuant to 49 C.F.R. Section 1180.6(a)(7)(ii), a copy of the executed agreement showing the significant terms of the proposed transaction (and redacting the confidential business terms) is attached hereto as Exhibit 2. Norfolk Southern has today submitted a petition for protective order. Separately Norfolk Southern has today submitted – on a confidential basis – an unredacted version of the executed agreement.

f. Labor Protection.

Any employees adversely affected by the trackage rights are entitled to protection under the conditions imposed in Norfolk and Western Railway Company – Trackage Rights – Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified by Mendocino Coast Railway, Inc. – Lease and Operate – California Western Railroad, 360 I.C.C. 653 (1980).

g. Environmental and History Documentation.

The proposed transaction qualifies under 49 C.F.R. Section 1105.6(c)(4) and as such, no environmental documentation is required. Likewise, the proposed transaction qualifies under 49 C.F.R. Section 1105.8(b)(3) and as such, no historic report will be prepared.

h. Caption Summary.

A caption summary suitable for publication in the Federal Register is attached hereto as Exhibit No. 3.

Respectfully submitted,



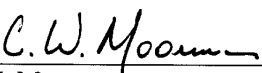
NORFOLK SOUTHERN RAILWAY COMPANY
Three Commercial Place
Norfolk, Virginia 23510

By: John V. Edwards
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
(757) 629-2838
(757) 533-4872 (fax)

Dated: February 13, 2004

VERIFICATION

I, C.W. Moorman, Senior Vice President – Corporate Planning and Services,
Norfolk Southern Corporation, hereby verify under penalty of perjury that the foregoing
is true and correct. Further, I certify that I am qualified and authorized to file this
Verified Notice of Exemption. Executed on this February 13, 2004.



C.W. Moorman
Senior Vice President – Corporate Planning and Services

Exhibit 1

Map

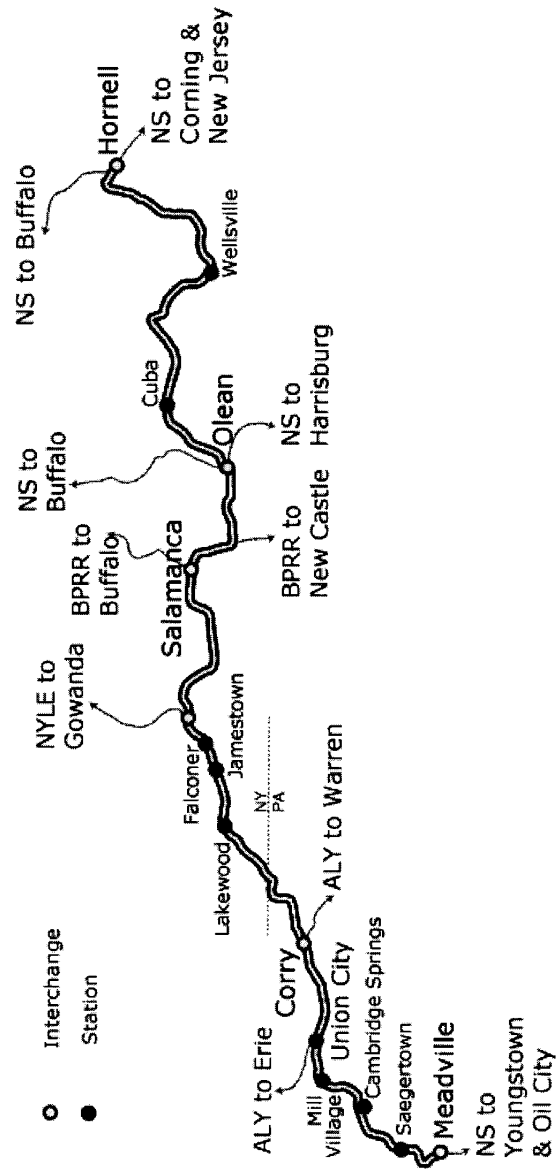


Exhibit 2

Agreement

TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT made this 10th day of February, 2004 by and between **WESTERN NEW YORK & PENNSYLVANIA RAILROAD, LLC (WNYP)**, and **NORFOLK SOUTHERN RAILWAY COMPANY (NSR)**;

WITNESSETH:

WHEREAS, WNYP, hereinafter referred to as "WNYP," leases and operates a line of railroad extending between Hornell, New York and Corry, Pennsylvania pursuant to a Sublease Agreement between WNYP, Pennsylvania Lines LLC and NSR, hereinafter referred to as "User," and;

