

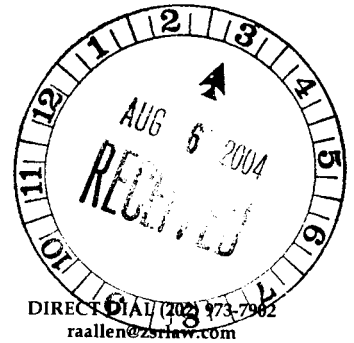
ZUCKERT SCOUTT & RASENBERGER, L.L.P.

ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309

Telephone [202] 298-8660 Fax [202] 342-0683

www.zsrlaw.com



RICHARD A. ALLEN

August 6, 2004

BY HAND DELIVERY

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

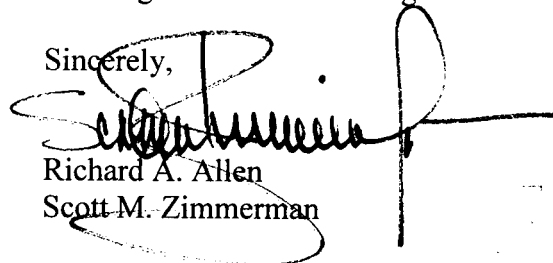
Re: CSX Corp. et al. – Control and Operating Leases/Agreements – Conrail Inc. et al., Finance Docket No. 33388 (Sub-Nos. 95 through 99); Wheeling & Lake Erie Railway Company–Lease and Operation Exemption–Norfolk and Western Railway Co.'s Dock at Huron, OH, Finance Docket No. 32516 (Sub-No. 1); Wheeling & Lake Erie Railway Company–Trackage Rights Exemption–Norfolk and Western Ry., Finance Docket No. 32525 (Sub-No. 1).

Dear Secretary Williams:

We enclose for filing an original and 10 copies of a Joint Petition of Norfolk Southern Corporation and Norfolk Southern Railway Company and Wheeling & Lake Erie Railway Company to Approve Settlement Agreement and To Exempt Embraced Transactions in the foregoing proceedings. Also enclosed are a check for \$950.00 for the filing fee in Finance Docket No. 33388 (Sub-No. 98) and a check for \$8,850.00 for the filing fees in Finance Docket No. 33388 (Sub-No. 96)(\$950.00); Finance Docket No. 33388 (Sub-No. 97)(\$950.00); Finance Docket No. 33388 (Sub-No. 99)(\$4,900.00); Finance Docket No. 32516 (Sub-No. 1)(\$1,100.00); and Finance Docket No. 32525 (Sub-No. 1)(\$950.00).

Also enclosed is a 3.5" floppy disc containing the text of the filing.

Sincerely,



Richard A. Allen
Scott M. Zimmerman

cc: (w/encl.)
William A. Callison, Esq.
William C. Sippel, Esq.
Mary Gay Sprague, Esq.

Office of Proceedings

AUG 09 2004

AUG 06 2004

ENTERED
Office of Proceedings

AUG 09 2004

Part of
Public Record

FILED

AUG 06 2004

SURFACE
TRANSPORTATION BOARD

EXPEDITED CONSIDERATION REQUESTED

Before The
Surface Transportation Board



FINANCE DOCKET NO. 33388 (Sub-No. 95) 211759

And embraced transactions in:

Finance Docket No. 33388 (Sub-No. 96) 211755

Finance Docket No. 33388 (Sub-No. 97) 211756

Finance Docket No. 33388 (Sub-No. 98) 211757

Finance Docket No. 33388 (Sub-No. 99) 211758

Finance Docket No. 32516 (Sub-No. 1) 211759

Finance Docket No. 32525 (Sub-No. 1) 211760

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN
CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

FILE RECEIVED

AUG 06 2004

[PETITION TO APPROVE SETTLEMENT AGREEMENT AND
EXEMPT EMBRACED TRANSACTIONS]

See captions of embraced transactions listed on page 2

**JOINT PETITION OF
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
AND
WHEELING & LAKE ERIE RAILWAY COMPANY
TO APPROVE SETTLEMENT AGREEMENT
AND EXEMPT EMBRACED TRANSACTIONS**

Richard A. Allen
Scott M. Zimmerman
ZUCKERT, SCOUTT
& RASENBERGER, LLP
888 Seventeenth Street, NW
Suite 700
Washington, DC 20006
(202) 298-8660
*Counsel for Norfolk Southern Corporation
and Norfolk Southern Railway Company*

August 6, 2004

William A. Callison
Vice President Law & Government Affairs
WHEELING & LAKE ERIE RAILWAY COMPANY
100 East First Street
Brewster, Ohio 44613
(330) 767-3401

William C. Sippel
FLETCHER & SIPPEL LLC
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2832
(312) 252-1500
Counsel for Wheeling & Lake Erie Railway Company

Embraced Transactions:

FINANCE DOCKET NO. 33388 (Sub-No. 96)
WHEELING & LAKE ERIE RAILWAY CO. – TRACKAGE RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY CO. BETWEEN BELLEVUE AND TOLEDO, OH

FINANCE DOCKET NO. 33388 (Sub-No. 97)
WHEELING & LAKE ERIE RAILWAY CO. – TRACKAGE RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY CO. IN CLEVELAND, OH

FINANCE DOCKET NO. 33388 (Sub-No. 98)
NORFOLK SOUTHERN RAILWAY CO. – TRACKAGE RIGHTS EXEMPTION –
WHEELING & LAKE ERIE RAILWAY CO. BETWEEN CLAIRTON, PA AND BELLEVUE, OH

FINANCE DOCKET NO. 33388 (Sub-No. 99)
WHEELING & LAKE ERIE RAILWAY CO. – PETITION FOR EXEMPTION – PURCHASE OF THE
TOLEDO PIVOT BRIDGE – NORFOLK SOUTHERN RAILWAY CO.

FINANCE DOCKET NO. 32516 (Sub-No. 1)
WHEELING & LAKE ERIE RAILWAY CO. – LEASE AND OPERATION EXEMPTION –
NORFOLK AND WESTERN RAILWAY CO.'S DOCK AT HURON, OH

FINANCE DOCKET NO. 32525 (Sub-No. 1)
WHEELING & LAKE ERIE RY. CO. — TRACKAGE RIGHTS EXEMPTION —
NORFOLK AND WESTERN RY.

EXPEDITED CONSIDERATION REQUESTED

Before The
Surface Transportation Board

FINANCE DOCKET NO. 33388 (Sub-No. 95)

And embraced transactions in:

Finance Docket No. 33388 (Sub-No. 96)

Finance Docket No. 33388 (Sub-No. 97)

Finance Docket No. 33388 (Sub-No. 98)

Finance Docket No. 33388 (Sub-No. 99)

Finance Docket No. 32516 (Sub-No. 1)

Finance Docket No. 32525 (Sub-No. 1)

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN
CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

[PETITION TO APPROVE SETTLEMENT AGREEMENT AND
EXEMPT EMBRACED TRANSACTIONS]

**JOINT PETITION OF
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
AND
WHEELING & LAKE ERIE RAILWAY COMPANY
TO APPROVE SETTLEMENT AGREEMENT
AND EXEMPT EMBRACED TRANSACTIONS**

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, “NS”) and Wheeling & Lake Erie Railway Company (“W&LE”) request the Board to (1) approve a settlement agreement (“Settlement Agreement”) they have entered into to implement and satisfy certain conditions the Board imposed in Decision 89, served July 23, 1998 in this docket, *CSX Corp., et al.—Control—Conrail, Inc. et al.*, 3 S.T.B. 196 (1998) (“Decision No. 89”), and in doing so, find that the Settlement Agreement is consistent with and reasonably

implements those conditions, and (2) pursuant to 49 U.S.C. §10502, issue or grant exemptions for the various transactions called for in the Settlement Agreement from the prior approval requirements of 49 U.S.C. Subtitle IV Part A.

As discussed in more detail below, the Settlement Agreement encompasses, among other things, six transactional elements otherwise subject to the Board's jurisdiction: three grants of trackage rights (two involving W&LE rights over NS, one involving NS rights over W&LE), one extension of the term of preexisting trackage rights (permitting W&LE access to the Huron Dock), one extension of the term of a preexisting lease (of the Huron Dock) and one asset purchase (W&LE's purchase of the Toledo Pivot Bridge). Specifically, the embraced cases are: Finance Docket No. 33388 (Sub-No. 96), *Wheeling & Lake Erie Railway Co. – Trackage Rights Exemption – Norfolk Southern Railway Co. Between Bellevue and Toledo, OH* (W&LE trackage rights); Finance Docket No. 32516 (Sub-No. 1), *Wheeling & Lake Erie Railway Co. – Lease and Operation Exemption – Norfolk and Western Railway Co.'s Dock at Huron, OH* (extension of existing lease of Huron Dock); Finance Docket No. 32525 (Sub-No. 1), *Wheeling & Lake Erie Ry. Co.—Trackage Rights Exemption—Norfolk and Western Railway* (extension of existing W&LE trackage rights to Huron Dock); Finance Docket No. 33388 (Sub-No. 97), *Wheeling & Lake Erie Railway Co. – Trackage Rights Exemption – Norfolk Southern Railway Co. in Cleveland, OH* (W&LE trackage rights); Finance Docket No. 33388 (Sub-No. 98), *Norfolk Southern Railway Co. – Trackage Rights Exemption – Wheeling & Lake Erie Railway Co. Between Clairton, Pa and Bellevue, OH* (NS trackage rights); and Finance Docket No 33388 (Sub-No. 99), *Wheeling & Lake Erie Railway Co. – Petition for Exemption – Purchase of the Toledo Pivot Bridge – Norfolk Southern Railway Co.* (W&LE's purchase of the Toledo Pivot Bridge).

Assuming the Board approves the Settlement Agreement and finds that it reasonably implements the applicable W&LE conditions in Decision No. 89, five of the six transactional elements of the settlement (all except the Toledo Pivot Bridge purchase) can be implemented through verified notices of exemption pursuant to 49 C.F.R. §1180.4(g), and the parties include herewith such verified notices.¹ As for W&LE's purchase of the Toledo Pivot Bridge, the parties hereby petition the Board pursuant to 49 U.S.C. §10502 for an exemption of that transaction from the prior approval requirements of 49 U.S.C. §10902.

As the Settlement Agreement provides, the Board's approval is an essential condition to the Settlement Agreement. The parties are seeking Board approval of the Settlement Agreement as well as exemption of each transactional element in this single, consolidated pleading in recognition of the fact that each element of the Settlement Agreement is an indispensable component of the whole and the Agreement provides that no element or elements shall be implemented unless they all are.² The Settlement Agreement is pro-competitive; the transactions encompassed within the Settlement Agreement collectively are of limited scope, and Board regulation of those transactions is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101 or to protect shippers from an abuse of market power.

¹ In Decision No. 89, 3 S.T.B. at 392, the Board "granted in part and denied in part" W&LE's responsive application in Finance Docket 33388 (Sub-No. 80), which among other things had sought trackage rights to Toledo and an extension of the Huron Dock lease. Because the Board in imposing the W&LE conditions did not specify, as between overhead haulage rights or trackage rights, the form of W&LE's access to Toledo or specify the term of the extension of the Huron Dock lease and the associated trackage rights, specific exemption of the actual transactions now agreed to by NS and W&LE with respect to those subjects is appropriate.

² The Settlement Agreement is attached hereto as Exhibit 1.

Reasons For Expedition

NS and W&LE respectfully request expedited consideration of this Petition and the embraced transactions. Expedited consideration is warranted for several reasons. The settlement will be discussed in greater detail below. Suffice it to say here that the Settlement Agreement resolves several significant and long-standing disputes between NS and W&LE, and expedited consideration and approval of the Settlement Agreement will permit the prompt realization of the benefits of those arrangements. Three elements of the Settlement Agreement (W&LE trackage rights to Toledo, extension of the Huron Dock lease, and extension of the associated trackage rights to the Dock) resolve issues that have been in dispute and unresolved since Decision No. 89 was served nearly six years ago. Additionally, the Huron Dock lease extension includes a downward adjustment in the applicable rent. Expedited approval of the Settlement Agreement will allow W&LE to benefit promptly from that provision, which reflects the parties' recognition of the changed economic circumstances affecting W&LE's use of the Dock. Another element of the Settlement Agreement is the sale to W&LE of NS' Toledo Pivot Bridge. Expedited approval of the Settlement Agreement will permit W&LE promptly to enjoy the operational flexibility that will result from owning and controlling the bridge, which although W&LE is its sole remaining user, NSR continues to staff and maintain. Moreover, another element of the Settlement Agreement, W&LE trackage rights between Berea, OH and "the Knob" in the Cleveland, OH area, resolves another longstanding dispute that, if unaddressed, could have required active Board intervention.

Finally, two procedural points pertaining to expedition: First, because the Settlement Agreement reflects a voluntary resolution of various issues between NS and W&LE, the parties believe this Petition is unlikely to prompt any significant opposition. Second, because this

Petition reflects a voluntarily arrived-at settlement agreement for the implementation of a condition imposed in the main Conrail Transaction proceeding, there is no reason to tie consideration of the Petition to the pending procedural schedule in the Conrail general oversight proceeding (Finance Docket No. 33388 (Sub-No. 91)). Assuming approval of this Settlement Agreement, W&LE will not be a further participant in the oversight proceeding. We submit there is therefore no reason to delay consideration of this Petition based on the timing of the Board's consideration of issues raised in the oversight proceeding, and we ask the Board not to do so.

