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October 6, 2023

By e-filing

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: Alabama & Gulf Coast Railway LLC
– Trackage Rights Exemption –
CSX Transportation Inc.
Docket No. FD 36724

Dear Ms. Brown:

Enclosed for e-filing on behalf of Alabama & Gulf Coast Railway LLC ("AGR") is a Notice of Exemption being filed pursuant to 49 CFR § 1180.2(d)(7) for overhead trackage rights.

AGR is also enclosing, with a request for expedited consideration, a motion for protective order pursuant to 49 CFR § 1104.14(b) to allow for the filing of certain documents that contain confidential or highly confidential commercial terms. With this motion, AGR is filing a Highly Confidential version of the trackage rights agreement.

The relevant filing fee was paid using Pay.gov. Please let me know if there are any questions regarding these filings.

Sincerely,



Justin J. Marks
Counsel to Alabama & Gulf Coast Railway LLC

FILED
OCTOBER 6, 2023
SURFACE
TRANSPORTATION BOARD

Enclosure

FEE RECEIVED
OCTOBER 6, 2023
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36724

**ALABAMA & GULF COAST RAILWAY LLC
– TRACKAGE RIGHTS EXEMPTION –
CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

(color images included)

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*Attorneys for
Alabama & Gulf Coast Railway LLC*

Dated: October 6, 2023

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36724

**ALABAMA & GULF COAST RAILWAY LLC
– TRACKAGE RIGHTS EXEMPTION –
CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

Alabama & Gulf Coast Railway LLC (“AGR”), a Class II railroad, files this Verified Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7), for AGR to acquire overhead trackage rights extending from milepost 59.9 at Linden, AL to milepost 50.4 near Myrtlewood, AL (the “Subject Trackage”) pursuant to a written trackage rights agreement to be entered into between AGR and CSX Transportation, Inc. (“CSXT”).¹ This notice of exemption is being filed contemporaneously with, and is related to, an application being filed in FD 36727 for CSXT to reacquire the 93.68-mile rail line referred to herein as the “Eastern Segment” from Meridian & Bigbee Railroad, L.L.C. (“MNBR”), a corporate affiliate of AGR. The Subject Trackage is a 9.5-mile portion of the Eastern Segment.²

¹ The milepost references for the Subject Trackage are MNBR mileposts and therefore do not match the mileposts describing the “Eastern Segment” in the related CSXT application referenced below.

² The Eastern Segment extends approximately 93.68 miles in two sections. Segment 1 extends 30.22 miles from milepost XXB 189.00 (some mileposts are not a full mile apart) near Burkville, AL, to milepost XXB 222.00 at the Western Junction station in Dallas County, AL. Segment 2 extends approximately 63.46 miles from milepost OOR 716.26 at the Western Junction station in Dallas County, AL, to milepost ORS 779.71 near Myrtlewood, AL.

In FD 36732, Canadian Pacific Kansas City Limited and The Kansas City Southern Railway d/b/a CPKC (“CPKC”) are seeking authority to acquire MNBR’s rail line known as the Western Segment. The Western Segment that CPKC is acquiring extends between milepost 0.0 at Meridian,

CSXT has agreed to grant overhead trackage rights to AGR over the Subject Trackage to permit AGR to continue to operate over the Subject Trackage facilitating AGR's continuing interchange with MNBR, and allowing interchange with CSXT and other carriers at Myrtlewood following CSXT's consummation of its acquisition of the Eastern Segment. AGR does not intend to exercise its authority under this notice unless and until CSXT consummates its acquisition transaction. A map of the Subject Trackage is attached hereto as Exhibit A.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal, or modification of trackage rights by a rail carrier over the lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The trackage rights covered by this Notice will be based upon a written agreement, a draft copy of which is attached hereto as Exhibit B, and is not being sought in a responsive application in a rail consolidation proceeding. Thus, the class exemption is applicable.

Supporting Information

In accordance with the provisions of 49 C.F.R. §1180.4(g), AGR provides the following information as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

(a)(1)(i) Description of Proposed Transaction

Currently AGR holds incidental operating rights from Linden to Myrtlewood over MNBR's rail line for purposes of interchange with MNBR. AGR is acquiring these trackage rights from CSXT in order to facilitate AGR's continued interchange with MNBR, and to allow

MS and milepost 50.4 at Myrtlewood, AL (the same point as CSXT milepost ORS 779.71 where the Eastern Segment ends). This notice of exemption is not directly related to or dependent on the consummation of the CPKC acquisition.

interchange with CSXT and other carriers at Myrtlewood upon consummation of the CSXT transaction in FD 36727.