WHEREAS, WNYP acquired the line of railroad between Corry, Pennsylvania and Meadville, Pennsylvania, connecting with the above referenced trackage at Corry; and

WHEREAS, WNYP is willing to allow NSR the right to use the trackage between Hornell and Corry, hereinafter referred to as "Subject Trackage" on the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

Section 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, hereinafter referred to as "Agreement", WNYP hereby grants to User the right to operate its trains, locomotives, cars and equipment with its own crews, hereinafter referred to as "Subject Trackage Rights" over the segment of WNYP's railroad from Hornell, New York to Meadville, Pennsylvania, Mileposts OS332.0-OS394.9, OS395.2-OS414.0, SA1.4-SA47.0, CE0.0-CE13.2, SA56.3-SA102.3 (186.5 Miles) as shown on attached Exhibit I.

Section 2. USE OF SUBJECT TRACKAGE

User's use of Subject Trackage shall be in common with WNYP and WNYP's right to use the Subject Trackage shall not be diminished by this Agreement.

- (A) Except as may otherwise be provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains, except that nothing contained herein, upon prior approval of WNYP, preclude the emergency use by User of such auxiliary Subject Trackage as may be designated by WNYP for such purposes.
- (B) WNYP shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against WNYP for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.
- (C) WNYP may not grant trackage rights of any nature on the Subject Trackage to other parties.
- (D) User shall have the right to operate in either direction over the Subject Trackage.

Section 3. RESTRICTION ON USE

The Subject Trackage Rights herein granted are granted for the sole purpose of User using Subject Trackage as previously described to operate its trains in overhead movements with ingress and egress rights at Hornell, New York, Olean, New York, Corry, Pennsylvania and Meadville, Pennsylvania. User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

Section 4. MISCELLANEOUS SPECIAL PROVISIONS

- (A) When operating over Subject Trackage, User's locomotives and crews will be equipped to communicate with WNYP on radio frequencies normally used by WNYP in directing train movements on Subject Trackage.
- (B) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of WNYP's representative or his designee.
- (C) Before User enters upon Subject Trackage with its trains, User must verify with WNYP that User has the ability to make a complete and continuous, uninterrupted movement over the Subject Trackage onto User's own railroad.

Section 5. COMPENSATION

- (A) The Current Charge to be paid by User for the subject trackage rights covered by this Agreement shall be [REDACTED] per car mile. As compensation for the Subject Trackage Rights, User will pay to WNYP a sum computed by multiplying (i) the Current Charge specified in Section 5 by (ii) the number of rail cars (loaded or empty) moved by User over the Subject Trackage by (iii) miles of Subject Trackage between Hornell, Olean, Corry and/or Meadville. For purposes of this Agreement, each railroad freight car (including standard flat cars not exceeding ninety-six [96] feet in length), locomotive, caboose or other equipment furnished in substitution of railroad equipment, loaded or empty, shall count as a single rail car. Each articulated freight car shall count as (1) rail car per every (4) axles of the articulated freight car. A single unit of Roadrailer® equipment (or comparable bimodal freight handling equipment) shall count as one half (1/2) of a rail car. A single unit of Container equipment, loaded or empty, defined as "an eighty-six (86) foot flat car containing up to four (4) demountable containers, each holding up to twenty-five (25) tons of lading, primarily coal or related commodities," shall count as one rail car. The Current Charge shall be subject to change to reflect any increase or decrease subsequent to the Effective Date of this Agreement in labor, material and other costs, as more fully set forth below.
- (B) WNYP shall bill User monthly; said bill shall include a statement which shall list the number of cars and the miles operated on the Subject Trackage, computed in accordance with this Section 5.
- (C) The Current Charge set forth in section 5 (A) hereof shall be revised upward or downward each year, beginning with the bill rendered for the month of July 2004, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads ("AAR"). In making such a determination, the Final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East district shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year and applying that percentage to the Current Charge.
- (D) In the event the base for the Annual Indexes of Charge-out Prices and Wage Rates issued by the AAR or any successor organization discontinues

publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under terms of Section 17 of this Agreement.

- (E) Under no circumstances shall the rate paid to WNYP by User be less than the Current Charge set forth in Section 5(a) hereof.

Section 6. PAYMENT OF BILLS

- (A) All payments called for under this Agreement shall be made within thirty (30) days after the date of the bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of the billing.
- (B) Bills rendered pursuant to the provisions of this Agreement, other than those provided for in Section 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by WNYP at the time any work is performed by WNYP for User or shall include actual costs and expenses, upon mutual agreement of the parties.

