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SHANNON M. MOYER

February 14, 2006

BY HAND

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

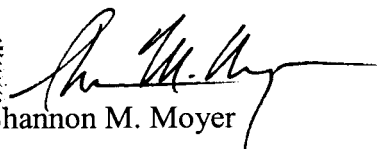
Re: Norfolk Southern Railway Company – Control and Consolidation
Exemption – Algers, Wnslow and Western Railway Company,
STB Finance Docket No. 34839

Dear Secretary Williams:

Enclosed for filing in the above-referenced new docket are the original and ten copies of Norfolk Southern Railway Company's "Petition for Exemption From 49 U.S.C. § 11323." Also enclosed is a check for \$5,400 for the filing fee.

Please date stamp and return with our messenger the additional copy of the enclosed Petition. Thank you for your assistance.

Sincerely,


Shannon M. Moyer

ENTERED
Office of Proceedings

Enclosures

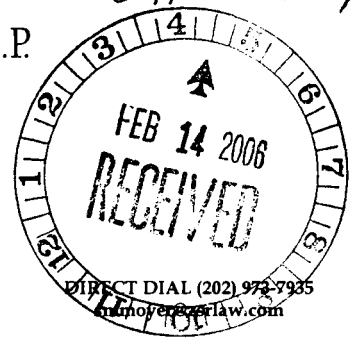
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**SURFACE
TRANSPORTATION BOARD**



FILED
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**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34839

NORFOLK SOUTHERN RAILWAY COMPANY
- CONTROL AND CONSOLIDATION EXEMPTION -
ALGERS, WINSLOW AND WESTERN RAILWAY COMPANY

PETITION FOR EXEMPTION
FROM
49 U.S.C. § 11323



FILED

FEB 14 2005

SURFACE
TRANSPORTATION BOARD

James A. Hixon		Richard A. Allen
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Dated: February 14, 2006

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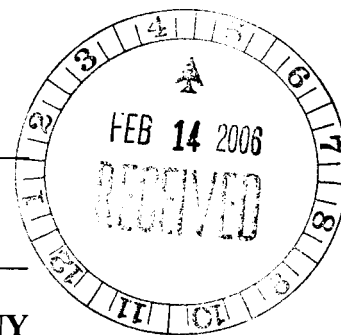
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. _____

**NORFOLK SOUTHERN RAILWAY COMPANY
– CONTROL AND CONSOLIDATION EXEMPTION –
ALGERS, WINSLOW AND WESTERN RAILWAY COMPANY**

**PETITION FOR EXEMPTION
FROM
49 U.S.C. § 11323**



Norfolk Southern Railway Company (“NSR”) hereby petitions the Surface Transportation Board (“Board”) to exempt from the prior approval requirements of 49 U.S.C. § 11323 its acquisition from American Metals and Coal International, Inc. (“AMCI”) of a 50 percent interest in the Algiers, Winslow and Western Railway Company (“AWW”). By acquiring the 50 percent interest from AMCI in a cash for stock transaction, NSR will become the sole owner of AWW. Accordingly, NSR further petitions the Board to exempt from the prior approval requirements of 49 U.S.C. § 11323 any consolidation of AWW into NSR following the acquisition of the 50 percent interest from AMCI. These petitions are made pursuant to 49 U.S.C. § 10502 and 49 CFR Parts 1121 and 1180, and NSR requests that, if granted, the Board make this Petition effective immediately, rather than after the customary thirty (30) day period.

STATEMENT OF FACTS

AWW owns and operates an approximately 19-mile rail line in southern Indiana that parallels a NSR mainline for three miles. On AWW's line are two coal mines and loading facilities both of which are currently closed. NSR already owns a 50 percent interest in AWW, the acquisition of which was approved by the Interstate Commerce Commission ("ICC") in 1974. It now seeks to acquire the remaining 50 percent of AWW from AMCI. Upon completion of this transaction, AWW will be wholly-owned by NSR, and NSR intends to consolidate AWW into NSR.

On March 1, 1974, the ICC granted authority to Southern Railway Co. ("Southern"), which later changed its name to NSR, to acquire 50 percent of AWW's outstanding stock.¹ Southern consummated that transaction.

At the time of that ICC decision, Southern was also negotiating with another party to acquire the remaining 50 percent of AWW and asked the ICC not to limit its approval to the acquisition of the purchased 50 percent of AWW. The ICC declined and said that "since additional shares will also result in majority ownership, a significant increase in power of applicant over the affairs of AWW will result. Such proposals require additional authorization of the Commission."²

The Southern was unable to acquire the remaining 50 percent. Since that time, the remaining 50 percent of AWW has been owned by various coal interests. Recently, it was owned by the Horizon Natural Resources' family of companies ("Horizon"). Horizon also owned the two coal mines and loading facilities located on AWW's line.

¹ Southern Railway Co. – Control – Algiers, Winslow and Western Railway Co., Finance Docket No. 27542 (Served March 11, 1974).

² Id. at n.1.

However, one of the mines (formerly known as Kindill #1 and now known as Pike #1) has been closed for years. In 2004, Horizon went bankrupt. By October 2004, the second mine (formerly known as Kindill #2 and now known as Pike #2) was also closed.³

Accordingly, AWW has moved little traffic and no coal since October 2004, and railroad workers have been laid off since that time. AWW occasionally switches cars into and out of a plant that makes industrial ties. Although AWW's five non-supervisory employees have been laid off, they are called on an "as needed" basis to perform this work.

