



Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241

Writer's Direct Dial Number

(757) 629-2838
(757) 533-4872 (Fax)
john.edwards@nscorp.com



John V. Edwards
General Attorney

July 2, 2002

NOTICE: FILING CONTAINS COLORED MAP APPENDIX

FILED

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

JUL 05 2002

**SURFACE
TRANSPORTATION BOARD**

Re: STB F.D. No. 34209, Norfolk Southern Railway Company –
Trackage Rights Exemption– Delaware & Hudson Railway Company, Inc.

Dear Secretary Williams:

Enclosed for filing please find an original and ten copies of the Verified Notice of Exemption submitted in the above-referenced proceeding, together with twenty additional copies of the map that appears as Exhibit 1 thereto. Also enclosed is a check for \$900.00 covering the costs set forth in 49 C.F.R. Section 1002.2(f)(40)(iv).

The original of this filing is clipped, but all copies have been stapled. Also submitted are three 3.5-inch IBM-compatible floppy diskettes, each with an electronic copy of this filing capable of being read by WordPerfect 9.0. These diskettes are labeled with the Docket Number as well as the title to the proceeding.

An additional copy of the Notice also is enclosed. Please indicate receipt and filing by time-stamping this extra copy and returning it in the enclosed self-addressed stamped envelope.

FEE RECEIVED

JUL 05 2002

**SURFACE
TRANSPORTATION BOARD**

Enclosures

Sincerely,

John V. Edwards

**ENTERED
Office of Proceedings**

JUL 08 2002

**Part of
Public Record**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34209

NORFOLK SOUTHERN RAILWAY COMPANY
– TRackage RIGHTS EXEMPTION –
DELAWARE AND HUDSON RAILWAY COMPANY, INC.



VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 C.F.R. Parts 1180.2(d)(7) and 1180.4(g), Norfolk Southern Railway Company (“Norfolk Southern”) hereby files this Verified Notice of Exemption from the prior approval requirements of 49 U.S.C. Section 11323, et seq., to permit Norfolk Southern to acquire and exercise overhead trackage rights over approximately 284.6 miles of the Freight Main Line (“FML”) lines of the Delaware and Hudson Railway Company, Inc. d/b/a/ Canadian Pacific Railway (“CPR”), between Norfolk Southern’s connection with CPR at MP 752.0 near Sunbury, PA and CPR’s connection with the Guilford Rail System (“GTI”) at milepost 467.40 at Mechanicville, NY. The trackage rights are based upon a written agreement and are not filed or sought in a responsive application to a rail consolidation proceeding. Accordingly, they are exempt from the prior approval requirements of 49 U.S.C. Section 11323.

In furtherance of this, Norfolk Southern hereby files this notice of exemption for the proposed transaction, and submits the following information in support thereof:

a. Correspondence.

The person to whom correspondence with respect to this Notice should be addressed (49 C.F.R. Section 1180.6(a) is:

John V. Edwards
General Attorney
Norfolk Southern Corp.
Three Commercial Place
Norfolk, VA 23510-2191
(757) 629-2838
(757) 533-4872 (fax)

b. Transaction Summary.

The following is a summary of the transaction, its proposed timing, and the purpose of the proposed transaction (49 C.F.R. Sections 1180.6(a)(1)(i)-(iii):

Norfolk Southern (with its consolidated subsidiaries) is a Virginia corporation with its business address of Three Commercial Place, Norfolk, VA 23510. It is a Class I railroad and a wholly-owned subsidiary of Norfolk Southern Corporation, a holding company. Norfolk Southern Corp. – Control – Norfolk & W. Ry. Co., 366 ICC 173 (1982). Norfolk Southern (with its subsidiaries) operates a rail system that extends throughout 23 states and the District of Columbia in the eastern United States, except New England.

The other rail carrier involved in this transaction is CPR, a Delaware corporation, doing business in the United States as Canadian Pacific Railway.

