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FD 36500 (Sub-No. 5)

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February 28, 2022

ENTERED
Office of Proceedings
February 28, 2022
Part of
Public Record

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By Electronic Filing

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: **Finance Docket No. 36500, *Canadian Pacific Ry. – Control – Kansas City Southern***

Dear Ms. Brown:

Enclosed for e-filing in the above-captioned Finance Docket is the Responsive Application by Norfolk Southern Railway Company. There are two versions of the Responsive Application. The first version, marked “PUBLIC,” and in which sensitive commercial, financial, and operating information has been redacted, is to be filed on the public record and served on all parties of record. The second version, marked as “HIGHLY CONFIDENTIAL,” is an unredacted version to be filed under seal subject to the Protective Order of April 2, 2021, and to be served on anyone who has executed the Board’s undertaking for highly confidential material contained in the Protective Order. A filing fee of \$8,880 was paid via Pay.gov on February 28, 2022.

Norfolk Southern Railway Company has concurrently filed Comments and Requests for Conditions in the above-captioned Finance Docket, and is also delivering to the Board, via e-filing, public and highly confidential workpapers, which are identified and labeled accordingly. As of March 1, 2022, the public workpapers will be made available upon request and the highly confidential workpapers, which are subject to the Protective Order, will be made available to those who have executed the Board’s undertaking for highly confidential materials contained in the Protective Order. Please contact me with any questions.

FILED
February 28, 2021
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
February 28, 2022
SURFACE
TRANSPORTATION BOARD

February 28, 2022

Weil, Gotshal & Manges LLP

Sincerely,

Brianna Kucerik

Brianne Kucerik

Attorney for Norfolk Southern Railway Company

Attachments

cc: All Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36500 (Sub-No. 5)

**CANADIAN PACIFIC RAILWAY LIMITED, ET AL.
- CONTROL –
KANSAS CITY SOUTHERN, ET AL.**

RESPONSIVE APPLICATION OF NORFOLK SOUTHERN RAILWAY COMPANY

Norfolk Southern Railway Company (“NS”)¹ hereby submits this Responsive Application pursuant to 48 U.S.C. §§ 11323-11325 and 49 C.F.R. Part 1180, Subpart A, for authorization of NS’s request for certain contingent trackage rights, in response to the application filed by Canadian Pacific Applicants² (“CP”) for acquisition and control of Kansas City Southern Applicants³ (“KCS”, collectively “Applicants”) (the “Application”). CP’s proposed acquisition of KCS (the “CP-KCS Transaction”) is the first Major Transaction⁴ in two decades and raises public interest issues of exceptional importance which potentially affect both NS as well as the availability of efficient and competitive rail service options for intermodal shippers.

NS and KCS are the sole members of Meridian Speedway, LLC (“MSLLC”). MSLLC owns the Meridian Speedway, a critical rail line connecting Meridian, Mississippi and Shreveport, Louisiana. In addition, and related to the MSLLC transaction, NS intermodal

¹ References herein to NS shall include The Alabama Great Southern Railroad Company (“AGS”), the subsidiary of NS that is the official member of the Meridian Speedway, LLC.

² The CP Applicants are Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc.

³ The KCS Applicants are Kansas City Southern and its U.S. rail carrier subsidiaries The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company.

⁴ 49 CFR § 1180.2 defines a major transaction as a “control or merger involving two or more class I railroads.”

shippers using the Meridian Speedway have had the benefit of services provided on the KCS line between Shreveport, Louisiana and Wylie, Texas (the “KCS Section”) and at the Wylie Intermodal Terminal. Together, these are the Meridian-Wylie Route.

Relevant transactional documents (the “Meridian Speedway Agreements”) relating to the formation of the MSLLC were filed with the STB in 2006 by NS and KCS in connection with the Notices of Exemption for those elements of the transaction requiring Board authorization.⁵ The Board approved this transaction on February 22, 2006.⁶

The Meridian-Wylie Route represents a significant component of NS’s commercial and operational offerings to intermodal customers. Preserving NS’s ability to meet its intermodal customers’ needs with competitive rates and services over that line is a primary focus for NS. Since 2006, when NS and KCS formed the MSLLC joint venture, NS alone invested \$308 million to provide necessary infrastructure upgrades and revitalize the route. As a result, the Meridian-to-Wylie Route has provided intermodal shippers with the most efficient route between the Southeastern and Northeastern United States and Dallas, Texas, and locations beyond Dallas in the Southwestern United States (primarily California).

NS currently relies on The Kansas City Southern Railway (“KCSR”), a subsidiary of KCS, as operator of the MSLLC, and on KCS, as owner of the KCS Section and the Wylie Intermodal Terminal, to achieve these benefits for shippers. NS has significant concerns about

⁵ *Norfolk Southern Railway Company – Trackage Rights Exemption – Meridian Speedway LLC – Between Meridian, MS and Shreveport, LA*, STB Docket No. FD 34821 (filed January 17, 2006); *Kansas City Southern, The Kansas City Southern Railway Company, and Meridian Speedway LLC – Exemption for Transactions Within a Corporate Family*, STB Docket No. FD 34822 (filed January 17, 2006); *Kansas City Southern Railway Company – Trackage Rights Exemption – Meridian Speedway, LLC*, STB Docket No. FD 34823 (filed January 17, 2006).

⁶ *Norfolk Southern Railway Company – Trackage Rights Exemption – Meridian Speedway LLC – Between Meridian, MS and Shreveport, LA*, STB Docket No. FD 34821 (served February 22, 2006); *Kansas City Southern, The Kansas City Southern Railway Company, and Meridian Speedway LLC – Exemption for Transactions Within a Corporate Family*, STB Docket No. FD 34822 (served February 22, 2006); *Kansas City Southern Railway Company – Trackage Rights Exemption – Meridian Speedway, LLC*, STB Docket No. FD 34823 (filed February 22, 2006).

KCS's incentive and ability to continue to service intermodal traffic on the Meridian-Wylie Route if the CP-KCS Transaction is approved by the Board without conditions. These concerns were the basis for the Description of Anticipated Responsive Application filed by NS on January 12, 2022. Since that filing, NS has carefully reviewed the evidence produced by Applicants in response to discovery requests⁷ as well as NS's agreements with KCS in connection with the Meridian-Wylie Route. NS has determined that NS's option to purchase the Wylie Intermodal Terminal will become exercisable during the "Notice Trigger Period," which for purposes of this Responsive Application is assumed to begin in May 2024,⁸ the 18th anniversary of the signing of the relevant agreement (the "Wylie Option").⁹ Given the unique circumstances presented by the Applicants' plan, an NS election to exercise the Wylie Option to purchase the Wylie Intermodal Terminal, combined with the grant of contingent trackage rights to work in conjunction with service over the Meridian Speedway would address specifically-identified harms.

If NS elects to exercise the Wylie Option, KCS must provide NS intermodal traffic originating or terminating at the Wylie Intermodal Terminal with haulage over the entire Meridian-Wylie Route.¹⁰ The contingent trackage rights south in this Responsive Application

⁷ NS notes that discovery is ongoing, and includes productions of documents received from Applicants as late as February 25, 2022, one business day prior to the deadline for filing Responsive Applications and Comment. NS reserves the right to modify its position and, if necessary, amend its filings based on information contained in these or any future productions.

⁸ The Wylie Option is able to be exercised during the "Notice Trigger Period" which could be triggered by KCSR giving written notice to NSR that KCSR intends to abandon, discontinue the use of, sell, lease or otherwise transfer control or use of the Terminal. This Responsive Application assumes that this abandonment will not take place sooner than May, 2024. Otherwise, the Notice Trigger Period is the one year period beginning on the eighteenth anniversary of the Closing of the Meridian Speedway transaction closing.

⁹ *Kansas City Southern, The Kansas City Southern Railway Company, And The Texas Mexican Railway Company, and Meridian Speedway, LLC – Exemption for Transactions Within a Corporate Family*, STB Docket No. FD 34822 (filed January 17, 2006), Exhibit J.