The name, business address and telephone number of Applicant are:

Alabama & Gulf Coast Railway LLC
734 Hixon Road (Fountain)
Monroeville, AL 36460

The name, business address and telephone number of counsel to whom questions regarding the transaction can be addressed are:

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(a)(1)(ii) Consummation Date

AGR intends to commence operations under the trackage rights agreement on the effective date of this Notice, or upon consummation of the CSXT transaction in FD 36727, whichever is later.

(a)(1)(iii) Purpose of Transaction

The CSXT grant of trackage rights over the Subject Trackage is one component of a larger transaction whereby CSXT is acquiring the Eastern Segment from MNBR. The trackage rights proposed are necessary to allow AGR and MNBR to continue to interchange at Myrtlewood, and

to establish interchange with CSXT and other carriers at that location once the CSXT reacquisition of the Eastern Segment is consummated.

(a)(5) States in which Property of the Applicant is Situated

AGR currently operates in the states of Alabama, Florida, and Mississippi, and the Subject Trackage is located in Alabama.

(a)(6) Map

A map showing the Subject Trackage is attached as Exhibit A.

(a)(7)(ii) Agreement

A draft public version of the Trackage Rights Agreement is attached as Exhibit B, with highly confidential material redacted in accordance with the requested protective order filed together with this Notice. The highly confidential version of the Trackage Rights Agreement is submitted under separate cover. AGR will submit public and highly confidential versions of the executed Trackage Rights Agreement within 10 days of the agreement being executed consistent with 49 CFR § 1180.6(a)(7)(ii).³

Labor Protection

AGR understands that any employees adversely affected by the trackage rights are entitled to protection under the conditions imposed in *Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc. - Lease and Operate - California Western Railroad*, 360 I.C.C. 653 (1980).

Caption Summary

Attached as Exhibit C is the caption summary required by 49 C.F.R. §1180.4(g)(2)(ii).

³ AGR does not expect the Trackage Rights Agreement to be executed until the closing of CSXT's acquisition of the Eastern Segment following Board approval of the transaction in FD 36727.

Environmental and Historic Documentation

Under 49 C.F.R. §1105.6(c)(4) and 49 C.F.R. §1105.8(b)(3), no environmental or historic documentation is required.

Conclusion

Based on the information provided above, AGR requests that the Board issue a notice of exemption for the trackage rights that are the subject of this Notice.

Respectfully submitted,



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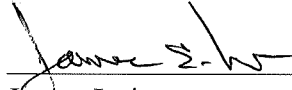
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*Attorneys for
Alabama & Gulf Coast Railway LLC*

Dated: October 6, 2023

VERIFICATION

I hereby verify on behalf of Alabama & Gulf Coast Railway LLC, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