Under the proposed transaction, Norfolk Southern will obtain overhead trackage rights over approximately 284.6 miles of the CPR system for certain restricted types and volumes of traffic, including traffic for interchange with the GTI and the Canadian

National Railway Company (“CN”). The basic purpose sought to be accomplished by the proposed transaction is to enable Norfolk Southern to more efficiently access and serve customers in New York State, the New England United States and Eastern Canadian rail market, in conjunction with trackage rights being obtained concurrently with the Reading Blue Mountain and Railroad Company, the subject of STB Finance Docket No. 34225, Norfolk Southern Railway Company – Trackage Rights Exemption – Reading Blue Mountain and Northern Railroad Company.

The proposed transaction described herein will be consummated no sooner than the latter of (1) the effective date of this Notice, or (2) the expiration of any labor notice period to which Norfolk Southern may be subject.

c. Applicant’s location.

The Applicant operates in the following locations (49 C.F.R. Section 1180.6(a)(5):

Norfolk Southern operates in the States of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia.

d. Map.

Pursuant to 49 C.F.R. Section 1180.6(a)(6), a map, showing the lines subject to the proposed transaction, together with those of relevant short line connections and other

rail lines in the region, together with the principal geographic points in the region traversed, is attached hereto as Exhibit 1.

e. Agreement.

Pursuant to 49 C.F.R. Section 1180.6(a)(7)(ii), a copy of the agreement as executed showing the significant terms of the proposed transaction is attached hereto as Exhibit 2.

f. Labor Protection.

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).

g. Environmental and History Documentation.

The proposed transaction qualifies under 49 C.F.R. Section 1105.6(c)(4) and as such, no environmental documentation is required. Likewise, the proposed transaction qualifies under 49 C.F.R. Section 1105.8(b)(3) and as such, no historic report will be prepared.

h. Caption Summary.

A caption summary suitable for publication in the Federal Register is attached
hereto as Exhibit No. 3.

Respectfully submitted,


T. L. Ingram

NORFOLK SOUTHERN RAILWAY COMPANY
Three Commercial Place
Norfolk, Virginia 23510

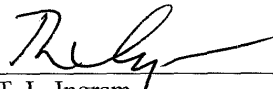
Of Counsel: John V. Edwards
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
(757) 629-2838
(757) 533-4872 (fax)

Dated: July 2, 2002

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF NORFOLK)

T. L. Ingram, Vice President Transportation-Operations, Norfolk Southern
Railway Company, being duly sworn, deposes and states that he has read the foregoing
statement and knows the contents thereof and that the same are true as stated to the best
of his information and belief.



T. L. Ingram

Subscribed and sworn to before me
this 3rd day of July, 2002.



Notary Public

My commission expires:

September 30, 2002

Exhibit 1

Map

**MAP WILL BE SCANNED
AT A LATER DATE**

Exhibit 2

Agreement

Execution Copy Dated June 27, 2002

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of this 27th day of June 2002, by and between Norfolk Southern Railway Company, a Virginia corporation, hereinafter referred to as "Norfolk Southern", and Delaware and Hudson Railway Company, Inc., a Delaware corporation, d/b/a Canadian Pacific Railway, hereinafter referred to as "CPR". Norfolk Southern and CPR are sometimes hereinafter individually referred to as a "Party" and sometimes collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, on May 5, 1998 the Parties entered into a haulage arrangement whereby CPR would perform haulage services for Norfolk Southern between Harrisburg, PA and Mechanicville, NY and between Binghamton, NY and Mechanicville, NY, and, subject to the formation of additional agreement(s) between the Parties, provide interchange with other rail carriers in the Albany, NY area; and

WHEREAS, on April 11, 1999 the Parties entered into another haulage arrangement whereby CPR would perform haulage services for Norfolk Southern intermodal traffic between Harrisburg, PA and Mechanicville NY, for interchange with Guilford Rail System ("GTI"); and

WHEREAS, on June 16, 1999 the Parties entered into an interim haulage agreement whereby CPR would perform haulage services for Norfolk Southern between Allentown, PA and Binghamton, NY; and

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WHEREAS, Norfolk Southern and CPR have explored efficiency and rationalization initiatives in the Northeast US, resulting in the Parties entering into a Term Sheet dated February 13, 2002 and, subsequently, a Northeast U.S. Restructuring Agreement (the "Restructuring Agreement"), executed contemporaneously with this Trackage Rights Agreement; and

WHEREAS, pursuant to the Restructuring Agreement, CPR has agreed to grant Norfolk Southern overhead trackage rights for Incremental Traffic, moving on the CPR Lines, subject to the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the premises, the mutual covenants, and other good and valuable consideration set forth herein, Norfolk Southern and CPR agree as follows.

