



Norfolk Southern Corporation
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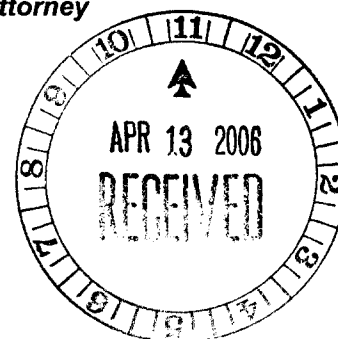
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Senior General Attorney

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April 12, 2006



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

Re: STB Docket No. AB-290 (Sub-No. 254X), Norfolk Southern Railway
Company - Petition for Exemption - Discontinuance of Service - Between
Halls Ferry Junction, NC and Badin, NC, in Stanly County, North Carolina;
STB Docket No. AB-290 (Sub-No. 274X), Yadkin Railroad Company - 2/6231
Petition for Exemption - Discontinuance of Service and Operating Rights
Under Lease - Between Halls Ferry Junction, NC and Badin, NC, in Stanly
County, North Carolina [RE-STYLED];
STB Docket No. AB-149 (Sub-No. 2), Winston-Salem Southbound - 2/6233
Railway Company - Petition for Exemption - Discontinuance of Service
and Operating Rights Under Lease - Between Whitney, NC and Badin,
NC, in Stanly County, North Carolina [RE-STYLED]

Dear Mr. Williams:

On March 30, 2006, Petitioners Norfolk Southern Railway Company (NSR), Yadkin Railroad Company (Yadkin) and Winston-Salem Southbound Railway Company (WSSB) submitted combined petitions for exemption, filing fees and discs in the captioned dockets. Petitioners now request that (1) they be allowed to postpone the filing date for these petitions until they submit a revised combined petition within the next few business days to make certain corrections to the description of the requested relief sought and to provide additional information, (2) the Board postpone publication of the notice of filing in the Federal Register to accord with the revised filing date and (3) that the corrected combined petitions be accepted in the same dockets and without new filing fees or new newspaper notices being published in view of (A) the short time since the original filing, (B) the fact that the Federal Register notice has not been published, and (C) the service of the original petition, this letter, and the amended petition on the only shipper on the Line, Alcoa, Inc., and other potentially interested parties shown as

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receiving copies of this letter.

We summarize the major items to be corrected or added below and provide the principal additional information as attachments to this letter. However, we will incorporate the changes into the body of a revised petition for clarity and to obviate the need for cross-references, and in order to make conforming changes to statements in the petition to the extent required. NSR will submit the fully revised petition to the Board as soon as possible and in any event within the next few business days.

1. NSR requested an exemption to discontinue service over the entire 11.11 miles of the subject Line between Milepost WF-0.0 at Halls Ferry Junction, NC and Milepost WF-11.11 at Badin, NC but did not clearly identify how its operation over the Line arose. NSR's predecessor, Carolina and Northwestern Railway Company leased the property of the Yadkin Railroad Company pursuant to an Agreement of Lease dated July 1, 1951. That lease was approved by the ICC in a case disposed of without a written report, June 7, 1951, ICC Finance Docket No. 17158, *Carolina & Northwestern Railway Company, Control, Etc.*, 282 I.C.C. 803 (1951). The leases approved in that docket included the lease of the then 43.11-mile line of the Yadkin Railroad Company, between Albemarle, NC and Yadkin Junction (Salisbury) NC. The 43.11 miles of Yadkin line included the 11.11 miles between Halls Ferry Junction, NC and Whitney, NC and between Whitney, NC and Badin, NC under contract (lease) from what was then Carolina Aluminum Company and is now Alcoa.