¹⁰ *Dallas Terminal Marketing Agreement, Section 2(e). Kansas City Southern, The Kansas City Southern Railway Company, and Meridian Speedway LLC – Exemption for Transactions Within a Corporate Family*, STB Docket No. FD 34822 (filed January 17, 2006).

would kick in only in the event of a Major Service Standard Failure.¹¹ As a result, in this Responsive Application, NS seeks only one agreement providing NS with contingent trackage rights on the KCS Section for intermodal traffic originating or terminating at the Wylie Intermodal Terminal, exercisable in the event of a Major Service Standard Failure (“KCS Section Trackage Rights Agreement”, Exhibit 2). NS already has contingent trackage rights, subject to the same trigger, for the same category of intermodal traffic, on the Meridian Speedway. Put simply, the agreement NS is requesting here will ensure that Meridian Speedway and Wylie Intermodal Terminal are connected by contingent trackage rights with a trigger that is identical to those NS already has on the Meridian Speedway.

Without the KCS Section Trackage Rights Agreement, NS intermodal shippers who utilize the reliable and fast service over the Meridian-Wylie Route are at risk of being forced to a much longer rail route or switch to highways, which would cause loss of efficient, competitive transportation options and significant harm to the public interest. As a result, the Board should require Applicants to execute the KCS Section Trackage Rights Agreement as a condition of the Board's approval of the CP-KCS Transaction.¹²

Statutory Framework

This Responsive Application is subject to prior review and authorization by the Board pursuant to 49 U.S.C. §§ 11321, 11323, 11324, and 11325, and governed by the standards of 49 U.S.C. § 11324(c) allowing the Board to impose conditions to ameliorate anticompetitive harm

¹¹ *Id.*, Exhibit C, at 32. A Major Service Standard Failure occurs when {{ [REDACTED] }}

¹² NS is also seeking that certain conditions be imposed upon any acceptance of the Application, including the terms of the requests made in this Responsive Application. *See* NS Comments and Requests for Conditions, filed concurrently as NS-9.

and prevent harm to the public interest. This Responsive Application is necessary as a condition to approval of the Application of CP to acquire KCS to preserve the existing, efficient Meridian-Wylie Route that intermodal shippers utilize to move across the Southeast and Southwest United States and avoid significant harm to the public as a result of the foreclosure of the Meridian-Wylie Route.

NS respectfully requests that this Responsive Application be treated as a Minor Transaction pursuant to 49 C.F.R. § 1180.2(c). First, the acquisition of trackage rights is generally exempt from Board review under 49 C.F.R. § 1180.2(d)(7).¹³ Second, the KCS Section Trackage Rights Agreement does not involve a control or merger involving two or more class I railroads and therefore is not a Major Transaction under 49 C.F.R. § 1180.2(a). Third, the KCS Section Trackage Rights Agreement clearly will not have any anticompetitive effects and therefore is not a Significant Transaction under 49 C.F.R. § 1180.2(b). In fact, the contingent trackage rights in the KCS Section Trackage Rights Agreement seeks to mitigate the potential harm that may flow from the CP-KCS Transaction and maintain existing routes that intermodal shippers utilize today. Accordingly, this Responsive Application should be judged under 49 C.F.R. § 1180.2(c) as a Minor Transaction.

The criteria for the Board to consider a Minor Transaction are contained in 49 U.S.C. §§ 11323-11325. Section 11324(d) sets forth the standard of review:

(d) In a proceeding under this section which does not involve the merger or control of at least two Class I railroads, as defined by the Board, the Board shall approve such an application unless it finds that—

¹³ The exemption does not apply when trackage rights are sought in responsive applications in rail consolidation proceedings, such as this Responsive Application.

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

Section 1180.6(a): Identification of Applicants and Person to Whom Correspondence with Respect to this Application Should be Addressed

NS is a Class I railroad that operates approximately 19,300 route miles in 22 primarily Eastern and Southern states and the District of Columbia. It serves every major container port in the eastern United States and provides efficient and competitive routings on its lines and in interchange with other rail carriers, including both KCS and CP, for movements beyond NS lines.

NS's name, business address, and telephone number are as follows:

Norfolk Southern Railway Company
650 W Peachtree St NW
Atlanta, GA 30308
470-463-6314

NS's counsel to whom correspondence with respect to this Responsive Application should be addressed is as follows:

Steven Newborn
Brianne Kucerik
Christopher Abbott
Weil, Gotshal & Manges LLP
2001 M Street NW
Suite 600
Washington, DC 20036
202-682-7000
brianne.kucerik@weil.com

Section 1180.6(a)(1)(i): Summary of the Proposed Transaction

In this Responsive Application, NS is seeking certain contingent trackage rights for overhead movement of a narrow category of traffic on a single KCS line to ensure intermodal shippers are not harmed as a result of the transaction contemplated by the Application. In particular, the KCS Section Trackage Rights Agreement provides NS with contingent trackage rights for intermodal traffic, the rail movement of which originates or terminates at the Wylie Intermodal Terminal, over the KCS line between the connection of MSLLC trackage with KCS at Shreveport, LA (at or near milepost V-169.85) and the so-called Wylie Intermodal Terminal at Wylie, TX (at or near milepost T-197.8) (“KCS Section”). The trackage rights would only be exercisable after NS purchases the Wylie Intermodal Terminal and only if CPKC fails to {{
[REDACTED]
[REDACTED] }}.

The KCS Section, along with the Meridian Speedway, form a continuous route between the Meridian gateway and the Wylie Intermodal Terminal. The Wylie Option was granted to NS by KCS as part of the Meridian Speedway formation.¹⁴ If the Wylie Option is exercised and joined with the contingent trackage rights requested hereunder, the combination will address a specific harm to the public resulting from the CP-KCS Transaction.

NS currently moves intermodal traffic with an origin or destination at the Wylie Intermodal Terminal that passes over the Meridian gateway (“NS Wylie Intermodal Traffic”) on an interline basis with KCS. If NS elects to exercise the Wylie Option, KCS must provide NS with haulage for NS Wylie Intermodal Traffic over the KCS Section and over the Meridian

¹⁴ Dallas Terminal Marketing Agreement, dated as of May 1, 2006, by and between NS and KCSR, as amended by the First Amendment to Dallas Terminal Marketing Agreement, dated September 28, 2016.

Speedway. NS will have contingent trackage rights to move NS Wylie Intermodal Traffic over the Meridian Speedway, including a four-tenths mile of track in Jackson, MS, owned by Canadian National Railway (“CN”), exercisable in the event of Major Service Standard Failure.¹⁵ In this Responsive Application, NS is seeking contingent trackage rights to move NS Wylie Intermodal Traffic over the KCS Section. The contingent trackage rights will not be exercisable until the later of (1) NS’s acquisition of the Wylie Intermodal Terminal, (2) a Major Service Standard Failure, and (3) the effective date of any required Board authorization of the requested trackage rights.

NS requests that the Board impose the trackage rights as conditions necessary for the approval of the Application under 49 U.S.C. § 11324(c). Section 11324(c) provides, in relevant part, that the “Board may impose conditions governing the transaction, including...requiring the granting of trackage rights and access to other facilities.”¹⁶ NS therefore requests that the Board grant NS trackage rights, and require that Applicants enter into the KCS Section Trackage Rights Agreement as a condition necessary for approval of the Application.¹⁷

Section 1180.6(a)(1)(ii): Proposed Time Schedule for Consummation of the Proposed Transaction

NS is prepared to execute the KCS Section Trackage Rights Agreement immediately. NS will be in a position to commence operations, if necessary, pursuant to the contingent trackage

¹⁵ The relevant conditions for NS’s contingent trackage rights are contained in the NSR-MSLLC Joint Use Agreement, filed as Exhibit C in *Kansas City Southern, The Kansas City Southern Railway Company, And The Texas Mexican Railway Company, and Meridian Speedway, LLC – Exemption for Transactions Within a Corporate Family*, STB Docket No. FD 34822 (filed January 17, 2006).

¹⁶ See 49 C.F.R. § 1180.1(d) (“The Board has broad authority under 49 U.S.C. 11324(c) to impose conditions on consolidations, including requiring divestiture of parallel tracks or the granting of trackage rights and access to other facilities..... The Board anticipates that mergers of Class I carriers would likely create some anticompetitive effects that would be difficult to mitigate through appropriate conditions, and that transitional service disruptions might temporarily negate any shipper benefits.”).