Section 1. DEFINITIONS AND INTERPRETATION

1.1 Capitalized Terms not otherwise defined herein shall be as defined in the Restructuring Agreement. If not otherwise defined herein or in the Restructuring Agreement, all words, terms and phrases shall be construed in accordance with the definition or meaning of such words, terms or phrases generally applicable in the railroad industry.

1.2 The Parties acknowledge and agree that numerous items not expressly addressed herein are governed by the terms of the Restructuring Agreement. The Parties further acknowledge their intent that this Agreement and the Restructuring Agreement be interpreted entirely consistently with one another.

Section 2. TRACKAGE RIGHTS AND INTERCHANGE

2.1 This Trackage Rights Agreement sets forth the terms and conditions for the overhead trackage rights granted by CPR, as owner and operator, to Norfolk Southern pursuant to the Restructuring Agreement for the non-exclusive right to transport Incremental Traffic in Norfolk Southern trains, locomotives, cars and equipment with Norfolk Southern's own crews over the CPR Lines (as depicted on the map attached hereto as Exhibit 1), and to interchange the same with GTI and/or CN/IC, their affiliates, and permitted successors and assigns, as addressed in Section 13.U. of the Restructuring Agreement..

2.2 Incremental Traffic shall remain in the revenue account of Norfolk Southern at all times and for all purposes, including car hire, while on the CPR Lines until the same is placed into the account of GTI and/or CN/IC. At no time shall Incremental Traffic be in the revenue account of CPR, for car hire or for other purposes. Norfolk Southern shall be responsible for all mileage and car hire charges accruing on cars in its revenue account and shall report and pay all appropriate allowances and charges directly to the owners of such cars.

2.3 The physical interchange between Norfolk Southern and GTI and/or CN/IC shall, to the extent the same takes place on the CPR Lines, be subject to the following:

(a) The location of the physical interchange between the carriers shall be subject to CPR's written approval; and

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(b) CPR will retain the right to substitute Mohawk Yard or such other reasonable locations as may from time to time be necessary as the physical interchange point for traffic to be interchanged between Norfolk Southern and GTI and/or CN/IC; and

(c) CPR shall not be liable for any locomotive costs, fuel costs, crew costs or other such "above the rail" costs incurred by GTI in performing an NS-GTI physical interchange at a location other than at MP 470.0.

(d) No interchange between Norfolk Southern and GTI and/or CN/IC shall take place on the CPR Lines in the absence of an agreement between Norfolk Southern and GTI and/or CNIC, as the case may be, governing the same.

2.4 Norfolk Southern shall have the right to stop trains on CPR tracks at Sunbury, PA for the sole purpose of setting off Norfolk Southern traffic. Also, upon the initiation of trackage rights operations between Binghamton and Mechanicville/Mohawk, Norfolk Southern shall have the right to stop trains on CPR trackage between Binghamton terminal and Taylor for the sole purposes of picking up and setting off Norfolk Southern traffic; CPR shall grant, upon Norfolk Southern's request, subject to an agreed upon operating plan between the Parties, such rights to Norfolk Southern to use such trackage as designated by CPR, on standard industry terms and conditions.