Background

In Decision No. 89, the Board approved, with certain conditions, a Transaction whereby NS and CSX³ divided between them the use and operation of most of the rail lines and other assets of Consolidated Rail Corporation ("Conrail"). The conditions imposed by the Board included several for the benefit of W&LE. In pertinent part, the Board ordered:

As indicated in this decision, applicants must (a) grant W&LE overhead haulage or trackage rights access to Toledo, with connections to [the Ann Arbor Railroad] and other railroads at Toledo, (b) extend W&LE's lease at, and trackage rights access to, NS' Huron Dock on Lake Erie, and (c) grant W&LE overhead haulage or trackage rights to Lima, OH, with a connection to [the Indiana and Ohio Rail System] at Lima. Applicants and W&LE must attempt to negotiate a solution with regard to these matters; and, if negotiations are not fully successful, may submit separate proposals no later than October 21, 1998.

Decision No. 89, Ordering Paragraph No. 68, 3 S.T.B. at 392. In its decision, the Board explained that the conditions sought by W&LE were not sought to remedy any asserted reduction of competition but were sought "to offset the adverse financial impact of the transaction on W&LE." 3 S.T.B. at 309. Although the Board did not believe the adverse impacts would be as

³ CSX refers collectively to CSX Corporation and CSX Transportation, Inc.

great as W&LE projected, it said: “Nevertheless, we think that the combination of W&LE’s precarious financial condition and these rather heavy losses calls out for a remedy to preserve essential services and an important competitive presence here.” *Id.* at 310.⁴

After the Transaction was implemented on June 1, 1999, and in furtherance of Decision No. 89, NS provided W&LE with interim access to Toledo, OH via haulage and then by limited operational rights between Bellevue and Toledo, OH, and extended W&LE’s lease of the Huron Dock. Until recently, however, NS and W&LE had not reached an agreement providing specific terms for the Toledo access and the Huron Dock lease extension. As NS periodically reported to the Board in its oversight reports, the parties continued to negotiate those terms and did not believe it necessary to ask the Board to resolve the matter.

NS and W&LE have now reached agreement on the essential terms to govern the implementation of the conditions the Board imposed in Decision No. 89 for the benefit of W&LE that are relevant to NS.⁵

Those terms are set forth in a document styled “Settlement Term Sheet,” referred to herein as the Settlement Agreement. The Settlement Agreement establishes the essential terms of the parties’ agreement but recognizes that more detailed language and provisions will be contained in more definitive agreements and documents that have yet to be negotiated. While the parties do not expect that they will have difficulty reaching such agreements, in the event they are unable to agree on particular language or provisions, they have agreed in the Settlement Agreement to submit any such disputes to binding arbitration, and assuming Board approval of

⁴ In a later decision addressing various requests for reconsideration of Decision No. 89, the Board further explained that its intent in imposing conditions for the benefit of W&LE was “not to indemnify W&LE” against losses caused by the transaction but was “to give W&LE the opportunity to obtain additional traffic in aid of its ability to be able to provide essential services.” *CSX Corp. et al.—Control—Conrail, Inc. et al.*, 3 S.T.B. 764, 781-782 (1998).

the Settlement Agreement, they foresee no circumstance that would require further Board involvement in this matter.⁶

While the conditions imposed for W&LE's benefit (as relevant to NS) in Decision No. 89 pertain specifically to W&LE access to Toledo and extension of the Huron Dock lease, the negotiations between NS and W&LE to resolve those matters resulted in an agreement encompassing elements beyond the limited scope of the conditions called for in Decision No. 89. These other elements, however, are inextricably linked to the parties' resolution of the Toledo access and Huron Dock issues, and therefore, as noted above, each element of the Settlement Agreement is non-severable from each of the others.

In summary, the Settlement Agreement consists of the following major elements:⁷

1. **W&LE Trackage rights between Bellevue and Toledo.** The Settlement Agreement provides that NS will grant to W&LE trackage rights between Bellevue, OH and Toledo, OH along the same route that W&LE has been operating on an interim basis since June 1, 1999. Because portions of the line are heavily-used and have limited capacity, W&LE's operations over it have been limited to one train per day in both directions, and the Settlement Agreement continues that limitation. However, it provides that the one-train-per-day limitation will be lifted upon the completion of certain specified enhancements to the capacity of the line and Homestead Yard in Toledo. It also requires NS to provide W&LE with back-up haulage rights for overflow traffic. Further, the parties have agreed that W&LE's access to Toledo via trackage and haulage rights will terminate upon certain events, including the acquisition of control of W&LE by another rail carrier. This provision balances the respective positions of the parties regarding the

⁶ All such agreements and documents will be filed with the Board for its information within 10 days after execution. *See* 49 C.F.R. §1180.6(a)(7)(ii).

⁷ The descriptions of the elements of the Settlement Agreement in this Petition are generalizations; they should not be construed as altering or superseding the descriptions in the

continuing effect of the “essential services” rationale for the Board-imposed condition in light of future events or transactions involving W&LE.

2. **Extension of Huron Dock Lease.** The Settlement Agreement extends W&LE’s lease of NS’ Huron Dock for ten years from the date of STB approval of the Settlement Agreement. This element of the Settlement Agreement also modifies the amount of monthly rent to be paid by W&LE and permits NS, under certain circumstances, to use a portion of the dock capacity during the extended lease term.

3. **Extension of W&LE Trackage Rights to Huron Dock.** In addition to extending the term of the lease of the Huron Dock, the Settlement Agreement calls for a corresponding extension of the term of the existing W&LE trackage rights over NS between Bellevue and Huron Dock by which W&LE accesses the Dock.

4. **Purchase of Toledo Pivot Bridge.** The Settlement Agreement also provides that, upon STB approval, W&LE will purchase from NS the Toledo Pivot Bridge that W&LE has been using to access Toledo.

5. **W&LE trackage rights between Berea, OH and the Knob.** Under the Settlement Agreement, NS, with the consent of Pennsylvania Lines LLC (“PRR”), will grant to W&LE trackage rights between the Berea Crossovers at Berea, OH and “the Knob” in Cleveland, OH. These rights are to be connective with existing rights W&LE has for movement over NS’ line between “the Knob” and Campbell Road Yard and with rights anticipated to be granted to W&LE by CSXT between Wellington, OH and the Berea Crossovers in substitution of rights granted to predecessors of W&LE between Wellington and Cleveland, OH.

6. **NS trackage rights between Clairton, PA and Bellevue, OH.** W&LE will grant to NS trackage rights over W&LE between Clairton, PA and Bellevue, OH, with ingress and egress at

Settlement Agreement itself, which reflects the actual agreement of the parties.

Mingo Junction, Jewett, Bowerston and Orrville, OH, with NS having responsibility for the construction of any necessary connections between its lines and the lines over which trackage rights are granted.

7. **Maple Heights, OH.** W&LE will permit NS to create and use a second at-grade road crossing at milepost 8.67 on W&LE's Cleveland Subdivision line and the parties "will use best efforts" to negotiate a further agreement regarding operations in the Maple Heights area. Apart from the Board's approval of the Settlement Agreement in general, implementation of this element of the Agreement does not require specific Board approval or exemption, as it does not constitute a transaction subject to Board jurisdiction.

Finally, the Settlement Agreement provides that the Board's approval is an essential condition to the Settlement Agreement becoming effective. This is to provide needed certainty regarding the validity and enforceability of the Settlement Agreement and to ensure that neither the parties to this Petition nor any other party could later contend that the agreement was invalid or unenforceable. The Settlement Agreement thus provides:

Further, the parties acknowledge and agree that particular elements of this term sheet require approval of the STB. The parties agree to submit this term sheet to the STB for its concurrence. The parties agree that the failure of the STB to act in accordance with the requirements of this term sheet will result in the failure of the term sheet package. In such a case, none of this term sheet, any of the elements therein, or any statements made to the STB in submitting or progressing for approval the term sheet shall be used against either party in the future.

I. THE BOARD SHOULD APPROVE THE SETTLEMENT AGREEMENT

W&LE and NS believe the Settlement Agreement reasonably implements and satisfies the conditions the Board imposed in Decision No. 89 for the benefit of W&LE performable by NS. In agreeing to bind themselves to its terms, however, W&LE and NS need to be certain that neither they, the Board nor any other party might later contend or conclude that the Settlement

Agreement was not consistent with the conditions imposed in Decision No. 89 or did not reasonably implement its terms.

W&LE and NS therefore respectfully request the Board to approve the Settlement Agreement and find that the Settlement Agreement is consistent with and reasonably implements the conditions the Board imposed in Decision No. 89 with respect to NS for the benefit of W&LE. The Board has ample authority to do so under 49 U.S.C. 11327, which provides: "When cause exists, the Board may make appropriate orders supplemental to an order made in a proceeding under sections 11322 through 11326 of this title."

II. THE BOARD SHOULD ISSUE OR GRANT, AS APPROPRIATE, AN EXEMPTION FOR EACH COMPONENT TRANSACTION OF THE SETTLEMENT AGREEMENT.

In addition to requesting that the Board approve the Settlement Agreement and find that the terms of the Agreement reasonably satisfy the Toledo access and Huron Dock conditions of Decision No. 89, NS and W&LE also hereby provide notice of, or petition for, as the case may be, exemption of the various elements of the Settlement Agreement from the prior approval requirements of Title 49, Subtitle I, Part A of the United States Code.

Section 10502 provides that the Board shall exempt a transaction when it finds that application of Part A in whole or in part (1) is not necessary to carry out the transportation policy of 49 U.S.C. § 10101 and (2) either (a) the transaction is of limited scope or (b) application of the statutory provision(s) from which exemption is sought is not needed to protect shippers from the abuse of market power. Those conditions are met not only by each individual element of the Settlement Agreement, but by all of them combined as well. Regulation of the elements of the Settlement Agreement is not necessary to carry out the national rail transportation policy. Taken together, the elements of the Settlement Agreement, even considered as a single, non-severable

transaction, are limited in scope. Further, there is no need for Board regulation to protect shippers from the abuse of market power; indeed, the Board has previously found that the Toledo access and Huron Dock extension conditions imposed in Decision No. 89, which the Settlement Agreement was negotiated to implement, are consistent with the public interest. *See* 3 S.T.B. at 377. In the following sections, W&LE and NS notice, or petition for, exemption of the various elements of the Settlement Agreement that otherwise would require Board approval.

A. Notice of Exemption: W&LE's trackage rights between Bellevue and Toledo.

Finance Docket No. 33388 (Sub-No. 96)
*Wheeling & Lake Erie Railway Co. – Trackage Rights Exemption –
Norfolk Southern Railway Co. between Bellevue and Toledo, OH*

W&LE hereby gives notice of its invocation of the class exemption of 49 C.F.R. §1180.2(d)(7), for the element of the Settlement Agreement consisting of W&LE's acquisition of trackage rights over NS between Bellevue and Toledo, OH. The subject rights are along the same route over which W&LE has been operating since June 1, 1999, in satisfaction of the condition in Decision No. 89 requiring that W&LE be provided "overhead haulage or trackage rights access to Toledo, with connections to [the Ann Arbor Railroad] and other railroads at Toledo". Although the exemption normally would become effective seven days after the filing of this Notice with the Board, by agreement of the parties, the effectiveness of this Notice and consummation of the transaction are contingent upon STB approval of the Settlement Agreement and execution of the relevant definitive documentation.

Pursuant to 49 C.F.R. §1180.4(g), the parties provide the following information:

1. Brief summary of the proposed transaction (§1180.6(a)(1)(i)): As more fully set forth in the Settlement Agreement (Exhibit 1), NS will grant W&LE overhead trackage rights

between Bellevue (Yeomans), OH, at milepost T-54.7 and Toledo (Manhattan Jct.), OH, at milepost CS-1.30, along the same route that W&LE has been operating since June 1, 1999.

W&LE's trackage rights will be limited to one train per day in each direction; that one-train-per-day limitation will be lifted, however, upon the completion of certain enhancements to the capacity of the line and Homestead Yard in Toledo, as discussed in the Settlement Agreement. NS also will provide W&LE with back-up haulage rights for overflow traffic. W&LE's access to Toledo via trackage and haulage rights will terminate upon certain events, including the acquisition of control of W&LE by another rail carrier.

2. Names, addresses, and counsel of Applicants (§1180.6(a)(1)(i)):

Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, Ohio 44613
(330) 767-7290

Counsel: William C. Sippel, Esq.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510
(757) 629-2838

Counsel: Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, LLP
888 Seventeenth Street, NW
Suite 700
Washington, DC 20006
(202) 298-8660

3. Schedule for consummation (§1180.6(a)(1)(ii)):

The parties intend to consummate the transaction as promptly as practicable after accomplishment of both (1) STB approval of the Settlement Agreement as sought in this Petition and (2) execution of the relevant definitive documentation.

4. Purpose of the transaction (§1180.6(a)(1)(iii)):

The Bellevue-Toledo trackage rights are one non-severable element of a settlement agreement between NS and W&LE to implement certain conditions imposed by the Board for the benefit of W&LE in Decision No. 89.

5. List of states (§1180.6(a)(5)):

W&LE presently operates and/or owns property in each of the following states:

Maryland
Ohio
Pennsylvania
West Virginia

NS presently operates and/or owns property in each of the following states (and other jurisdictions):

Alabama
Delaware
Florida
Georgia
Illinois
Indiana
Iowa
Kentucky
Louisiana
Maryland
Michigan
Mississippi
New Jersey
New York
North Carolina
Ohio

Pennsylvania
South Carolina
Tennessee
Virginia
West Virginia
District of Columbia
Ontario, Canada

6. Maps (§1180.6(a)(6)):

A map indicating the lines of W&LE is attached hereto as Exhibit 2. A map showing the W&LE trackage rights between Bellevue and Toledo is attached as Exhibit 3.