Section 7. MAINTENANCE OF SUBJECT TRACKAGE

Subject to the terms of the Sublease Agreement, WNYP shall maintain, repair and renew the Subject Trackage with its own supervision and labor. WNYP shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but WNYP does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. WNYP shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts to avoid such interruptions.

Section 8. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

Existing connections or facilities, which are jointly used by the parties hereto under existing agreements, shall continue to be maintained, repaired and

renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.

Section 9. ADDITIONS, RETIREMENTS AND ALTERATIONS

- (A) WNYP, from time to time and at its sole cost and expense, may make changes in, additions and betterment to, or retirements from, the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

Section 10. MANAGEMENT AND OPERATIONS

- (A) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless WNYP and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon WNYP or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.
- (B) User in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of WNYP, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of WNYP. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the

maximum authorized freight speeds as provided by WNYP's operating rules and regulations without the prior consent of WNYP.

- (C) User shall make such arrangements with WNYP as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and User shall pay to WNYP, upon receipt of bills therefor, any cost incurred by WNYP in connection with the qualification of such employees of User, as well as the cost of pilots furnished by WNYP, until such time as such employees are deemed by the appropriate examining officer of WNYP to be properly qualified for operation as herein contemplated.
- (D) In the event of any investigation or hearing concerning the violation of any operating rule or practice by User's employees while on the Subject Trackage, User shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by User, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to User's employee or employees required to attend such hearings.
- (E) WNYP shall have the right to exclude from the Subject Trackage any employee of User determined by the above, to be in violation of WNYP's rules, regulations, orders, practices, or instructions issued by WNYP's Timetable or otherwise. User shall release, indemnify, defend, and save harmless WNYP and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- (F) The trains, locomotives, cars and equipment of User, WNYP, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as will afford the most economical and efficient movement of all traffic.
- (G) In the event that a train of User shall be forced to stop on the Subject Trackage, due to mechanical failure of User's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by WNYP

on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, WNYP shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse WNYP for the cost of rendering any such assistance.

- (H) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by WNYP, and User shall reimburse WNYP for the cost thereof.
- (I) In the event WNYP and User agree that WNYP should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by WNYP and which would not have been incurred had the retained or additional employees not been provided.

Section 11. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly.

Section 12. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, WNYP shall perform or provide such service, including the repair and restoration of roadbed, Subject Trackage and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 13 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it.

Section 13. LIABILITY

For the purpose of this Section 13, the term "Damage" means all assessments, losses, damages, liabilities, costs and expenses, including without limitation interest, penalties and attorneys' and consultants' fees. For the purpose of this Section 13, the term "Railroad Consequential Damages" means consequential, indirect, incidental or other similar damage, injury or loss to either User or WNYP. The responsibility between WNYP and User for all Damage arising out of, incidental to or occurring in connection with this Agreement shall be apportioned as follows:

- (A) Sole Responsibility: Subject to Section 13(E), each party shall assume and bear all responsibility for Damage to or resulting from its own trains, locomotives and equipment, including but not limited to cars and lading in its possession or being handled for its account, and for the death of or injury to its own employees.
- (B) User and WNYP Responsibility: Subject to Section 13(E), the parties shall jointly and equally (50% User and 50% WNYP) assume and bear all responsibility for all Damage, other than Damage which is subject to Section 13(A).
- (C) Process: User and WNYP each shall be responsible for the payment, handling, administration and disposition of all Damage for which it bears exclusive responsibility under Section 13(A), and both User and WNYP shall have joint responsibility for the payment, handling, administration and disposition of all Damage for which they are jointly responsible under Section 13(B). In assigning joint responsibility to both parties, it is not the intent of this Agreement that the parties will actually act jointly, but rather that the parties will agree between themselves on the most practical and efficient arrangement for handling, administering, and disposing of Damage for which they bear joint responsibility, with the objective of eliminating unnecessary duplication of effort and minimizing overall costs.
- (D) Indemnification: Each party to this Agreement covenants and agrees to (i) fully indemnify and save harmless the other parties to this Agreement from and against any payments which are the responsibility of such party under this Agreement, and all expenses, including attorney's fees and expenses, and other expenses of any court or regulatory proceeding, incurred by such other parties in defending any claim for which they are liable, and (ii) defend such other parties against such claims with counsel selected by such party

and reasonably acceptable to such other parties.

