



Norfolk Southern Corporation
Law Department
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David A. Shelton
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August 28, 2002



VIA AIRBORNE EXPRESS

ENTERED
Office of Proceedings

FEE RECEIVED

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

AUG 29 2002

Part of
Public Record

AUG 29 2002

**SURFACE
TRANSPORTATION BOARD**

Re: Finance Docket No. 34237 – Notice of Exemption – Norfolk
Southern Railway Company – Corporate Family Transaction
Exemption – Memphis and Charleston Railway Company

Dear Mr. Williams:

In accordance with 49 CFR § 1180.4(g), please find enclosed for filing with the Surface Transportation Board one original and ten (10) copies of a Notice of Exemption submitted on behalf of Norfolk Southern Railway Company ("NSR") and Memphis and Charleston Railway Company ("MCR"). In addition, twenty (20) unbound copies of Exhibit 1 to the Notice of Exemption are enclosed as required by 49 CFR § 1180.6(a)(6). The Notice of Exemption concerns a proposed merger of MCR with and into NSR.

Also enclosed is a check for the filing fee of \$1,300 as provided in 49 CFR § 1002.2(f)(38)(iv). Finally, an additional copy of this letter is enclosed; please have it date stamped and returned to me at the above address.

Sincerely,

FILED

David A. Shelton

Enclosures

AUG 29 2002

**SURFACE
TRANSPORTATION BOARD**

Operating Subsidiary: Norfolk Southern Railway Company



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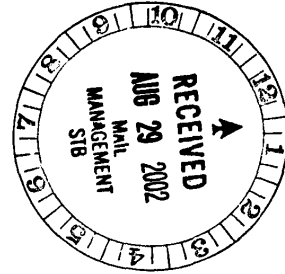
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Sincerely,

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34237



NORFOLK SOUTHERN RAILWAY COMPANY
-- CORPORATE FAMILY TRANSACTION EXEMPTION --
MEMPHIS AND CHARLESTON RAILWAY COMPANY

NOTICE OF EXEMPTION

NOW COME Norfolk Southern Railway Company ("NSR") and Memphis and Charleston Railway Company ("MCR") and state as follows:

This is a notice of intent to engage in a transaction found by the Surface Transportation Board (the "Board") to be presumptively exempt from Board regulation pursuant to 49 U.S.C. § 10502, to wit, a transaction within a corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. See 49 C.F.R. § 1180.2(d)(3).

The Board's regulations at § 1180.4(g)(1) provide that, to avail itself of such an exemption, a rail carrier must file with the Board a verified notice of the transaction.

Accordingly, NSR and MCR file this notice and submit the following required information:

I. Description of Transaction

(a) This notice is filed on behalf of Norfolk Southern Railway Company, a Virginia corporation ("NSR"), and Memphis and Charleston Railway Company, a Mississippi corporation ("MCR"). NSR and MCR each has a business address at Three Commercial Place, Norfolk, Virginia 23510-2191. The name, address and telephone number of the parties' counsel to whom questions may be addressed is:

David A. Shelton
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-9241
(757) 629-2834

NSR is a Class I railroad that, together with its rail subsidiaries, operates approximately 21,500 miles of railroad in 22 states, the District of Columbia and the province of Ontario. MCR owns approximately 34 miles of road located in Mississippi that have been leased to NSR or its predecessors since about 1898.

NSR is controlled through stock ownership by Norfolk Southern Corporation, a non-carrier holding company.

NSR owns all of the authorized capital stock of MCR. MCR has been controlled by NSR or its predecessors through stock ownership since approximately 1898.

The proposed transaction, which is designed to further the goal of corporate simplification, will be accomplished as a direct merger of MCR into NSR pursuant to the statutory short-form merger provisions of Virginia and Mississippi law.

MCR and NSR will enter into an Agreement and Plan of Merger substantially in the form of Exhibit 2 hereto ("Merger Agreement"), which will provide, among other things, that, subject to necessary regulatory approval or exemption, MCR will be merged into and with NSR. All

shares of capital stock of MCR will be cancelled and retired, and no consideration will be paid in respect of such shares.

At the effective time of the merger, MCR will be merged with and into NSR, and the separate corporate existence of MCR will cease. NSR, as the surviving corporation, will succeed to ownership of all assets of MCR and will be responsible for all debts and obligations of MCR.

The proposed merger will not result in any significant changes in rail operations over the properties owned by MCR. Service levels and customers' access to rail service will not be affected by the transaction.

No effects on employees are anticipated. The interests of rail employees will be addressed adequately by imposition of standard labor protective conditions pursuant to 49 U.S.C. §§ 10502(g) and 11326 and as set forth in New York Dock Ry. – Control – Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), as clarified by Wilmington Terminal R.R. – Pur. & Lease – CSX Transp., 6 I.C.C.2d 799 (1990).

NSR and MCR expect to consummate the proposed merger on or as soon as practicable after October 1, 2002. The principle purpose of the proposed merger is to eliminate MCR as a separate corporate entity, thereby simplifying the corporate structure of NSR and the NSR system and eliminating costs associated with separate accounting, tax, bookkeeping and reporting functions.

