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SERVICE DATE – DECEMBER 5, 2008

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35197]

Delaware and Hudson Railway Company, Inc. and The New York, Susquehanna and Western Railway Corporation—Joint Relocation Project Exemption—in Binghamton, NY

On November 19, 2008, Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific (CP), and The New York, Susquehanna and Western Railway Corporation (NYS&W), jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to jointly use and operate over track stemming from the sale by CP to NYS&W of approximately 0.95 miles of track and right-of-way and the exchange of non-exclusive overhead trackage rights between CP and NYS&W.¹

The purpose of the joint relocation project is to rationalize track usage and freight operations in the Binghamton terminal area, which will enable more efficient and expeditious rail service without disruption to shippers.

¹ Applicants state that the overhead reciprocal trackage rights will terminate 10 years from the effective date (initial term). Unless CP or NYS&W notifies the other in writing at least 6 months prior to the expiration of the initial term or any successive term, the reciprocal trackage rights may continue in full force and effect for up to three successive terms of 10 years each under the same terms and conditions. The parties must seek appropriate Board authority for the trackage rights to expire at the end of the initial term or at the end of the successive term or terms, as appropriate.

The project consists of the following transactions:

(1) CP will sell to NYS&W its currently out-of-service Liberty Street Main trackage and right-of-way between Points C (located at Norfolk Southern Railway Company (NS) milepost 214.1 +/-) and D (located at CP milepost 613.62), a distance of approximately 0.95 miles. Prior to being taken out of service, this track doubled as the connecting track between CP's freight main line and the NS Southern Tier Line, on the one hand, and NYS&W's switching lead on the north side of its freight yard, on the other. However, as stated by the parties, the movement of through freight trains over this track segment disrupted switching operations. This sale will significantly reduce these disruptions as through freight trains will be routed on the trackage described in part 2 below. The parties contend that NYS&W intends, and is better positioned, to repair, rehabilitate, and upgrade the trackage so the parties may ultimately resume operations over this segment.

(2) NYS&W will grant CP non-exclusive overhead trackage rights to operate over trackage owned by NYS&W located between: (1) Points A (located at NS milepost 214.1 (+/-)) and B (located at CP milepost 613.84) (the Buffalo Runner); (2) Points C and D; and (3) Points D and F (located at CP milepost 612.77), a distance of approximately 2.56 miles.² These trackage rights are intended to enable CP to continue through movements from its freight main line to NS's Southern Tier Line and avoid

² NYS&W's grant of trackage rights to CP incorporates the trackage rights CP previously granted to NS over the Buffalo Running Track in Norfolk Southern Railway Company—Trackage Rights Exemption—Delaware and Hudson Railway Company, Inc., STB Finance Docket No. 34209 (STB served July 25, 2002). Once this transaction is consummated, NS may also effectuate those trackage rights through the Binghamton terminal over trackage between Points A to B to D in order to further the joint project's rationalization of terminal operations to better accommodate switching and through movements.

disruption of switching operations. NYS&W has already rehabilitated the Buffalo Runner to accommodate through freight movements to and from the Southern Tier Line, which will eliminate a bottleneck occurring when a train passes between NS and CP, and will prevent CP trains from blocking NYS&W access to its freight yard. NYS&W will continue to operate over these segments.

(3) CP will grant NYS&W non-exclusive overhead trackage rights to operate over trackage owned by CP located between: (1) Points B and D; (2) Points E (located at CP milepost 613.54) and G (located at CP milepost 612.98); (3) Points G and H (located at CP milepost 613.99); and (4) Points I (located at CP milepost 614.13) and J (located at CP milepost 614.30), a distance of approximately 1.96 miles. These trackage rights are intended to enable NYS&W to use CP's Bevier Street Yard for operations unrelated to interchange with CP and to operate on CP's Binghamton Runner between NYS&W's Syracuse and Utica Branch on the north, NYS&W's Binghamton Yard, and the Southern Tier. CP will continue to operate over these segments.

Applicants state that the proposed project will not disrupt service to shippers as CP and NYS&W will continue to have access to the Binghamton terminal area. Additionally, applicants state that the proposed project will not involve an expansion of service by CP or NYS&W into new territory, or alter the existing competitive situation.

The Board will exercise jurisdiction over the abandonment, construction, or sale components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track or transfer of existing track involves expansion into new territory. See City of Detroit v. Canadian National Ry. Co., et al., 9 I.C.C.2d 1208 (1993), aff'd sub nom. Detroit/Wayne

County Port Authority v. ICC, 59 F.3d 1314 (D.C. Cir. 1995), Flats Industrial Railroad Company and Norfolk Southern Railway Company—Joint Relocation Project Exemption—in Cleveland, OH, STB Finance Docket No. 34108 (STB served Nov. 15, 2001). Line relocation projects may embrace trackage rights transactions such as those involved here. See D.T.&I.R.—Trackage Rights, 363 I.C.C. 878 (1981). Under these standards, the sale and incidental trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

The earliest this transaction may be consummated is the December 19, 2008 effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. 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 automatically stay the transaction. Petitions for stay must be filed no later than December 12, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35197, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on applicants' representatives: W. Karl Hansen, Leonard, Street and Deinard Professional

Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402, and Nathan Fenno, The New York, Susquehanna and Western Railway Corporation, 1 Railroad Avenue, Cooperstown, NY 13326.

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Decided: December 1, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan

Acting Secretary