Carolina and Northwestern Railway Company was merged into Southern Railway Company on June 1, 1988. Thus, Southern Railway Company, soon to become Norfolk Southern Railway Company by change of name effective December 31, 1990, succeeded directly to the lease of the Yadkin Railroad Company and its property and rights. Renewal of the lease and operating agreement between Yadkin Railroad Company and Carolina and Northwestern Railway Company's successor, NSR, for a 25-year period with an optional 25-year extension was approved by the Board in *Norfolk Southern Railway Company - Corporate Family Transaction Exemption - Yadkin Railroad Company*, STB Finance Docket No. 33951 (STB served December 12, 2000). Therefore, NSR's discontinuance of service is that previously approved by the ICC and later by the Board in the approval of NSR's lease and operation of the Yadkin property. A copy of the 1951 lease of the Yadkin Railroad property to NSR's predecessor, C&NW, is attached to this letter and will be re-submitted as Exhibit 20 to the petition.

2. Petitioners submit a copy of the March 28, 1916 agreement between Tallassee Power Company and Yadkin Railroad Company under which Yadkin leased

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the segment of the Line between Halls Ferry Junction, NC and Whitney, NC, which will be re-submitted as Exhibit 21.

3. Petitioners submit a copy of the March 28, 1916 agreement between Tallassee Power Company and Yadkin Railroad Company and Winston-Salem Southbound Railway Company under which Yadkin and WSSB leased the segment of the Line between Whitney, NC and Badin NC, which will be re-submitted as Exhibit 22.

4. These documents are submitted in order to show that an exemption for discontinuance of service and operating rights under relief, rather than abandonment of the Line, is the more proper relief to be granted to Petitioners in this proceeding. Petitioners do not own the right-of-way or track and material on the Line or either segment of it, and therefore, should not be "abandoning" the Line or any part of it.

5. The exemptions for petitioners to discontinue service over the Line will result in no railroad or other party having a common carrier obligation or residual common carrier obligation to provide service over the Line. No party now has a residual common carrier obligation to provide service over the Line because it was never owned by a common carrier nor operated by its owner, Tallassee Power Company, now Alcoa. Alcoa owns the Line and is not a railroad. As far as appears, since the railroads operated the Line since almost the date of its construction, Alcoa has never held itself out to be a common carrier over the Line nor has it ever provided any service over the Line. Petitioners have found no evidence that any other railroad customer was ever located along the Line but will re-check this to the extent they are able to do so.

6. Under the above facts, it appears that the Line will become ordinary property or at most a private line of railroad outside the Board's jurisdiction when Petitioners discontinue service over the Line.

Petitioners will file their completely amended petition with the above and conforming changes as promptly as possible and as noted above, serve this letter on Alcoa and all known interested parties.

Yours very truly,



James R. Paschall

Enclosures

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cc w/ encl.:

Ms. Sue Koessler
Alcoa, Inc.
1100 Riverview Tower
900 S. Gay Street
Knoxville, TN 37902

Mr. Michael F. McBride
LeBoeuf, Lamb, Greene & MacRae LLP
1875 Connecticut Avenue, N.W.
Washington, DC 20009

Via DHL Express

Mr. Patrick B. Simmons
Director - Rail Division
North Carolina Department of Transportation
1533 Mail Service Center
Raleigh, NC 27699-1533

Ms. JoAnne Sanford, Chair
North Carolina Utilities Commission
P. O. Box 29510
Raleigh, NC 27626

United States Department of Defense
Military Traffic Management Command (MTMCTEA)
Transportation Engineering Agency
Railroads for National Defense Program
720 Thimble Shoals, Blvd., Suite 130
Newport News, VA 23606-2574

Mr. Tom Ross, Chief of National Recreation and Trails
U. S. Department of the Interior - National Park Service
Recreation Resources Assistance Division
P.O. Box 37127
Washington, D.C., 20013-7127

U. S. Department of Agriculture,
Chief of the Forest Service
4th Floor N.W., Auditors' Building
14th Street and Independence Avenue, S.W.
Washington, D.C. 20250