- (E) Limitation: Section (A) and (B) shall apply only to the amount of Damage resulting from a single incident which is \$25 million or less. Responsibility for Damage resulting from a single incident which exceeds \$25 million shall be allocated to the extent of such excess to WNYP and User in proportion to their respective fault or negligence in causing such Damage, subject to the following rules: (1) the total amount of Damage for which each party would otherwise be responsible under Section 13 (A) and (B) shall be determined, on a comparative percentage basis; (2) for each party, multiply \$25 million by the comparative percentage determined for that party in Section 13(E)(1); (3) the Damage for which each party is responsible in excess of the amount determined in Section 13(E)(2) shall be allocated between WNYP and User in proportion to their respective fault or negligence in causing the Damage. As used in this Section 13(E) only, the term "Damage" shall exclude Railroad Consequential Damages (which are always borne by the railroad which sustained them) and claims for exemplary and punitive Damage by any party hereto on its own behalf against another party hereto. By way of example, if Damage from a single incident were \$100 million, of which WNYP would be responsible for \$80 million under Section 13(A) and (B) and User would be responsible for \$20 million under Section 13 (A) and (B), WNYP would be responsible for \$20 million and User would be responsible for \$5 million of such Damage under Section 13(E)(1), and the remaining \$75 million of Damage would be apportioned between WNYP and User in proportion to their respective fault or negligence in causing the Damage. Any dispute between or among the parties hereto in computing the comparative percentage, in determining their respective fault or negligence in causing the Damage or otherwise relating to their respective responsibilities for Damage arising out of, incidental to or occurring in connection with any such incident, including any Damage exceeding \$25 million, shall be submitted for resolution by binding arbitration pursuant to Section 17. The \$25 million amount referred to in this Section 13(E) may be adjusted every five years following the date of this Agreement with the prior approval of all parties, which approval may be given or refused at the sole discretion of each party.
- (F) Exceptions: Each party shall assume and bear all responsibility for Damage caused by acts or omission of any its employees while under the influence of drugs or alcohol and Section 13(B) and (E) shall not apply to any such Damage.

Section 14. CLAIMS

- (A) The parties shall agree between themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each party shall be responsible for losses occurring to lading in its possession for the account of such party and (ii) the parties shall follow relevant Association of American Railroads (AAR) rules and formulas in providing for the allocation of losses which are either of undetermined origin or in cars handled in interline service by or for the account of the parties.
- (B) Each party shall indemnify and hold harmless the other parties against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the parties' intention that each party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

SECTION 15 INSURANCE

- (A) WNYP shall procure and maintain in effect during the life of this Agreement a policy or policies of insurance covering the liability to which it is or may be subject under Section 13 hereof. Such insurance shall provide minimum limits of Five Million Dollars (\$5,000,000) per occurrence but may be subject to an annual aggregate limit of Five Million Dollars (\$5,000,000) and a per occurrence deductible not in excess of Twenty-Five Thousand Dollars (\$25,000).
- (B) If the insurance provided under this Section 15 takes the form of a Claims Made Policy, WNYP agrees to purchase whatever supplemental coverage may be necessary to provide continuous supplemental coverage of its potential liability under this Agreement, with annual occurrence and annual

aggregate limits no less than those required hereunder, for a period of time at least five (5) years following the termination of this Agreement. WNYP further agrees to immediately give written notice to the Director Risk Management, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510-2191, of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company.

- (C) On or before any anniversary date of this Agreement which occurs more than one (1) year after its Commencement Date, NSR may require an increase in the amount of insurance coverage required by this Section 15, or changes in the terms and conditions of the policy or policies, provided the amount of the increase does not exceed an average of Two Million Dollars (\$2,000,000) for each year that this Agreement has been in effect.
- (D) Every policy of insurance obtained by WNYP pursuant to the requirements of this Section 15 shall contain provisions requiring that the insurance carriers give NSR at least thirty (30) days notice, in writing, of any proposed policy cancellation and of any material modification of the terms and conditions of the policy. The terms and conditions of each policy of insurance obtained by WNYP to satisfy the requirements of this Section 15 will be subject to the approval of NSR.
- (E) Within thirty (30) days of execution of this Agreement, WNYP will furnish to the above referenced Director Risk Management an accurate copy of each policy of insurance obtained pursuant to the requirements of this Agreement. Compliance with this requirement will not relieve WNYP of any other obligation under this Agreement and will in no way limit or modify WNYP's obligation to provide the specific insurance coverage required by this Agreement. Evidence of subsequent renewal of such insurance or of any material change must be furnished to the above referenced Director Risk Management as stipulated in Subsection (B) above.