(b) NSR and its railroad subsidiaries own or operate lines of railroad in the States of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia and in Washington, D.C.

MCR owns lines located entirely within the State of Mississippi. A map showing the lines of railroad owned by MCR in relation to the NSR rail system is attached hereto as Exhibit

1. A copy of the proposed Merger Agreement is attached hereto as Exhibit 2.

II. Other Matters

The proposed transaction will not have a significant effect on the quality of the human environment or on the consumption of energy. Because the proposed merger involves only a change in ownership or similar changes not involving a change in carrier operations, no environmental reports or documentation are required. See 49 C.F.R. § 1105.6(c)(2). Similarly, because the proposed merger will involve only a transfer of MCR's lines, sites and/or structures between corporate affiliates with no significant change in operations, no historic report is required. See 49 C.F.R. § 1105.8(b)(2).

Respectfully Submitted,



Stephen C. Tobias
Vice President, Norfolk Southern Railway
Company
President, Memphis and Charleston Railway
Company

Of counsel:

David A. Shelton
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-9241
(757) 629-2834

Dated: August 28, 2002

VERIFICATION

COMMONWEALTH OF VIRGINIA)
) ss
CITY OF NORFOLK)

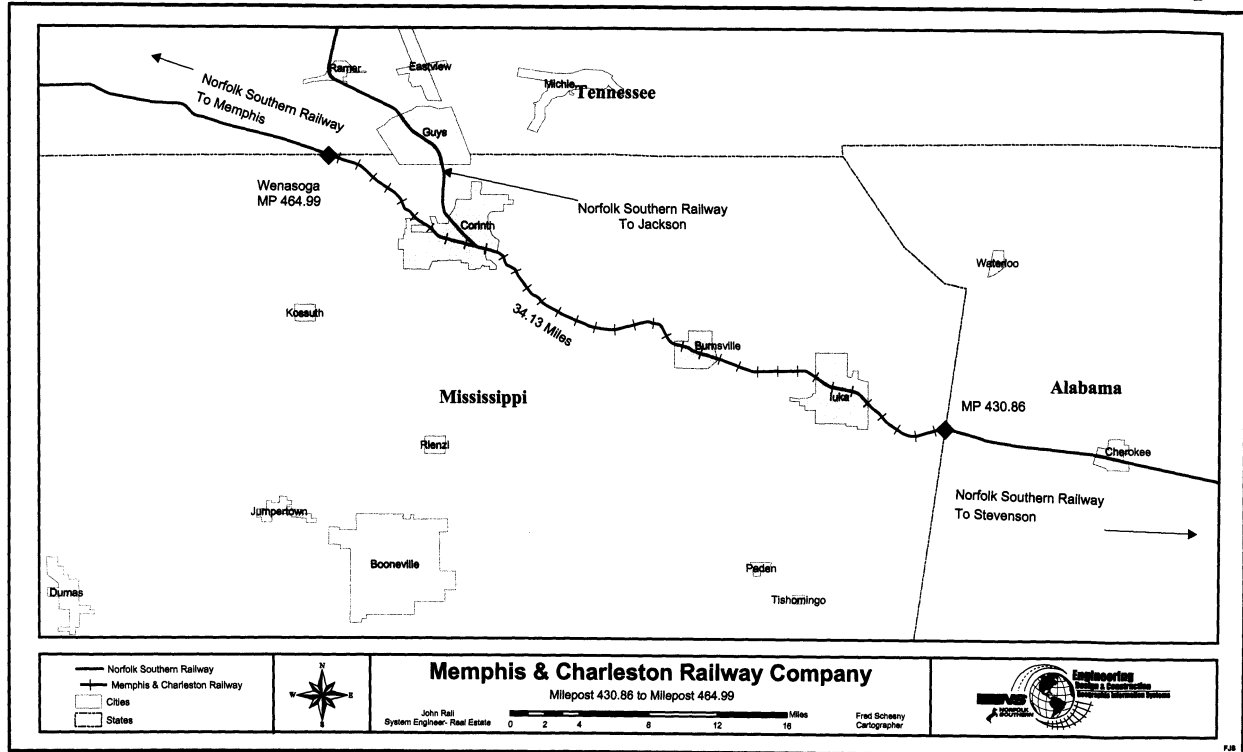
Stephen C. Tobias, being duly sworn, deposes and says that he is Vice President of Norfolk Southern Railway Company and President of Memphis and Charleston Railway Company; that he is authorized to sign, verify and file with the Surface Transportation Board the foregoing Notice of Exemption; that he has carefully examined all of the statements contained in said Notice of Exemption; that he has knowledge of the matters set forth therein insofar as those matters relate to Norfolk Southern Railway Company and Memphis and Charleston Railway Company; and that all such statements made and matters set forth with respect to Norfolk Southern Railway Company and Memphis and Charleston Railway Company are true to the best of his knowledge, information and belief.