THIS AGREEMENT OF LEASE, dated as of the 1st day of July, 1951, by and between

YADKIN RAILROAD COMPANY, a corporation of the State of North Carolina, hereinafter styled Lessor, party of the first part; and

CAROLINA AND NORTHWESTERN RAILWAY COMPANY, a corporation of the States of Virginia, North Carolina and South Carolina, hereinafter styled Lessee, party of the second part;

WITNESSETH:

THAT the LESSOR, for and in consideration of the rents or sums of money herein reserved to be paid to it by Lessee, and of the covenants of Lessee hereinafter expressed, does hereby lease unto LESSEE:

ALL of the railroads and physical properties of Lessor, including leased properties, equipment, material and supplies, and all contracts, rights, powers, franchises and privileges in connection therewith, as well as the income therefrom, EXCEPT cash and United States Government Bonds in the Treasury of Lessor on July 1, 1951, or due as of that date; SUBJECT, however, to the First Mortgage of Lessor to Central Trust Company of New York (now The Hanover Bank), Trustee, dated November 7, 1890.

To HAVE AND To HOLD the said leased premises unto LESSEE for a term beginning as of the 1st day of July, 1951, and ending on the 31st day of December in the year 2000; SUBJECT, however, to termination by either party by six (6) months' written notice to the other, and SUBJECT ALSO to termination at the election of the Trustee of the Development and General Mortgage of Southern Railway Company in the event of default under that Mortgage as provided in Section 6 of Article Three of said Mortgage; upon the Lessee's

YIELDING AND PAYING, however, to Lessor the following rents or sums of money:

(a) An annual rental of Thirty Thousand Five Hundred Dollars (\$30,500);

(b) An amount equal to the charges for depreciation or amortization allowed to Lessor for each calendar year in respect of the leased premises under the provisions of the United States Internal Revenue Code;

(c) In the event of retirement or abandonment of depreciable property of Lessor, solely on account of casualty, obsolescence or other cause not adequately provided for in determining the rates of depreciation or amortization, respectively, an amount equal to the deduction allowed to Lessor for each calendar year for such causes with respect to the leased premises under the provisions of the United States Internal Revenue Code; and

(d) In the event of retirement or abandonment of nondepreciable property of Lessor, an amount equal to the deduction allowed to Lessor for each calendar year for such causes with respect to the leased premises under the provisions of the United States Internal Revenue Code;

said rentals (a), (b), (c) and (d) to be payable semi-annually on the 30th day of June and the 31st day of December in each year; it being understood that rentals (b), (c) and (d) may be estimated in the first instance, but shall be adjusted when actual allowances are ascertained; and also the following contingent rental:

(e) A contingent rental in any calendar year in which Lessee has net profits equal to such proportion of said net profits as the railway operating revenues derived by Lessee in that year from the movement of traffic over the leased property shall bear to the total railway operating revenues of Lessee; said contingent

rental to be payable annually on December 31 of each year.

As used in paragraph (e), the term "net profits" shall be interpreted to mean the net railway operating income of Lessee in any calendar year less its fixed charges (excluding contingent rental) and less miscellaneous income charges in that year. "Railway operating revenues", "net railway operating income", "fixed charges (excluding contingent rental)" and "miscellaneous income charges" used in computing the contingent rental shall be ascertained pursuant to the Accounting Classifications prescribed by the Interstate Commerce Commission. Lessee shall keep such records as will reflect with reasonable accuracy the railway operating revenues which Lessee derives from the movement of traffic over the leased property.

Rentals payable December 31, 1951, shall be for the period July 1, 1951, to December 31, 1951.

For the purposes of this lease, depreciable property refers to the classes of property for which deductions for depreciation or amortization are now or may hereafter be allowed to Lessor under the United States Internal Revenue Code, and nondepreciable property refers to all other classes of property.