In October 2004, Lexington Coal Company ("Lexington") acquired both mines, the 50 percent interest in AWW, and some other mining interests from Horizon during Horizon's bankruptcy proceeding. Lexington then set out to operate the mining interests it could and sell the remainder.⁴

Indiana Land and Mineral Company, LLC ("IL&M"), a joint venture of AMCI and T&T Washing Company, purchased the two coal mines and loading facilities from Lexington in September 2005.⁵ It also acquired the 50 percent interest in AWW. On January 23, 2006, IL&M transferred the 50 percent interest in AWW to AMCI. IL&M has also arranged for the sale of the coal mines and loading facilities served by AWW to companies that intend to reopen them.⁶

³ See Massey, CONSOL make pitch for Marrowbone Development?, Platts Coal Trader at 1 (October 5, 2004).

⁴ Id. ("[Lexington Coal's President] is hoping for quick decisions on whether to restart those mines or sell them . . .").

⁵ See American Metals and Coal, T&T Washing Buying Two Kindill Mines, Platts Coal Outlook at 5 (September 12, 2005).

⁶ NSR understands that AMCI intends to convey Pike #2 to Solar Sources and to convey Pike #1 to James River Resources. NSR further understands coal may not be mined at Pike #1. Rather, it understands

NSR seeks to acquire the remaining 50 percent interest in AWW from AMCI and to consolidate AWW into NSR. AMCI's sale of this 50 percent interest will allow it to focus on its core business of mining.

SUMMARY OF THE TRANSACTION

NSR owns 50 percent of AWW, and AMCI owns the remaining 50 percent of AWW. NSR seeks authority to acquire the remaining 50 percent interest in AWW from AMCI and thereby become the sole owner of AWW. Accordingly, NSR also seeks authority to consolidate AWW into NSR following the acquisition.

Once these transactions are completed, NSR, a company focused on providing rail transportation services, will wholly-own AWW. Mining interests will own the mines and loading facilities. Accordingly, benefits will flow from companies focusing on their core competencies. A mining interest will no longer have to divert its attention from its principal business to operate a railroad.

Moreover, NSR, and its rail operating expertise, will be available to provide transportation services directly to the mines and loading facilities on AWW's line when they reopen, thereby helping to put people back to work at the mines and helping to establish another source of coal to meet the nation's energy demands. It is anticipated that the new owners of these mines and loading facilities will reopen them. NSR will also be able to use the three-mile segment of AWW's line that parallels its mainline to generate additional capacity for other NSR traffic.

Today all of the rail activity that occurs on AWW's track is activity in which NSR participates. AWW handles sporadic shipments from an industrial tie plant on the line,

that the coal that will be loaded at Pike #1's coal loading facility will be trucked to the facility from several miles away.

but interchanges that traffic with NSR. NSR also stores on AWW's track multilevel railcars for Toyota. Finally, NSR uses AWW track to interchange some coal and carload traffic that does not originate on the AWW with Indiana Southern Railroad Company ("ISRR").

As a result of the transaction, some rail customers will gain single-line service from NSR when the mines and loading facilities reopen, while the rest will continue to have joint-line service (only with NSR in AWW's shoes) via an interchange near Oakland City, Indiana. Historically, AWW has interchanged some traffic with CSX Transportation, Inc. ("CSXT") and ISRR.⁷ NSR will preserve this interchange. NSR will also honor any existing contract with a shipper for the remaining duration of the contract.

Additionally, NSR will benefit from administrative efficiencies by consolidating AWW into NSR after the acquisition.

The parties intend to consummate this transaction as soon as practical after approval of this petition for exemption by the Board and after any remaining conditions to the closing of the transaction are fulfilled.

⁷ CSXT had not interchange traffic with AWW in some years even before the last mine closed in 2004. When CSXT used to interchange traffic, it reached the interchange via trackage rights over ISRR.

THE TRANSACTION

I. PETITIONER.

NSR is a Class I railroad and a common carrier subject to Board jurisdiction with its headquarters located at Three Commercial Place, Norfolk, Virginia 23510-9241. Its representative to whom correspondence may be sent is:

John M. Scheib
General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-9241
(757) 629-2831

NSR operates a rail system extending 21,300 miles in the District of Columbia, the Province of Ontario, Canada, and the following states: Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia.

II. OTHER PARTIES TO THE TRANSACTION.

AWW is a Class III railroad and a private company that is 50 percent owned by NSR and 50 percent owned by AMCI. It operates an approximately 19-mile rail line in southern Indiana. Its address is P.O. Box 188, Oakland City, Indiana 47660. A map depicting AWW's line is attached as Exhibit B.

AMCI is a private company with its headquarters located at 20 Dayton Ave., Greenwich, Connecticut 06830. Its principle business is mining. It holds no rail assets other than its recently acquired 50 percent interest in AWW.

III. THE AGREEMENT.

A copy of the Stock Purchase Agreement under which NSR will acquire the 50 percent interest in AWW from AMCI (redacting confidential business terms) is attached hereto as Exhibit A.

ARGUMENT

I. THIS TRANSACTION SATISFIES THE EXEMPTION CRITERIA.

Both the acquisition of control of a rail carrier by any number of rail carriers and the consolidation of the properties or franchises of at least two rail carriers into one corporation for the ownership, management, or operation of the previously separately-owned properties require the prior approval of the Board. 49 U.S.C. § 11323(a)(3) & (1). Accordingly, NSR's proposed acquisition of the remaining 50 percent interest in AWW and its subsequent consolidation of AWW into NSR would be subject to the Board's prior approval requirements, absent exemption.