Stephen C. Tobias

Subscribed and sworn to before me
this 27th day of August, 2002.

Lori F. Erbe
Notary Public

My commission expires: June 30, 2005



AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER ("Agreement") is made as of _____, by and between NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation ("NSR"), and MEMPHIS AND CHARLESTON RAILWAY COMPANY, a Mississippi corporation and a subsidiary of NSR ("MCR").

WITNESSETH:

WHEREAS, the authorized capital stock of MCR as of the date of this Agreement consists of 1,000 shares of Common Stock, par value \$100 per share, all of which are issued and outstanding ("MCR Common Stock");

WHEREAS, as of the date of this Agreement NSR owns all of the issued and outstanding MCR Common Stock;

WHEREAS, this Agreement has been approved and adopted by the Boards of Directors of NSR and MCR;

WHEREAS, this Agreement is intended to constitute a liquidation of MCR within the meaning of Sections 332 and 337 of the Internal Revenue Code of 1986, as amended.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, NSR and MCR hereby agree as follows:

1. The Merger. (a) Subject to the terms and conditions contained in this Agreement, at the Effective Time (as hereinafter defined), MCR shall be merged with and into NSR (the "Merger") in accordance with Virginia Code § 13.1-719 and Mississippi Code §§ 77-9-119 and 79-4-11.04, the separate existence of MCR shall cease, and NSR shall continue as the surviving corporation under the laws of the Commonwealth of Virginia ("Surviving Corporation"). The name of the Surviving Corporation shall be Norfolk Southern Railway Company. The principal office of the Surviving Corporation shall be located in Norfolk, Virginia.

(b) The Merger shall be effective upon the later of: (i) the filing with the Secretary of State of the State of Mississippi of properly executed articles of merger in compliance with Mississippi Code § 79-4-11.05, (ii) the issuance by the State Corporation Commission of the Commonwealth of Virginia of a document copy of the articles of merger pursuant to Virginia Code § 13.1-720 or (iii) such later time as may be specified in the documents filed or issued under (i) and (ii) of this subsection (b) (the "Effective Time"). At the Effective Time, the Merger shall have the effects stated in Virginia Code § 13.1-721 and Mississippi Code § 79-4-11.06.

2. Conversion of Shares. (a) At the Effective Time, each then outstanding share of MCR Common Stock shall be cancelled and retired, and all certificates theretofore representing shares of MCR Common Stock shall be cancelled and cease to represent any interest in MCR. No payment shall be made with respect to the MCR Common Stock and no shares, securities or

obligations convertible into shares shall be issued or delivered with respect to the MCR Common Stock.

(b) Each share of stock of NSR outstanding immediately prior to the Effective Time shall remain outstanding after the Effective Time as an identical share of NSR, and no shares, securities or obligations convertible into shares of NSR shall be issued or delivered as a result of the Merger.

3. Articles of Incorporation and Bylaws; Officers and Directors. The Merger will not effect any changes in the terms or provisions of the Articles of Incorporation or Bylaws of NSR. The provisions of the Articles of Incorporation and the Bylaws of NSR in effect immediately prior to the Effective Time shall be the provisions of the Articles of Incorporation and the Bylaws of the Surviving Corporation. The officers and directors of NSR holding office immediately prior to the Effective Time shall be the officers and directors of the Surviving Corporation, and they shall serve until their successors are duly appointed or elected.

4. Conditions to the Merger. The obligations of NSR and the obligations of MCR under this Agreement are subject to and shall be conditioned upon the satisfaction, or waiver (in whole or in part) in writing, of each of the following conditions:

(i) NSR and MCR shall have obtained any necessary approval and authority (without unusual conditions) of the Surface Transportation Board ("STB") and any other regulatory agency having jurisdiction, or shall have obtained, or shall have complied with such requirements as necessary to avail themselves of any, exemption from regulation by the STB and any other regulatory agency having jurisdiction. Each of such approvals, authorities and exemptions shall remain in full force and effect at the Effective Time and such approvals, authorities and exemptions, and the transactions contemplated hereby, shall not have been contested by any Federal or state governmental agency by formal proceeding; and

(ii) No one or more of NSR and MCR shall be subject to any order, decree or injunction of a court or agency of competent jurisdiction that enjoins or prohibits the consummation of the Merger.

5. Termination. Anything in this Agreement to the contrary notwithstanding, this Agreement may be terminated and the Merger provided for herein may be abandoned any time prior to the Effective Time by mutual agreement of NSR and MCR.

6. Modification of Agreement; Waiver. This Agreement may, subject to applicable law, be amended by action of the Boards of Directors of NSR and MCR, and any provision of this Agreement may be waived at any time by the party that is entitled to the benefits thereof.

7. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf by its officer thereunto duly authorized as of the day and year first written above.

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____
Stephen C. Tobias, Vice President

Witness:

Name: _____

MEMPHIS AND CHARLESTON RAILWAY COMPANY

By: _____
Stephen C. Tobias, President

Witness:

Name: _____