7. Agreement (§1180.6(a)(7)(ii)):

The Settlement Agreement is attached hereto as Exhibit 1. Pursuant to §1180.6(a)(7)(ii), the parties will submit an executed copy of the definitive Bellevue-Toledo trackage rights agreement within 10 days after execution.

8. Labor protection (§1180.4(g)(1)(i)):

Under 49 U.S.C. § 10502(g), the Board may not exempt a rail carrier from otherwise applicable employee protection obligations. The applicable level of labor protection for this transaction is that specified in *Norfolk and Western Ry. Co. - Trackage Rights - BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc. - Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n. v. United States*, 675 F.2d 1248 (D.C. Cir. 1982).

9. Caption Summary (§1180.4(g)(2)(i)):

A caption summary is attached hereto as Exhibit 4.

B. Notice of Exemption: Extension of the Huron Dock lease.

Finance Docket No. 32516 (Sub-No. 1)
*Wheeling & Lake Erie Railway Co. – Lease and Operation Exemption – Norfolk and Western
Railway Co.'s Dock at Huron, OH*

W&LE hereby gives notice of its invocation of the class exemption of 49 C.F.R.

§1180.2(d)(4), for the element of the Settlement Agreement consisting of the extension of the term of W&LE's lease of NS' Huron Dock, reflecting compliance with the Board's condition in Decision No. 89 requiring "exten[sion of] W&LE's lease at . . . NS' Huron Dock on Lake Erie." 3 S.T.B. at 392. Although the exemption would normally become effective seven days after the filing of this Notice with the Board, by agreement of the parties, effectiveness of this Notice and consummation of the transaction are contingent upon STB approval of the Settlement Agreement and execution of the relevant definitive documentation.

Pursuant to 49 C.F.R. §1180.4(g), the parties provide the following information:

1. Brief summary of the proposed transaction (§1180.6(a)(1)(i)): The original Huron Dock lease, dated June 24, 1994, was exempted from the requirements of then-49 U.S.C. §11343-45 pursuant to the decision of the Interstate Commerce Commission in *Wheeling & Lake Erie Ry. Co.—Lease and Operation Exemption—Norfolk and Western Ry. Co.'s Dock at Huron, OH*, ICC Finance Docket No. 32516 (ICC served June 27, 1994). The original term of the lease was 50 months, with a W&LE option for extension for an additional two years but in no event beyond June 30, 2000.

In Decision No. 89 the STB directed applicants to, among other things, "extend W&LE's lease at, and trackage rights access to, NS' Huron Dock on Lake Erie." Since June 1, 1999, the Conrail Split Date, NS and W&LE have treated the Huron Dock lease and associated trackage

rights as *de facto* extended, pursuant to the Board's order, pending negotiation of a settlement to implement the Board's conditions, which has now been achieved in the Settlement Agreement.

This element of the Settlement Agreement provides for extending the term of the Huron Dock lease for 10 years from the date of STB approval of the Settlement Agreement. As set forth in the Settlement Agreement, the only other modifications to the existing lease agreement are adjustments to the rent and a provision stating that, if needed and available, a to-be-negotiated portion of the Dock capacity may be used by NS, with a commensurate reduction in W&LE's rent.

2. Names, addresses, and counsel of Applicants (§1180.6(a)(1)(i)):

See Section II.A.2., above at page 13.

3. Schedule for consummation (§1180.6(a)(1)(ii)):

The parties intend to consummate the transaction as promptly as practicable after accomplishment of both (1) STB approval of the Settlement Agreement as sought in this Petition and (2) execution of the relevant definitive documentation.

4. Purpose of the transaction (§1180.6(a)(1)(iii)):

The extension of the Huron Dock lease is one non-severable element of a settlement agreement between NS and W&LE to implement certain conditions imposed by the Board for the benefit of W&LE in Decision No. 89.

5. List of states (§1180.6(a)(5)):

See Section II.A.5., above at pages 14-15.

6. Maps (§1180.6(a)(6)):

A map indicating the lines of W&LE is attached hereto as Exhibit 2. A map identifying the location of the Huron Dock and the leased areas of the Dock was filed in Finance Docket No.

32516 and is attached as Exhibit 5.

7. Agreement (§1180.6(a)(7)(ii)):

The Settlement Agreement is attached hereto as Exhibit 1. Pursuant to §1180.6(a)(7)(ii), the parties will submit an executed copy of the definitive lease extension agreement within 10 days after execution.

8. Labor protection (§1180.4(g)(1)(i)):

Under 49 U.S.C. § 10502(g), the Board may not exempt a rail carrier from otherwise applicable employee protection obligations. The applicable level of labor protection for this transaction is that specified in *Mendocino Coast Ry., Inc. - Lease and Operate*, 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc. - Lease and Operate*, 360 I.C.C. 653 (1980).

C. Notice of Exemption: Extension of W&LE trackage rights to Huron Dock.

Finance Docket No. 32525 (Sub-No. 1)
Wheeling & Lake Erie Ry. Co.—Trackage Rights Exemption—Norfolk and Western Railway

W&LE hereby gives notice of its invocation of the class exemption of 49 C.F.R. §1180.2(d)(4), for the element of the Settlement Agreement consisting of the extension of the term of the trackage rights of W&LE over NS permitting W&LE to reach Huron Dock, reflecting compliance with the Board's condition in Decision No. 89 requiring "exten[sion of] W&LE's . . . trackage rights access to, NS' Huron Dock on Lake Erie." 3 S.T.B. at 392. Although the exemption normally would become effective seven days after the filing of this Notice with the Board, by agreement of the parties, the effectiveness of this Notice and consummation of the transaction are contingent upon STB approval of the Settlement Agreement and execution of the relevant definitive documentation.

Pursuant to 49 C.F.R. §1180.4(g), the parties provide the following information:

1. Brief summary of the proposed transaction (§1180.6(a)(1)(i)): In an agreement dated July 4, 1994, NS granted overhead trackage rights to W&LE, limited to one train per day in each direction, for the purpose of moving certain iron ore traffic through Huron Dock. The subject trackage over which those rights were granted was the NS line between approximately milepost B242 at Bellevue, OH and approximately milepost B229 at Berlin Heights, OH, and between approximately milepost B232 at Shinrock, OH (on the Bellevue-Berlin Heights segment) and approximately milepost HU12.2 at the Huron Dock connection in Huron, OH. The July 4, 1994 trackage rights agreement included a 5-year term, with a W&LE right of renewal for an additional 5-year term subject to negotiated adjustment of other contract terms and conditions. The trackage rights were exempted in *Wheeling & Lake Erie Ry. Co.—Trackage Rights Exemption—Norfolk and Western Ry.*, ICC Finance Docket No. 32525 (ICC served July 15, 1994).

In Decision No. 89 the STB directed applicants to, among other things, “extend W&LE’s lease at, and trackage rights access to, NS’ Huron Dock on Lake Erie.” 3 S.T.B. at 392. Since June 1, 1999, the Conrail Split Date, NS and W&LE have treated the Huron Dock lease and associated trackage rights as *de facto* extended, pursuant to the Board’s order, pending negotiation of a settlement to implement the Board’s conditions, which has now been achieved in the Settlement Agreement.

This element of the Settlement Agreement provides for extending the term of the aforementioned trackage rights for 10 years from the date of STB approval of the Settlement Agreement. The Settlement Agreement provides for no other changes to the terms of the July 4, 1994 trackage rights agreement.

2. Names, addresses, and counsel of Applicants (§1180.6(a)(1)(i)):

See Section II.A.2., above at page 13.

3. Schedule for consummation (§1180.6(a)(1)(ii)):

The parties intend to consummate the transaction as promptly as practicable after accomplishment of both (1) STB approval of the Settlement Agreement as sought in this Petition and (2) execution of the relevant definitive documentation.

4. Purpose of the transaction (§1180.6(a)(1)(iii)):

The extension of the subject trackage rights is one non-severable element of a settlement agreement between NS and W&LE to implement certain conditions imposed by the Board for the benefit of W&LE in Decision No. 89.

5. List of states (§1180.6(a)(5)):

See Section II.A.5., above at pages 14-15.

6. Maps (§1180.6(a)(6)):

A map indicating the lines of W&LE is attached hereto as Exhibit 2. A map showing the subject trackage rights was filed in Finance Docket No. 32525 and is attached as Exhibit 6.

7. Agreement (§1180.6(a)(7)(ii)):

The Settlement Agreement is attached hereto as Exhibit 1. Pursuant to §1180.6(a)(7)(ii), the parties will submit an executed copy of the definitive trackage rights extension agreement within 10 days after execution.

8. Labor protection (§1180.4(g)(1)(i)):

Under 49 U.S.C. § 10502(g), the Board may not exempt a rail carrier from otherwise applicable employee protection obligations. The applicable level of labor protection for this transaction is that specified in *Norfolk and Western Ry. Co. - Trackage Rights - BN*, 354 I.C.C.

605 (1978), as modified in *Mendocino Coast Ry., Inc. - Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n. v. United States*, 675 F.2d 1248 (D.C. Cir. 1982).

9. Caption Summary (§1180.4(g)(2)(i)).

A caption summary is attached as Exhibit 7.

**D. Notice of Exemption: W&LE trackage rights between
Berea, OH and Knob, OH.**

Finance Docket No. 33388 (Sub-No. 97)
*Wheeling & Lake Erie Railway Co. – Trackage Rights Exemption –
Norfolk Southern Railway Co. in Cleveland, OH.*

W&LE hereby gives notice of its invocation of the class exemption of 49 C.F.R. §1180.2(d)(7), for the element of the Settlement Agreement consisting of W&LE's acquisition of trackage rights over NS in the Cleveland, OH area between Berea, OH and “The Knob,” OH. Although the exemption normally would become effective seven days after the filing of this Notice with the Board, by agreement of the parties, the effectiveness of this Notice and consummation of the transaction are contingent upon STB approval of the Settlement Agreement and execution of the relevant definitive documentation.

Pursuant to 49 C.F.R. §1180.4(g), the parties provide the following information:

1. Brief summary of the proposed transaction (§1180.6(a)(1)(i)): NS, with the consent of PRR, will grant W&LE trackage rights near Cleveland, OH between Berea, OH and “the Knob,” OH. Specifically, the subject trackage is between Berea, OH at milepost CD-194.2 and the Knob, OH at milepost GZ-488.13. The trackage rights are bridge rights only between the endpoints, and only for a prior or subsequent move to or from Wellington, OH via the

“Wellington-Berea Route,” as that term is used in a March 12, 2004 draft trackage rights agreement (attached hereto as Exhibit 8). The Settlement Agreement provides that the granted trackage rights will be “based upon” that March 12, 2004 draft agreement, except that the agreement will state that the 25-year term relates solely to the terms and conditions of the agreement, and not the underlying right of movement itself, which shall be governed by the principles articulated in *Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134 (1946). The trackage rights will be connective with existing rights W&LE has for movement over NS' line between the Knob and Campbell Road Yard and rights that W&LE has or will obtain over CSXT's line between Wellington and Berea, OH.⁸

2. Names, addresses, and counsel of Applicants (§1180.6(a)(1)(i)):

See Section II.A.2., above at page 13.

3. Schedule for consummation (§1180.6(a)(1)(ii)):

The parties intend to consummate the transaction as promptly as practicable after accomplishment of both (1) STB approval of the Settlement Agreement as sought in this Petition and (2) execution of the relevant definitive documentation.

4. Purpose of the transaction (§1180.6(a)(1)(iii)):

The Berea-Knob trackage rights are one non-severable element of a settlement agreement between NS and W&LE to implement certain conditions imposed by the Board for the benefit of W&LE in Decision No. 89.

5. List of states (§1180.6(a)(5)):

See Section II.A.5., above at pages 14-15.

⁸ Should W&LE acquire any new trackage rights over CSXT's line, W&LE will seek appropriate authority or exemption therefrom for such rights at that time.

6. Maps (§1180.6(a)(6)):

A map indicating the lines of W&LE is attached hereto as Exhibit 2. A map showing the W&LE trackage rights between Berea and the Knob is attached as Exhibit 9.

7. Agreement (§1180.6(a)(7)(ii)):

The Settlement Agreement is attached hereto as Exhibit 1. The March 12, 2004 draft trackage rights agreement referred to in the Settlement Agreement is attached hereto as Exhibit

6. Pursuant to §1180.6(a)(7)(ii), the parties will submit an executed copy of the definitive Berea-Knob trackage rights agreement within 10 days after execution.

8. Labor protection (§1180.4(g)(1)(i)):

Under 49 U.S.C. § 10502(g), the Board may not exempt a rail carrier from otherwise applicable employee protection obligations. The applicable level of labor protection for this transaction is that specified in *Norfolk and Western Ry. Co. - Trackage Rights - BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc. - Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n. v. United States*, 675 F.2d 1248 (D.C. Cir. 1982).

9. Caption Summary (§1180.4(g)(2)(i)):

A caption summary is attached hereto as Exhibit 10.

E. Notice of Exemption: NS' trackage rights between Clairton, PA and Bellevue, OH.

Finance Docket No. 33388 (Sub-No. 98)
*Norfolk Southern Railway Co. – Trackage Rights Exemption –
Wheeling & Lake Erie Railway Co. Between Clairton, Pa and Bellevue, OH*

NS hereby gives notice of its invocation of the class exemption of 49 C.F.R. §1180.2(d)(7), for the element of the Settlement Agreement consisting of NS' acquisition of

trackage rights over W&LE between Clairton, PA and Bellevue, OH. Although the exemption normally would become effective seven days after the filing of this Notice with the Board, by agreement of the parties, the effectiveness of this notice and consummation of the transaction is contingent upon STB approval of the Settlement Agreement and execution of the relevant definitive documentation.