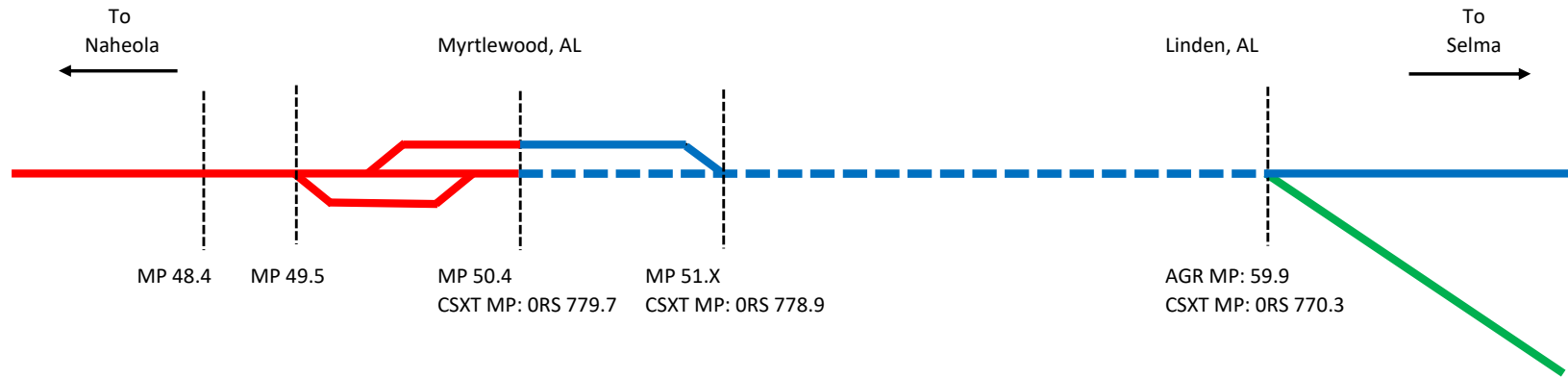


James Irvin
President

Executed on October 6, 2023

EXHIBIT A

MAP



Legend	
CSXT Ownership	
AGR Ownership	
MNBR Ownership	
AGR Trackage Rights Over CSXT	

EXHIBIT B

DRAFT TRACKAGE RIGHTS AGREEMENT (PUBLIC VERSION)

TRACKAGE RIGHTS AGREEMENT
between
CSX TRANSPORTATION, INC.
and
ALABAMA & GULF COAST RAILWAY LLC
between
LINDEN, ALABAMA and MYRTLEWOOD, ALABAMA

THIS TRACKAGE RIGHTS AGREEMENT (the “Agreement”) made and entered into this ____ day of _____, 2024, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose principal place of business is Jacksonville, Florida (hereinafter called “CSXT”), and ALABAMA & GULF COAST RAILWAY LLC, a Delaware limited liability company (hereinafter called “AGR”), each being hereinafter sometimes severally called “Party” and collectively called “Parties.”

WITNESSETH:

WHEREAS, CSXT desires to resume its operation of the rail line between Myrtlewood, AL and Burkeville, AL (the “Line”) the underlying land of which is currently leased by CSXT to Meridian & Bigbee Railroad, L.L.C. (“MNBR”); and

WHEREAS, Genesee & Wyoming Inc. (“GWI”) is the parent company of both AGR and MNBR; and

WHEREAS, CSXT and GWI entered into a Transaction Agreement dated October ●, 2023 outlining several operating agreements to be executed among CSXT, AGR, and MNBR to facilitate resumed CSXT operations on the Line (collectively, the “Transaction”); and

WHEREAS, AGR desires to have overhead trackage rights on CSXT between the Parties’ connection at Linden, AL and Myrtlewood, AL for purposes of reaching the rail line between Meridian, MS and Myrtlewood (the “Western Line”) for the purposes of interchanging traffic with MNBR; and

WHEREAS, CSXT as owner is agreeable to granting such rights to AGR as user under the following terms and conditions;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is agreed between the Parties as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, CSXT hereby grants to AGR the right to operate its trains (locomotives or cars) with its own crews (hereinafter referred to as the “Trackage Rights”) over the following segments of CSXT's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit “A” (hereinafter referred to as the “Subject

Trackage”):

- A. From the Parties’ connection at Milepost 59.9 near Linden, AL, to the connection between the Line and the Western Line at Milepost 50.4 near Myrtlewood, AL.

ARTICLE 2. USE OF SUBJECT TRACKAGE

- A. AGR's use of the Subject Trackage shall be in common with CSXT and any other user of the Subject Trackage, and CSXT's right to use the Subject Trackage shall not be diminished by this Agreement. CSXT shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.
- B. AGR may use the Subject Trackage solely for the purpose of the overhead movement of its own trains between the end points of the Subject Trackage, except to the extent permitted in an interchange agreement.
- C. Except as may otherwise be provided by this Agreement, AGR shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of CSXT, preclude the emergency use by AGR of such auxiliary tracks as may be designated by CSXT for such purposes.
- D. CSXT shall have exclusive control of the management and operation of the Subject Trackage. AGR shall not have any claim against CSXT for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by AGR is interrupted or delayed at any time from any cause.