This transaction may well qualify as an exempt transaction pursuant to 49 CFR 1180.2(d)(3) (corporate family transactions) because NSR already owns a 50 percent interest in AWW that the ICC approved in a control proceeding. The ICC's 1974 decision, however, left some uncertainty over what type of approval would be needed subsequently to acquire an additional interest in AWW. Accordingly, NSR files this Petition for Exemption rather than a Notice of Exemption.

The Board must exempt a transaction from the prior approval requirements when the Board finds that: (1) prior approval is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 (the "RTP"); and (2) either (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from an abuse of market

power. 49 U.S.C. §10502. Here, all three criteria are satisfied, and the Board should grant this petition for exemption.

A. Prior Approval is Not Needed to Carry Out the Rail Transportation Policy.

Detailed scrutiny of NSR's control of AWW and subsequent consolidation of AWW into NSR is not necessary to carry out the objectives of the RTP.

In fact, an exemption from the prior approval requirements for the control of AWW and its subsequent consolidation into NSR will promote these objectives. First, some potential future customers of coal from the mines and loading facilities with destinations on NSR will have the opportunity to receive single-line service after the transaction, whereas they would receive joint-line service without the transaction. Thus, the exemption would "foster sound economic conditions in transportation." 49 U.S.C. § 10101(5).

Second, that exemption will also result in efficiencies by allowing AWW and NSR to combine and to streamline administrative support functions. In addition, acquisition of the remaining 50 percent interest in AWW and consolidation of AWW into NSR will permit more efficient use of these rail facilities because most of the rail activity currently on AWW's tracks is NSR activity. In both these regards, the petition will "promote a safe and efficient transportation system" and again "foster sound economic conditions in transportation." 49 U.S.C. § 10101(3) & (5).

Third, that exemption will allow the integration of AWW into NSR, with its attendant experience, logistics, and resources, which will "foster sound economic conditions in transportation," 49 U.S.C. §10101(5), and "encourage honest and efficient management of railroads." 49 U.S.C. § 10101(9).

Fourth, that exemption will result in AWW becoming a part of a railroad with a strong safety record and winner of 16 straight Harriman Awards for safety, which will “promote a safe and efficient rail transportation system.” 49 U.S.C. §10101(3).

Fifth, by permitting the transaction to be in effect by the time the new owners of the mines and loading facilities along the AWW are ready to restart operations, this exemption will promote “the development and continuation of a sound rail transportation system . . . to meet the needs of the public.” 49 U.S.C. §10101(4).

Sixth, exempting this transaction from the full-blown application procedures of 49 U.S.C. § 11323 will help “minimize the need for Federal regulatory control over the rail transportation system,” 49 U.S.C. § 10101(2), and “reduce regulatory barriers to entry into and exit from the industry.” 49 U.S.C. § 10101(7).

Seventh, many elements of the RTP speak of competition. *See e.g.* 49 U.S.C. § 10101(4) (“ . . . and to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense”). However, the transaction will not reduce competition. The two coal mines and loading facilities currently on AWW will continue to be served by one carrier – only after consummation that carrier will be NSR. Moreover, as discussed in Section 1.C., below, the transaction will not subject any shipper to the abuse of market power, and NSR does not anticipate any change in current interchange arrangements with other railroads.

Finally, NSR’s acquisition does not involve two Class I railroads. Absent an exemption, this transaction would be subject to the approval requirements of 49 U.S.C. 11324(d), which requires the Board to approve the transaction unless it finds both that:

- (1) As a result of the transaction, there is likely to be a substantial lessening of competition, creation of a monopoly, or restraint of trade in any region of the United States; and
- (2) The anticompetitive effects of the transaction outweigh the public interest in meeting significant public needs.

This transaction clearly would be approved under this standard because, among other reasons, (1) there are no anticompetitive effects from NSR stepping into AWW's shoes, (2) there have been only sporadic shipments and no coal shipments since October 24, 2004, and (3) some future shippers will benefit from single line service where they had multiple carrier service.

In sum, not only is regulation unnecessary to carry out the RTP, but the RTP is actually better served by the Board granting the exemption.

B. This Transaction Is of Limited Scope.

This transaction would result in NSR acquiring control of a Class III carrier of which NSR already owns a 50 percent interest. That carrier owns only an approximately 19-mile rail line in southern Indiana – a discrete geographic area. There have not been any regular shippers for over one year. Thus, the transaction is clearly of limited scope. *See, e.g., Genesee & Wyoming Indust., Inc. – Continuance in Control Exemption – Allegheny & Eastern Railroad, Inc., ICC Finance Docket No. 32149 (Served Oct. 23, 1992) (finding transaction of limited scope because “it concerns 147.1 miles of rail line in a limited geographical area of western Pennsylvania, and affects only 8 regular shippers.”)*

C. Regulation Is Not Necessary to Protect Shippers from an Abuse of Market Power.

Because NSR's proposed control and consolidation is limited in scope, it is not even necessary to consider whether prior review is necessary to protect shippers from an abuse of railroad market power. 49 U.S.C. § 10502(a)(2)(A); *see, e.g., Indiana Rail Road Co. – Petition for Exemption – Acquisition and Operation – Illinois Central Railroad Co. – Line Between Sullivan, In and Browns, IL*, 6 I.C.C.2d 1004, 1010 (1990). In any event, it is not.