Pursuant to 49 C.F.R. §1180.4(g), the parties provide the following information:

1. Brief summary of the proposed transaction (§1180.6(a)(1)(i)): W&LE will grant NS overhead trackage rights between Milepost 5.2 at Clairton, PA and Milepost H53.7 at Bellevue, OH. NS shall have rights of ingress and egress at Mingo Junction, OH, Jewett, OH, Bowerston, OH and Orrville, OH, to the extent permitted by existing connections or such future connections as may be built and maintained by NS at NS' expense. W&LE will use its best efforts to permit NS to obtain the trackage rights between Jewett and Bowerston, reflecting the fact that W&LE's rights over that segment are themselves trackage rights over the Ohio Central Railroad. The agreement with respect to NS' Clairton-Bellevue trackage rights will contain the same standard terms and conditions as found in the March 12, 2004 draft agreement for W&LE trackage rights between Berea and the Knob, with no minimum payment. Any new connections required with reference to these NS trackage rights, including new connections that will be required at Mingo Junction and Orrville, will be at NS' expense.

2. Names, addresses, and counsel of Applicants (§1180.6(a)(1)(i)):

See Section II.A.2., above at page 13.

3. Schedule for consummation (§1180.6(a)(1)(ii)):

The parties intend to consummate the transaction as promptly as practicable after accomplishment of both (1) STB approval of the Settlement Agreement as sought in this Petition

and (2) execution of the relevant definitive documentation.

4. Purpose of the transaction (§1180.6(a)(1)(iii)):

The NS trackage rights between Clairton and Bellevue are one non-severable element of a settlement agreement between NS and W&LE to implement certain conditions imposed by the Board for the benefit of W&LE in Decision No. 89.

5. List of states (§1180.6(a)(5)):

See Section II.A.5., above at page 14-15.

6. Maps (§1180.6(a)(6)):

A map indicating the lines of W&LE and NS is attached hereto as Exhibit 2. A map detailing the NS trackage rights between Clairton, PA and Bellevue, OH is attached as Exhibit 11.

7. Agreement (§1180.6(a)(7)(ii)):

The Settlement Agreement is attached hereto as Exhibit 1. Pursuant to §1180.6(a)(7)(ii), the parties will submit an executed copy of the definitive Clairton-Bellevue trackage rights agreement within 10 days after execution.

8. Labor protection (§1180.4(g)(1)(i)):

Under 49 U.S.C. § 10502(g), the Board may not exempt a rail carrier from otherwise applicable employee protection obligations. The applicable level of labor protection for this transaction is that specified in *Norfolk and Western Ry. Co. - Trackage Rights - BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc. - Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n. v. United States*, 675 F.2d 1248 (D.C. Cir. 1982).

9. Caption Summary (§1180.4(g)(2)(i)):

A caption summary is attached hereto as Exhibit 12.

F. Petition For Exemption: W&LE's purchase and operation of the Toledo Pivot Bridge.

Finance Docket No 33388 (Sub-No. 99)
*Wheeling & Lake Erie Railway Co. – Petition for Exemption –
Purchase of the Toledo Pivot Bridge – Norfolk Southern Railway Co.*

W&LE hereby petitions the Board pursuant to 49 U.S.C. §10502 for an exemption from the requirements of 49 U.S.C. § 10902 for the element of the Settlement Agreement providing for the acquisition by W&LE of NS' Toledo Pivot Bridge. The bridge, also sometimes referred to as the Maumee River Bridge, is a railroad swing bridge spanning the Maumee River in Toledo, Ohio on the NS rail line over which W&LE has been exercising (and under the Settlement Agreement will continue to exercise) trackage rights between Bellevue, OH and Toledo.

In Decision No. 89 the Board granted NS authority to discontinue operations over the bridge. *See* 3 S.T.B. at 392, Ordering Paragraph 71 (reference to STB Docket No. AB-290 (Sub-No. 197X)), and NS exercised that authority during the course of the Conrail oversight proceeding. *See* Finance Docket No. 33388 (Sub-No. 91) [General Oversight], NS-5, Second General Oversight Report of Norfolk Southern Corporation and Norfolk Southern Ry. Co. at 30 (filed June 1, 2001). Thus, for several years, W&LE has been the sole user of the bridge, while NS, as owner of the bridge, has continued to maintain the bridge and provide a bridge tender for operating it. These circumstances led NS and W&LE to explore, from the very start of negotiations, W&LE's purchase of the bridge as part of a comprehensive settlement between the parties. *See* Finance Docket No. 33388 (Sub-No. 91) [General Oversight], NS-8, Third General

Oversight Report of Norfolk Southern Corporation and Norfolk Southern Ry. Co. at 36 (filed June 3, 2002).

This element of the Settlement Agreement provides that, immediately upon the effectiveness of the requested exemption, W&LE will purchase the bridge for \$1.00. Environmental liability as of the sale date will be allocated to NS (as owner) or Pennsylvania Lines LLC (as operator) and to W&LE to the extent provided in existing access agreements; such liability after the date of the sale will be allocated to W&LE as owner/operator. NS will use the bridge thereafter only upon a mutually agreeable understanding of the parties.

The Board should grant the requested exemption with respect to the bridge purchase. Board approval of the transaction is not necessary to carry out the national rail transportation policy. Indeed, granting the requested exemption will facilitate the transfer of ownership and operation of the bridge to its sole current user, thus fostering the development and continuation of a sound rail transportation system to meet the needs of the public (§10101(4)), sound economic conditions in transportation (§10101(5)), and the efficient management of the property (§10101(9)). Further, this element of the overall Settlement Agreement – the sale of a single bridge structure – is limited in scope, and application of the full statutory application process is not needed to protect shippers from an abuse of market power.

In addition to the foregoing, the parties provide the following information:

Names, addresses, and counsel of Applicants (§1180.6(a)(1)(i)):

See Section II.A.2., above at page 13.

Schedule for consummation (§1180.6(a)(1)(ii)):

The parties intend to consummate the transaction as promptly as practicable after accomplishment of both (1) STB approval of the Settlement Agreement as sought in this Petition

and (2) execution of the relevant definitive documentation.

Purpose of the transaction (§1180.6(a)(1)(iii)):

W&LE's purchase of the Toledo Pivot Bridge is one non-severable element of a settlement agreement between NS and W&LE to implement certain conditions imposed by the Board for the benefit of W&LE in Decision No. 89.

List of states (§1180.6(a)(5)):

See Section II.A.5., above at pages 14-15.

Maps (§1180.6(a)(6)):

A map indicating the lines of W&LE is attached hereto as Exhibit 2. The location of the Toledo Pivot Bridge is shown on the map attached as Exhibit 3.

Agreement (§1180.6(a)(7)(ii)):

The Settlement Agreement is attached hereto as Exhibit 1. Pursuant to §1180.6(a)(7)(ii), the parties will submit an executed copy of the definitive bridge sale agreement within 10 days after execution.

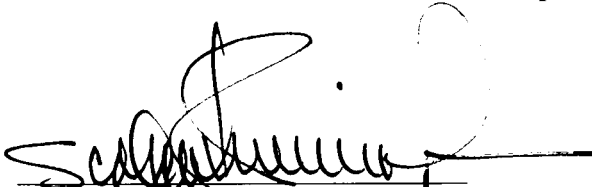
Labor protection (§1180.4(g)(1)(i)):

Under 49 U.S.C. § 10502(g), the Board may not exempt a rail carrier from otherwise applicable employee protection obligations. The applicable level of labor protection for this transaction is that specified by 49 U.S.C. § 10902(d) and *Wisconsin Central Ltd. -- Acq. Exem. -- Union Pacific R. Co.*, 2 S.T.B. 218 (1997), *rev'd in part sub nom. Association of Amer. Railroads v. STB*, 162 F.3d 101 (D.C. Cir. 1998).

CONCLUSION

The parties respectfully request that the Board (1) approve the Settlement Agreement and find that the Settlement Agreement is consistent with and reasonably implements the conditions the Board imposed in Decision No. 89 and (2) issue the notices of, or, with respect to the Toledo Pivot Bridge purchase, grant the petition for, exemption of each of the elements of the Settlement Agreement otherwise subject to Board approval.

Respectfully submitted,

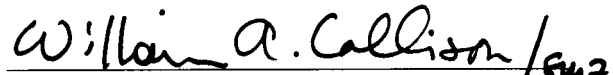


Richard A. Allen
Scott M. Zimmerman
ZUCKERT, SCOUTT & RASENBERGER,
LLP

888 Seventeenth Street, NW
Suite 700
Washington, DC 20006
(202) 298-8660

*Counsel for Norfolk Southern Corporation
and Norfolk Southern Railway Company*

August 6, 2004



William A. Callison
Vice President Law & Government Affairs
WHEELING & LAKE ERIE RAILWAY
COMPANY

100 East First Street
Brewster, Ohio 44613
(330) 767-3401

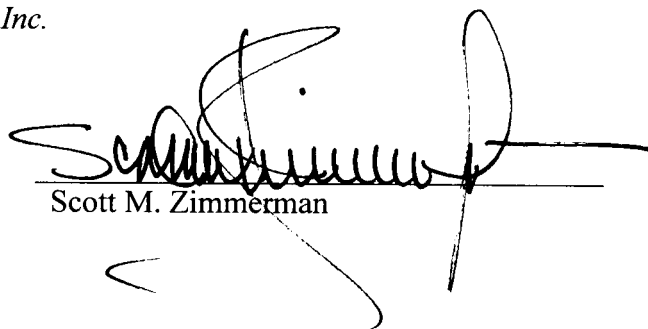
William C. Sippel
FLETCHER & SIPPEL LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
(312) 252-1500

*Counsel for Wheeling & Lake Erie Railway
Company*

CERTIFICATE OF SERVICE

I certify that on August 6, 2004, a true copy of the foregoing "Joint Petition of Norfolk Southern Corporation and Norfolk Southern Railway Company and Wheeling & Lake Erie Railway Company to Approve Settlement Agreement and To Exempt Embraced Transactions" was served by hand delivery upon:

Mary Gabrielle Sprague, Esq.
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004
*Counsel for CSX Corporation and
CSX Transportation, Inc.*



Scott M. Zimmerman

Norfolk Southern Railway Company – Wheeling & Lake Erie Railway Company

SETTLEMENT TERM SHEET

This settlement term sheet resolves certain issues raised with regard to the implementation of conditions imposed on the Conrail Transaction, specifically as set forth in Ordering Paragraph 68 of Decision No. 89 in Finance Docket No. 33388, and as subsequently clarified by the STB. This settlement, together with earlier actions that W&LE has taken with CSX (with regard, for example, to the grant of overhead haulage or trackage rights to Lima, OH, with a connection to IORY), will, in the opinion of both Norfolk Southern and W&LE, result in a satisfactory result consistent with the STB Ordering Paragraph 68 (as clarified).

The parties acknowledge and agree that the following elements of the term sheet are generalizations, which need to be implemented through definitive documentation. They also acknowledge and agree that the term sheet as a whole is a package, and that no element may be implemented without the remaining elements. The parties intend to be bound by these terms set forth herein. If, for any reason, the parties cannot agree on a specific provision in any of the definitive documentation for any element of this term sheet, the parties agree to submit the matter for determination by an independent third party through a baseball-type of arbitration, as set forth below. In all cases, except as specified below, the parties intend for standard terms and conditions to apply.

Further, the parties acknowledge and agree that particular elements of this term sheet require approval of the STB. The parties agree to submit this term sheet to the STB for its concurrence. The parties agree that the failure of the STB to act in accordance with the requirements of this term sheet will result in the failure of the term sheet package. In such a case, none of this term sheet, any of the elements therein, or any statements made to the STB in submitting or progressing for approval the term sheet shall be used against either party in the future. The parties acknowledge that several matters in this term sheet, once reduced to agreements, will need to be submitted to the Board, including but not limited to the Cleveland Trackage Rights and the transfer of the Toledo Pivot Bridge.

Bellevue - Toledo trackage and haulage rights:

Norfolk Southern will grant to W&LE trackage rights between Bellevue and Toledo, OH, along the route that W&LE now operates pursuant to a temporary agreement dated as of October 18, 1999. These trackage rights will be limited to one train per day per direction, without restriction as to commodity, until the capacity improvements set forth below are satisfied. As is the case under the temporary agreement, haulage for other carriers will not be permitted. The liability and compensation provisions set forth in the temporary agreement will be integrated into the trackage rights agreement unless the parties mutually agree otherwise.

Norfolk Southern and W&LE agree to expand capacity at Bellevue and between

Bellevue and Oak Harbor, as well as a possible reasonable improvements necessary for W&LE to effectively use the main track through Homestead Yard. The specific capacity expansion projects will be listed in the definitive agreements, but at a minimum the list will include approximately 75% double track and improved signaling along the mainline between Bellevue and Oak Harbor, and a reconstruction of the Bellevue mini-plant, and closing related crossings and construction of overpasses. Funding for the project in part will come from Norfolk Southern funds (10% of the project cost), with the balance from W&LE and public funding (no requirement for any specific amount or percentage to come from W&LE). No Norfolk Southern funds need to be expended for this project unless the entirety of the W&LE/public funding component is committed and available. Upon completion of the construction of all of the items on the capacity expansion project list, the one train per day per direction limitation on the W&LE trackage rights between Bellevue and Toledo, OH shall be lifted. Norfolk Southern and W&LE to work together to solicit the required public funding. Should Norfolk Southern complete any, or any part of, the projects found on the capacity expansion project list, then the funding that Norfolk Southern provided (not including public funding) shall be counted towards its 10% contribution.