Section 3. RESTRICTIONS ON USE

3.1 The rights granted herein are for overhead traffic only. Norfolk Southern shall not have the right, except as otherwise provided for within this Agreement, to:

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(a) Set off, pick up, or store equipment or switch industries upon all or any part of the CPR Lines, except as necessary for the handling of locomotives, cars or cabooses bad ordered en route; or

(b) Serve any industry, team or house track now existing or hereinafter located along the CPR Lines; or

(c) Permit or admit, without permission in writing from CPR, any third party to the use of all or any part of the CPR Lines, nor contract, or make any agreement to provide haulage over the CPR Lines of trains, locomotives, cars or cabooses of any third party which in the normal course of business would not be considered as the trains, locomotives, cars or cabooses of Norfolk Southern (the foregoing shall not prevent Norfolk Southern, pursuant to a run-through agreement with any railroad, or a bona fide equipment lease, from using the locomotives and cabooses of another railroad as its own under this Agreement); or

(d) Construct tracks connecting to the CPR Lines without the written consent of CPR; or

(e) Operate Restricted Traffic over the CPR Lines; or

(f) Operate a Special Train over the CPR Lines; or

(g) Interchange with any carrier, other than as specified within this Agreement; or

(h) Enter or Exit the CPR Lines at any point other than those Points A-H designated on Exhibit 1 hereto.

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3.2 Norfolk Southern's Incremental Traffic operated between Points "D" to "E" and "F" is limited to a volume restriction of one (1) train per day in each direction until: (1) Norfolk Southern receives CPR's written concurrence on available line capacity within this corridor, which concurrence shall not be unreasonably withheld; and (2) Norfolk Southern reaches an agreement with the CN/IC on Mohawk divisions or other handling of relevant current Norfolk Southern-CN/IC Buffalo Gateway traffic via a route through Mohawk.

3.3 Norfolk Southern may not use the trackage rights between Binghamton and Albany/GTI – Mechanicville for any Incremental Traffic that is destined to Voorheesville, NY that further is either:

- (a) inbound finished vehicle traffic originating at Norfolk Southern or CSXT origins that are open to Norfolk Southern for interchange with CPR at Buffalo, NY; or
- (b) finished vehicle traffic that could be interchanged with Norfolk Southern at Salem, IL from any rail carrier for furtherance by Norfolk Southern to an interchange with CPR at Buffalo, NY.

Section 4. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTION

Existing connections or facilities which are jointly used by the Parties hereto under existing agreements 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.

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Section 5. OPERATION AND MANAGEMENT OF SUBJECT TRACKAGE

5.1 The management and operation of the CPR Lines shall be under the exclusive direction and control of CPR. CPR shall have the unrestricted right to change the management and the operations on and over the CPR Lines as it, in its sole judgment, may deem necessary, expedient or proper for the operation of the CPR Lines.

5.2 Norfolk Southern shall comply with 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, cars and equipment or trains, locomotives, cars and equipment under its control while such trains, locomotives, cars and equipment are being operated over the CPR Lines. Notwithstanding any other provisions herein, Norfolk Southern shall indemnify, protect, defend, and save harmless CPR and its subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon CPR or its subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court of competent jurisdiction, when attributable solely to the failure of Norfolk Southern to comply with its obligations in this regard.

5.3 When operating Incremental Traffic over the CPR Lines, Norfolk Southern's locomotives and crews shall be equipped to communicate with the operators of the segments of Subject Trackage on radio frequencies then normally used in directing train movements on the Subject Trackage. Norfolk Southern's locomotives shall be adequately powered to maintain the maximum authorized freight speeds as provided by

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CPR's operating rules and equipped with such cab signals, LSL and other safety equipment that is required by law or instruction for the operation over any or all of the Subject Trackage.

5.4 The CPR Lines shall be maintained to standards as identified in Section 8.F.1(a) of the Restructuring Agreement. CPR shall be bound to use only reasonable and customary care, skill and diligence in the operation, maintenance, repair, renewal and management of the CPR Lines and Norfolk Southern and its subsidiaries or affiliates, or their respective directors, officers, agents and employees shall not, by reason of CPR's performing or neglecting to perform any operation, maintenance, repair, renewal or management of CPR Lines, have or make against CPR any claim or demand for loss, damage, destruction, injury or death whatsoever resulting from CPR's performance, failure or neglect, except as otherwise provided in Section 10 herein.