Regulation is not necessary to protect shippers from an abuse of power for a variety of reasons. Importantly, there is only one active customer on the line, who ships only a few cars of industrial ties per week. In addition, NSR is aware of one other effective contract, which is for three-railroad movement of coal among AWW, ISRR, and Indiana Railroad, and that shipper's transportation option from the mines and loading facilities will remain a three carrier movement.

Some future shippers would benefit from this transaction. Potential shippers of coal from the mines and loading facilities along the AWW line served at destination by NSR will be able to receive single-line service after the transaction, whereas they would receive joint-line service without the transaction. As the Board has recognized, "as a general matter, single-line service is superior to join-line service." *See, e.g., CSX Corp. and CSX Transp., Inc., Norfolk Southern Corp. and Norfolk Southern Railway Co. – Control and Operating Leases/Agreements – Conrail Inc. and Consolidated Rail Corp.*, STB Finance Docket No. 33388, Decision No. 89, slip op. at 60 (Served July 20, 1998).

In addition, no change in interchange arrangements is anticipated. Currently, AWW can interchange traffic as necessary with ISRR or CSXT at Oakland City. After

the transaction, NSR would still interchange traffic as necessary with ISRR or CSXT at Oakland City.⁸ And when the mines reopen, NSR will honor any transportation contract that might still be in effect at that time for its duration.

II. LABOR PROTECTION PROVIDED.

NSR's acquisition of AWW, a Class III carrier, will be subject to the appropriate labor protective conditions. In this case, the condition imposed by New York Dock Ry. - Control - Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), *aff'd sub nom.*, New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979), would apply.

III. NO SIGNIFICANT ENVIRONMENTAL OR HISTORICAL IMPACTS.

No environmental documentation is required for a control or consolidation transaction that will not result in the diversion from rail to motor carriage of more than (A) 1,000 rail carloads a year, or (B) an average of 50 rail carloads per mile per year for any part of the affected line (49 C.F.R. § 1105.7(e)(4)); or that does not involve (A) an increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, (B) an increase in rail yard activity of at least 100 percent (measure by carload activity), or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment (49 C.F.R. § 1105.07(e)). *See* 49 C.F.R. § 1105.6(2)(i).

⁸ As previously noted, Petitioner does not know whether CSXT can still reach AWW because CSXT had not interchanged traffic with AWW for some years prior to the closing of the mines. To the extent CSXT has such rights, Norfolk Southern will still interchange traffic as necessary with CSXT at Oakland City.

NSR's control of AWW and subsequent consolidation of AWW into NSR will not result in changes in operations that exceed the above-listed thresholds. Accordingly no environmental documentation is necessary for this petition for exemption.

Of course, when the mines reopen as anticipated, traffic on the AWW line would increase from its current level. However, those increases would not be a direct result of this transaction. Rather they would be the result of a multi-year process, involving multiple bankruptcy proceedings, played out in the mining industry that would result in the reopening of the mines and loading facilities. Of course, NSR hopes that this transaction will facilitate the reopening of those mines and loading facilities by relieving AMCI, or its successor, of its rail assets so it can focus on its principle mining business and will result in superior single line service for many customers.

Under 49 C.F.R. § 1105.8(b)(3), transactions involving the common control through stock ownership or other similar action which will not substantially change the level of maintenance of railroad property are exempt from the historic report requirements of 49 C.F.R. § 1105.8(a). Because no substantial changes in the level of maintenance are expected, no historic report is required for this petition for exemption.

IV. EFFECTIVE DATE OF A BOARD DECISION GRANTING THIS PETITION

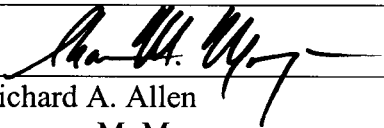
In the event that the Board grants this Petition, NSR requests that the Board make its decision effective immediately rather than after the customary thirty (30) days. *See* 49 C.F.R. § 1121.4(e). Because the mining interests are working toward reopening the mines and loading facilities on the AWW line soon, NSR would like to implement this transaction quickly. Quick implementation would streamline and provide certainty in

negotiations over transportation services, because all involved would know that the negotiations were occurring with the party that will provide those services.

CONCLUSION

NSR respectfully requests that the Board grant this petition for exemption from the prior approval requirements of 49 U.S.C. § 11323 so that NSR can acquire the remaining 50 percent interest in AWW and then consolidate AWW into NSR.

Respectfully submitted,

James A. Hixon		
James A. Squires		Richard A. Allen
George A. Aspatore		Shannon M. Moyer
John M. Scheib		Zuckert, Scoutt & Rasenberger LLP
Norfolk Southern Corporation		888 17 th Street, N.W.
Three Comercial Place		Washington D.C. 20006-3939
Norfolk, VA 23510		(202) 298-8660
(757) 629-2657		
		Attorneys for Norfolk Southern Corporation

Dated: February 14, 2006

VERIFICATION

I, Kathryn B. McQuade, Executive Vice-President Planning and Chief Information Officer under penalty of perjury, hereby declare and verify that I have read the foregoing Petition for Exemption, know the facts stated therein, and it is true and correct.

Executed on the 13th day of February, 2006.

A handwritten signature in cursive script, reading "Kathryn B. McQuade", written over a horizontal line.

Kathryn B. McQuade
Executive Vice-President Planning and
Chief Information Officer
Norfolk Southern Corporation

STOCK PURCHASE AGREEMENT

This **STOCK PURCHASE AGREEMENT** (this "Agreement") is dated as of January 6, 2006, by and between Norfolk Southern Railway Company, a Virginia corporation ("NSR"), and American Metals and Coal International, Inc., a Delaware corporation ("AMCI").