Norfolk Southern shall provide to W&LE backup haulage for overflow traffic with no service guarantee. Norfolk Southern will use its best efforts to meet reasonable service levels.”

The access rights between Bellevue and Toledo were granted by the STB on the basis of an essential services argument. Norfolk Southern and W&LE may disagree as to the long-term implication of that, but as part and parcel of the settlement that they have reached with regard to implementation of Decision No. 89’s ordering paragraph No. 68, Norfolk Southern and W&LE agree that the access rights (trackage rights and the back-up haulage) are to be eliminated upon:

1. the acquisition of control of W&LE by another rail carrier or a Carrier Interest, as hereinafter defined;
2. the joint acquisition of control of W&LE and any other rail carrier, including but not limited to the entering into by W&LE of a partnership, a limited liability company, or any other business arrangement of like kind,
3. the acquisition of any of W&LE’s limited or general partnership interests, or
4. the acquisition of all or substantially all of W&LE or its business or assets by a “Carrier Interest,” which is defined as another rail carrier, or an officer(s), partner(s), manager(s) or person or party of or that controls or is controlled by another rail carrier.

Notwithstanding the foregoing, Norfolk Southern and W&LE agree that: (a) W&LE may receive an infusion of capital (with an associated issuance of equity interest in the W&LE) provided that infusion and the associated issuance of equity interest does not result in a change of control resulting in another Carrier Interest controlling, or in joint

control with, W&LE, and (b) W&LE may purchase a Class III rail carrier or all or substantially all of the assets of a Class III rail carrier,

Toledo Pivot Bridge

W&LE will purchase the Toledo Pivot Bridge immediately upon the approval by the STB of the transfer of the bridge. Compensation to be paid will be \$1.00. Environmental provisions will provide that any environmental liability relating to the bridge existing as of the date of the sale will be allocated to Norfolk Southern or PRR, as owner and/or operator (and to W&LE to the extent that existing access agreements would provide for such allocation) and any environmental liability relating to the bridge existing after the date of the sale will be allocated to W&LE, as owner and operator. Norfolk Southern will use the bridge only upon a mutually agreeable understanding.

Cleveland Trackage Rights – between Berea and the Knob

Norfolk Southern will grant to W&LE trackage rights, based upon the Berea – Knob agreement transmitted on March 12, 2004, except that the agreement will state that the 25-year term relates solely to the agreement's terms and conditions, and not the underlying right of movement. The agreement will state that the underlying right of movement, the trackage rights itself, will be governed by the principles found in Tex Mex. Further, the agreement will provide that the trackage rights are connective with any rights the W&LE has for movement between the Knob and Campbell Road Yard.

Maple Heights

Upon execution of this term sheet, W&LE will grant to Norfolk Southern an immediate right to create and use a second road at-grade crossing over the W&LE line at 8.67, under an executed agreement specifying the same terms and conditions as found in the agreement governing the road at-grade crossing at 9.03, in order to access a new trailer parking area.

Norfolk Southern and W&LE will use their respective best efforts to negotiate broader deal involving the Maple Heights area. Two options, both involving Norfolk Southern lease of freight rights on Randall Secondary are currently being evaluated:

1. The short line brings the traffic to Norfolk Southern in the vicinity of the Maple Heights, and handles W&LE traffic to and from W&LE as at the present time. Under this scenario, the Erie Crossing diamonds could be removed at least temporarily. This option does not provide for W&LE operation on the Norfolk Southern Cleveland Line main track.

2. The short line brings the traffic and W&LE switch traffic to Norfolk Southern at Von Willer Yard. Norfolk Southern will provide haulage to W&LE between Von Willer and an interchange location to be determined, south of Maple Heights intermodal terminal. W&LE's property at Maple Heights may be made available to

Norfolk Southern at a price to be agreed upon. The Erie Crossing diamonds would remain in place. This option does not provide for W&LE operation on the Norfolk Southern Cleveland Line main track.

Clairton, PA – Bellevue, OH trackage Rights

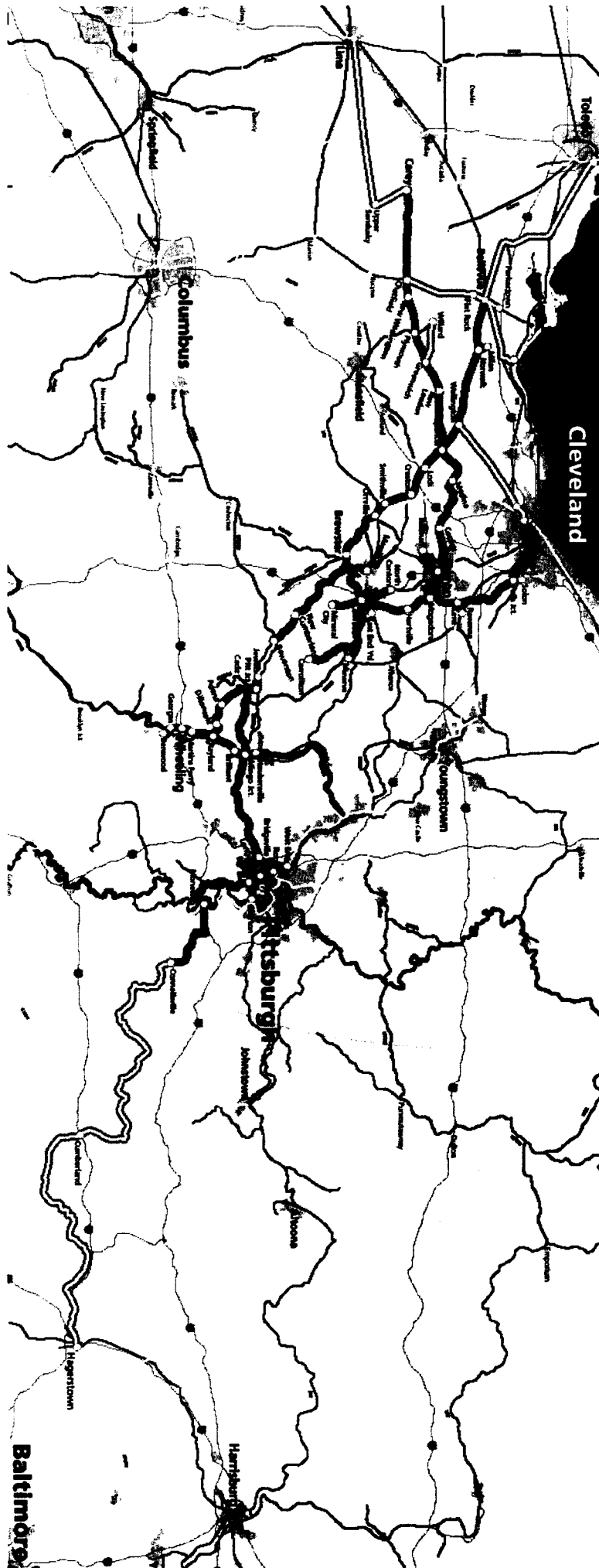
W&LE will grant to Norfolk Southern overhead trackage rights over W&LE between Clairton, PA and Bellevue, with rights of ingress and egress at Mingo Jct., Jewett, Bowerston and Orrville, OH, to the extent permitted. With reference to the W&LE between Jewett and Bowerston, W&LE will use its best efforts to permit Norfolk Southern to obtain the trackage rights described herein. The agreement will contain standard terms and conditions as defined in the Cleveland Berea – Knob trackage rights, with no minimum payment. Norfolk Southern would be responsible for the cost of any new connections needed, including new connections which will be required at Mingo Jct. and Orrville.

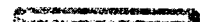
Huron Dock

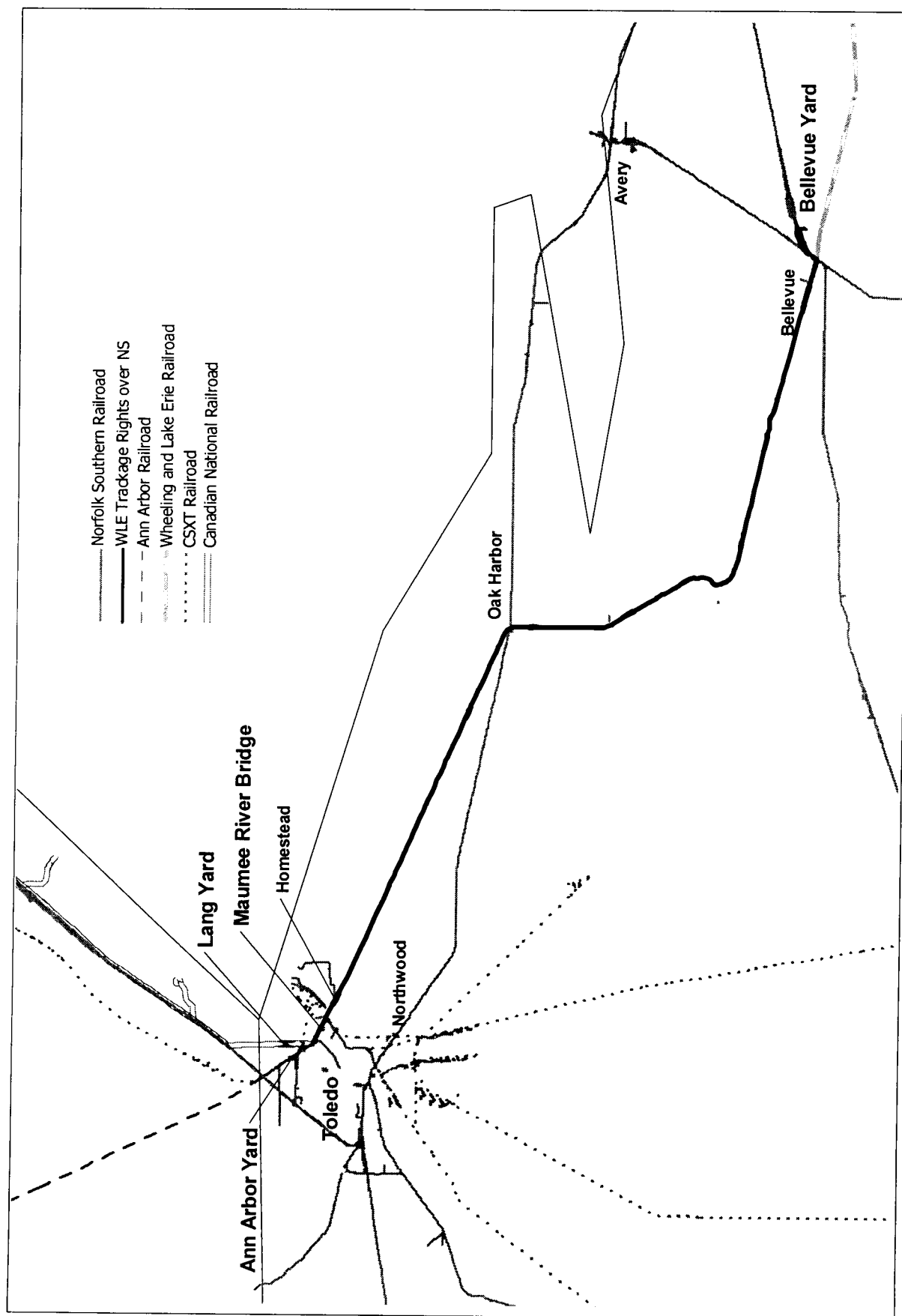
In consideration for the other elements of this Settlement Agreement, the existing W&LE lease of the Huron Dock is extended for 10 years from the date of STB approval of this settlement, with no other modification, except as follows: First, the rent at Huron Dock goes immediately to \$15,000 per month, and at such time as the Bellevue-Toledo capacity expansion is completed and W&LE's trackage rights become unlimited, the Huron Dock lease rental shall become \$10,000 per month. Second, during the term of this lease expansion, should Norfolk Southern need dock capacity and should such capacity become available at Huron, Norfolk Southern may utilize a portion of the dock capacity to be agreed upon, with a commensurate reduction in rental paid by W&LE. The existing trackage rights between Bellevue and Huron Dock shall be extended to a term coextensive with the extension of the Huron Dock lease term, and otherwise remain unchanged.

Baseball Arbitration Provisions

[to be inserted]



 Wheeling & Lake Erie Railway
 Trackage Rights
CSXT
 Norfolk Southern
 Other Railroads
 Interstate Highways
 Canadian Pacific  Neomodal
 RiverDock
 Canadian National



CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 33388 (Sub-No. 96)

WHEELING & LAKE ERIE RAILWAY CO. – TRACKAGE RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY CO. BETWEEN BELLEVUE AND TOLEDO,
OH

Norfolk Southern Railway Company (“NS”) will agree to grant Wheeling & Lake Erie Railway Company (“W&LE”) overhead trackage rights between Bellevue (Yeomans), OH, at milepost T-54.7 and Toledo (Manhattan Jct.), OH, at milepost CS-1.30. The trackage rights will become effective when the Surface Transportation Board grants a petition by NS and W&LE in Finance Docket No. 33388 (Sub-. No. 95) to approve a settlement agreement and when NS and W&LE execute a trackage rights agreement.

This notice is filed under 49 C.F. R. §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.