5.5 Norfolk Southern, at its sole expense, shall install and maintain upon its trains, locomotives, cabooses and cars such equipment or devices as may now or in the future be mandated by the Federal Railroad Administration, or other governing body having authority, for the safe and efficient operation of trains over the CPR Lines.

5.6 Subject to Section 19 of the Restructuring Agreement, if the use of the CPR Lines is at any time interrupted or traffic over the Subject Trackage is delayed for any cause whatsoever, CPR shall, with reasonable diligence, restore the line as required for the passage of trains of the Parties. Except as provided in Section 8.F.3. of the Restructuring Agreement, neither Party shall have or make any claim against the other for the loss or damage of any kind resulting from such interruption or delay.

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5.7 The operation of Norfolk Southern over the CPR Lines shall at all times be in accordance with the rules, instructions and restrictions of CPR, provided, however, that such rules, instructions and restrictions shall be reasonable, just and fair between all parties using the CPR Lines and shall not unjustly discriminate against any of them. These rules and instructions shall include, but not be limited to, operating and safety rules, timetables, special instructions, bulletins, general orders and authoritative directions of train dispatchers and operating officers. CPR will not make any rule or restriction applying to Norfolk Southern's trains that does not apply with equal force to CPR's trains.

5.8 Norfolk Southern trains while operating over the Subject Trackage shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the CPR Lines as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CPR's operating rules and regulations without the prior consent of CPR.

5.9 In the event that a train of Norfolk Southern shall be forced to stop on the CPR Lines due to mechanical failure of Norfolk Southern'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 Norfolk Southern fails to maintain the speed required by CPR on the CPR Lines, or if in emergencies, crippled or otherwise defective cars are set out of Norfolk Southern's trains on the CPR Lines, CPR shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the CPR Lines, and

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Norfolk Southern shall reimburse CPR for the actual cost of rendering any such assistance.

5.10 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 CPR Lines, such work shall be done by CPR, and Norfolk Southern shall reimburse CPR for the cost thereof.

5.11 All employees of Norfolk Southern engaged in the operation of Norfolk Southern trains over the CPR Lines shall be required to qualify for entry onto the CPR Lines by passing periodic examinations on the operating and safety rules of CPR in addition to the physical characteristics. Norfolk Southern shall make such arrangements with CPR as may be required to ensure that all of its employees who shall operate its trains, locomotives, cars and equipment over the CPR Lines are qualified for operation thereover, and Norfolk Southern shall pay to CPR, upon receipt of bills therefore, any and all costs incurred by CPR in connection with the qualification of such employees of Norfolk Southern which may include, but are not limited to, those costs addressed in Section 7.5 of this Agreement including the cost of pilots furnished by CPR, until such time as such employees are deemed by the appropriate examining officer of CPR to be properly qualified for operation as herein contemplated. CPR may require that such qualification trips be repeated if the subject Norfolk Southern employee has not made a trip over the CPR Lines within a reasonable period of preceding time, but only to the same extent as would be required of CPR's own employees. Pending qualification or requalification of subject employees, CPR shall furnish a pilot or pilots, at the expense of Norfolk Southern, to allow operation as contemplated in this Agreement. For purposes of

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Section 10 of this Agreement, any employee of CPR acting as a pilot for Norfolk Southern will be considered an employee of Norfolk Southern.

5.12 If any employee of Norfolk Southern, neglects, refuses or fails to abide by CPR's rules, safety rules, instructions or restrictions governing the operation over the CPR Lines, CPR shall in writing so notify Norfolk Southern. CPR shall have the right to require Norfolk Southern to promptly withhold any Norfolk Southern employee from service over the CPR Lines pending the result of formal investigation of the alleged neglect, refusal or failure. After the notice is given to Norfolk Southern, CPR and Norfolk Southern shall promptly hold a joint investigation, in which each of the Parties shall bear its own expenses for its own employees and witnesses. Notice of such investigation to Norfolk Southern employees shall be given by Norfolk Southern officers. The investigation shall be conducted in accordance with the terms and conditions of the agreements between Norfolk Southern and its employees. If the result of such investigation warrants, any subject Norfolk Southern employee so investigated shall upon written request by CPR be restricted by Norfolk Southern from operating on the CPR Lines, and Norfolk Southern shall release and indemnify CPR from and against any and all claims and expenses related to such restriction, provided, however, that CPR shall not unreasonably exercise this right of restriction.