ARTICLE 3. RESTRICTION ON USE

- A. The Trackage Rights herein granted are granted for the sole purpose of AGR using the same for bridge traffic only between the terminals of the Subject Trackage, and only for interchange with MNBR. AGR shall not perform any local freight service whatsoever at any point located on the Subject Trackage.
- B. Shipments transported by AGR over the Subject Trackage are limited to shipments moving solely in the account of AGR. AGR shall not transport any other shipments over the Subject Trackage unless otherwise provided in a written amendment to this Agreement.
- C. As of the date hereof, the Parties acknowledge and agree that AGR is not currently required under Federal law to equip its locomotives with an onboard PTC apparatus or to bear any cost or responsibility for installing a PTC system in order to traverse the Subject Trackage. CSXT acknowledges and agrees that AGR, until required under Federal law, rule or regulation, shall be permitted to traverse the Subject Trackage without equipping its locomotives with an onboard PTC apparatus and AGR is not responsible for installing

a PTC system.

- D. In the event that AGR is required in the future under Federal law, rule or regulation to install a PTC system or to equip its locomotives with an onboard PTC apparatus to traverse the Subject Trackage (“AGR’s Future PTC Requirement”), AGR shall be responsible for its own costs incurred in connection with AGR’s Future PTC Requirement.
- E. If AGR’s Future PTC Requirement is triggered, the Parties agree to work cooperatively to ensure that AGR’s PTC system and/or onboard PTC apparatus will be interoperable with CSXT’s PTC system on the Subject Trackage.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

- A. When operating over the Subject Trackage, AGR's locomotives and crews shall be equipped to communicate with CSXT on radio frequencies normally used by CSXT in directing train movements on the Subject Trackage.
- B. Procedures for qualification and occupancy of the Subject Trackage shall be arranged by the local supervision of each carrier. All control and usage shall be subject to the approval of CSXT's representative or his designee.

ARTICLE 5. COMPENSATION

- A. The factor to be used in calculating payments to be made by AGR for the Trackage Rights covered by this Agreement shall be [REDACTED] (hereinafter referred to as the “Current Charge”).
[REDACTED]
- B. [REDACTED]
- C. AGR shall furnish CSXT information concerning all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. This procedure shall be required at the time the Association of American Railroads (AAR) defines the standard reporting procedures for trackage rights carriers. The carriers shall determine the minimal data requirements.

D.

[REDACTED]

E.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

F.

[REDACTED]

ARTICLE 6. PAYMENT OF BILLS

- A. All payments called for under this Agreement shall be made by AGR 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.
- B. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in this Article, shall include direct labor and material costs, together with the surcharges,

overhead percentages and equipment rentals as specified by CSXT at the time any work is performed by CSXT for AGR.

ARTICLE 7. MAINTENANCE OF SUBJECT TRACKAGE

- A. CSXT shall maintain, repair and renew the Subject Trackage with its own supervision and labor. CSXT shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but CSXT does not guarantee the condition of the Subject Trackage at any time during the term hereof or that operations thereover shall not be interrupted. Furthermore, except as may be otherwise provided in Article 14, AGR shall not by reason of failure or neglect on the part of CSXT to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CSXT or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by AGR resulting from any such failure or neglect.
- B. CSXT may, at the expense of AGR, perform such additional maintenance as AGR may reasonably require or request.

ARTICLE 8. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

- A. Existing connections or facilities that are jointly used by the Parties 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.
- B. Any additional connections to the Subject Trackage which may be required shall be subject to the CSXT 's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:
 - (i). AGR or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of AGR or others which connect the respective lines of the Parties.
 - (ii). CSXT shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of AGR such portions of the additional tracks located on the right-of-way of CSXT that connect the respective lines of the Parties. Upon termination of this Agreement, CSXT may at its option remove the portion of such trackage and appurtenances as may be located on property of CSXT, at the sole cost and expense of AGR. The salvage material removed shall be released to AGR or, as otherwise agreed upon, CSXT shall credit AGR the current fair market value for said salvage.

ARTICLE 9. ADDITIONS, RETIREMENTS AND ALTERATIONS

- A. CSXT, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or 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.
- B. If the Parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate AGR's operations beyond that required by CSXT to accommodate its operations, CSXT shall construct the additional or altered facilities and AGR shall pay to CSXT the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities. All such additional or altered facilities shall be owned by CSXT.