¹⁷ See NS Comments and Requests for Conditions, concurrently filed as NS-9.

rights over the KCS Section following execution of the Wylie Option. NS is confident that, if necessary, it can expeditiously implement the operational changes necessary to maintain rail competition and provide efficient and high-quality service to its customers on the KCS Section.

Section 1180.6(a)(1)(iii): Purpose Sought to be Accomplished by the Proposed Transaction

The purpose for the KCS Section Trackage Rights Agreement sought in this Responsive Application is to ensure that service to intermodal shippers on the Meridian-Wylie Route will not be disrupted, deterred, or eliminated as a result of the CP-KCS Transaction. The proposed contingent trackage rights would only be triggered in the event of a Major Service Standard Failure by Applicants. As described above in footnote 10, a Major Service Standard Failure would only occur if CPKC fails to {{ [REDACTED] }}

Put differently, the proposed contingent trackage rights only become exercisable if CPKC {{ [REDACTED] }} The request sought in this Responsive Application will avoid harm to shippers and to the public, including significant negative environmental impact that would result from the Application.¹⁸

Section 1180.6(a)(2): Public Interest Justifications

(i): Effect of the Proposed Transaction on Competition

The requested trackage rights will allow shippers continued use of the Meridian-Wylie Route to move intermodal traffic quickly and efficiently. As previously explained, if the Application is approved without the conditions requested by NS, then NS will not be able to continue offering reliable intermodal service over the Meridian-Wylie Route or grow its service. Shippers moving intermodal traffic between the Southeast and Dallas, TX metro area and the

¹⁸ See NS Comments and Requests for Conditions, concurrently filed as NS-9.

broader Southwestern region currently utilize the Meridian-Wylie Route because of its speed and reliability. Without the requested contingent trackage rights, Applicants may stifle intermodal growth and cause significant diversion of intermodal traffic from rail to truck. The requested conditions in this Responsive Application serve to maintain the viability of the Meridian-Wylie Route as an efficient route for intermodal shippers.

(ii): Financial Considerations

It is anticipated that NS will pay reasonable trackage rights charges negotiated with the Applicants or, if it should become necessary, set by the Board, upon exercise of the requested contingent trackage rights. Compensation for the additional trackage rights shall be typical in the industry for trackage rights and consistent with Board decisions providing for determining such compensation.

(iii): Effect of Increase of Total Fixed Charges Resulting from the Proposed Transaction

This subsection is not applicable to this Responsive Application, because the KCS Section Trackage Rights Agreement does not include any increase of total fixed charges.

(iv): Effect of the Proposed Transaction upon the Adequacy of Transportation Services to the Public

The KCS Section Trackage Rights Agreement will substantially promote the adequacy of transportation services to the public. NS provides vital and competitive intermodal rail service along the Meridian-Wylie Route.¹⁹ The requested trackage rights are necessary to preserve the Meridian-Wylie Route as a viable intermodal route and keep intermodal traffic from being diverted to trucks.²⁰ NS has worked hard and made significant investment to offer an intermodal

¹⁹ NS Comments and Requests for Conditions, concurrently filed as NS-9.

²⁰ *Id.*

service that can compete with trucks.²¹ The speed and reliability of the Meridian-Wylie Route is essential to the intermodal service offering.²² Accordingly, if the Board does not grant the requested trackage rights, intermodal shippers dependent on the Meridian-Wylie Route may lose access to efficient service, forcing them to utilize longer and more costly routes, or to trucks.

(v): Effect of the Proposed Transaction on Employees

The trackage rights being sought pursuant to this Responsive Application are contingent upon the occurrence of events, including events within the control of Primary Applicants. Requiring the Applicants to execute the KCS Section Trackage Rights Agreement itself, however, will have no effect on employees of the Primary Applicants.

(vi): Effect of the inclusion in the Proposed Transaction of Other Railroads

Inclusion is not a relevant consideration in this Responsive Application because the KCS Section Trackage Rights Agreement does not involve the merger or control of at least two Class I railroads under 49 U.S.C. § 11324(b)(2) and (d).

Section 1180.6(a)(3): Other Supporting Material

The following material concurrently filed in NS-9 is incorporated herein by reference:

- Comments and Requests for Conditions by Norfolk Southern Railroad Company;
- Verified Statement from Claude E. “Ed” Elkins, Executive Vice President and Chief Marketing Officer of Norfolk Southern Corporation;
- Verified Statement from Michael McClellan, Senior Vice President and Chief Strategy Officer at Norfolk Southern Corporation; and
- Verified Statement from Professor John Mayo, Ph.D., Elsa Carlson McDonough Chair of Business Administration and Professor of Economics, Business and Public Policy in Georgetown University’s McDonough School of Business.

Section 1180.6(a)(4): Opinion of Counsel

²¹ *Id.*

²² *Id.*

The opinion of NS's counsel is that the KCS Section Trackage Rights Agreement requested in this Responsive Application satisfies the requirements of law and will be legally authorized and valid if approved by the Board attached as Exhibit 3.

Section 1180.6(a)(5): States Where Applicants Own Property

NS operates in the following states: Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New York, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. The contingent trackage rights that NS seeks in this Responsive Application are located in Louisiana and Texas.

Section 1180.6(a)(6): Maps – Exhibit 1

Maps depicting the rail lines of NS and its affiliates are attached as Exhibit 1(A). Also attached as Exhibit 1(B) is a map showing the Meridian-Wylie Route and the relevant rail-lines surrounding NS's substantive request for contingent trackage rights between Shreveport, LA and Wylie, TX.

Section 1180.6(a)(7)(i): Description of the Transaction

As fully described above in Section 1180.6(a)(1)(i), NS will acquire contingent trackage rights to move a narrow category of intermodal traffic over the KCS line from Shreveport, LA to the Wylie Intermodal Terminal, which are not exercisable until the later of (1) NS's acquisition of the Wylie Intermodal Terminal, (2) a major service standard failure, and (3) the Board's authorization of the requested trackage rights.

Section 1180.6(a)(7)(ii): Agreement – Exhibit 2

The proposed agreement containing significant terms of the proposed trackage rights agreement are submitted with this Responsive Application as Exhibit 2.

Section 1180.6(a)(7)(iii): Information Regarding the Consolidated Entity

This subsection is not applicable to this Responsive Application because it does not propose a consolidation or merger.

Section 1180.6(a)(7)(iv): Court Order

This subsection is not applicable to this Responsive Application, because neither a trustee, receiver, assignee, nor personal representative of NS is an Applicant herein.

Section 1180.6(a)(7)(v): Property Involved in the Proposed Transaction

NS seeks to acquire contingent trackage rights over the approximately 188-mile line owned by KCS between Shreveport, LA and the Wylie Intermodal Terminal. For a full description of the line, see Section 1180.6(a)(1)(i) and the map contained in Exhibit A.

Section 1180.6(a)(7)(vi): Principal Routes, Termini, Points of Interchange, and Amount of Mileage Involved

NS operates approximately 19,300 route miles in 22 primarily Eastern and Southern states and the District of Columbia. It serves every major container port in the Eastern United States and provides shippers with efficient and competitive routings on its lines and in interchange with other rail carriers, including both KCS and CP, for movements beyond NS lines. The principal routes, termini, and points of interchange are shown on the maps attached as Exhibits 1(A)-(B). NS currently connects with CP at Kansas City, MO, Chicago, IL, Detroit, MI, Buffalo, NY, and Schenectady, NY and with KCS at Kansas City, MO, New Orleans, LA, Meridian, MS, Corinth, MS, Tuscaloosa, AL, Hattiesburg, MS, Mexico, MO, and St. Louis, MO.