5.13 Neither Party hereto shall require the other Party's crews to perform any work beyond that required by its current labor agreements, subject to any modifications that may result from future labor agreements, while said crews are on the other Party's property and/or subject to the other Party's supervision. Should either Party require the other Party's crews to perform additional services over and above that contemplated

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herein, which results in penalty claims being progressed, that Party shall reimburse the other Party for the cost of all such claims. It is agreed that the Party subject to the claims shall notify the other Party of such claims so that the movement(s) causing the claim(s) can be corrected to avoid liability.

5.14 To promote more efficient train operations over the CPR Lines, Norfolk Southern shall submit all schedules of its train operations over the CPR Lines to CPR for its concurrence and Norfolk Southern shall provide CPR with advance notice of the estimated time of arrival of trains, and documentation, prior to entering the CPR Lines.

Section 6. BAD ORDERS AND LIGHT RUNNING REPAIRS

6.1 If any cars, cabooses, or locomotives of Norfolk Southern are bad ordered en route on the CPR Lines and it is necessary that they be set out, those cars, cabooses or locomotives shall, after being promptly repaired, be promptly picked up by Norfolk Southern. CPR may, upon request of Norfolk Southern and at the exclusive expense of Norfolk Southern, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the Association of American Railroads, furnish required labor and material to perform light repairs required to make such bad ordered equipment safe and lawful for movement, and billing for this work shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the Association of American Railroads.

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Section 7. BILLING AND PAYMENT OF CHARGES

7.1 Norfolk Southern shall on or about the tenth day of each month provide CPR an accounting of its use of the CPR Lines for the prior month. Such use of the CPR Lines shall be furnished to CPR's Manager Interline Agreements or designated representative and shall include a detailed listing of loaded and empty car movements over the CPR Lines. Such detailed listing, to the extent available, shall be forwarded to CPR in an electronic format, and shall include car initial and numbers, date of movements and the points traversed over the CPR Lines and such other information as CPR may reasonably request. The Parties shall exchange data on all loaded and empty cars by Electronic Data Interchange (EDI) transmission.

7.2 CPR shall bill and Norfolk Southern shall pay to CPR a sum computed by multiplying: (i) the Base Trackage Rights Charge, as may be revised in accordance with Section 6.E. of the Restructuring Agreement by (ii) the number of cars (loaded and empty) handled by Norfolk Southern with its own crews and power over the CPR Lines by (iii) the miles of CPR Lines used, provided, however, that with regard to movements pursuant to this Agreement that originate or transit Binghamton, New York, for interchange with GTI in the Mechanicville region, the mileage shall always be measured to/from MP 470.0 without regard to the actual interchange point with GTI. With respect to articulated units, the number of axles in each articulated unit shall be divided by four (4) in order to develop an equivalent car count for the application of the Base Trackage Rights Charge. Car count data for articulated units is subject to change upon development of technology to separate units by car numbers.

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7.3 The costs, expenses and charges that Norfolk Southern is required to bear and pay under the provisions of this Agreement are in addition to any and all other costs, expenses and charges that Norfolk Southern is required to bear and pay under the provisions of the Restructuring Agreement.

7.4 It is expressly understood and agreed that the payments described in this Section 7 to be paid by Norfolk Southern do not, in any case, include any cost or expense which may be incurred by CPR on account of loss of or damage to property, or injury to or death of any person or persons arising out of, or in connection with, the operation by Norfolk Southern upon or over the CPR Lines. It is agreed by and between the Parties that such items of cost or expense shall be borne and paid by the Parties according to the provision of Section 10 hereof.

7.5 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in this Section 7, shall include direct labor and material costs, together with the customary surcharges, overhead percentages and equipment rentals as specified at the time any work is performed by CPR for Norfolk Southern.