ARTICLE 10. MANAGEMENT AND OPERATIONS

- A. AGR shall comply with the provisions of 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 and cars) while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. AGR shall indemnify, protect, defend, and save harmless CSXT and its 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 CSXT or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of AGR to comply with its obligations in this regard.
- B. AGR in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of CSXT, and the movement of AGR's trains (locomotives and cars) over the Subject Trackage shall at all times be subject to the orders of the transportation officers of CSXT. AGR's trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CSXT's operating rules and regulations without the prior consent of CSXT.

- C. AGR shall make such arrangements with CSXT 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 AGR shall pay to CSXT, upon receipt of bills therefor, any cost incurred by CSXT in connection with the qualification of such employees of AGR, as well as the cost of pilots furnished by CSXT, until such time as such employees are deemed by the appropriate examining officer of CSXT to be properly qualified for operation as herein contemplated.
- D. CSXT may conduct an investigation at its option if an AGR employee working on CSXT's property is alleged to have violated CSXT's safety rules, operating rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, CSXT shall schedule the investigation and notify AGR's local Transportation Officer in the territory thereof, who shall, in turn, arrange to issue proper notice to the AGR's employee(s) of the investigation. CSXT's scheduling of the investigation must comply with the time limits provided in the applicable labor agreement on AGR's railroad. CSXT shall provide its regulations, supplements, and safety rules to AGR at no cost.
- E. If CSXT conducts an investigation, CSXT shall have the right to exclude from the Subject Trackage any employee of AGR except officers, determined by CSXT, as the result of CSXT's investigation or hearing described below, to be in violation of CSXT's rules, regulations, orders, practices or instructions.
- F. In a major offense, such as violation of Rule "G", dishonesty, insubordination, or a serious violation of operating rules, wherein CSXT desires to bar AGR's employee from service on CSXT's territory pending an investigation by CSXT, immediate verbal notification shall be given to the appropriate Transportation Officer of AGR so that proper written notice can be issued to the employee.
- G. If CSXT conducts an investigation, its officer shall conduct the investigation, but an officer of AGR shall be present to assure compliance with AGR's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, CSXT shall promptly furnish AGR with two copies of the investigative hearing transcript and a recommendation as to the discipline to be assessed. AGR's Transportation Officer shall arrange to assess discipline, subject to receipt of CSXT's recommended discipline, within the applicable time limits. If CSXT recommends dismissal, AGR reserves the right to change the recommendation to the extent of barring the individual from operating over CSXT's territory.
- H. CSXT shall reimburse AGR for all payments that AGR might be required to make as a result of a challenge being made by the employee or his representative as to the discipline recommended by CSXT and assessed by AGR. AGR agrees to notify CSXT before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, CSXT shall be given an opportunity to review AGR's submission.

Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which AGR may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

- I. The trains, locomotives, cars and equipment of AGR, CSXT, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either Party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- J. In the event that a train of AGR shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among AGR's crew, or due to mechanical failure of AGR's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of AGR fails to maintain the speed required by CSXT on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of AGR's trains on the Subject Trackage, CSXT shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew AGR'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 AGR shall reimburse CSXT for the cost of rendering any such assistance.
- K. 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, such work shall be done by CSXT, and AGR shall reimburse CSXT for the cost thereof.
- L. In the event CSXT and AGR agree that CSXT should retain employees or provide additional employees for the sole benefit of AGR, the Parties shall enter into a separate agreement under which AGR shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by CSXT and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 11. MILEAGE AND CAR HIRE

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

ARTICLE 12. CLEARING OF WRECKS

Whenever AGR's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, CSXT shall perform or provide such service, including the repair and restoration of roadbed, track and structures. 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 13 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 AGR at the time of such wreck, shall be promptly delivered to it.

ARTICLE 13. LIABILITY

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, judgements, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by either Party as described herein, all of which are collectively referred to as a "Loss", shall be divided as follows:

- A. If a Loss occurs involving the trains, locomotives, engines and/or employees of only one of the Parties, then the involved Party shall be solely responsible for the Loss, even if caused partially or completely by the other Party.
- B. If a Loss occurs on the Subject Trackage involving the trains and locomotives of both CSXT and AGR, then: (i) each Party is solely responsible for any Loss to its own employees, locomotives and equipment in its own account, including lading, and (ii) the Parties are equally responsible for any Loss to the Subject Trackage and any Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.
- C. For purposes of assigning responsibility of a Loss under this Article as between the Parties, a Loss involving one of the Parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one Party to this Agreement.
- D. Whenever any liability, cost, or expense 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 to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that Party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.
- E. Notwithstanding any provision of this Article 13 to the contrary, each Party shall assume and bear all responsibility for any Loss caused by acts or omissions of any its employees

while under the influence of drugs or alcohol.