AND it is hereby covenanted and agreed between Lessor and Lessee, in consideration of said lease:

1. That Lessee will pay the rents and sums of money herein reserved in the manner and on the basis herein specified.
2. That Lessee will assume, carry out and perform all of the public duties of Lessor; and that it will pay and discharge all taxes (other than income taxes), licenses or other charges which may be assessed or levied upon the property of Lessor leased hereunder.
3. That Lessee will maintain the properties leased hereunder in such good condition and repair that upon the ter-

mination of this lease said properties shall be in good operating condition, with normal maintenance having been performed; and shall return said properties to Lessor at the termination of this lease in good condition and repair, ordinary and reasonable wear and tear excepted, together with materials and supplies equivalent to those turned over to the Lessee at the beginning of the term of this lease.

4. Lessee shall have the right to retire, abandon or otherwise dispose of any portions of the leased properties, including equipment, no longer necessary in connection with the operation and maintenance of the railroads and properties leased hereunder. Upon the retirement or abandonment of any of the leased premises, such property so retired or abandoned (other than land) shall belong to the Lessee; provided, however, that Lessee shall pay to Lessor an amount equal to the value of the net salvage therefrom, that is to say, the gross salvage less labor and other costs of salvaging.

5. Lessor shall bear the costs of depreciation, amortization and losses on retirements.

6. Lessee shall have full occupancy, control and management of the leased properties and their appurtenances with the right to change or alter the same from time to time as may be requisite in connection with the operation thereof, and the further right to exercise or have exercised in its behalf every right, power and privilege possessed by Lessor in respect thereof, either in its own name or in the name of Lessor, subject to the terms and provisions of this lease.

7. Lessor will preserve and continue its corporate existence in so far as the same may be required for the proper protection and preservation of the rights of Lessee hereunder and will take all such corporate or other actions as may be necessary to assure Lessee full use and enjoyment of the premises leased hereunder and for the purposes of exercising the power of eminent domain or other powers,

privileges and franchises in connection with the use, operation and enjoyment of the leased premises.

8. That this lease agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto as well as upon the parties themselves.

9. This instrument is executed in several counterparts, each part so executed being an original, and such counterparts together constituting but one and the same instrument which shall be sufficiently evidenced by any such original counterpart. This instrument is dated as of July 1, 1951, for convenience only, and the actual dates of execution are the dates of acknowledgment hereof by the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed and their respective corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized, as of the day and year first above written.

YADKIN RAILROAD COMPANY,

By E. R. OLIVER,
Vice President.

(SEAL)
ATTEST:

M. N. ROWZIE,
Assistant Secretary.

CAROLINA AND NORTHWESTERN
RAILWAY COMPANY,

By JOHN B. HYDE,
Vice President.

(SEAL)
ATTEST:

R. L. EDDINGTON,
Secretary.
F.H.T.

DISTRICT OF COLUMBIA, }
CITY OF WASHINGTON. }

This 29th day of June, A. D. 1951, personally came before me, P. K. Howard, a Notary Public in and for the District of Columbia, E. R. Oliver, who, being by me duly sworn, says that he is Vice President of the Yadkin Railroad Company, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said company, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said Vice President acknowledged the said writing to be the act and deed of said corporation.

WITNESS my hand and notarial seal this the 29th day of June, 1951.

(SEAL) P. K. HOWARD,
*Notary Public in and for the
District of Columbia.*

My commission expires May 1, 1955.

DISTRICT OF COLUMBIA, }
CITY OF WASHINGTON. }

This 27th day of June, A. D. 1951, personally came before me, Hobart R. House, a Notary Public in and for the District of Columbia, John B. Hyde, who, being by me duly sworn, says that he is Vice President of the Carolina and Northwestern Railway Company, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said company, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said Vice President acknowledged the said writing to be the act and deed of said corporation.

WITNESS my hand and notarial seal this the 27th day of June, 1951.

(SEAL) HOBART R. HOUSE,
 Notary Public in and for the
 District of Columbia.

My commission expires November 15, 1951.