7.6 The payment of bills shall not be delayed or payment refused or reduced on the face amount of bill rendered because of errors in supporting details which are not material relative to the billed amount, but bill shall be paid as rendered and exception to charges shall be taken in writing addressed to the officer of CPR responsible for the issuance of the bill; provided that no exception to any charge shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill containing said charge was rendered.

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Section 8. CLAIMS AND SETTLEMENTS

8.1 Except as provided in Section 8.2, all claims, injuries, deaths, 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 therefore under the provisions of this Agreement. The Parties 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.

8.2 Each Party will investigate, adjust and defend all cargo related liability claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.

8.3 In the event a claim or suit is asserted against one of the Parties hereto which is the other Party'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.

8.4 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 herein, except that salaries or wages of full-time claim agents, full-time attorneys and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by the employing Party.

8.5 Excluding cargo related liability claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709, neither Party shall

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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 Thirty-Five Thousand Dollars (\$35,000).

8.6 It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions or apportionments provided in Section 10.

8.7 Except as provided for in Section 5.13 herein, each Party hereto agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries and affiliates, and all of 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 labor claims or grievances made by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or predicated on a collective bargaining agreement. It is the intention of the Parties that each Party shall bear the full costs of labor claims and grievances filed by its own employees arising under its collective bargaining agreements with its employees.

Section 9. CLEARING OF WRECKS

9.1 Whenever Norfolk Southern's use of the CPR Lines requires rerailling, wrecking service or wrecking train service, CPR shall perform or provide such service, including the repair and restoration of roadbed, track and structures, except that CPR in its sole discretion may request a third party to perform such rerailling service at Norfolk

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Southern's sole reasonable expense.

9.2. 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 Section 10 hereof. All locomotives, cars, equipment and salvage that are owned by or under the management and control of or used by Norfolk Southern at the time of such wreck, shall be promptly delivered to Norfolk Southern, unless the Parties otherwise agree.

Section 10. LIABILITY

10.1 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, litigation expenses and attorney's fees resulting from the use of the CPR Lines as described herein, all of which are collectively referred to as a "Loss", will be divided as follows:

(a) If a Loss occurs on the CPR Lines involving the trains, cars and locomotives of only one of the Parties hereto, then that one Party is solely responsible for the Loss, even if caused partially or completely by the another Party.

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(b) If a Loss occurs on the CPR Lines involving the trains, cars and locomotives of more than one Party, then (i) each Party is solely responsible for any Loss to its own employees, locomotives and equipment and that in its own revenue account including lading and (ii) the Parties are equally responsible for any Loss to the CPR Lines 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 Section as between the Parties hereto, 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 hereto under the foregoing or succeeding provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party to this Agreement and their parent corporations, subsidiaries and affiliates, and all of its 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) In every case of death or injury suffered by an employee of any Party hereto, 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 any of said Parties, under the provisions of

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this Agreement, are required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such Party (ies) 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.

(f) For purposes of determining liability, pilots furnished by CPR to Norfolk Southern pursuant to this Agreement shall be considered as the employees of Norfolk Southern while such pilots are on duty as pilots.

(g) If a claim or suit shall be commenced against any of the Parties hereto for Damage for which another Party hereto is ultimately liable, the Party sued or against whom the claim is asserted may give notice of such claim or suit to the other Party and thereupon the latter shall assume the defense of the claim or suit and save harmless therefrom the Party sued or against whom the claim is asserted. The Party liable hereunder shall also be responsible and indemnify the other Party for all costs and expenses associated with defending the claim or suit (excluding the salaries, wages and benefits of the Parties' employees), including reasonable outside attorneys' fees. Where both Parties are liable hereunder, each Party shall bear its own costs and expenses associated with defending the claim or suit.

Section 11. Abandonment and Discontinuance of Subject Trackage.