- F. In every case of death or injury suffered by an employee of either AGR or CSXT, 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.
- G. For purposes of determining liability under this Article, pilots furnished by CSXT to AGR pursuant to this Agreement shall be considered as the employees of AGR while such employees are on duty as pilots.
- H. For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 8.B(ii), all work performed by CSXT shall be deemed performed for the sole benefit of AGR and, AGR shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of CSXT. AGR shall protect, indemnify, and save harmless CSXT and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which AGR is responsible.
- I. 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.
- J. In the event of a Loss as set out herein, the Parties to this Agreement 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.
- K. Neither Party shall have the right to prosecute any claim or make any demand against the other Party for any indirect, special or consequential damages, including but not limited to loss, damage or liability accruing to it by reason of any interference with, interruption of or delay in the operating of its trains, engines or cars or the transportation of its freight on account of delays or interruption in the use of any portion of said tracks used jointly under the terms hereof.

- L. Notwithstanding any and all of the forgoing provisions of this Article 13, in the event a Loss occurs with the trains and locomotives of both CSXT and AGR, and such Loss is attributable solely to the gross negligence or willful or wanton misconduct of only one of the Parties, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Loss, then the Party to which such gross negligence or willful or wanton misconduct is attributable shall assume all liability, cost and expense in connection with such Loss. The Parties agree that, for purposes of this Article 13.L, "gross negligence or willful or wanton misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness."

ARTICLE 14. CLAIMS

- A. Except as provided in Subarticle B below, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the Party bearing the liability, cost, and expense therefor under the provisions of this Agreement.
- B. Each Party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and CFR 1005, or in accordance with any applicable transportation contract.
- C. In the event a claim or suit is asserted against CSXT or AGR 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.
- D. 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.
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or CFR 1005, 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]
- F. Each Party agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries and affiliates, and 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 which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

- G. It is understood that nothing in this Article 14 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 13.

ARTICLE 15. INSURANCE

- A. During the term of this Agreement AGR, at its sole cost and expense, shall procure and maintain in effect a policy of Comprehensive Railroad liability insurance, with limits of [REDACTED] bodily injury and/or property damage, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to, or destruction of property, including the loss of use thereof, in any one occurrence, subject to a self-insured retention limit [REDACTED] including contractual liability insurance, which names CSXT as an additional insured. Failure to procure and maintain such insurance in force shall constitute a breach of this Agreement. AGR shall provide a minimum of thirty (30) days' advance written notice to CSXT prior to any material changes to or cancellation of such policy.
- B. This Insurance coverage shall be effected under standard form policies issued by insurers of financial responsibility, which are rated "A-" or better by either Best's Insurance Reports, Standard & Poor's Insurance Rating Service or Moody's Investors Service. CSXT reserves the right to reject as inadequate coverage by an insurance company rated less than "A-" by the aforementioned rating services.
- C. The insurance shall be evidenced by a current certificate furnished by AGR to CSXT as an additional insured with its return of the executed Agreement. Subsequently, annual renewal certificates of insurance shall be furnished to:

Insurance Department
CSX Transportation, Inc.
500 Water Street, C907
Jacksonville, FL 32202
E-Mail: csx@ebix.com

- D. Such certificates shall be subject to the prior approval of CSXT's Insurance Department. All of the required endorsements and notice provisions shall be stated on the certificate of

insurance that is provided to CSXT. In addition, AGR shall provide CSXT's Insurance Department notice of any claim arising under this Agreement and any other correspondence dealing with insurance and insurance matters directly relating to this Agreement.

- E. During the term of this Agreement, it is understood that CSXT is self-insured.

ARTICLE 16. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of AGR to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from CSXT, CSXT shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by CSXT of any prior breach thereof, to terminate the Trackage Rights and AGR'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 CSXT shall not impair its rights under this Agreement or any cause or causes of action it may have against AGR for the recovery of damages.

