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July 24, 2002

Via Facsimile
Original following by Overnight Delivery

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

ENTERED
Office of Proceedings

JUL 26 2002

Part of
Public Record

Re: STB F.D. No. 34209, Norfolk Southern Railway Co. – *205945*
Trackage Rights Exemption– Delaware & Hudson Railway Company, Inc.

Re: STB F.D. No. 34225, Norfolk Southern Railway Co. – Trackage Rights *205946*
Exemption – Reading Blue Mountain and Northern Railroad Company

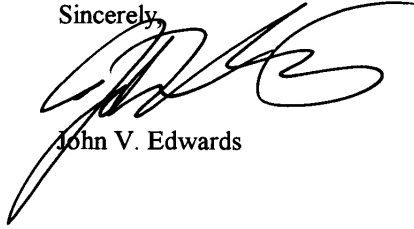
Dear Secretary Williams:

Enclosed for filing please find an original and ten copies of the Limited Response of Norfolk Southern Railway Company to the Petition to Reject/Revoke and Petition to Stay Operation of Exemptions with regard to each of the above-referenced proceedings ("Petition"), filed July 23, 2002 by Samuel J. Nasca. The Petition requested expedited hearing on the contents thereof under the erroneous assumption that operations under the respective trackage rights would begin August 1, 2002. This Limited Response addresses solely the question of the imposition of the stay. Norfolk Southern respectfully reserves the right to address the merits of the Petition in a manner otherwise timely under the Board's regulations. Further, although the Petition alleges that the above-referenced proceedings should be consolidated, and although Norfolk Southern disagrees, Norfolk Southern submits this Limited Response in both dockets simultaneously in order to address matters in the most expeditious manner possible.

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

Sincerely,

A handwritten signature in black ink, appearing to be "J. Edwards", written over the printed name.

John V. Edwards

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34209

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

FINANCE DOCKET NO. 34225

NORFOLK SOUTHERN RAILWAY COMPANY
– TRACKAGE RIGHTS EXEMPTION –
READING BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY

LIMITED RESPONSE OF NORFOLK SOUTHERN RAILWAY COMPANY



On July 5, 2002, Norfolk Southern Railway Company (“Norfolk Southern”) submitted two independent verified notice of exemptions pursuant to 49 C.F.R. Parts 1180.2(d)(7) and 1180.4(g), to permit Norfolk Southern to acquire and exercise overhead trackage rights over approximately 284.6 miles of the Freight Main Line 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 at milepost 467.40 at Mechanicville, NY (F.D. No. 34209) and over approximately 56.7 miles of the Lehigh Line of Reading Blue Mountain and Northern Railroad Company (“RBMN”), between MP 119.3 in Lehighton Yard and MP 175.5 in Dupont, PA (F.D. No. 34225). In both cases, 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.

On July 23, 2002, Samuel J. Nasca, for an on behalf of United Transportation Union – New York State Legislative Board (“UTU-NY”) filed a Petition to Reject/Revoke, and Petition to Stay Operation of Exemptions (“Petition”). The Petition generally alleges that the notices should be rejected for failing to comply with the Board’s rules. If any alleged defects are cured, the Petition nevertheless argues that the exemption be revoked, and that New York Dock protective conditions be imposed, and that regardless, the Board should stay the operation of the exemptions. Although none of the relief requested by the Petition is justified, Norfolk Southern herein responds solely to the question of whether the Board should impose a stay. It appears that the Petition contemplates that operations pursuant to the trackage rights notices would begin imminently (according to the Petition, on August 1, 2002). Therefore, the Board may feel it incumbent to decide whether to issue a stay in these two proceedings prior to August 1. By filing this Limited Reply, addressed solely to the need for the issuance of a stay, Norfolk Southern respectfully reserves the right to respond to the merits of the Petition in a subsequent pleading, within the time frames set forth by the Board’s regulations.

The Petition simply does not meet any the criteria that the Board and its predecessor have typically applied in determining whether to issue a stay. That criteria, which is consistent with those set forth by the Court of Appeals for the District of Columbia Circuit in Washington Metropolitan Area Transit Commission v. Holliday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977), require the moving party to establish: (1) that it will suffer irreparable harm absent a stay, (2) that a stay will not substantially harm

other parties, (3) that it has a substantial likelihood of prevailing on the merits, and (4) that the public interest favors a stay.