An Agreement, made and entered into this 28th day of March, 1916, by and between

TALLASSEE POWER COMPANY, a corporation organized and existing under and by virtue of the laws of the State of North Carolina, hereinafter for convenience styled the Lessor, party of the first part; and

YADKIN RAILROAD COMPANY, a corporation organized and existing under and by virtue of the laws of the State of North Carolina, hereinafter for convenience styled the Yadkin Company, party of the second part:

Witnesseth:

THAT the LESSOR, for and in consideration of the sum of one dollar to it in hand paid by the Yadkin Company, the receipt whereof is hereby acknowledged, and of the covenants of the Yadkin Company upon its part to be kept and performed as hereinafter expressed, has leased and demised, and by these presents does now lease and demise unto the Yadkin Company

ALL that certain line of railroad of the Lessor extending from a point of connection with the railroad of the Yadkin Company running between Salisbury and Norwood, at Halls Ferry Junction, near New London, in the County of Stanly and State of North Carolina, thence in a northeasterly direction, for a distance of seven (7) miles, more or less, to Whitney on the Yadkin River, in said Stanly County;

TOGETHER with all and singular the rails, roadbed, right of way, side tracks, switches, turnouts, bridges, trestles, depots, structures and appurtenances of whatsoever nature, to the same belonging or in any wise appertaining.

To Have and to Hold the same unto the Yadkin Company, its successors and assigns, until this agreement

shall be terminated by either party hereto upon notice, in writing, to the other party hereto, as hereinafter provided.

AND the LESSOR further covenants and agrees unto and with the Yadkin Company, that it, the Yadkin Company, and its successors and assigns, shall, during the term of this lease, have quiet, peaceable and uninterrupted possession of said demised line of railroad and property, and the sole and exclusive use and enjoyment thereof.

AND the YADKIN COMPANY hereby covenants and agrees:

That it will, during said term, at its own cost and expense, except as hereinafter provided, maintain and operate, or cause to be maintained and operated, the said line of railroad as a common carrier, in connection with the said railroad of the Yadkin Company.

AND it is MUTUALLY Covenanted and Agreed:

1. That the operation of the said line of railroad by the Yadkin Company, so to be undertaken, shall contemplate only the furnishing and handling and the operation thereon of such motive power and equipment, as the volume of business to be created by the Lessor and the local traffic along the said line of railroad shall warrant and the facilities of the Yadkin Company and its successors and assigns shall permit; and shall not be interpreted as imposing upon the Yadkin Company, its successors or assigns, any obligation to do terminal switching on said line unless the Yadkin Company, its successors or assigns, shall elect to do such switching, and shall be paid reasonable compensation therefor.

2. That the maintenance of said line of railroad by the Yadkin Company, so to be undertaken, shall contemplate only such ordinary maintenance thereof as may be necessary to keep the track, roadbed and superstructure thereof, as originally built, in such condition as will permit the safe and convenient operation thereof by the Yadkin Company; and that all betterments of the said line of railroad, as well as all extraordi-

nary maintenance thereof, such as damage to roadway, embankments, tracks, culverts, buildings or other structures, caused by or resulting from ponding of water, landslides, fire, Acts of Providence or other similar causes, shall be made, and all taxes and assessments levied thereon shall be paid, by and at the sole cost and expense of the Lessor, without further obligation on the part of the Yadkin Company; but such renewals and betterments shall be made under the supervision of and subject to the approval of the Yadkin Company.

3. That upon the termination of this agreement, as hereinafter provided, the Yadkin Company will quietly and peaceably surrender the said line of railroad and appurtenances hereby demised unto the Lessor, its successors and assigns, in as good condition as the same may have been in when received by the Yadkin Company, damages by fire or other casualty and ordinary wear and tear excepted.