ARTICLE 17. REGULATORY APPROVAL

- A. Should this Agreement require the prior approval of the Surface Transportation Board (STB), AGR at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. CSXT shall assist and support efforts of AGR to secure any necessary STB approval of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the exemption of this Agreement from regulation, AGR, solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 18. ABANDONMENT OF SUBJECT TRACKAGE

Notwithstanding the provisions of Article 19, CSXT may abandon the Subject Trackage during the term of this Agreement or any renewals thereof, upon giving AGR not less than ninety (90) days' written notice of CSXT's intent to abandon. In the event regulatory authority is required to effect such abandonment, AGR shall not interfere with CSXT's actions to seek and to exercise such authority. In the event regulatory authority is required for AGR to discontinue its own operations over the Subject Trackage, AGR shall seek and exercise such regulatory authority at the same time that CSXT seeks regulatory authority to abandon the Subject Trackage. CSXT and AGR shall exercise the abandonment and discontinuance authority within thirty (30) days from the date CSXT and AGR obtain the aforementioned regulatory authority. Upon the date established by CSXT for abandonment of the Subject Trackage by its aforesaid notice to AGR or upon the above specified date of exercise of the regulatory authority to abandon and discontinue operations,

whichever is later, 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 from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. The foregoing provisions shall govern the Parties notwithstanding the provisions of 49 U.S.C. Section 10904 or any other provisions of law, and AGR hereby expressly waives any rights it may possess to subsidize operations on the Subject Trackage or to acquire the Subject Trackage pursuant to said provisions of law. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

ARTICLE 19. TERM

- A. A. This Agreement shall become effective following the latest date of: (i) the date first written above; (ii) following receipt of any required regulatory approvals or exemptions from any regulatory agency, with respect to the Transaction; and (iii) the satisfaction or waiver by the Party entitled to waive any conditions precedent to the Transaction (the "Effective Date") and shall continue in full force and effect until terminated as provided herein or by mutual agreement of both Parties. The Parties shall memorialize the Effective Date through an exchange of written correspondence.
- B. Intentionally Omitted.
- C. Within thirty (30) days following the date of this Agreement, AGR, at its sole expense, shall submit to the STB (or successor agency) regulatory filing(s) to obtain any necessary authority or exemption to exercise the Trackage Rights. CSXT will join in any such application or pleading to the STB, upon request of AGR. AGR shall provide CSXT with an opportunity to review and comment on AGR's regulatory filing prior to their submission to the STB. In the event that one or more parties oppose the granting of the regulatory authority or exemption sought by AGR or appeal a determination to grant such authority or exemption, AGR shall promptly respond to such opponents and shall pursue in good faith appeals of any adverse decision by the STB.
- D. Termination of this Agreement shall not relieve or release either Party from any obligation assumed or from any liability which may have arisen or been incurred by either Party under the terms of this Agreement prior to the termination hereof.
- E. Upon termination of this Agreement prior to the expiration of the Term, and if AGR obtained approval or exemption from the STB to operate pursuant to this Agreement, AGR shall immediately make the necessary filing with the STB to discontinue AGR's rights covered by this Agreement. Should AGR fail to make such a filing within thirty (30) days of said termination, CSXT shall be deemed to have been given AGR's power of attorney to take such action on AGR's behalf and AGR shall not oppose such a filing, and shall be responsible for reimbursing CSXT for any reasonable cost associated with said filing, including but not limited to attorney and filing fees. AGR agrees that monetary damages will not be a sufficient remedy in the event it breaches this provision, and agrees that

specific performance or other injunctive relief would be appropriate under the circumstances.

ARTICLE 20. FORCE MAJEURE

CSXT shall not be responsible to AGR for delays of any kind under this Agreement nor for failure to perform under this Agreement if such failure to perform is caused by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, terrorism, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, pandemic, strike, lockout or labor disputes experienced by the Parties, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations and other events beyond the reasonable control of CSXT. CSXT shall provide AGR with prompt written notice of any event of force majeure and shall take reasonable steps to resolve such event. Once the force majeure event is resolved, CSXT shall notify AGR in writing, and CSXT shall promptly re-institute operations pursuant to this Agreement.