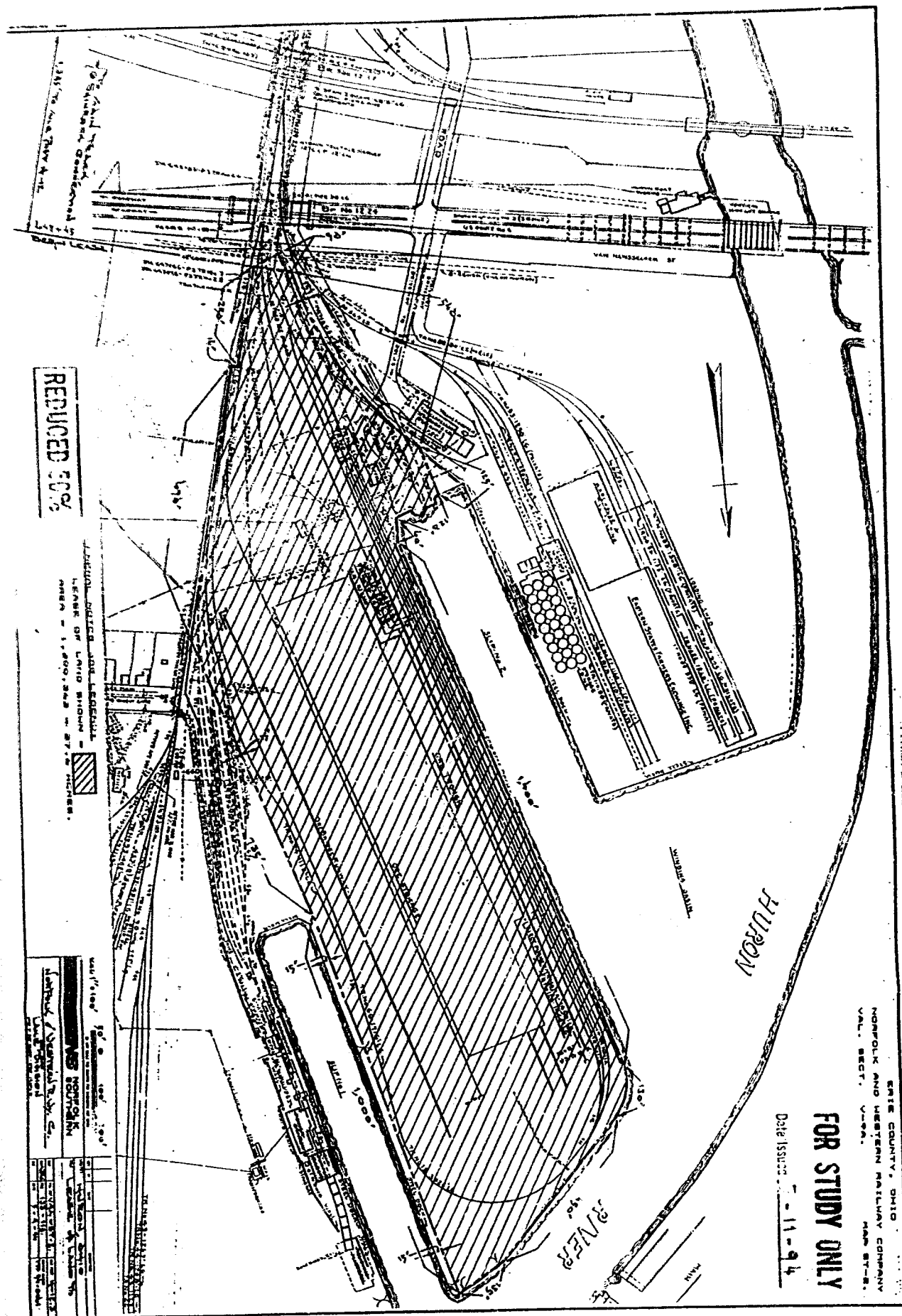
Dated:

By the Board.

Vernon A. Williams

Secretary

FD 32516

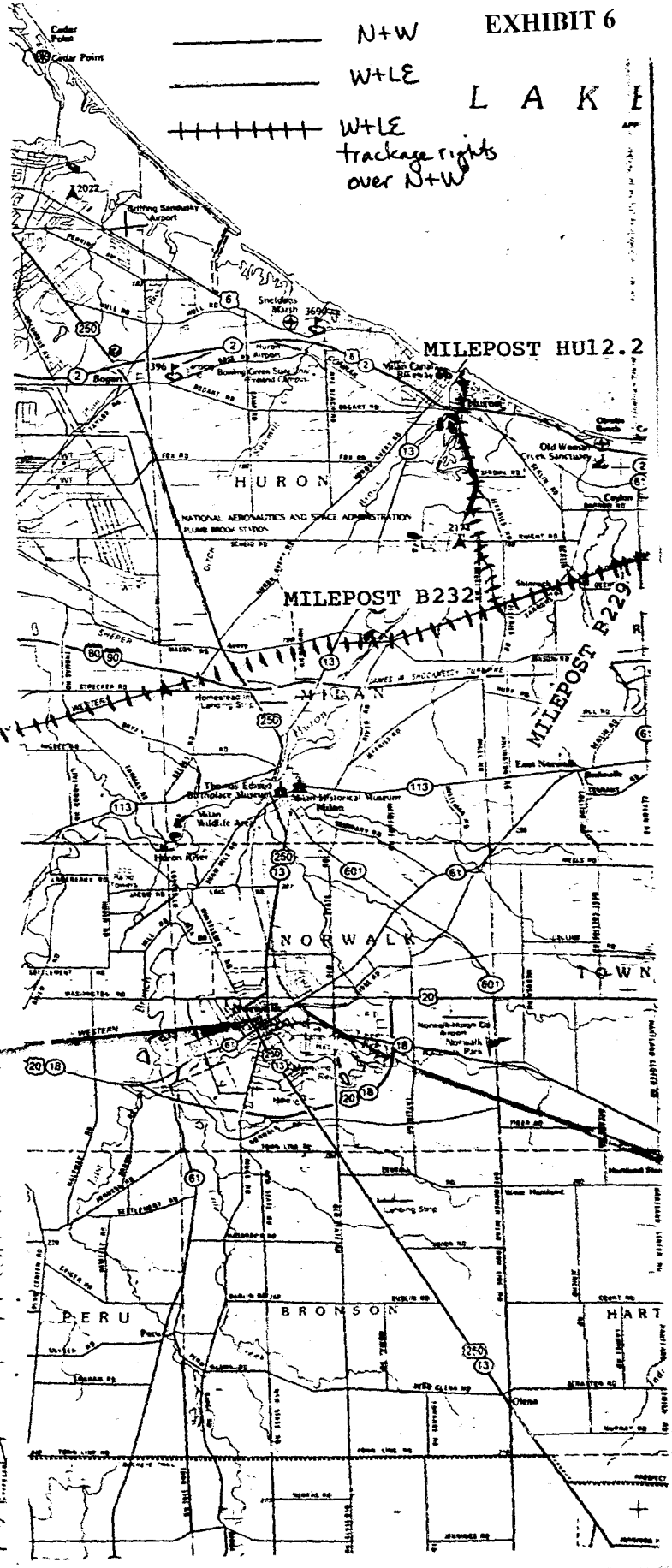
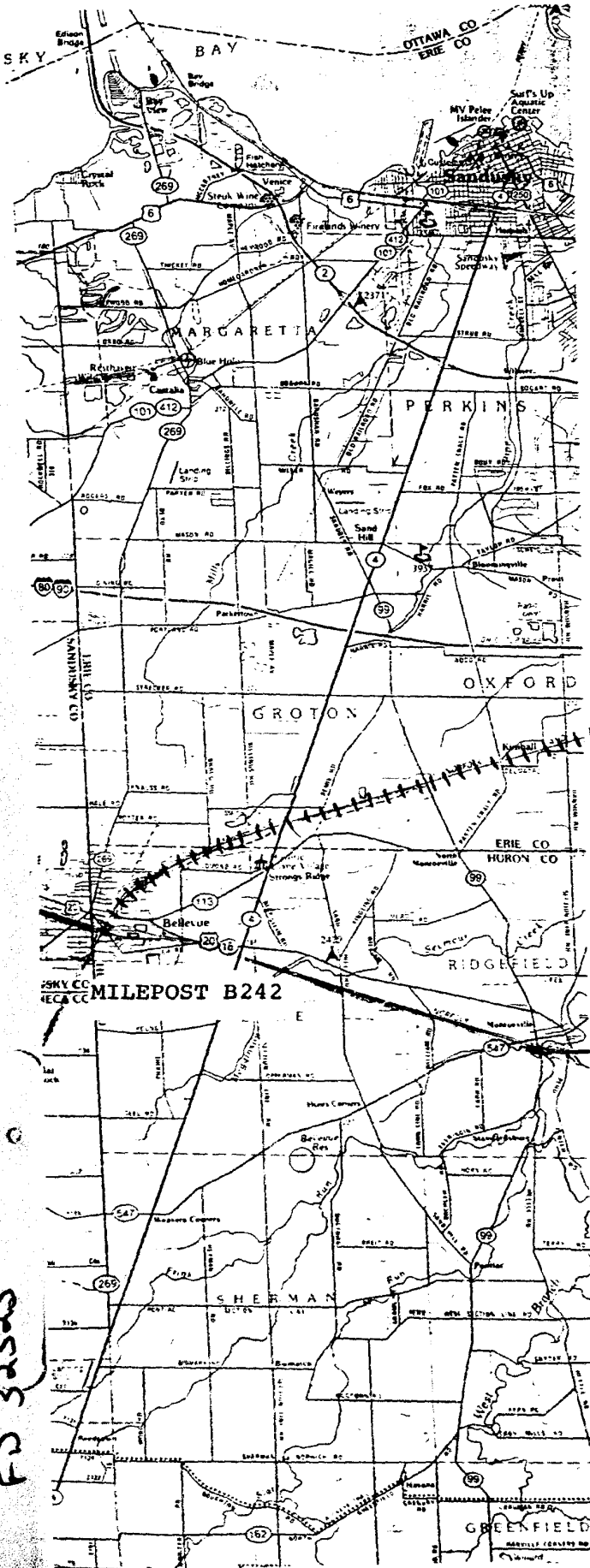


N+W

W+LE

L A K E

W+LE
trackage rights
over N+W



FD 3255

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 32525 (Sub-No. 1)
WHEELING & LAKE ERIE RY. CO. — TRACKAGE RIGHTS EXEMPTION —
NORFOLK AND WESTERN
RY.

Norfolk Southern Railway Company ("NS") will agree to extend the term of the Wheeling & Lake Erie Railway Company ("W&LE") overhead trackage rights between approximately milepost B242 at Bellevue, Ohio and approximately milepost B229 at Berlin Heights, OH, and between approximately milepost B232 at Shinrock, OH (on the Bellevue-Berlin Heights segment) and approximately milepost HU12.2 at the Huron Dock connection in Huron, OH. The trackage rights were exempted in *Wheeling & Lake Erie Ry. Co.—Trackage Rights Exemption—Norfolk and Western Ry.*, ICC Finance Docket No. 32525 (ICC served July 15, 1994). The trackage rights extension will become effective when the Surface Transportation Board grants a petition by NS and W&LE in Finance Docket No. 33388 (Sub-No. 95) to approve a settlement agreement and when NS and W&LE execute an extension of their trackage rights agreement.

This notice is filed under 49 C.F. R. §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

DRAFT – March 12, 2004

THIS TRACKAGE RIGHTS AGREEMENT, entered into as of this day of , 2004, by and among THE WHEELING & LAKE ERIE RAILWAY COMPANY (hereinafter referred to as “WLE”), and NORFOLK SOUTHERN RAILWAY COMPANY and its rail operating subsidiaries (hereinafter collectively referred to as “NSR”).

WHEREAS, The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company (the “Big Four”), and the Receiver of The Wheeling and Lake Erie Railroad Company (the “Wheeling”) entered into an agreement dated November 1, 1913 (the “1913 Agreement”) providing for overhead trackage rights between Wellington, OH and a point of connection between the Big Four and the Wheeling about one and one-half mile east of Linndale Yard at a point now known as the “Knob” by way of CP Short (said route being hereinafter referred to as the “Wellington – Knob Route”); and

WHEREAS, in 1989, the overhead trackage rights on the Wellington – Knob Route were assigned by Norfolk & Western Railway Company, successor in interest to the Wheeling as to the Wellington – Knob Route trackage rights, to WLE, such assignment consented to by Consolidated Rail Corporation (“Conrail”), a successor interest to the Big Four as to the same; and

WHEREAS, Norfolk Southern Corporation (“NSC”), parent to NSR, has entered into a Transaction Agreement (the “Transaction Agreement”) among NSC and CSX Transportation, Inc. (“CSXT”), a wholly-owned subsidiary of CSX Corporation (“CSX”); NSR; Conrail Inc. (“CRR”); Conrail, a wholly-owned subsidiary of CRR; and CRR Holdings LLC;

WHEREAS, CSX and NSC have indirectly acquired all the outstanding capital stock of CRR;

WHEREAS, pursuant to the Transaction Agreement, and pursuant to and subject to Decision No. 89 rendered in Finance Docket No. 33388, certain assets of CRC have been allocated to Pennsylvania Lines LLC (“PRR”), a subsidiary of CRC, to be operated by NSR under the terms of an allocated assets operating agreement (the “NSR Operating Agreement”) between PRR and NSR;

WHEREAS, pursuant to the same Transaction Agreement, and pursuant to and subject to Decision No 89, certain assets of CRC have been allocated to New York Central Lines LLC (“NYC”) to be operated by CSX under the terms of an allocated assets operating agreement (the “CSX Operating Agreement”) between NYC and CSX; and

WHEREAS, pursuant to the same Transaction Agreement, and pursuant to and subject to Decision No. 89, PRR now is the owner of that portion of the Wellington – Knob Route between CP Short and the Knob; and

WHEREAS, pursuant to the same Transaction Agreement, and pursuant to and subject to Decision No. 89, NYC is the owner of that portion of the Wellington – Knob Route between Wellington and CP Short; and