4. That the Yadkin Company may discontinue operation of said line of railroad and surrender same unto the Lessor sixty (60) days after it shall have served upon the Lessor notice, in writing, of its election so to do, and terminate this agreement; and the Lessor may re-enter upon said line of railroad and oust and exclude the Yadkin Company therefrom, one (1) year after it shall have served upon the Yadkin Company notice, in writing, of its election so to do and terminate this agreement.

In Witness Whereof, the parties hereto have caused these presents to be executed and their respective corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized, the day and year first above written.

TALLASSEE POWER COMPANY,

By

ARTHUR V. DAVIS,

President.

[SEAL]

Attest:

G. R. GIBBONS,
Secretary.

YADKIN RAILROAD COMPANY,

By

FAIRFAX HARRISON,

President.

[SEAL]

Attest:

GEO. R. ANDERSON,
Assistant Secretary.

E. H. C.

An Agreement, made and entered into this 28th day of March, 1916, by and between

TALLASSEE POWER COMPANY, a corporation organized and existing under and by virtue of the laws of the State of North Carolina, hereinafter for convenience styled the Lessor, party of the first part; and

YADKIN RAILROAD COMPANY, a corporation organized and existing under and by virtue of the laws of the State of North Carolina, and WINSTON-SALEM SOUTH-BOUND RAILWAY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of North Carolina, hereinafter together for convenience styled the Lessees, parties of the second part;

Witnesseth:

THAT the LESSOR, for and in consideration of the sum of One Dollar to it in hand paid by the Lessees, and of other good and valuable considerations it thereunto moving, the receipt whereof is hereby acknowledged, and of the covenants of the Lessees upon their part to be kept and performed as hereinafter expressed, has leased and demised, and by these presents does lease and demise unto the Lessees, to be used and enjoyed in common by the said Lessees, which shall have equal rights, each with the other, in said use and enjoyment thereof.

ALL that certain line of railroad of the Lessor extending from a point of connection with the so-called Whitney Branch of the Lessor, (now under lease to said Yadkin Railroad Company) at Whitney, in the County of Stanly and State of North Carolina, thence in a southeasterly direction, for a distance of five (5) miles, more or less, to Badin, in said Stanly County;

TOGETHER with all and singular the rails, roadbed, right of way, side track, switches, turnouts, bridges, trestles, depots, structures and appurtenances of whatsoever nature, (now existing or which as hereinafter provided may be hereafter constructed by the Lessor) to the same belonging or in any wise appertaining.

ALL being substantially as shown in red upon the blue-print hereunto annexed and made a part of this agreement.

To Have and to Hold the same unto the Lessees, their successors and assigns, respectively, until this agreement shall be terminated by either party hereto upon notice, in writing, to the other party or parties hereto, as hereinafter provided.

AND the LESSOR further covenants and agrees unto and with the Lessees, that they, the said Lessees, and their successors and assigns, shall, during the term of this lease, have quiet, peaceable and uninterrupted possession of said demised line of railroad and property, and the sole and exclusive common use and enjoyment thereof.

AND the LESSEES hereby covenant and agree:

That they will, during said term, at their own cost and expense, except as hereinafter provided, maintain and operate, or cause to be maintained and operated, the said line of railroad as a common carrier, in connection with the respective railroads of the Lessees.

AND it is MUTUALLY covenanted and agreed:

1. That the operation of the said line of railroad by the Lessees, so to be undertaken, shall contemplate only the furnishing and handling and the operation of such motive power and equipment thereon, as the volume of business to be created by the Lessor and the local traffic along the said line of railroad shall warrant and the facilities of the Lessees shall permit; and shall not be interpreted as imposing upon the Lessees any obligation to do terminal switching on said line unless the Lessees shall elect to do such switching, and shall be paid reasonable compensation therefor; the intention being that inbound carload shipments shall be delivered by the Lessees to the Lessor, and outbound carload shipments shall be delivered by the Lessor to the Lessees, on designated interchange tracks at said Badin, and that passengers, mail, express, baggage and less than carload shipments of freight shall be delivered and received at the station to be provided by the Lessor.