The KCS Section runs between Shreveport, LA and the Wylie Intermodal Terminal in Wylie, TX. It is approximately 188 miles in length. The traffic for which NS is seeking contingent trackage rights currently moves between the Wylie Intermodal Terminal and

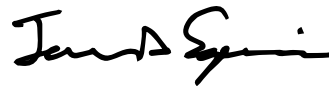
Meridian, MS by KCS on an interline basis in interchange between KCS and NS at Meridian, MS. KCS operates the traffic over the Meridian-Wylie Route, while NS handles the traffic in its network East of Meridian, MS. Upon purchase of the Wylie Intermodal Terminal, KCS will provide NS with haulage over the Meridian-Wylie Route for intermodal traffic that originates or terminates at the Wylie Intermodal Terminal. If the Board grants the requested contingent trackage rights, NS will be able to ensure continuous operations for intermodal shippers along the Meridian-Wylie Route following its purchase of the Wylie Intermodal Terminal.

Section 1180.6(a)(7)(vii): Government Financial Assistance

This subsection is not applicable to this Responsive Application, because no government financial assistance is involved.

Section 1180.4(c)(2)(i): Signatures, Oaths, and Certifications

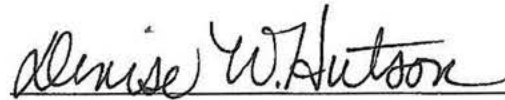
I, James A. Squires, declare under penalty of perjury that I am Chairman and Chief Executive Officer of Norfolk Southern Corporation, the parent entity of Norfolk Southern Railway Company; that I am one of the executive officers duly authorized to sign, to verify, and to file this Responsive Application on behalf of Norfolk Southern Railway Company; that I have knowledge of the matters contained in this Responsive Application; and that the statements made in this Responsive Application are true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "James A. Squires".

James A. Squires
Chairman and Chief Executive Officer
Norfolk Southern Corporation

Executed on this 28th day of February, 2022.

I, Denise W. Hutson, certify that I am Corporate Secretary of Norfolk Southern Corporation, parent entity of Norfolk Southern Railway Company, Responsive Application herein, and that James A. Squires, Chairman and Chief Executive Officer of Norfolk Southern Corporation, is duly authorized to sign, verify, and to file this Responsive Application on behalf of Norfolk Southern Railway Company.

A handwritten signature in black ink, reading "Denise W. Hutson", written over a horizontal line.

Denise W. Hutson
Corporate Secretary
Norfolk Southern Corporation

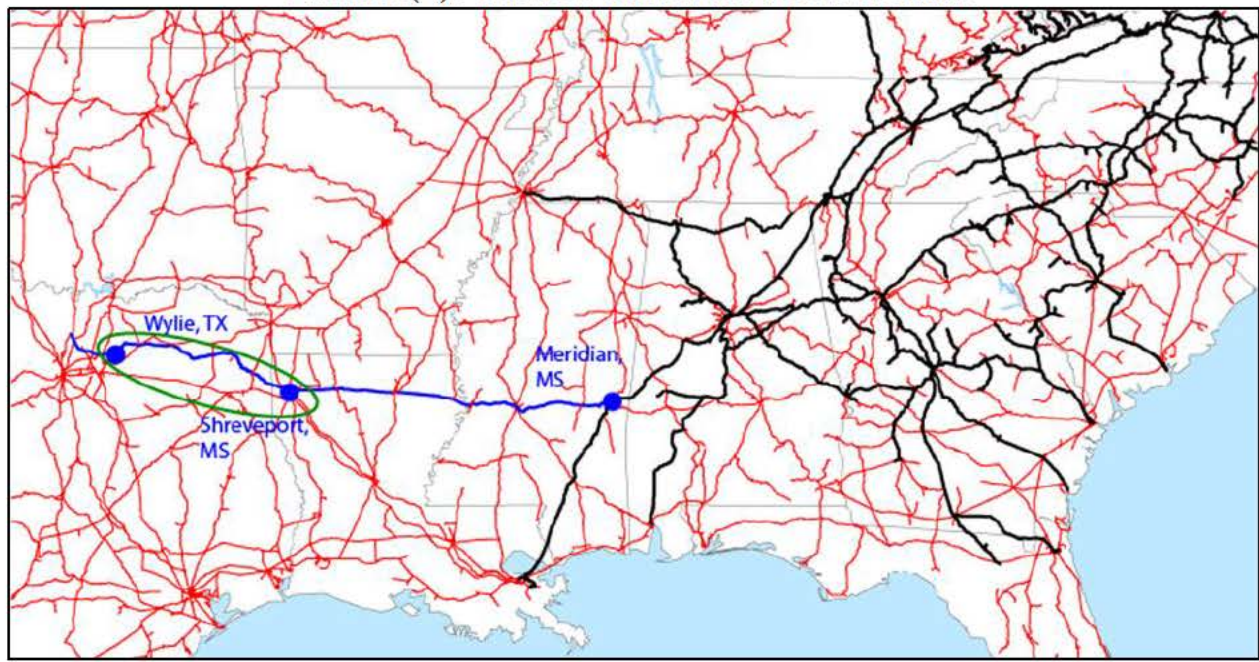
Executed on this 28th day of February, 2022.

Exhibit 1: Maps

Exhibit 1(A): The KCS Section



Exhibit 1(B): The KCS Section and the NS Network



Note: The black lines indicate the NS Network, the blue line shows the Meridian-Wylie Route, the green oval indicates the KCS Section, and the red lines show tracks owned by other railroads.

Exhibit 2: Proposed Trackage Rights Agreement

TRACKAGE RIGHTS AGREEMENT**Between****NORFOLK SOUTHERN RAILWAY COMPANY****And****[CANADIAN PACIFIC KANSAS CITY LIMITED]**

THIS TRACKAGE RIGHTS AGREEMENT, (“Agreement”), entered into as of this ____ day of _____, 202X (the “Effective Date”), by and between [CANADIAN PACIFIC KANSAS CITY LIMITED] (hereinafter referred to as “RR”) and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter referred to as “User”). Each of RR and User shall individually be referred to as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, RR owns and operates a rail line between Wylie, TX and Shreveport, LA; and

WHEREAS, RR owns and operates an intermodal facility located near Wylie, TX (at or near milepost T-197.8) (the “Wylie Intermodal Terminal”); and

WHEREAS, pursuant to the Dallas Terminal Marketing Agreement, dated May 1, 2006, between User and The Kansas City Southern Railway Company (“KCSR” and such agreement, as amended, the “Dallas Terminal Marketing Agreement”), User has an option to purchase the Wylie Intermodal Terminal (the “Wylie Option”); and

WHEREAS, pursuant to the Dallas Terminal Marketing Agreement, after User exercises its option to purchase the Wylie Intermodal Terminal, traffic moving pursuant to the Dallas Terminal Marketing Agreement between the Wylie Intermodal Terminal and an interchange with Meridian Speedway LLC (“MSLLC”) in Shreveport, LA shall be moved in haulage to be performed by [KCSR] for User on terms and conditions set forth in the Dallas Terminal Marketing Agreement; and

WHEREAS, the Surface Transportation Board (the “STB”), pursuant to action in STB Finance Docket Nos. 34821, 34822, and 34823, permitted notices of exemption to become effective, permitting, among other things, on May 1, 2006, (i) KCS to contribute the assets comprising its rail line between Meridian, Mississippi and Shreveport, Louisiana to MSLLC (the “MSLLC Line”) and the creation of MSLLC as a joint venture between User and KCSR, and (ii) the grant to User of certain haulage and contingent trackage rights over the MSLLC Line pursuant to the Norfolk Southern Railway Company – Meridian Speedway LLC Joint Use Agreement, dated May 1, 2006 (as amended, the “NS/MSLLC Joint Use Agreement”); and

WHEREAS, the NS/MSLLC Joint Use Agreement provides, among other things, for certain transit standards for the provision of services by KCSR for haulage traffic moving over the MSLLC Line, and for haulage traffic moving over both the MSLLC Line and the KCSR mainline west of Shreveport, Louisiana, including, but not limited to, traffic that moves over the Subject Trackage between Shreveport, Louisiana and the Wylie Intermodal Terminal; and

WHEREAS, the NS/MSLLC Joint Use Agreement provides that such transit standards will not be amended or modified as a result of a change in control of KCSR; and

WHEREAS, in the event of a Major Service Standard Failure (as defined in the NS/MSLLC Joint Use Agreement), under the NS/MSLLC Joint Use Agreement User has the option to exercise trackage rights for the movement of traffic over the MSLLC Line; and

WHEREAS, the parties desire to set forth the terms and conditions on which, in the event the Wylie Option is exercised, User will be entitled to trackage rights over the Subject Trackage for the movement of traffic that would otherwise move in haulage between the Wylie Intermodal Terminal and Shreveport, Louisiana.