(a) Norfolk Southern shall have the right, subject to securing any necessary regulatory approval, to discontinue its use of the CPR Lines or any portion thereof. CPR

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shall have the right, subject to securing any necessary regulatory approval, to abandon its use of the CPR Lines or any portion thereof. Before filing an application for regulatory approval of such abandonment, CPR shall give Norfolk Southern ninety (90) days' advance notice in writing of its intention to do so in order that Norfolk Southern may determine whether it desires to purchase the CPR Lines (or portion thereof) or to discontinue its use thereof.

(b) If Norfolk Southern desires to purchase the CPR Lines, it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event the offer meets the requirements of 49 U.S.C. Section 10904 and CPR receives more than one such offer, CPR will exercise its statutory right to negotiate with Norfolk Southern rather than with the other offer(s). Thereafter, the rights and obligations of the parties in respect to Norfolk Southern's acquisition of the CPR Lines shall be governed by applicable provisions of the law.

(c) In any one of the circumstances listed below Norfolk Southern shall be deemed to have determined that it does not desire to purchase the CPR Lines and that it desires to discontinue its use thereof:

(i) Norfolk Southern fails to submit an offer of financial assistance to purchase the CPR Lines within the time prescribed by statute and applicable regulations, or

(ii) Norfolk Southern, having made an offer of financial assistance to purchase the CPR Lines, but being unable to reach agreement with CPR as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or

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(iii) Norfolk Southern, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or

(iv) Norfolk Southern, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

In such event Norfolk Southern shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the CPR Lines. If Norfolk Southern does not promptly file an application seeking approval of its discontinuance of Norfolk Southern's operations over the CPR Lines, CPR shall be deemed to have been given Norfolk Southern's power of attorney to take such action on Norfolk Southern's behalf.

(d) In the event any application filed by CPR is granted but an application filed by Norfolk Southern under Subsection (c) above is denied by the proper regulatory authority, the parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the CPR Lines to Norfolk Southern (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.

(e) In the event CPR abandons the CPR Lines (or portion thereof) under circumstances which (because of changes in the law or otherwise) are not susceptible of handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that Norfolk Southern either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price

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consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.

(f) In the event CPR's application for authority to abandon is denied, Norfolk Southern will withdraw any application it has filed under Subsection (c) above.

(g) Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Section 11 result in an obligation imposed by any competent authority on any Party hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the Party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

(h) Notwithstanding any other provision of this Agreement, if CPR abandons its use of the CPR Lines or any portion thereof, and ceases all use of the same, and further Norfolk Southern does not discontinue its rights or purchase the said portion of the CPR Lines pursuant to this Section 11, Norfolk Southern shall reimburse CPR the actual cost to operate and maintain said portion of the abandoned CPR Lines. Such payment of actual costs shall be in lieu of the payment of charges contemplated in Section 7 of this Agreement.

Section 12. Term and Termination.

12.1 This Agreement shall become effective the day first written above or, should Surface Transportation Board approval be required, on the effective date such approval is received. The Agreement shall remain in effect for a term exactly concurrent with the Restructuring Agreement.

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12.2 Should the Restructuring Agreement be terminated, this Agreement shall be considered to be contemporaneously terminated.

12.3 In the event this Agreement is terminated, Norfolk Southern shall not oppose any discontinuance application filed with the STB.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

Witness: Delaware and Hudson Railway Company, Inc.
d/b/a Canadian Pacific Railway

As to CPR By: _____
(Title)

Witness: Norfolk Southern Railway Company

As to Norfolk Southern By: _____
(Title)

Exhibit 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 34209

Norfolk Southern Railway Company – Trackage Rights Exemption – Delaware & Hudson Railway Company, Inc.

Delaware & Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway (“CPR”) has agreed to grant overhead trackage rights to Norfolk Southern Railway Company between Norfolk Southern’s connection with CPR at MP 752.0 of CPR’s Freight Main Line (“FML”) near Sunbury and CPR’s connection with Guilford Rail System (“GTT”) at MP 467.40 of CPR’s FML at Mechanicville, NY. The trackage rights will be effective no sooner than the latter of (1) the effective date of this Notice, or (2) the expiration of any labor notice period to which Norfolk Southern may be subject.

This notice is filed under Section 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

Vernon A. Williams,
Secretary