WHEREAS, the portion of the Wellington – Knob Route between Wellington and CP Short and the portion of the Wellington – Knob Route between CP and the Knob are now no longer joined in such a manner as to permit a straight progressive move from one segment to the other; and

WHEREAS, said CSX Operating Agreement, in relevant part, permits CSX to enter into transactions such as those described herein with regard to the assets so

allocated, including but not limited to the Wellington – CP Short Route and, as further described hereinafter, the Wellington – Berea Route; and

WHEREAS, said NSR Operating Agreement, in relevant part, permits NSR to enter into transactions as described herein with regard to the assets so allocated, including but not limited to the CP Short – Knob Route and, as further described hereinafter, the Berea – CP Short Route;

WHEREAS, WLE has sought or has obtained an agreement to operate, via overhead trackage rights, between Wellington and a cross-over to the NSR-operated Berea cross-over tracks for the purpose of moving traffic in its own account to or from the Berea – CP Short Route and the CP Short – Knob Route (together, the route between the Berea crossovers and the Knob via Rockport Yard (bypassing CP Short) shall be referred to herein as the Berea – Knob Route); and

WHEREAS, the parties hereto desire to terminate the 1913 Agreement, as it applies to the CP Short – Knob Route, and substitute a new agreement to cover the terms and conditions of the overhead trackage rights granted in the 1913 Agreement, but only as to movements over the Berea – Knob Route except as otherwise provided herein;

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, NSR hereby grants, and PRR consents to the grant, to WLE the right to operate its trains, locomotives, cars and equipment with its own crews, in its own account (hereinafter referred to as “Trackage

Rights”) over the following segments of PRR’s railroad shown on the plan attached hereto, made a part hereof and marked Exhibit “I” (hereinafter referred to as the “Subject Trackage”):

[DEFINE SUBJECT TRACKAGE]

SECTION 2. USE OF SUBJECT TRACKAGE

(a) WLE’s use of the Subject Trackage shall be in common with NSR and any other user of the Subject Trackage, and NSR’s right to use the Subject Trackage shall not be diminished by this Trackage Rights Agreement.

(b) WLE shall have bridge rights only between the endpoints, and only for a prior or subsequent move to/from Wellington via the Wellington – Berea Route. WLE shall not perform any local freight service whatsoever at any point located on the Subject Trackage. WLE shall not have rights over the Subject Trackage for the purpose of moving traffic to any point on the Wellington – Berea Route, or to any off-on point on the Wellington – Berea Route, other than Wellington, regardless of whether CSX, NYC or other party in control over all or a portion of the Wellington – Berea Route provides WLE on-off rights or other local access along that route, nor shall WLE have any rights over the Subject Trackage for the purpose of moving traffic to any point between Berea and CP Short on trackage that on the Effective Date of this Agreement is controlled by CSX, regardless of whether that said trackage is controlled by any other party subsequent to the Effective Date.

(c) NSR shall have exclusive control of the management and operation of the Subject Trackage. WLE shall not have any claim against NSR for liability account of

loss or damage of any kind in the event the use of the Subject Trackage by WLE is interrupted or delayed at any time from any cause.

(d) WLE shall have the right to operate in either direction over the Subject Trackage.

(e) Except as may otherwise be provided by this Agreement, WLE 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 NSR, preclude the emergency use by WLE of such auxiliary Subject Trackage as may be designated by NSR for such purposes.

(f) WLE will not permit or admit any third party to the use of all or any portion of the Subject Trackage, nor under the guise of doing its business, contract or make any agreement to handle as its own trains, locomotives, cabooses or cars over or upon the Subject Trackage, or any portion thereof, the trains, locomotives, cabooses or cars of any such third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of WLE, or in any other way provide haulage service to others on or over the Subject Line.

SECTION 3. MISCELLANEOUS SPECIAL PROVISIONS

(a) When operating over the Subject Trackage, WLE's locomotives and crews will be equipped to communicate with NSR on radio frequencies normally used by NSR in directing train movements on the Subject Trackage.

(b) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier, and the provisions of Section 6 of

this Agreement. All control and usage will be subject to the approval of NSR's representative or his designee.

(c) NSR shall have the right to exclude from its tracks any employee of WLE determined to be in violation of NSR rules, regulations, orders, practices, or instructions issued by NSR timetable or otherwise. WLE shall release, indemnify, defend, and save harmless NSR 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.

(d) WLE acknowledges that NSR and/or CSX use of the so-called Berea Crossover that permits WLE progressive movements between the Wellington – Berea Route and the Berea – Knob Route is rarely used by NSR or CSX and further that WLE will, as a result of this Agreement, become the dominant user of said Berea Crossover. WLE further acknowledges that the winter weather conditions are such that switch heaters are required on either end of said Berea Crossovers so as to permit WLE use of the same without significant NSR and/or CSX maintenance personnel attention that would not otherwise be required in the absence of WLE's use of the same. Therefore, WLE shall pay to NSR, in addition to the compensation otherwise set forth in this Agreement, an additional [\$xxx] per month to pay for the presence and service of switch heaters for the NSR-maintained switches at the Berea Crossover. Further, WLE represents and warrants to NSR that it has arrangements in place at all times during the term of this Agreement for the provision of a switch heater for the CSX-maintained switches at the Berea Crossover.

SECTION 4. COMPENSATION

(a) The Current Charge to be paid by WLE for the Trackage Rights covered by this Agreement shall be thirty-one cents (US\$0.31) per car mile. As compensation for the trackage rights, WLE will pay to NSR a sum computed by multiplying (i) the Current Charge specified in this section 4 by (ii) the number of rail cars (loaded or empty) moved by WLE over the Subject Trackage by (iii) miles of between the endpoints of the Subject Trackage as specified in Section 1 hereof, which for the purposes of this Agreement shall be considered to be [MILEAGE]. 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 be counted as one (1) rail car per every four (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 Coltainer® 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) WLE shall submit a monthly payment to NSR; said payment shall include a statement which shall list the number of cars operated by WLE over the Subject

Trackage for WLE's previous month's use of the Subject Trackage, computed in accordance with this Section 4.

(c) The Current Charge set forth in section 4 (a) hereof shall be revised upward or downward each year, beginning with the bill rendered for the month of July first following the "Effective Date" of this Agreement, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Chargeout 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 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 shall be changed from the year 1977 appropriate revision shall be made. If 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 16 of this Agreement.

(e) Under no circumstances shall the rate paid to NSR by WLE be less than the Current Charge set forth in section 4(a) hereof.

SECTION 5. 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 billing.

(b) Bills rendered pursuant to the provisions of this Agreement, other than those provided for in section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by NSR at the time any work is performed by NSR for WLE or shall include actual costs and expenses, upon mutual agreement of the parties.

SECTION 6. MAINTENANCE AND OPERATIONS

(a) NSR shall, at its own expense, and with its own supervision and labor, maintain, repair, renew, and operate the Subject Trackage, provided, however, that NSR need not maintain, repair or renew Subject Trackage to any better condition than it is in as of the Effective Date, reasonable wear and tear excepted.

(b) WLE shall not by reason of failure or neglect on the part of NSR hereto to maintain, repair, or renew the respective ownership segments of the Subject Trackage, have or make any claim against the other parties, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or

for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by a party resulting from any such failure or neglect.

(c) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train, locomotive or equipment of a party hereto becomes stalled or unable to proceed under its own power, or if in emergencies crippled or otherwise defective cars are set out of a party's trains on the Subject Trackage, the party owning the trackage shall 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. The party provided such service shall pay the other a reasonable charge therefore, which shall be in accordance with the their Schedule of Surcharges and Rates for Billings to U.S. Railroads and which shall be comparable to the rate schedules of U.S. Class I Railroads.

(d) If it become 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 the party owning the trackage. The party provided such service shall pay the other a reasonable charge therefore, which shall be in accordance with the their Schedule of Surcharges and Rates for Billings to U.S. Railroads and which shall be comparable to the rate schedules of U.S. Class I Railroads.

SECTION 7. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing in each party's trains on the Subject Trackage shall be assumed by that party and reported and paid by that party directly to the owner of such cars.

SECTION 8. CLEARING OF WRECKS

Whenever use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, NSR shall arrange for such service, including the repair and restoration of roadbed, track, and structures. The cost and expense thereof, including without limitation, loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 11 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control or used by a party at the time of such wreck shall be promptly delivered to it.

SECTION 9. ADDITIONS TO AND/OR RETIREMENTS

(a) The cost and expense of future additions or changes shall be borne by the party or parties for whose benefit they are made. However, any changes required, subsequent to the Effective Date hereof, by any public authority shall be borne by the parties hereto in proportion to the parties' usage over the affected location, as measured by usage during the twelve (12) month period after the addition or change is put into service. Nothing in this Section 9(a) shall be interpreted as expressing an intention of either party to request or consent to any future additions or changes.

(b) In accordance with the provisions of Section 14, NSR shall have the right to retire and eliminate all or part of the Subject Trackage. All costs and expenses relating to removal of track, associated track appurtenances, signals and related facilities

necessary to effect abandonment, discontinuance or complete withdrawal of either party shall be at the sole cost and expense of said party.

SECTION 10. MAINTENANCE OF CONNECTIONS

All other existing connections or facilities which are jointly used by the parties hereto under other existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, renewal under such agreements or practices.

SECTION 11. LIABILITY

The responsibility of the parties hereto as among themselves for loss of, damage to, or destruction of any property whatsoever, or injury to or 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 from, arising out of, incidental to, or occurring in connection with this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or 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, occurs with the trains, locomotives, cars, or equipment of, or in the account of, one party hereto being involved, without the trains, locomotives, cars or equipment of, or in the account of, the other party hereto being involved, such involved party shall assume all liability therefor and bear all cost and expense in connection

therewith and shall forever protect, defend, indemnify, and hold harmless the other party hereto, its parent and subsidiaries, and each of their respective directors, officers, agents, and employees from and against any such liability, cost and expense.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or 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, occurs with the trains, locomotives, cars or equipment of, or in the account of, both NSR and WLE being involved, each shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and for injury to and death of each of their respective directors, officers, agents, and employees (including sole employees), and persons in each of their care and custody. All liability, cost, and expense for injury to and death of any other person or persons whomsoever, and for loss of, damage to, and destruction of all other property (including without limitation the Subject Trackage) so occurring shall be borne equally by such parties involved.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or 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, occurs without the trains, locomotives, cars, or equipment of, or in the account of, any party hereto being involved, or if it cannot be determined which party's or parties' trains, locomotives, cars or equipment are involved, each party hereto shall separately assume and bear all liability, cost, and expense for injury to and

death of each of their directors, officers, agents, and employees (including sole employees), and persons in each of their care and custody, and all liability, cost, and expense for injury to and death of any other person or persons whomsoever, and for loss of, damage to, and destruction of all other property (including without limitation the Subject Trackage) so occurring shall be borne equally by the parties hereto.

(d) Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other parties to this Agreement and their directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the indemnitees or their directors, officers, agents or employees.

(e) The parties hereto agree that each and all of its indemnity commitments in this Agreement in favor of the other party hereto shall also extend to and indemnify their respective parent corporations, subsidiaries and affiliates, and, with respect to an indemnity in favor of NSR, shall also extend to and indemnify PRR, its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees.

(f) In every case of death or injury suffered by an employee of a party hereto, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and one or more of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a

period of time, such party(ies) shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(g) Each party agrees to indemnify and hold the other parties hereto harmless 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 its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon that agency's approval of or exemption of this Agreement and operations hereunder, or pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

(h) If any employee of WLE shall neglect, refuse or fail to abide by NSR's rules, instructions and restrictions governing the operation on or along the Subject Trackage, such employees shall upon written request of NSR, be prohibited by WLE from working on the Subject Trackage, and WLE shall release and indemnify NSR from and against any and all claims and expenses because of such withdrawal.

(i) Each party shall assume and bear all responsibility for such loss, damage, injury and death caused by acts or omissions of any of its employees while under the influence of drugs or alcohol and Section 10(a), (b) and (c) shall not apply.

SECTION 12. INVESTIGATION

(a) Each party shall investigate, adjust, and defend all cargo related claim liability filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. 10709.

(b) In the event a claim or suit is asserted against one of the parties hereto which is the other party's duty to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(c) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit shall be included as costs and expenses in applying the liability provisions set forth herein, except that salaries or wages of full-time employees of any party, including claim agents and attorneys, engaged directly or indirectly in such work shall be borne by the employing party.

(d) Excluding cargo related claim liability filed in accordance with 49 U.S.C. 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709, no party shall settle or compromise any claim, demand, suit or cause of action for which any other party has any liability hereunder without the concurrence of such other party or parties if the consideration for such settlement exceeds Thirty-Five Thousand Dollars (\$35,000.00).

SECTION 13. TERM

(a) This Agreement shall become effective on the date first appearing above, and following the expiration of any time periods required by the issuance of labor notices

by NS, if any, and shall remain in full force and effect for a period of twenty-five (25) years. Notwithstanding the foregoing, should a reconnection be made which would permit a progressive move over CP Short from the Wellington – CP Short Route to the CP Short – Knob Route, then this Agreement shall expire as to the Berea – CP Short Route and instead be effective only as to the CP Short – Knob Route (all other terms and conditions remaining effective), but effective only to the extent this Agreement would be effective in the absence of, and not taking into account the existence and substance of, this sentence. Further notwithstanding the foregoing, should any party who owns or controls the Wellington – CP Short Route, or any portion thereof which reaches CP Short acquire WLE or otherwise control WLE and/or its operations, then this Agreement shall expire as to the Berea – CP Short Route and instead be effective only as to the CP Short – Knob Route (all other terms and conditions remaining effective), but effective only to the extent this Agreement would be effective in the absence of, and not taking into account the existence and substance of, this sentence.