NOW, THEREFORE, User and RR, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

- 1.1 Subject to the terms and conditions set forth in this Agreement, RR hereby grants to User the right to operate, in overhead service only, its trains, locomotives, cars, and equipment

with its own crews (hereinafter referred to as the “Trackage Rights”)²³ over the segment of RR’s railroad (herein referred to as the “Subject Trackage”), as shown on the plan attached hereto, made a part hereof and marked Exhibit “A”, between the connection of the MSLLC Line with [RR] at Shreveport, LA (at or near milepost V-169.85) and the Wylie Intermodal Terminal near Wylie, TX (at or near milepost T-197.8).

- 1.2 The Trackage Rights shall include the right to enter and exit the Subject Trackage only at the connection between MSLLC and RR at Shreveport, LA (at or near milepost V-169.85) and at the Wylie Intermodal Terminal at Wylie, TX (at or near milepost T-197.8).
- 1.3 Notwithstanding the foregoing, NSR shall not be entitled to exercise its Trackage Rights unless and until: (a) any required STB authorization or exemption applicable to the Trackage Rights shall have become effective (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption); (b) User shall have exercised the Wylie Option and acquired the Wylie Intermodal Terminal; and (c) a Major Service Standard Failure, as set forth in the NS/MSLLC Joint Use Agreement, Section 2 of Appendix B – Commercial Appendix, shall have occurred, which shall include, but not be limited to, any failure to satisfy the requirement that the transit time for a Qualifying Train moving traffic subject to the Dallas Terminal Marketing Agreement between the End Points will be 12 hours from the time the train reaches the first End Point (as such terms are defined in the NS/MLLC Joint Use Agreement). Commencement of operations pursuant to this Trackage Rights Agreement shall begin on a date specified by User to RR (the “Commencement Date”).

ARTICLE 2. USE OF LINE

- 2.1 User’s use of the Subject Trackage shall be in common with RR and any other user of the Subject Trackage and RR’s right to use the Subject Trackage shall not be diminished by this Agreement. RR shall retain the exclusive right to grant to other persons rights of any nature on the Subject Trackage.
- 2.2 Except as may be otherwise provided in this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage, or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein will, upon prior approval of RR, preclude the emergency use by User of such auxiliary tracks as may be designated by RR for such purposes.
- 2.3 RR shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against RR for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any

time from any cause.

2.4 User shall have the right to operate in either direction over the Subject Trackage.

ARTICLE 3. RESTRICTIONS ON USE

User's operations over the Subject Trackage shall be restricted to the movement of intermodal traffic, the rail movement of which originates or terminates at the Wylie Intermodal Terminal in Wylie, Texas.

ARTICLE 4. COMPENSATION

4.1 {{ [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}

4.2 {{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}

4.3 {{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}

ARTICLE 5. PAYMENT OF BILLS

- 5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of 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 shall be adjusted in the accounts of a subsequent month. The records of each Party, 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.
- 5.2 Bills rendered pursuant to the provisions of this Agreement, if any, other than those set forth in Article 4, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by the performing party at the time any work is performed by one Party for the other Party.
- 5.3 With the exception of any claims arising out of or related to any indemnification obligation herein, no bill shall be rendered, honored, recognized, or considered if filed later than three (3) years after the last day of the calendar month in which the expense covered thereby is incurred. No exception to any bill shall be honored, recognized, or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill was rendered.

ARTICLE 6. MAINTENANCE OF LINE

- 6.1 RR shall be responsible for all maintenance, repair and renewal of the Subject Trackage, including but not limited to track, bridges, signals, detectors and highway grade crossing equipment as applicable. RR shall maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but RR does not guarantee the condition of the Subject Trackage, or that operation thereover will not be interrupted.
- 6.2 Except as may be otherwise provided in Article 12 hereof, User shall not by reason of failure or neglect on the part of RR to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against RR or its parent corporation, subsidiaries and affiliates and any or all of 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. If the use of the Subject Trackage shall at any time be interrupted or traffic thereon is delayed for any cause, RR shall with reasonable diligence restore the Subject Trackage for the movement of cars.

ARTICLE 7. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

- 7.1 Existing connections or facilities which are jointly used by the Parties under 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, and renewal under such agreements or practices.
- 7.2 Any new or upgraded connections to the Subject Trackage at a point of permitted entry or exit which may be required shall be subject to RR's approval (including design) and shall be constructed, maintained, repaired, and renewed as follows:
- (a) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability, and expense such portions of the tracks located on the right of way of User or others which connect the respective lines of the Parties hereto; and
 - (b) RR shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability, and expense of User such portions of the tracks located on the right of way of RR which connect the respective lines of the Parties hereto.

ARTICLE 8. ADDITIONS, RETIREMENTS, AND ALTERATIONS

- 8.1 RR, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.
- 8.2 If User requests RR make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for RR's operation, RR shall make such changes in or additions and betterments to the Subject Trackage, and User shall pay to RR the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities.

ARTICLE 9. MANAGEMENT AND OPERATIONS

- 9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with RR on radio frequencies normally used by RR in directing train movements on the Subject Trackage.
- 9.2 The Subject Trackage shall be dispatched in a manner consistent with that of the NSR trackage rights operated pursuant to the NS/MSLLC Joint Use Agreement. Before its locomotives enter onto the Subject Trackage, User shall request permission from RR's dispatcher or other designated representative at RR's rail traffic control center or such other location as RR may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify RR's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified RR's representatives that it has cleared the Subject Trackage, User will not reenter the Subject Trackage without again obtaining permission from RR's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by RR to permit User to use RR's trackage.
- 9.3 Both Parties shall comply with the provisions of the Federal Railroad Safety Act, the Federal Locomotive Inspection Act, and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. Each Party shall indemnify, protect, defend, and save harmless the other and its respective parent corporation, subsidiaries, and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon such Party and its respective parent corporation, subsidiaries, and affiliates, and all of their respective directors, officers, agents and employees under such laws, rules, and regulations by any public agency, authority, or court having jurisdiction over the Subject Trackage or over operations on the Subject Trackage, when attributable to the failure of that Party to comply with its obligations in this regard.
- 9.4 User in its use of the Subject Trackage shall comply in all respects with its own safety and general conduct rules, equipment operation and train handling rules, and hazardous materials instructions. While using the Subject Trackage, User shall comply in all respects with the operating rules, timetables, and special instructions of RR, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of RR; provided, however, that such operating rules, timetables, and special instructions and orders of the transportation officers of RR shall not unjustly discriminate between the Parties. RR will not make any rule or

restriction applying to User's trains that does not apply equally to RR's trains. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by RR's operating rules and regulations, without the prior consent of RR. The Parties shall make proper accommodation for exceptions, should that be reasonable, necessary and practicable. All User trains shall be powered to permit operation at the maximum track speed allowed for the Subject Trackage's class of track.

- 9.5 User shall make such arrangements with RR as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Subject Trackage qualified for operation thereover, and User shall pay to RR, upon receipt of bills therefor, any reasonable cost incurred by RR in connection with the qualification of such employees of User, as well as the reasonable cost of pilots furnished by RR, until such time as such employees are deemed by the appropriate examining officer of RR to be properly qualified for operation as herein contemplated, such determination not to be unreasonably withheld, conditioned or delayed.
- 9.6 RR shall have the right to exclude from its tracks any employee of User, except officers, determined by RR to be in violation of RR's rules, regulations, orders, practices, or instructions promulgated in the normal course of business in writing by RR in its timetable or otherwise, and provided in advance to User. The decision to bar any employee of User from its tracks will not be interpreted as a request for User to fire the individual(s). User shall release, indemnify, defend, and save harmless RR from and against any and all claims and expenses resulting from such exclusion.
- 9.7 The trains, locomotives, cars and equipment of User, RR, and any other present or future user of the Subject Trackage or any portion thereof, will be operated without prejudice or partiality to any party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- 9.8 User shall ensure that its locomotives are fueled to a capacity that enables User's trains to traverse the Subject Trackage without having to be fueled.
- 9.9 In the event that (i) one of User's trains is forced to stop on the Subject Trackage and is unable to proceed due to mechanical failure of User's equipment or any other cause not resulting from an accident or derailment, (ii) one of User's trains fails to maintain the speed required by RR on the Subject Trackage; or (iii) in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, RR will have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User will

reimburse RR for the cost incurred by RR in rendering any such assistance.