A stay is not necessary in this case, as Norfolk Southern will not be implementing operations under the two trackage rights agreements any earlier than August 24, 2002. A stay could substantially harm Norfolk Southern, because prior to that date Norfolk Southern intends to continue to prepare for implementation of the trackage rights, and a stay could prevent such preparation.

UTU-NY does not have a high probability of success on the merits of its case. It alleges that "it is clear that the Restructuring Agreement constitutes a major transaction, involving construction, haulage, trackage rights, and abandonment." Petition at 5. As will be seen, the Restructuring Agreement entered into between Norfolk Southern and CPR generally provides for the revision of compensation under an existing trackage rights agreement, the revision of compensation under an existing haulage agreement, the allocation of the cost of funding for capacity improvements that may be needed in the future, the CPR to grant trackage rights to Norfolk Southern pursuant to the agreement that is the subject of Finance Docket No. 34209 for traffic that is not moving today under any agreement between the parties (and not, as is implied in the Pleading, traffic that is to be diverted from existing haulage that CPR performs for Norfolk Southern), an option for CPR to obtain trackage rights over a line operated by Norfolk Southern should CPR desire to exercise that option (which trackage rights would be based upon an agreement not yet drafted but which would be submitted to the STB pursuant to its regulations); and sets forth a plan for operating trains over certain routes subsequent to the implementation of the trackage rights agreement. The trackage rights agreement under which RBMN

granted to Norfolk Southern rights to operate over its line merely permits the operations contemplated in the Restructuring Agreement to take place. In whole or in its constituent parts, the Restructuring Agreement simply is not a "major transaction."

The UTU-NY seems to indicate that "the breadth of the impact on NS employees," Petition at 6, has a bearing on the question of whether this is a major transaction. Although Norfolk Southern will set forth in detail a response to this claim in its future response, we note that UTU-NY makes the claim without any support. Further, the Petition also claims that the "elimination of NS employees at Renovo suggests a discontinuance of all service at that point, amounting to a de facto abandonment." The suggestion is without merit, as Norfolk Southern is not intending to discontinue all services to the Renovo area, and any discontinuance over or abandonment of this line of railroad would require the prior approval of the Board. Neither discontinuance nor abandonment authority has been sought.

Norfolk Southern will, for the sake of resolving the issues set forth in the Petition, submit a petition for a protective order, together with unredacted and redacted versions of the relevant trackage rights agreements and the so-called Restructuring Agreement. Further, Norfolk Southern will agree to provide to counsel for UTU-NY any of the RBMN/Norfolk Southern trackage rights agreement, the CPR/Norfolk Southern trackage rights agreement, and/or the Restructuring Agreement to counsel for UTU-NY in a redacted form and, upon executing a standard undertaking, in highly confidential form. (Norfolk Southern has previously submitted to the Board the RBMN/Norfolk Southern trackage rights agreement with terms associated with compensation redacted in order to keep confidential this competitively sensitive term.)

For all the reasons set forth, Norfolk Southern respectfully submits that UTU-NY
has failed to establish the criteria necessary for the imposition of a stay.

Respectfully submitted,



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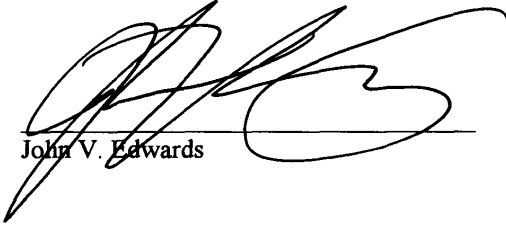
Dated: July 5, 2002

CERTIFICATE OF SERVICE

I, John V. Edwards, hereby certify that I have served the foregoing Limited
Response of Norfolk Southern Railway Company the to UTU-NY Petition to
Reject/Revoke, and Petition to Stay Operation of Exemptions, by fax and overnight
courier to:

Gordon P. MacDougall
1025 Connecticut Ave., N.W.
Washington D.C. 20036
202-223-9738
202-331-8343 (fax)

Dated this 24th day of July, 2002.



John V. Edwards