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Before the
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
May 31, 2019
Part of
Public Record

Finance Docket No. 36298

NAVAL NUCLEAR PROPULSION PROGRAM, UNITED STATES ARMY MILITARY
SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND, AND FLUOR MARINE
PROPULSION, LLC-PETITION FOR DECLARATORY ORDER

PETITION TO INTERVENE
AND
COMMENTS IN SUPPORT

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Attorney for Samuel J. Nasca

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Preliminary Statement

Samuel J. Nasca,^{1/} for and on behalf of SMART/Transportation Division, New York State
Legislative Board (SMART/TD-NY), submit this petition to intervene in the captioned matter,
and to file comments in support of issuance of a declaratory order therein.

This controversy was brought to the agency April 30, 2019, by the three captioned
petitioners on filing a 366-page document seeking a declaratory order regarding the status of
railroad trackage near Ballston Spa, NY, operated by Delaware & Hudson Railway Company,
d/b/a Canadian Pacific(CP).

The Surface Transportation Board (STB or Board), on May 14, 2019, directed CP to file its
reply by May 14, with petitioners an opportunity to file a rebuttal by June 14, 2019.

^{1/} New York State Legislative Director for SMART/TD, with offices at 35 Fuller Road, Albany,
NY 12205.

The STB's May 14 procedural decision did not institute a proceeding at this time. The decision indicated STB favored the resolution of disputes through alternative dispute resolution, such as mediation, in lieu of formal proceedings, whenever possible.

Intervention. The matter of proposed abandonment for the involved trackage has a history, in which this SMART/TD-NY predecessor railroad organization affiliate, Railway Labor Executive Association (RLEA), was an active participant, along with other rail employee interests, at the Interstate Commerce Commission (ICC) proceeding . ^{2/} Railroad employees stand to be adversely affected if the trackage serving the railroad movement of heavily oversized containers is abandoned or the service discontinued. Rail employment is important. Job and compensation loss are important to employees, their families, and the involved communities. The D&H attempt to abandon the trackage was unsuccessful 40 years ago. The intervention of railroad employees will not unduly broaden the issues, just as such participation did not unduly broaden the 1979-1980 former ICC proceeding. Carrier employees are likely in position to provide valuable information concerning operations if such becomes necessary, especially should disputes arise concerning the railroad service.

Merits. The designation of railroad trackage as "excepted" or "line of railroad" has been subject to much litigation over the years. The legal literature is vast, with even the declaratory order process sometimes unavailing. See: Florida C. Ry. Co. Petition For Declaratory Order, 360 I.C.C. 272 (1979) & 360 I.C.C. 449 (1979), dism. sub. nom. City of Miami v. I.C.C., 669

^{2/} Delaware and Hudson Railway Company—Abandonment in the Towns of Ballston and Milton, NY, AB-156 (Sub-No. 9F), decided Sept. 30, 1980 (served Oct. 15, 1980). The April 30, 2019 Pet., at 40, para 72, infers the entire 1979-80 record is now included. This is incorrect, for example, see: Ex.CE-9. The ICC's interim June 25, 1980 Decision(served June 27, 1980), acknowledged labor participation. April 30, 2019 Pet., at CE-71.

F.2d 219 (5th Cir. 1982). In this Ballston Spa situation, SMART/TD -NY considers the involved trackage to be "line of railroad" and subject to STB abandonment/discontinuance regulation. Moreover, the provisions of the 49 U.S.C. 10906 exception relate to entry and exit provisions of STB regulations, not to other features of STB jurisdiction. The STB has jurisdiction of "excepted" trackage. United Transp. Union v. Surface Transp. Bd., 183 F.3d 606, 612 (7th Cir. 1999), and thus can reach other aspects of excepted trackage as bear on other features of the Interstate Commerce Act, as amended, and the rail transportation policy.

Respectfully submitted,



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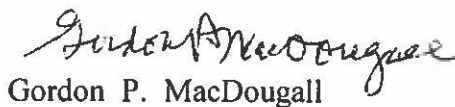
May 31, 2019

Attorney for Samuel J. Nasca

Certificate of Service

I hereby certify I have served a copy of the foregoing upon all parties of record by first class mail postage-prepaid.

Washington DC



Gordon P. MacDougall