- 9.10 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, RR will have the option to perform such work, and User will reimburse RR for the cost incurred by RR with respect thereto.
- 9.11 In the event RR and User agree that RR should retain employees or provide additional employees for the sole benefit of User, the Parties will enter into a separate agreement under which User will bear all cost and expense for any such retained or additional employees provided, including recruitment and training cost, and including without limitation all cost and expense associated with labor protective payments which are made by RR and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 10. MILEAGE AND CAR HIRE

- 10.1 All mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be assumed by User and reported and paid by User directly to the owner(s) of such cars.

ARTICLE 11. CLEARING OF WRECKS

- 11.1 Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, RR shall be responsible for the provision of such service, including the repair and restoration of roadbed, track and structures so as to minimize the impact on RR and User operations. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 12 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 of or used by User at the time of such wreck, shall be promptly delivered to User.

ARTICLE 12. LIABILITY

- 12.1 Without changing the responsibility for the provision of emergency services as set forth in Article 11, the responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the Parties and third persons), (ii) any real or personal property damage of any person (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgments, litigation expenses, and reasonable attorneys' fees resulting from the use of the Subject Trackage by either Party as provided for herein, all of which are collectively referred to as a "Loss", shall be allocated as follows:
- (a) If a Loss results from use of the Subject Trackage involving the trains, locomotives or other units of motive power (hereinafter in Article 12, "Locomotives"), cars, and/or equipment of only one Party, then such Party shall be solely responsible for the Loss, even if caused partially or completely by the other Party.
 - (b) Losses involving the trains, Locomotives, cars, and/or equipment of both Parties.
 - (i) Except as otherwise provided in Section 12.1(b)(ii), if a Loss results from use of the Subject Trackage involving the trains, Locomotives, cars, and/or equipment of both RR and User, then: (A) each Party shall be solely responsible for any Loss to its own employees, trains, Locomotives, equipment, and cars in its own account including lading and (B) responsibility for any Loss to the Subject Trackage and Loss sustained by third parties shall be divided equally between the two Parties, regardless of the proportionate responsibility between them as to the cause of the Loss.
 - (ii) If any damage of the environment, including without limitation land, air, water, wildlife, and vegetation, results from use of the Subject Trackage involving both RR and User's trains, Locomotives, cars, and/or equipment, then as between themselves, (A) RR shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in such RR's cars and equipment and/or RR's Locomotive(s) from which there is a release, (B) User shall be solely responsible for any damage or destruction to the environment and to third parties that results solely from a substance transported in such User's cars and equipment and/or User's Locomotive(s) from which there was a release, and (C) RR and User shall be responsible, in proportion to the total number of Locomotives, cars, and/or equipment of each Party from which there was a release, for any damage or destruction to the environment (including exacerbation of existing conditions) and to third parties that results from one or more substances transported in cars or equipment in the revenue waybill and car hire accounts or Locomotives of both RR and User

from which there were releases.

- (c) If a Loss results from use of the Subject Trackage involving the trains, Locomotives, cars, and/or equipment only one of the Parties and one or more third parties, then such Party hereto shall be solely responsible for such Loss as between the Parties.
- 12.2 If a Loss occurs other than one resulting from the use of the Subject Trackage by the trains, Locomotives, cars, and/or equipment of either RR or User, then each of RR and User is solely responsible for any Loss to its own employees, trains, Locomotives, cars, and/or equipment, even if caused partially or completely by the other Party.
- 12.3 Except as provided in Section 9.11, each Party agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries and affiliates, and any or all their respective directors, officers, agents and employees from and 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, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this 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 that may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees. Similarly, each Party agrees to indemnify and hold harmless the other Party against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement.
- 12.4 Whenever any Loss is assumed by or apportioned to a Party under the foregoing provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party and its parent corporation, subsidiaries and affiliates, and any and all of their respective directors, officers, agents, and employees from and against such Loss assumed by that Party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.
- 12.5 In every case of death or injury suffered by an employee of either User or RR, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either 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 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.

- 12.6 For purposes of determining liability, pilots furnished by RR to User pursuant to this Agreement shall be considered as the employees of User while such employees are on duty as pilots for User.
- 12.7 If any suit or action shall be brought against either Party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said other Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- 12.8 In the event of a Loss as set out herein, the Parties shall be bound by the Freight Claim Rules, Principles, and Practices of the AAR as to the handling of any claims for the loss or damage to lading.
- 12.9 Notwithstanding any provision of this Agreement to the contrary, for the purpose of this Article 12, the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right of way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.
- 12.10 Notwithstanding any and all of the forgoing provisions of this Article 12, in the event a Loss occurs while the Subject Trackage is being used by RR and/or User, and such Loss is attributable solely to the willful or wanton negligence of only one of the Parties to this Agreement, then the Party which was so willfully or wantonly negligent shall be solely responsible for such Loss. The Parties shall submit disputes involving the determination of whether a Loss is attributable solely to the willful or wanton negligence of one of the Parties to this Agreement, but no other disputes under this Agreement, to binding arbitration under the commercial arbitration rules of the American Arbitration Association.
- 12.11 Notwithstanding any provision of this Agreement to the contrary and regardless of the nature of the cause of action (whether in contract, tort or otherwise), in no event shall either Party be liable to the other Party for any incidental, special, indirect, consequential or punitive damages whatsoever (including but not limited to lost profits, business interruption expenses, lost use of equipment, liability to a Party's customers for liquidated damages or other damages) arising out of or related to the activities contemplated by this Agreement, even if advised of the possibility of such damages. Except as otherwise provided in Sections 12.7 and 13.1(c) hereof, under no circumstances shall either Party be entitled to recover its attorneys' fees and legal cost and expenses from the other Party for

a dispute arising out of this Agreement.

ARTICLE 13. CLAIMS

13.1 Except as provided in Section 13.1(a) below, all claims, injuries, death, property damages, and losses arising out of or connected with this Agreement will be investigated, adjusted, and defended by the Party bearing the liability, cost, and expense therefor under Article 12 of this Agreement.

- (a) Each Party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. § 11706 and 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 RR or User which is the other's duty hereunder 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 under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by such Party.
- (d) Excluding freight loss and damage claims 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. § 10709, neither Party shall settle or compromise any claim, demand, suit or cause of action for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds {{ [REDACTED] }}

13.2 It is understood that nothing in this Article 13 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 12.

ARTICLE 14. INDEMNITY COVERAGE

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

ARTICLE 15. INTENTIONALLY OMITTED**ARTICLE 16. TERM, TERMINATION, AND DEFAULT**

- 16.1 This Agreement shall remain in full force and effect until mutually terminated by the Parties; provided, however, that User shall have the right to terminate this Agreement upon giving sixty (60) days' advance written notice to RR.
- 16.2 Termination of this Agreement shall not relieve or release either Party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to termination thereof.
- 16.3 In the event of any material failure on the part of User to perform its obligations under this Agreement and the continuation of such failure for a period of sixty (60) days after its receipt of written notice thereof by certified mail from RR, RR shall have the right at its option and after first giving thirty (30) days' written notice thereof by certified mail, and notwithstanding any waiver by RR of any prior breach hereof, to terminate the Agreement and User's use of the Subject Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right by RR will not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

ARTICLE 17. REGULATORY APPROVAL

- 17.1 Should implementation of this Agreement require the prior approval and authorization of the STB or other regulatory authority, User, at its own cost and expense, will initiate and thereafter diligently pursue such approval and authorization or an exemption therefrom.