WHEREAS, AMCI is the beneficial and record owner of 2,500 shares (the "Shares") of common stock, no par value, of Algiers, Winslow and Western Railway Company, an Indiana corporation ("AWW"), and NSR is the beneficial and record owner of 2,500 shares of common stock, no par value, of AWW, such 5,000 shares of common stock representing all of the outstanding shares of common stock of AWW; and

WHEREAS, NSR desires to purchase from AMCI, and AMCI desires to sell to NSR, the Shares on the terms and conditions set forth in this Agreement, such that AWW will become a wholly owned subsidiary of NSR.

NOW THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements herein contained, and intending to be legally bound, the parties hereto agree as follows:

SECTION 1. ACQUISITION OF SHARES. Subject to the terms and conditions of this Agreement, at the Closing (as hereinafter defined), AMCI shall sell, transfer and deliver to NSR the Shares free and clear of all Liens (as hereinafter defined), and NSR shall purchase the Shares for the consideration set forth in Section 2.

SECTION 2. PURCHASE PRICE AND PAYMENT. The aggregate purchase price for the Shares shall be \$1,000,000 and, subject to the terms and conditions of this Agreement, shall be paid by NSR to AMCI at the Closing by wire transfer of immediately available funds pursuant to wire instructions previously provided to NSR by AMCI for that purpose.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF AMCI. AMCI represents and warrants to NSR as of the date of this Agreement and as of the Closing Date (as hereinafter defined) as follows:

3.1 Organization and Good Standing. AMCI is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all necessary power and authority to carry on its business as presently conducted.

3.2 Power and Authorization. AMCI has full legal right, power and authority to enter into and perform its obligations under this Agreement at or prior to the Closing. The execution delivery and performance by AMCI of this Agreement has been duly authorized by all necessary corporate action. This Agreement has been duly and validly executed and delivered by AMCI and constitutes the legal, valid and binding obligation of AMCI, enforceable against it in accordance with its terms.

3.3 No Conflicts. The execution, delivery and performance of this Agreement does not and will not (with or without the passage of time or the giving of notice) (i) violate or conflict with the organizational documents of AMCI, or any law, regulation, judgment, order, award or other decision of requirement of any arbitrator, court, government or governmental agency or instrumentality (collectively, "Laws") binding upon AMCI, (ii) violate, conflict with, result in breach of, or constitute a default under any agreement or other obligation binding on AMCI or its assets, (iii) give to any party other than NSR any rights to the Shares, or (iv) result in, require or permit the creation or imposition of any restriction, mortgage, deed of trust, pledge, lien, security interest or other charge, claim or encumbrance of any nature (collectively, "Liens") upon or with respect to the Shares. There are no actions, proceedings or investigations pending or, to the knowledge of AMCI, threatened, that question any of the transactions contemplated by, or the validity of, this Agreement which, if adversely determined, could reasonably be expected to have an adverse effect upon the ability of AMCI to enter into or perform its obligations under this Agreement.

3.4 Required Consents. Except for the applicable requirements of the Surface Transportation Board (the "STB"), there are no approvals, authorizations, consents, orders or other actions of, or filings with, any person or entity that are required to be obtained or made by AMCI or its affiliated entities in connection with the execution of, and the consummation of the transactions contemplated under, this Agreement.

3.5 Ownership of the Shares. AMCI owns the Shares beneficially and of record, free and clear of any Lien. There are no shareholder or other agreements affecting the right of AMCI to convey the Shares to NSR or any other right of AMCI with respect to the Shares, and AMCI has the absolute right, authority, power and capacity to sell, assign, transfer and deliver the Shares to NSR free and clear of any Lien. Upon delivery to NSR of the certificates for the Shares at the Closing, NSR will acquire good, valid and marketable title to the Shares, free and clear of all Liens.

3.6 Brokers. No person acting on behalf of AMCI or any of its affiliates or under the authority of any of the foregoing is or will be entitled to any brokers' or finders' fee or any other commission or similar fee, directly or indirectly, in connection with any of the transactions contemplated by this Agreement.

3.7 No Misrepresentation. No representation or warranty of AMCI contained in this Section 3 contains any untrue statement or omits to state any fact necessary in order to make the statements in this Section 3, in light of the circumstances under which they were made, not misleading.

3.8 No Other Representations. Except for the limited representations and warranties set forth in this Section 3, AMCI makes no representation or warranty whatsoever regarding AMCI, the Shares, or AWW, including without limitation the business, operations, financial conditions, prospects or affairs of AWW.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF NSR. NSR represents and warrants to AMCI as of the date of this Agreement and as of the Closing Date (as hereinafter defined) as follows:

4.1 Organization and Good Standing. NSR is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and has all necessary power and authority to carry on its business as presently conducted.

4.2 Power and Authorization. NSR has full legal right, power and authority to enter into and perform its obligations under this Agreement at or prior to the Closing. The execution, delivery and performance by NSR of this Agreement has been duly authorized by all necessary corporate action. This Agreement has been duly and validly executed and delivered by NSR and constitutes the legal, valid and binding obligation of NSR, enforceable against it in accordance with its terms.