2. That the maintenance of said line of railroad by the Lessees, so to be undertaken, shall contemplate only such ordinary maintenance thereof as may be necessary, to keep the

track, roadbed and superstructure thereof, as originally built, or as rehabilitated by the Lessor as hereinafter provided, in such condition as will permit the safe and convenient operation thereof by the Lessees; and that all betterments of the said line of railroad, including telegraph and telephone lines, as well as all extraordinary maintenance thereof, such as damage to roadway, embankments, track, culverts, buildings and other structures which may be caused by or result from ponding of water, fire, landslides, Acts of Providence, or other similar causes, shall be made, by and at the sole cost and expense of the Lessor, without further obligation on the part of the Lessees.

3. That as a condition precedent to any obligation on the part of the Lessees to begin the operation of the said line of railroad, the Lessor shall, at its own cost and expense, rehabilitate the said railroad and its physical appurtenances, and put the same in good serviceable condition and repair, so as to admit of the safe and convenient operation thereof by the Lessees; it being understood and agreed that the work of rehabilitating said railroad and appurtenances shall, at all times during its progress, be subject to the supervision and inspection, and upon its completion, to the approval of the respective Chief Engineers of the Lessees, or their duly authorized representatives.

4. That the Lessor shall forthwith, and within a reasonable time, construct at its own cost and expense, such necessary passenger and freight terminal facilities, including platforms, sidings, interchange tracks and other necessary appurtenant facilities at both Whitney and Badin, as may be reasonably required by the Lessees, for the convenient handling of freight and passenger business at said Whitney and Badin; and shall, moreover, from time to time hereafter, at its own cost and expense, make such additions to, betterments, or improvements of the said line of railroad and terminal facilities, including extraordinary maintenance thereof, as may be necessary and reasonable for the safe and convenient operation of said line of railroad; it being understood that all of such work shall, at all times during its progress, be subject to the supervision and inspection, and upon its completion, to the approval, of the

respective Chief Engineers of the Lessees, or their duly authorized representatives.

5. That the Lessor shall, during the life of this agreement, supply and furnish unto the Lessees, at convenient points on said line of railroad to be agreed upon by the parties hereto, such quantity or quantities of pure clean water, as may be required by the Lessees, for use in locomotive engines and trains operated on said line of railroad, and for other railroad purposes of the Lessees; and to that end, the Lessor shall provide and furnish, at its own exclusive cost and expense, the necessary facilities for supplying such water to the Lessees; it being understood that the Lessees shall pay the Lessor in quarterly settlements, upon bills rendered therefor by the Lessor, in the usual course of business, the actual cost to the Lessor of furnishing such water to the Lessees, but not including any part of the expense to the Lessor of providing and furnishing the water facilities.

6. That the Lessor will pay all taxes and assessments which may be levied upon the said demised line of railroad and the appurtenances thereof, as well as upon any and all additions to or betterments or improvements of the same, and will, moreover, keep the depot buildings, water tanks, bridges, trestles and other structures appurtenant to said railroad fully insured, during the life of this agreement.

7. That upon the termination of this agreement, as hereinafter provided, the Lessees will quietly and peaceably surrender the said line of railroad and appurtenances hereby demised unto the Lessor, its successors and assigns, in as good condition as the same may have been in when received by the Lessees, except ordinary wear and tear and such damage to roadbed, embankments, tracks, culverts, buildings and other structures as may be caused by or result from ponding of water, fire, landslides, Acts of Providence or other similar causes.

8. That the Lessees may discontinue operation of said line of railroad and surrender same unto the Lessor sixty (60)

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days after they shall have served upon the Lessor notice, in writing, of their election to do so, and terminate this agreement, and the Lessor may re-enter upon said line of railroad and oust and exclude the Lessees therefrom, one (1) year after it shall have served upon the Lessees notice, in writing, of its election so to do and terminate this agreement.