- 17.2 Should User elect to discontinue the Trackage Rights, User shall, within sixty (60) days of that election, initiate and thereafter diligently prosecute any action to obtain approval from STB or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. Termination or expiration of this Agreement shall have no effect on the perpetual right of movement granted to User and shall not trigger a requirement for User to discontinue rights at the STB.

ARTICLE 18. FORCE MAJEURE

- 18.1 The obligations, other than payment obligations, of the Parties under this Agreement shall be subject to force majeure (including Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the Parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders, or regulations, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take all reasonable measures including providing routing over alternate rail lines to the extent practicable (subject to reimbursement for incremental costs), and granting the right to enter and exit the Subject Trackage at locations other than the End Points in the case of a necessary detour, to restore performance of its obligations in a timely manner.

ARTICLE 19. ABANDONMENT

- 19.1 Notwithstanding the provisions of Article 16 of this Agreement, RR may abandon all or part of the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of RR's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with or oppose RR's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that RR seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from RR pursuant to 49 U.S.C. § 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. § 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the

Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes RR's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by RR for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that RR is authorized to abandon the Subject Trackage. Upon discontinuance of User'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 herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

ARTICLE 20. SUCCESSORS AND ASSIGNS

- 20.1 Neither Party hereto may assign or transfer this Agreement, in whole or in part, or any rights granted herein, or delegate to another party any duties hereunder, except a subsidiary, or an affiliate without the prior written consent of the other Party. Any transfer, assignment, or delegation of this Agreement, or of any rights or duties herein granted or imposed, whether voluntary or involuntary, by operation of law or otherwise, without such prior consent in writing, shall be null and void *ab initio*, and at the option of the party whose written consent should have been obtained, this Agreement may be terminated. Subject to this Article, this Agreement shall be binding upon and inure to the benefits of the Parties hereto and their permitted successors and assigns.

ARTICLE 21. NOTICE

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

If to RR:

General Manager – Interline Management
Canadian Pacific Kansas City Limited
Gulf Canada Square

401 9th Square
Calgary, Alberta, Canada T2P 4Z4

with a copy to:

Manager Interline Agreement Management
Canadian Pacific Kansas City Limited
Gulf Canada Square
401 9th Square
Calgary, Alberta, Canada T2P 4Z4

If to User:

Norfolk Southern Railway Company
Attn: Senior Director – Interline Services
650 West Peachtree Street NW – Box 38
Atlanta, Georgia 30308

Either Party may provide changes in the above addresses to the other Party by personal service or U.S. mail.

ARTICLE 22. GENERAL PROVISIONS

- 22.1 This Agreement and each and every provision hereof is for the exclusive benefit of the Parties not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the Parties.
- 22.2 This Agreement contains the entire understanding of the Parties and supersedes any and all oral understandings between the Parties.
- 22.3 No term or provision of this Agreement may be changed, waived, discharged, or terminated

except by an instrument in writing and signed by both Parties.

- 22.4 No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.
- 22.5 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.
- 22.6 All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 22.7 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the Parties, such expression means the trains, locomotives, cars, and equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, cars, and equipment which are owned by, leased to, or in the account of such Party. Whenever such locomotives, cars, or equipment are owned or leased by one Party and are in the possession or account of the other Party, such locomotives, cars, and equipment shall be considered those of that other Party in whose possession or train such locomotives, cars and equipment are located.
- 22.8 This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.
- 22.9 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without giving effect to any choice or conflict of laws provision or rule (whether of the Commonwealth of Virginia or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the Commonwealth of Virginia.
- 22.10 If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to

replace such invalid or unenforceable provisions in a manner which produces a result which is substantially equivalent to the terms of this Agreement in all material respects.

22.11 This Agreement may be executed in several counterparts, each of which will be deemed an original, and such counterparts shall constitute one and the same instrument.

ARTICLE 23. CONFIDENTIALITY

23.1 Except as required by applicable law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over or the subject matter of this Agreement or as may be necessary or appropriate for a Party to enforce its rights under this Agreement, during the term of this Agreement and during a period of three (3) years subsequent to termination of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or obtained hereunder shall be kept confidential and shall not be disclosed by either RR or User to any party other than each Party's respective parent corporation, subsidiaries, and affiliates, and their respective directors, officers, agents, employees and attorneys, without the prior written approval of the other Party.

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

Witness for RR:

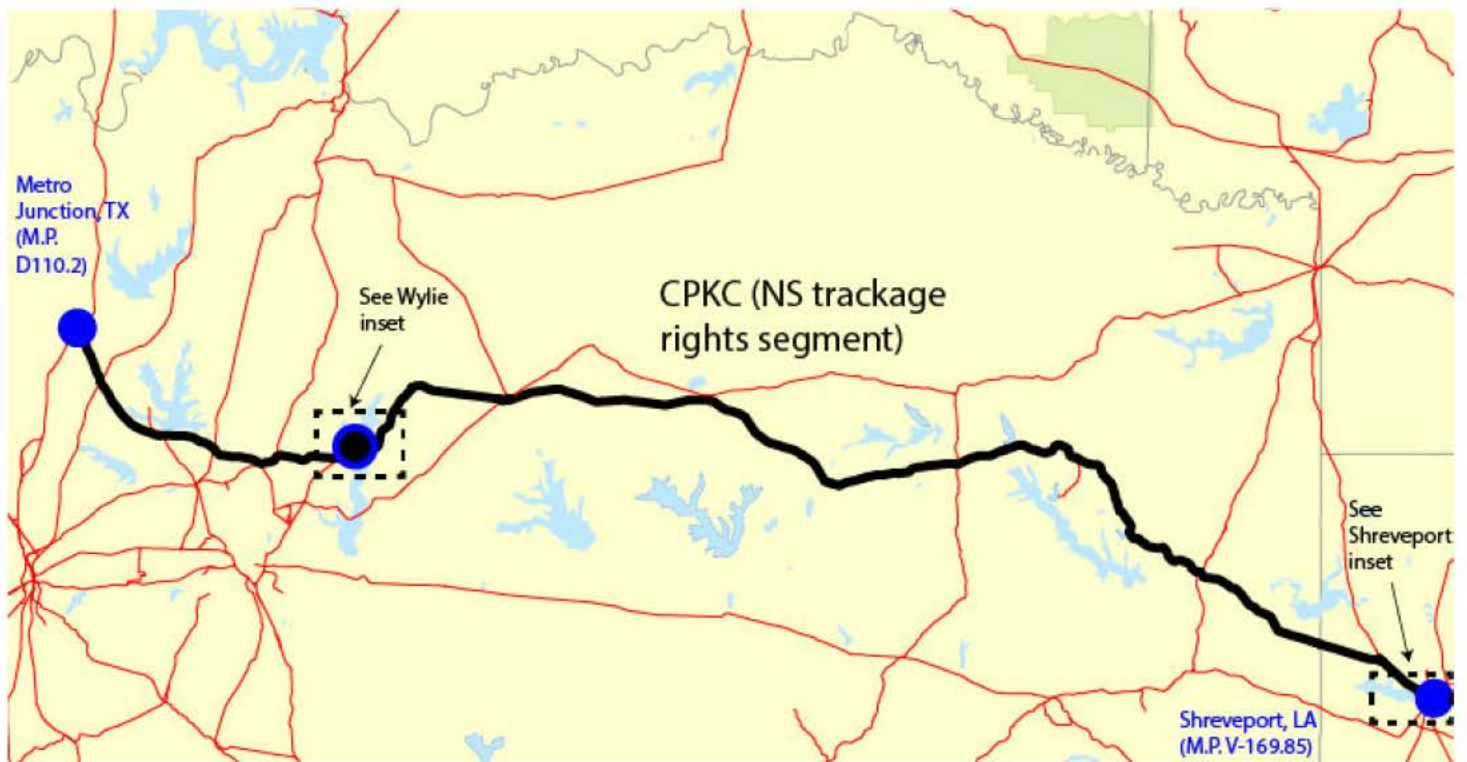
CANADIAN
PACIFIC KANSAS CITY LIMITED

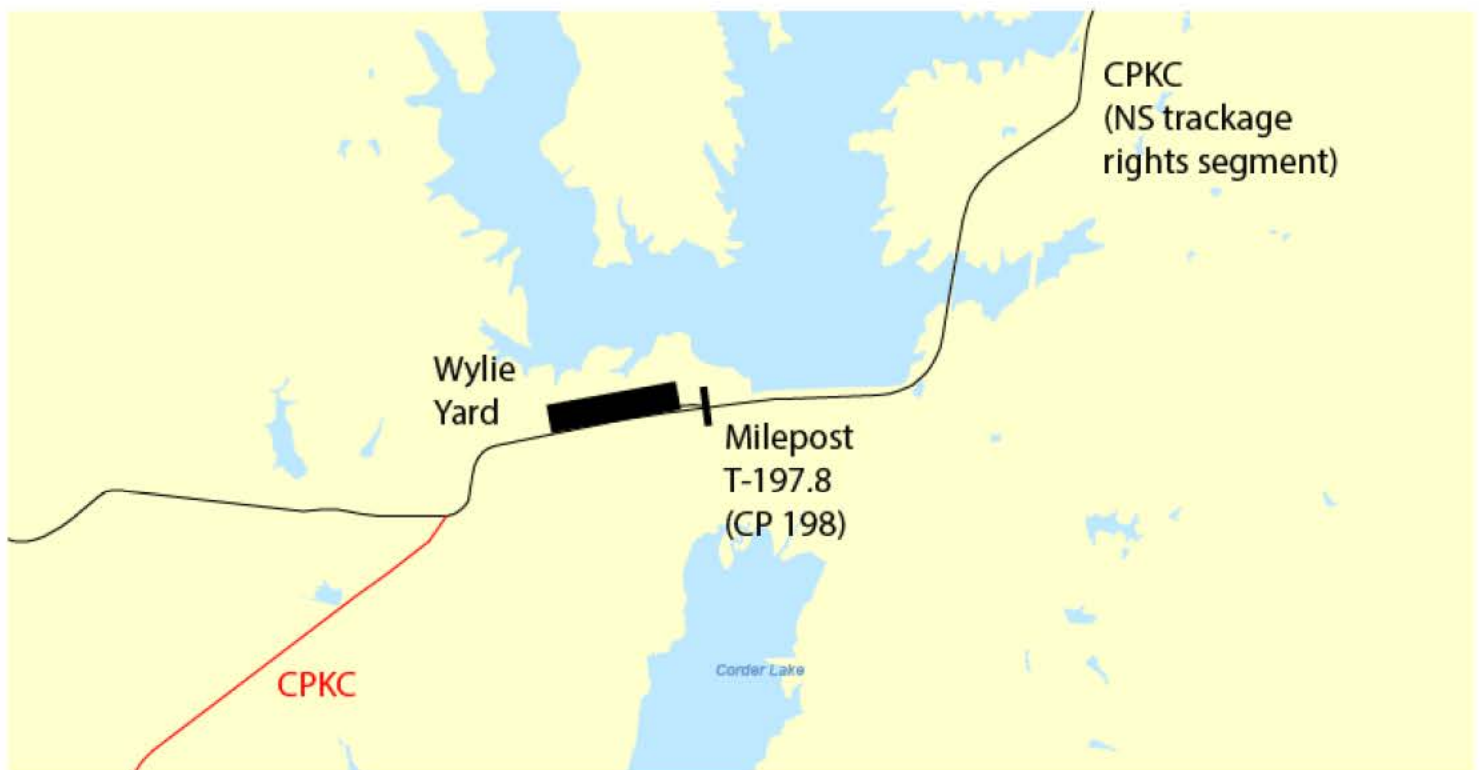
By: _____

Witness for USER:

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____
Vice President

EXHIBIT A

Wylie inset

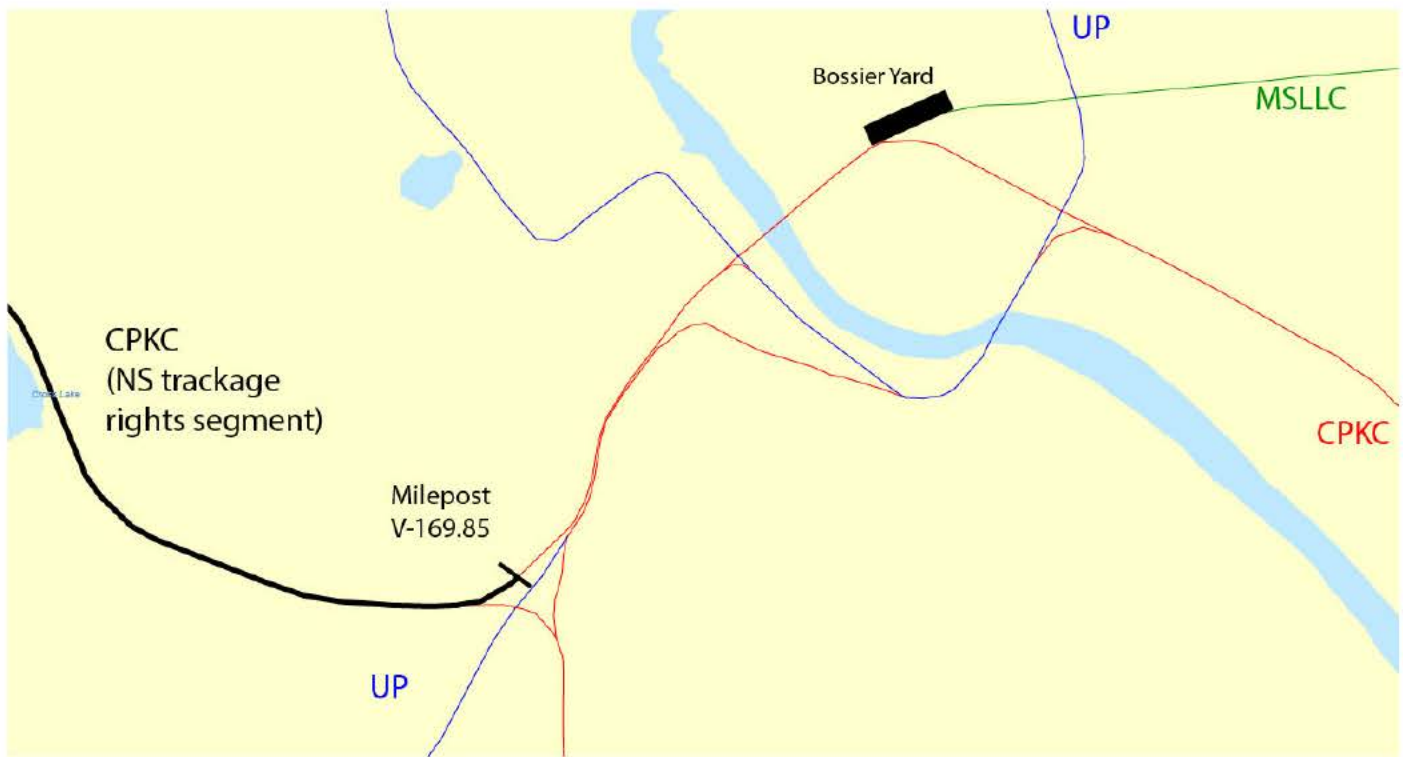
Shreveport inset

Exhibit 3: Opinion of Counsel**OPINION OF COUNSEL FOR
NORFOLK SOUTHERN RAILWAY COMPANY**

As counsel for Norfolk Southern Railway Company (“NS”), I am familiar with the transaction proposed in the Responsive Application of NS. It is my opinion that the transaction proposed in NS’s Responsive Application meets all requirements of law, will be legally authorized and valid if approved by the Surface Transportation Board, is within the corporate power of NS, and will not result in any breach, violation or default of any provisions of NS’s Articles of Incorporation or Bylaws.

Weil, Gotshal & Manges LLP

Brianne Kucerik

Brianne Kucerik
2001 M Street, NW
Suite 600
Washington, DC 20036

Attorney for Norfolk Southern
Railway Company

Dated this 28th day of February, 2022.