4.3 No Conflicts. The execution, delivery and performance of this Agreement does not and will not (with or without the passage of time or the giving of notice) (i) violate or conflict with the organizational documents of NSR, or any Law binding upon NSR or (ii) violate, conflict with, result in breach of, or constitute a default under any agreement or other obligation binding on NSR or its assets. There are no actions, proceedings or investigations pending or, to the knowledge of NSR, threatened, that question any of the transactions contemplated by, or the validity of, this Agreement which, if adversely determined, could reasonably be expected to have an adverse effect upon the ability of NSR to enter into or perform its obligations under this Agreement.

4.4 Required Consents. Except for the applicable requirements of the STB, there are no approvals, authorizations, consents, orders or other actions of, or filings with, any person or entity that are required to be obtained or made by NSR or its affiliated entities in connection with the execution of, and the consummation of the transactions contemplated under, this Agreement.

4.5 Investment Intent. NSR is acquiring the Shares for its own account and not with a view to their distribution within the meaning of Section 2(11) of the Securities Act of 1933 or any successor law or comparable law enacted by a state, or any regulation or rule promulgated pursuant to any of the foregoing.

4.6 NSR's Investigation. NSR is familiar with, and has complete access to all information related to, the business, operations, financial conditions, prospects and affairs of AWW. Other than the limited representations and warranties of AMCI set forth in Section 3, NSR is entering into this Agreement solely on the basis of its own investigation of AWW and not in reliance on any representation, warranty or other statement, written or oral, of AMCI or its agents or affiliates.

SECTION 5. CLOSING.

5.1 The Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Norfolk Southern Corporation, Three

Commercial Place, Norfolk, Virginia, 23510 at 10:00 A.M., local time on a date to be agreed to by NSR and AMCI, which date shall be no later than five business days following the date on which all of the conditions set forth in Section 7 of this Agreement shall have been satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions), or at such other time and place as NSR and AMCI mutually agree upon in writing. The date of the Closing is referred to in this Agreement as the "Closing Date."

5.2 Deliveries at the Closing. At the Closing:

(a) NSR shall deliver: (i) the purchase price as provided in Section 2 hereof; (ii) a certificate dated as of the Closing Date and signed by a duly authorized officer of NSR, to the effect set forth in Section 7.3(c); and (iii) such documents and instruments as AMCI may reasonably request to evidence the satisfaction of all conditions precedent set forth in Section 7 of this Agreement or that are required to be delivered by NSR at or prior to the Closing Date pursuant to this Agreement.

(b) AMCI shall deliver: (i) certificates representing all of the Shares, duly endorsed for transfer or with stock powers affixed thereto executed in blank in proper form for transfer; (ii) a certificate dated as of the Closing Date and signed by a duly authorized officer of AMCI, to the effect set forth in Section 7.2(c); (iii) effective resignations from all positions with AWW executed by each of the officers and directors of AWW designated by AMCI; and (iv) such documents and instruments as NSR may reasonably request to evidence the satisfaction of all conditions precedent set forth in Section 7 of this Agreement or that are required to be delivered by AMCI at or prior to the Closing Date pursuant to this Agreement.

5.3 Further Assurances. At and following the Closing, each party to this Agreement shall deliver or cause to be delivered, as appropriate and upon request, such further certificates, consents and other documents as may be necessary to carry out the terms of this Agreement.

SECTION 6. OBLIGATIONS OF THE PARTIES UNTIL CLOSING. Between the date of this Agreement and the Closing, each of AMCI and NSR will use its commercially reasonable efforts to cause the conditions to the obligations of the other party set forth in Section 7 of this Agreement to be satisfied; provided, that, except as agreed in writing by the parties hereto, in no event shall either of the parties hereto be obligated to accept, in connection with obtaining STB approval (or exemption therefrom) for the transactions contemplated by this Agreement, any condition or requirement that is not acceptable to such party in its reasonable judgment. In addition, the parties hereto shall cooperate and use their commercially reasonable efforts to (i) obtain all consents, approvals, authorizations and agreements (or exemptions therefrom) of the STB necessary to authorize, approve or permit the consummation of the transactions contemplated by this Agreement as promptly as practicable hereafter, (ii) as promptly as practicable hereafter, file or submit, or cause to be filed or submitted, to the STB all notices, applications, documents and other materials necessary in connection with obtaining STB approval (or exemption therefrom) of the transactions contemplated by this Agreement and (iii) respond as promptly as practicable to all inquiries received from the STB for additional information or documentation in connection with obtaining the STB's approval (or exemption therefrom) of the transactions contemplated by this Agreement. Each of the parties hereto shall

furnish to the other party hereto such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of any filings or submissions to the STB necessary to obtain the STB's approval (or exemption therefrom) of the transactions contemplated by this Agreement. Pending the Closing hereunder, AMCI and NSR shall cause, and shall cause their respective agents acting as officers and directors of AWW to cause, AWW to operate its business in the ordinary course, exercising prudent business judgment for AWW's business and affairs without regard to the pendency of the transaction hereunder. Without limiting the generality of the foregoing, AMCI and NSR shall cause AWW to undertake in good faith any reasonable request from customers or potential customers for service and negotiate in good faith, or provide reasonable assurances with respect to, the terms of service to be provided to such customers or potential customers.

SECTION 7. CONDITIONS TO THE CLOSING.

7.1 Mutual Conditions. The respective obligations of the parties to complete the purchase/sale of the Shares and to take the other actions required to be taken by each of the parties at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived jointly by NSR and AMCI in writing, in whole or in part):

(a) Regulatory Approvals. The approval of the STB (or exemption therefrom) shall have been obtained and shall be in full force and effect, and not subject to conditions that any party deems unacceptable in its reasonable judgment, and shall not be subject to a pending petition for review before a U.S. Court of Appeals.