9. That if at any time hereafter a difference of opinion or dispute shall arise between the parties hereto, or between any two or more of them, in respect of any of the provisions of this agreement, or as to their respective rights, liabilities or duties hereunder, the matter in dispute, if it cannot be settled by the parties themselves, shall be submitted to arbitration, as hereinafter provided.

Any party hereto desiring the submission of a disputed question to arbitration shall state in writing to the other party or parties to the dispute the matter on which arbitration is desired and shall request in writing such other party or parties to join in the selection of a single disinterested arbitrator, skilled in railroad operation, to determine the same, and if the said parties shall be able to agree upon such arbitrator, such matter shall be submitted to him for decision.

In the event that the parties to the dispute or controversy are unable to agree upon a single arbitrator, as aforesaid, then a board of arbitrators shall be selected in the following manner: If there are only two parties to the controversy, one arbitrator shall be selected by each party, and if there are two or more parties to one side they shall agree in selecting an arbitrator for their side, the two arbitrators thus chosen by the two sides shall select a third arbitrator who shall also act as umpire. If there shall be more than two sides to a controversy, one arbitrator shall be selected by each side, and if the arbitrators thus selected shall be even in number, such arbitrators shall select another arbitrator to act with them, as umpire; or, if the arbitrators selected by the disputing sides to the controversy shall be odd in number, they shall select one of their own number to act as umpire. The party or parties desiring such arbitration shall give written notice of the same to the other party or parties, stating therein definitely the question or questions in dispute, and naming the person selected

as arbitrator or arbitrators, by the party or parties giving the notice; and thereupon it shall become and be the duty of the other party or parties to whom such notice is given, within thirty (30) days after the receipt of such notice, to name an arbitrator or arbitrators, to act for it or them, and in the event that the party or parties receiving such notice shall fail or neglect so to do, then an arbitrator or arbitrators for the party or parties so in default may be appointed by the Federal Judge of the Fifth North Carolina District, upon the written application of the moving party or parties, and upon five (5) days' written notice of such application to the other party or parties to the controversy.

The single arbitrator, if one shall be chosen, or the board of arbitrators selected, as hereinbefore provided, shall give to the parties to the dispute or difference written notice of the time and place of hearing, which hearing shall not be less than twenty (20) nor more than thirty (30) days after service of such notice; and at the time and place appointed the single arbitrator or the board of arbitrators, as the case may be, shall proceed to the final hearing of the question or questions in dispute, unless for good cause shown, of which the arbitrator or the board of arbitrators, by a majority, shall be the judge, such hearing shall be postponed until some later date. The determination of the arbitrator chosen or the board of arbitrators, as the case may be, by a majority of the members composing the board, shall be made in writing, and a report thereof delivered to each of the parties to the dispute or difference, within sixty (60) days from the date of the selection of the single arbitrator, or if a board is selected, the last acting member thereof, as above provided, unless the parties to the dispute or difference shall agree to extend the time within which such report may be so rendered; and such determination, when so made, shall be final and conclusive upon the parties to such dispute or difference, upon the question or questions so submitted to arbitration.

No person shall be qualified to act as arbitrator except a disinterested person skilled in railroad operation.

All expenses attending each and every arbitration shall be borne equally by the parties to the difference or dispute arbitrated.

In Witness Whereof, the parties hereto have caused these presents to be executed and their respective corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized, the day and year first above written.

TALLASSEE POWER COMPANY,

By

ARTHUR V. DAVIS,
President.

[SEAL]

Attest:

G. R. GIBBONS,
Secretary.

YADKIN RAILROAD COMPANY,

By

FAIRFAX HARRISON,
President.

[SEAL]

Attest:

GEO. R. ANDERSON,
Assistant Secretary.

WINSTON-SALEM SOUTHBOUND
RAILWAY COMPANY,

By

HENRY E. FRIES,
President.

[SEAL]

Attest:

H. F. WILKINSON,
Secretary.

E. H. C.