ARTICLE 21. ARBITRATION

Other than a claim for injunctive relief, any dispute arising between the Parties with respect to this Agreement that is not resolved within thirty (30) days of the date of the written notice of the dispute shall be determined exclusively by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The Parties shall request that the arbitrator selected shall be knowledgeable in railroad commercial transactions. The decision of the arbitrator shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the Parties. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

ARTICLE 22. SUCCESSORS AND ASSIGNS

This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of the Parties; provided, that neither Party shall have the right to assign this Agreement, by merger, operation of law, or otherwise, without the prior written consent of the other Party, which consent may be withheld at the discretion of that Party.

ARTICLE 23. NOTICE

All notices required to be given by one Party to the other, shall be in writing and addressed as follows:

TO CSXT: Director Joint Facilities
 CSX Transportation, Inc.
 500 Water Street, J801
 Jacksonville, FL 32202

TO AGR: Alabama & Gulf Coast Railway LLC
 13901 Sutton Park Drive South, Suite 270
 Jacksonville, FL 32224
 Attention: President
 E-Mail: LegalNotices@gwrr.com

With copy to:

 Genesee & Wyoming Inc.
 20 West Avenue
 Darien, CT 06820
 Attention: General Counsel
 E-Mail: LegalNotices@gwrr.com

ARTICLE 24. GENERAL PROVISIONS

- A. This Agreement and each and every provision hereof is for the exclusive benefit of the Parties and 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.
- B. This Agreement contains the entire understanding of the Parties and supersedes any and all written and oral understandings between the Parties.
- C. 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.
- D. Unless otherwise defined herein, 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.
- E. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- F. Each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) herein contained shall have independent and severable status from each other

separate division, or combination thereof, for the determination of legality, so that if any separate division is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall be treated as a nullity, but such holding or determination shall have no effect upon the validity or enforceability of each and every other separate division, or any combination thereof.

- G. 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 to this Agreement and are in the possession or account of the other Party to this Agreement, such locomotives, cars and equipment shall be considered those of the other Party under this Agreement.
- H. This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.
- I. No Party may disclose the provisions of this Agreement to a third party, excluding a parent, affiliate or subsidiary company and the attorneys, accountants, consultants, officers and employees of such party, parent, affiliate or subsidiary company, without the written consent of the other Party, except as otherwise required by law, regulation or ruling.
- J. Except as may be expressly provided by this Agreement, nothing in this Agreement shall modify or amend any other agreement between CSXT and AGR.
- K. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.
- L. The recitals to this Agreement are hereby expressly incorporated into this Agreement as if restated in their entirety herein.
- M. All matters related to the interpretation, construction, validity and enforcement of this Agreement shall be governed by and construed in accordance with the domestic laws of the State of Florida, without giving effect to any choice or conflict of laws, provision or rule that would cause the application of laws of any jurisdiction other than the State of Florida.

IN WITNESS WHEREOF the Parties have caused these presents to be executed by their duly authorized officers as of the day and year first above written.

CSX TRANSPORTATION, INC.

By: _____

As its: _____

ALABAMA & GULF COAST RAILWAY LLC

By: _____

As its: _____

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

Docket No. FD 36724

**ALABAMA & GULF COAST RAILWAY LLC
– TRACKAGE RIGHTS–
CSX TRANSPORTATION, INC.**

Alabama & Gulf Coast Railway LLC (“AGR”), a Class II railroad, files this Verified Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7), for AGR to acquire overhead trackage rights extending from milepost 59.9 at Linden, AL to milepost 50.4 near Myrtlewood, AL (the “Subject Trackage”) pursuant to a written trackage rights agreement to be entered into between AGR and CSX Transportation, Inc. (“CSXT”). The Subject Trackage will extend approximately 9.5 miles and is a portion of a 93.68-mile rail line known as the “Eastern Segment” that CSXT is seeking to acquire from Meridian & Bigbee Railroad, L.L.C. (“MNBR”), an affiliate of AGR, in the related proceeding docketed at STB Finance Docket No. 36727.

CSXT has agreed to grant overhead trackage rights to AGR over the Subject Trackage to permit AGR to continue to operate over the Subject Trackage facilitating AGR’s continued interchange with MNBR, and allowing interchange with CSXT and other carriers, at Myrtlewood following CSXT’s consummation of its acquisition of the Eastern Segment. AGR does not intend to exercise its authority under this notice unless and until CSXT consummates its acquisition of the Eastern Segment.

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

Dated:

By the Board, Mai T. Dinh, Director, Office of Proceedings