(b) No Order or Action. No Law shall have been enacted, entered, promulgated or enforced by any governmental authority that prohibits, restricts or makes illegal the consummation of any of the transactions contemplated hereby, and no action shall be pending or threatened that questions the validity of this Agreement or declares or proposes to declare the same unlawful or seeks to enjoin the consummation of any of the transactions contemplated hereby.

7.2 Additional Conditions of NSR. The obligation of NSR to complete the purchase of the Shares and to take the other actions required to be taken by NSR at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following additional conditions (any of which may be waived by NSR in writing, in whole or in part):

(a) Representations and Warranties. The representations and warranties contained in Section 3 hereof and in all certificates delivered by AMCI pursuant hereto or in connection with the transactions contemplated hereby shall be true and accurate in all respects as of the date of this Agreement and as of the Closing as though made at and as of the Closing.

(b) Performance. AMCI shall have performed all obligations and complied in all material respects with all covenants required by this Agreement to be performed or complied with by AMCI on or prior to the Closing Date.

(c) Certificate. AMCI shall have delivered to NSR a certificate, dated the Closing Date, signed on behalf of AMCI by its President, certifying that the conditions specified in Sections 7.2(a) and (b) of this Agreement have been satisfied.

(d) Labor Implementing Agreements. NSR shall have either (i) obtained labor implementing agreements covering all applicable employees of AWW and NSR or (ii) NSR's right to terminate this Agreement pursuant to Section 8.4(c) hereof shall have been deemed waived under the terms of that provision.

(e) No Material Adverse Effect. There shall have been no material adverse effect on the assets (taken as a whole) or the prospective business of AWW between the date hereof and the Closing Date.

7.3 Additional Conditions of AMCI. The obligation of AMCI to complete the sale of the Shares and to take the other actions required to be taken by AMCI at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following additional conditions (any of which may be waived by AMCI in writing, in whole or in part):

(a) Representations and Warranties. The representations and warranties contained in Section 4 hereof and in all certificates delivered by NSR to AMCI pursuant hereto or in connection with the transactions contemplated hereby shall be true and accurate in all respects as of the date of this Agreement and as of the Closing as though made at and as of the Closing.

(b) Performance. NSR shall have performed all obligations and complied in all material respects with all covenants required by this Agreement to be performed or complied with by NSR on or prior to the Closing Date.

(c) Certificate. NSR shall have delivered to AMCI a certificate, dated the Closing Date, signed on behalf of NSR by an officer of NSR, certifying that the conditions specified in Sections 7.3(a) and (b) of this Agreement have been satisfied.

SECTION 8. TERMINATION.

8.1 Termination by Mutual Consent. This Agreement may be terminated at any time prior to the Closing by the mutual agreement, in writing, of each of AMCI and NSR.

8.2 Termination by Final Order. This Agreement may be terminated by AMCI or NSR upon written notice to the other party that any final, non-appealable Law shall have been enacted, entered, promulgated or enforced by any governmental authority of competent jurisdiction which prohibits, restricts or makes illegal the consummation of the Closing or any of the transactions contemplated hereby; provided, that the right to terminate this Agreement under this Section 8.2 shall not be available to any party whose breach of any provision or whose failure to perform any obligation under this Agreement (or the breach or failure of any affiliate thereof) has been the cause of such Law.

8.3 Termination for Lack of STB Approval. This Agreement may be terminated by AMCI or NSR upon written notice to the other party if STB approval (or exemption therefrom)

shall not have been obtained within nine months of the date hereof; provided, that the right to terminate this Agreement under this Section 8.3 shall not be available to any party whose breach of any provision or whose failure to perform any obligation under this Agreement (or the breach or failure of any affiliate thereof) has been the cause of the failure to obtain such approval or exemption.

8.4 Termination by NSR. NSR may (but shall not be obligated to) terminate this Agreement prior to the Closing by giving written notice to AMCI if:

- (a) there has been a material violation or breach by AMCI of any of its agreements or covenants contained in this Agreement or there has been a material violation or breach by AMCI of any of its representations or warranties contained in this Agreement such that it is reasonably likely that the conditions set forth in either Section 7.2(a) or (b) cannot be satisfied;
- (b) the STB shall have imposed a condition to its approval of the transactions contemplated by this Agreement, which condition is not acceptable to NSR in NSR's reasonable judgment;
- (c) NSR shall have failed to obtain labor implementing agreements covering all applicable employees of AWW and NSR after using commercially reasonable efforts to obtain such agreements through the date of its termination notice; provided, that such termination right shall be deemed to have been waived unless exercised by NSR on or before the ninetieth day after the service date of STB approval of the transactions contemplated by this Agreement; or
- (d) there has been a material adverse effect on the assets or the prospective business of AWW between the date hereof and the Closing Date.

8.5 Termination by AMCI. AMCI may (but shall not be obligated to) terminate this Agreement prior to the Closing by giving written notice to NSR if:

- (a) there has been a material violation or breach by NSR of any of its respective agreements or covenants contained in this Agreement or there has been a material violation or breach by NSR of any of its representations or warranties contained in this Agreement such that it is reasonably likely that the conditions set forth in either Section 7.3(a) and (b) cannot be satisfied; or
- (b) the STB shall have imposed a condition to its approval of the transactions contemplated by this Agreement, which condition is not acceptable to AMCI in AMCI's reasonable judgment.