(b) Termination of this Agreement shall not relieve or release any party hereto from any liability it may have incurred or any obligation which may have accrued under any provision of this Agreement prior to said termination.

SECTION 14. ABANDONMENT

NSR may abandon the Subject Trackage. In the event regulatory authority is required to effect such abandonment, WLE will not interfere with NSR's actions to seek and to exercise such authority. In the event regulatory authority is required for WLE to discontinue its own operations over the Subject Trackage, WLE will seek and diligently

pursue such regulatory authority at the same time that NSR seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as WLE may do so in accordance with applicable statutes and regulations, unless WLE intends to acquire the Subject Trackage from NSR pursuant to 49 U.S.C. Section 10904 or other similar provision. Unless WLE or another party acquires the Subject Trackage for continued rail use, WLE shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by NSR for abandonment of the Subject Trackage, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of WLE's operation is not required, WLE shall discontinue its operations hereunder on the date that NSR is authorized to abandon the Subject Trackage. Upon discontinuance of WLE's operations, this Agreement shall terminate and be of no further force and effect, except that 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 prior to said termination. As used in this Section 14, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

SECTION 15. 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 contained herein shall be taken as creating or increasing any right in any other party or parties to recover by way of damages or otherwise against any of the parties hereto.

(b) All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement among the parties hereto containing the subject matter hereof, and supersede any and all oral or verbal understandings between said parties.

(d) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by the parties hereto.

(e) WLE shall not assign or transfer this Agreement or any of its rights hereunder to any person, firm or corporation without obtaining the prior written consent of NSR, which such consent may be given or withheld at NSR's sole discretion.

(f) For the purpose of this Agreement, the trains, locomotives, cars, and equipment of any company other than a party hereto, including employees, passengers, and property thereon, while being moved upon or over the railroad of any party hereto shall, as between the parties hereto, be deemed to be the trains, locomotives, cars, equipment, employees, passengers, and property of the party hereto under which such trains, engines, and cars are under its control.

(g) 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.

SECTION 16. ARBITRATION

Except concerning loss or destruction of, damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration by a sole, disinterested arbitrator to be selected jointly by the parties involved in the dispute. If the parties fail to select such arbitrator within sixty (60) days after demand for arbitration is made by any party hereto, the parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties involved in the dispute. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator(s), if any, shall be borne equally by the parties involved in the dispute. 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 matters 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 17. NOTICE

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

- (a) If to WLE:

c/o President
Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, OH 44613

- (b) If to NS:

c/o Senior 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 the means specified above.

SECTION 18. MISCELLANEOUS SPECIAL PROVISIONS

(a) When operating over the Subject Trackage, WLE's locomotives and crews will be equipped to communicate with NSR on radio frequencies normally used by NSR in directing train movements on the Subject Trackage.

(b) Procedures for qualification and occupancy of the Subject Trackage will be arranged by local supervision of each carrier, but any expense incurred by NSR to qualify WLE crew shall be borne by WLE. All control and usage will be subject to the approval of NSR's representative or his designee.

(c) Before its locomotives enter onto the Subject Trackage, WLE shall ascertain that the trackage to permit WLE's movements beyond the Subject Trackage onto the Wellington – CP Short Route or WLE's lines beyond the Knob, as would be relevant for the movement in question, is clear to receive WLE's train, and then request permission from NSR's dispatcher or other designated representative at such location as NSR may designate. WLE shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow WLE's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, WLE will notify NSR's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once WLE has notified NSR's representatives that it has cleared the Subject Trackage, WLE shall not reenter the Subject Trackage without again obtaining permission from NSR's representative. WLE shall provide and maintain at its sole expense all communication equipment needed and as may be required by NSR to permit WLE to use the Subject Trackage.

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

WITNESS:

WHEELING & LAKE ERIE RAILWAY COMPANY

DRAFT – March 12, 2004

By:

As to WLE.

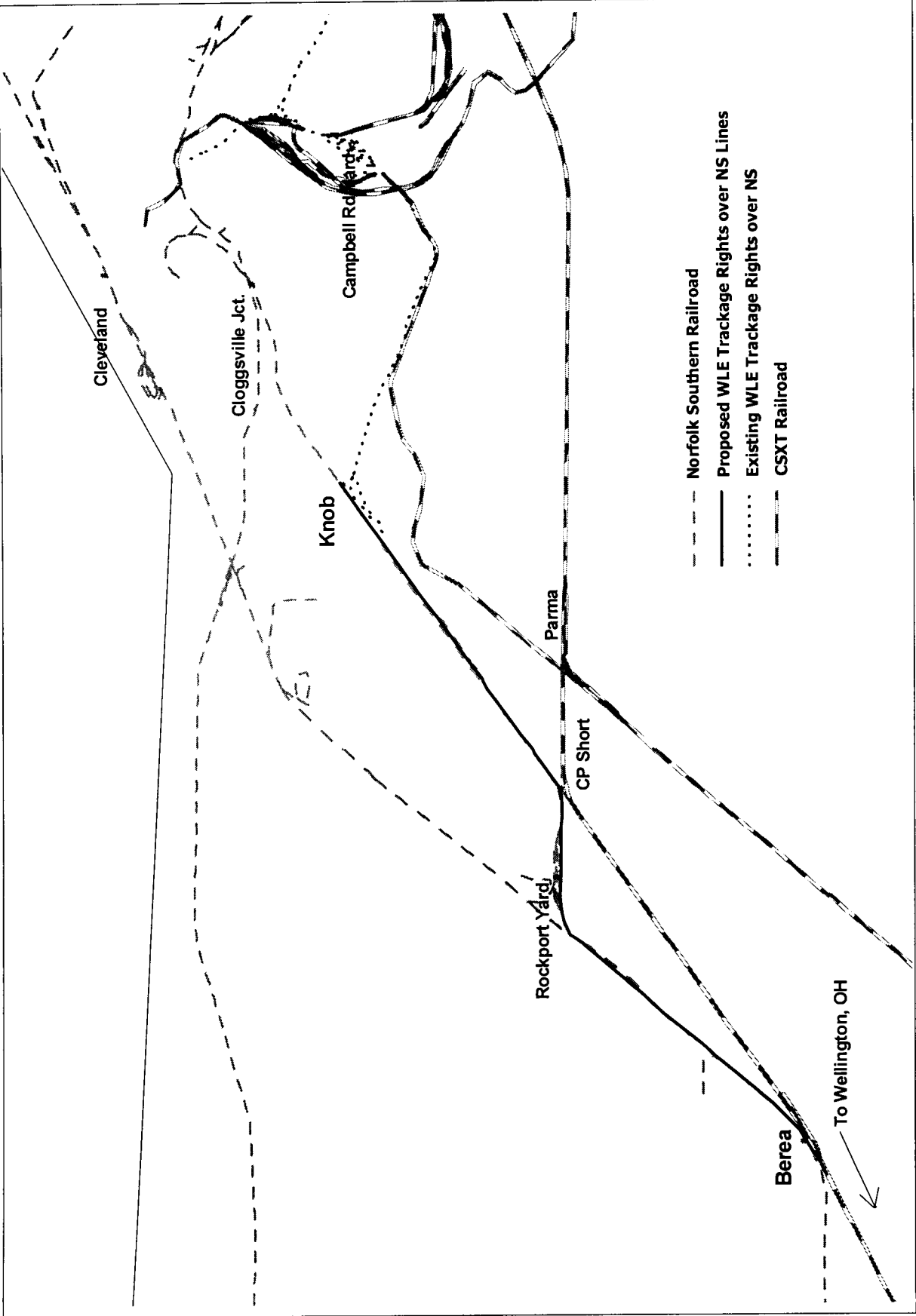
WITNESS:

NORFOLK SOUTHERN RAILWAY COMPANY

By:

As to NS.

Senior Vice President Operations



CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 33388 (Sub-No. 97)

WHEELING & LAKE ERIE RAILWAY CO. – TRACKAGE RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY CO. IN CLEVELAND, OH

Norfolk Southern Railway Company (“NS”) will agree to grant Wheeling & Lake Erie Railway Company (“W&LE”) overhead trackage rights in the Cleveland, OH area between Berea, OH at milepost CD-194.2 and the Knob, OH at milepost GZ-488.13. The trackage rights will become effective when the Surface Transportation Board grants a petition by NS and W&LE in Finance Docket No. 33388 (Sub- No. 95) to approve a settlement agreement and when NS and W&LE execute a trackage rights agreement.

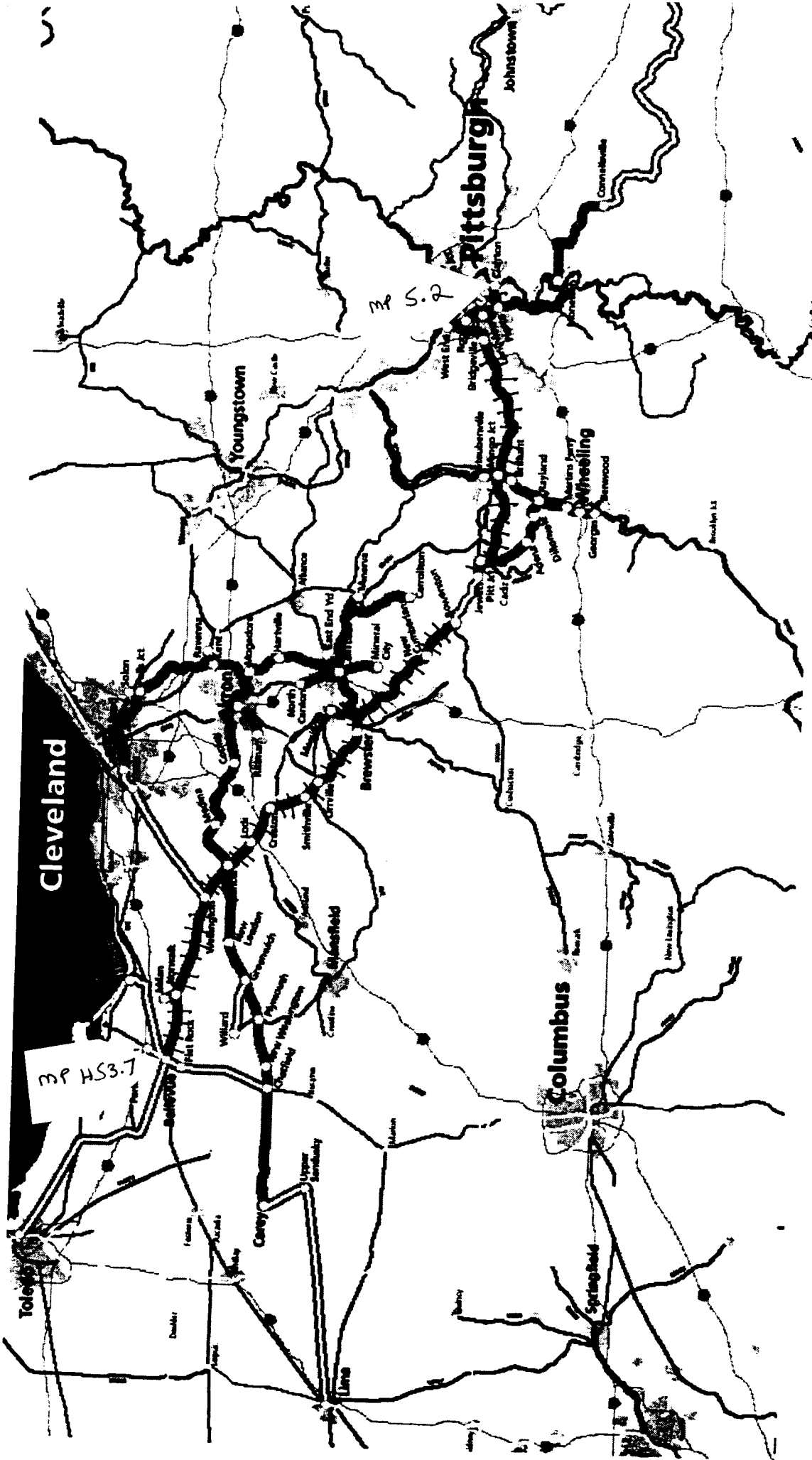
This notice is filed under 49 C.F. R. §1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

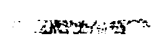
Dated:

By the Board.

Vernon A. Williams

Secretary



 Wheeling & Lake Erie Railway
 Trackage Rights (WLE)

 CSXT

 Norfolk Southern

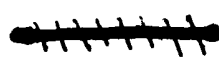
 Other Railroads

 Interstate Highways

 Canadian Pacific  Neomodal

 RiverDock

 Canadian National

 Norfolk Southern Railway Trackage Rights

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 33388 (Sub-No. 98)

NORFOLK SOUTHERN RAILWAY CO. – TRACKAGE RIGHTS EXEMPTION –
WHEELING & LAKE ERIE RAILWAY CO. BETWEEN CLAIRTON, PA AND
BELLEVUE, OH

Wheeling & Lake Erie Railway Company (“W&LE”) will agree to grant Norfolk Southern Railway Company (“NS”) overhead trackage rights between milepost 5.2 at Clairton, PA and milepost H53.7 at Bellevue, OH. The trackage rights will become effective when the Surface Transportation Board grants a petition by NS and W&LE in Finance Docket No. 33388 (Sub-No. 95) to approve a settlement agreement and when NS and W&LE execute a trackage rights agreement.

This notice is filed under 49 C.F. R. §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