Section 16. TERM, DEFAULT AND TERMINATION

- (A) This Agreement shall become effective ("Commencement Date") as of the first date signed by both WNYP and User, and if required, following receipt of any regulatory approvals, and following the expiration of any time periods required by the issuance of labor notices by WNYP, and shall remain in full force and effect for a period of twenty (20) years with one renewal term of ten (10) years. User shall have the option, subject to

approval by WNYP, of extending this Agreement for an additional term by notice in writing given at least (6) months prior to the end of the current term.

- (B) Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to termination thereof.
- (C) In the event of any substantial failure on the part of User to perform its obligations provided under the terms of this Subject Trackage Rights Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from WNYP, WNYP shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by WNYP of any prior breach thereof, to terminate the Agreement. The exercise of such right by WNYP shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.
- (D) The rights, benefits, duties and obligations running from or to User, except to a controlled subsidiary under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon termination of this Agreement.

Section 17. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through binding arbitration by a sole, disinterested arbitrator to be selected jointly by the parties. If the parties fail to select such arbitrator within sixty (60) days after demand for arbitration is made by either party hereto, and then they shall jointly submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal laws or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the

arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision or award of the arbitrator.

Section 18. ABANDONMENT

The Sublease Agreement describes the respective rights and obligations of the parties with respect to abandonment of the Subject Trackage.

Section 19. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto including any person, firm or corporation succeeding to the ownership of substantially all of the assets or business of User or into which User is merged or consolidated; provided, however, that User shall not in any manner transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of WNYP.

Section 20. NOTICE

Any notice required or permitted to be given by one party to another under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to WNYP: General Manager
Western New York & Pennsylvania Railroad, LLC
P.O. Box 190-B
Lakeville, NY 14480

If to User: Vice President Transportation Operations
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-2191

Any party may provide changes in the above addresses to the other parties by personal service or U.S. mail.

Section 21. GENERAL PROVISIONS

- (A) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right of any other party to recover by way of damages or otherwise against any of the parties hereto.
- (B) The Sublease Agreement and this Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- (C) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all parties to this Agreement.
- (D) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words terms and phrases in the railroad industry.
- (E) All Article headings are inserted for convenience only and shall not affect any interpretation of this Agreement.
- (F) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of another party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- (G) This Agreement is the result of mutual negotiations of the parties hereto; none of whom shall be considered the drafter for purposes of contract construction.
- (H) No party hereto may disclose the provisions of this Agreement to an outside party, excluding a parent, subsidiary or affiliate company, without the written consent of the other parties, except as otherwise required by law, regulation or ruling.

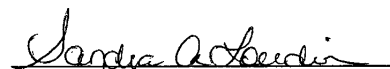
Section 22. INDEMNITY COVERAGE

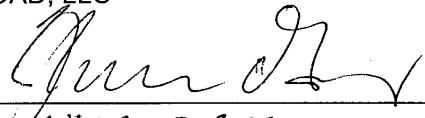
As part of the consideration hereof, each party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other parties shall also extend to and indemnify the parent corporation, subsidiaries and affiliates of such other parties, and all of their respective directors, officers, agents and employees.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS

WESTERN NEW YORK & PENNSYLVANIA
RAILROAD, LLC


Title

By 
WILLIAM D. BURT
PRESIDENT AND CHIEF OPERATING OFFICER

WITNESS

NORFOLK SOUTHERN RAILWAY COMPANY

Title

By 

Exhibit 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 34470

Norfolk Southern Railway Company – Trackage Rights Exemption – Western New York & Pennsylvania, LLC

Western New York & Pennsylvania (“WNYP”) has agreed to grant overhead trackage rights to Norfolk Southern Railway Company (“NSR”) to permit NSR to operate over approximately 186.5 miles of the WNYP main line between Hornell, New York and Meadville, Pennsylvania, Mileposts OS332.0-OS394.9, OS395.2-OS414.0, SA1.4-SA47.0, CE0.0-CE13.2, SA56.3-SA102.3, with ingress and egress rights at Hornell, NY, Olean, NY, Corry, PA and Meadville, PA. The trackage rights will be effective no sooner than the latter of (1) the effective date of this Notice, or (2) the expiration of any labor notice period to which the carriers may be subject.

This notice is filed under Section 1180.2(d)(7). 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 stay the transaction.

Dated:

By the Board

Vernon A. Williams,
Secretary