8.6 Termination for Failure to Close.

Without limiting any other rights of termination set forth in this Agreement, a party may (but shall not be obligated to) terminate this Agreement if the Closing has not occurred within twelve (12) months of the date of this Agreement; provided that the right to terminate this Agreement under this Section 8.6 shall not be available to any party whose breach of any

provisions or whose failure to perform any obligation under this Agreement (or the breach or failure of any affiliate thereof) has been the cause of such failure of the Closing to occur by such date.

8.7 Effect of Termination In the event of the termination of this Agreement as permitted by this Section 8, no party shall have any obligation under, or liability to any other in respect to, this Agreement, except with respect to any willful breach of this Agreement that gives rise to such termination.

SECTION 9. MISCELLANEOUS.

9.1 Notices. All notices, requests, demands and other communications (collectively, "Notices") given pursuant to this Agreement shall be in writing, and shall be delivered by personal service, courier, overnight delivery service, facsimile transmission (which must be confirmed) or by United States registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

(a) if to NSR, to:

Norfolk Southern Railway Company
c/o Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510
Facsimile No.: (757) 533-4872
Attn: James A. Squires, Esq.

(b) if to AMCI, to:

American Metals and Coal International, Inc.
One Energy Place
Latrobe, PA 15650
Facsimile No.: (724) 537-5853
Attn: Michael J. Walker

With copies to:

Consulting & Coal Services, Inc.
Attar Center
200 Main Street, Suite B
Beckley, WV 25801-4613
Facsimile: (304) 929-3910
Attn: Josef Ehrenguber

Ziemer, Stayman, Weitzel & Shoulders, LLP
20 NW 1st Street, 9th Floor
Evansville, Indiana 47708
Facsimile No.: (812) 424-7575

Attn: Charles A. Compton

Any Notice, other than a Notice sent by registered or certified mail, shall be effective when received; a Notice sent by registered or certified mail, postage prepaid return receipt requested, shall be effective on the earlier of when received or the third day following deposit in the United States mails. Any party may from time to time change its address for further Notices hereunder by giving notice to the other parties in the manner prescribed in this Section.

9.2 Entire Agreement. This Agreement contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter of this Agreement, and any and all prior discussions, negotiations, commitments and understandings, whether oral or otherwise, related to the subject matter of this Agreement are hereby merged herein. Nothing in this Agreement, express or implied, is intended to confer upon any person other than the parties hereto any rights or remedies under or by way of this Agreement.

9.3 Survival of Representations and Warranties. All representations and warranties made in this Agreement or made in any document delivered pursuant to this Agreement by or on behalf of any party shall survive the execution and delivery of this Agreement or such other document and shall survive the Closing.

9.4 Assignment. No party may assign its rights or obligations under this Agreement, and any attempted or purported assignment or any delegation of any party's duties or obligations arising under this Agreement to any third party or entity shall be deemed to be null and void, and shall constitute a material breach by such party of its duties and obligations under this Agreement; provided that NSR may assign its rights hereunder to any wholly-owned subsidiary of Norfolk Southern Corporation, but no such assignment shall relieve NSR of its obligations hereunder.

9.5 Governing Law; Submission to Jurisdiction. THE LAWS OF THE STATE OF INDIANA SHALL GOVERN THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION OF ITS TERMS AND THE INTERPRETATION OF THE RIGHTS AND DUTIES ARISING HEREUNDER. Each of the parties hereto (i) consents to submit itself to the exclusive jurisdiction of any Federal or state court located in the Commonwealth of Virginia, (ii) will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (iii) waives any objection based on forum non conveniens or any other objection to venue thereof.

9.6 Specific Performance; Injunctive Relief. Each of the parties hereto acknowledges, understands and agrees that any breach or threatened breach by such party or such party's affiliates of the covenants contained herein will cause irreparable injury to the other party and that money damages will not provide an adequate remedy therefor. Accordingly, in the event of any such breach or threatened breach, a non-breaching party shall have the right and remedy (in addition to any other rights or remedies available at Law or in equity, including, money damages) to have the provisions of this Agreement specifically enforced by, and to seek injunctive relief and other equitable remedies in, any court having competent jurisdiction. Each party further agrees to waive any requirement for the securing or posting of any bond or other security in connection with seeking such remedies.

9.7 Severability. Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be or become prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

9.8 Captions. The various captions of this Agreement are for reference only and shall not be considered or referred to in resolving questions of interpretation of this Agreement.

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

9.10 Costs and Attorneys' Fees. Whether or not the transactions contemplated hereby are consummated, each of the parties shall bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated hereunder, including fees and expenses of its own financial or other consultants, accountants and counsel.

9.11 Judicial Interpretation. Should any provision of this Agreement require judicial interpretation, it is agreed that a court or other entity interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any person by reason of the rule of construction that a document is to be construed more strictly against the person who itself or through its agent prepared the same, it being agreed that all parties have participated in the preparation of this Agreement.

9.12 No Third Party Beneficiaries. Except as expressly provided in this Agreement, this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto; provided, however, that this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and permitted assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

NORFOLK SOUTHERN RAILWAY
COMPANY

By: Kathryn B. McGuire
Name: Kathryn B. McGuire
Title: Vice President

AMERICAN METALS AND COAL
INTERNATIONAL, INC.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**NORFOLK SOUTHERN RAILWAY
COMPANY**

By: _____
Name:
Title:

**AMERICAN METALS AND COAL
INTERNATIONAL, INC.**

By:  _____
Name: Michael J. Walker
Title: Executive Vice President

EXHIBIT B

