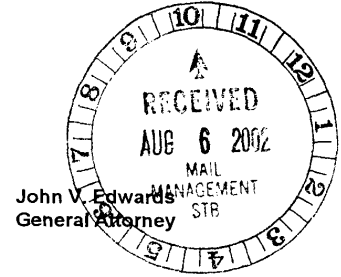




**NORFOLK
SOUTHERN**

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

205984



Writer's Direct Dial Number

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

August 5, 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

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

Dear Secretary Williams:

Enclosed for filing please find an original and ten copies of the Petition for Protective Order of Norfolk Southern Railroad Company with regard to the above-referenced proceeding ("Petition"). Also, enclosed under seal are unredacted and redacted versions of the Restructuring Agreement, marked "Confidential Materials Subject to Protective Order."

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 this cover letter 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,

John V. Edwards

ENTERED
Office of Proceedings
AUG 6 2002
Part of
Public Record

Enclosures

205984

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34225

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

PETITION FOR PROTECTIVE ORDER



**ENTERED
Office of Proceedings**

AUG 6 2002

**Part of
Public Record**

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

Date: August 5, 2002

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34225

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

PETITION FOR PROTECTIVE ORDER



Norfolk Southern Railway Company ("Norfolk Southern") hereby submits to the Surface Transportation Board ("STB" or "Board") a petition to the Board requesting that the Board enter, in the above-referenced proceeding, a protective order, in the form provided in Appendix A hereto. The order is required to permit Norfolk Southern to submit certain documents to the Board and for use by counsel to United Transportation Union – New York State Legislative Board ("UTU-NY"), solely for use in this proceeding, that contain commercially highly sensitive terms.

On July 5, 2002, Norfolk Southern Railway Company ("Norfolk Southern") submitted a verified notice of exemption 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 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 (the "RBMN trackage rights"). Norfolk Southern also submitted an

independent verified notice of exemption to permit it to acquire and exercise 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 (in Finance Docket No. 34209, Norfolk Southern Railway Company – Trackage Rights Exemption – Delaware & Hudson Railway Company) (the "CPR Trackage Rights"). In each case, 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, each agreement is exempt from the prior approval requirements of 49 U.S.C. Section 11323.

On July 23, 2002, UTU-NY filed a Petition to Reject/Revoke, and Petition to Stay Operation of Exemptions ("Petition") in both Finance Docket No. 34209 and in Finance Docket No. 34225. The Petition generally alleges that the notices should be rejected for failing to comply with the Board's rules, including in this proceeding, the failure to file an unredacted copy of the trackage rights agreement. 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, allegedly because the transaction contemplated a "major transaction." The Petition sought consolidation of the two proceedings. Also attached to the Petition was a document request, seeking not only the so-called Restructuring Agreement, but

other documents as well.¹ On July 24, 2002, Norfolk Southern submitted a limited response (“NSR Limited Reply”) solely to the question of whether the Board should impose a stay. Norfolk Southern reserved the right to respond to the merits of the Petition in a subsequent pleading.

On July 25, 2002, the Board separately published a Notice of Exemption in Finance Docket No. 34209 and in Finance Docket No. 34225. Also on July 25, 2002, the Board served a Decision denying the stay requested by UTU-NY. The Board did not consolidate the two proceedings. Later that day, UTU-NY filed with the Board a notice that UTU-represented Norfolk Southern employees had reached an implementing agreement with Norfolk Southern regarding the transactions covered by Finance Docket No 34209 and Finance Docket No. 34225, but noting that “the situation with respect to UTU-represented employees of the Delaware and Hudson Railway Company and the Reading Blue Mountain and Northern Railroad Company remain pending and unresolved.”²

As contemplated in the Limited Reply, Norfolk Southern is submitting today this

¹ The document request was served in both Finance Docket No. 34209 and in Finance Docket No. 34225. As UTU has reached an implementing agreement with Norfolk Southern, and further as the issues set forth in the Petition should be completely resolved with the production of the Restructuring Agreement, Norfolk Southern will not be producing additional documents in response to the UTU-NY document request.

² Norfolk Southern understands that since the service of UTU-NY’s July 25, 2002 letter, CPR has provided notice to its employees of the CPR-Norfolk Southern Trackage rights. That notice indicated that CPR anticipated no impact upon its employees. Further, Norfolk Southern understands that RBMN has provided notice to its employees of the trackage rights the subject of Finance Docket No. 34225 by notice dated August 5, 2002. That notice indicated that RBMN believes that there will be no impact anticipated on RBMN’s employees. Norfolk Southern is today providing copies of each of these notices to counsel for UTU-NY. As the Board knows, should any employee be affected by the transaction, he or she will be entitled to the benefits under N&W/Mendocino conditions.

petition for a protective order, together with an unredacted version of the RBMN-Norfolk Southern trackage rights agreement.³ Further, without waiting action by the Board on this petition for a protective order, Norfolk Southern will agree to provide to counsel for UTU-NY, upon execution of the attached highly confidential undertaking, the trackage rights agreement in an unredacted form, provided he agrees to be bound by that undertaking regardless of Board action on this petition for a Protective Order.

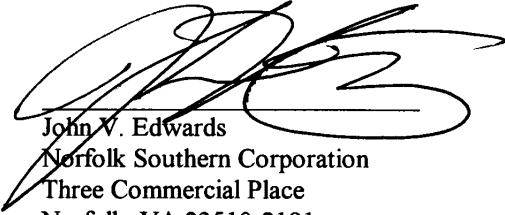
The information that was redacted from the trackage rights agreement is highly confidential commercially-sensitive information developed and protected against public disclosure by Norfolk Southern, namely trackage rights rates, charges and certain adjustments thereto. The proposed protective order is necessary to protect this highly confidential information. The proposed order will allow Norfolk Southern to present the trackage rights agreement to the Board and to UTU-NY, while at the same time protecting the confidentiality of that sensitive information.

The proposed protective order is modeled substantially on several others that the Board has recently entered, but contemplates that only a highly confidential and a public version of the RBMN-Norfolk Southern trackage rights agreement will be produced.

Accordingly, Norfolk Southern requests that a protective order be entered in the form provided in Appendix A hereto, including the forms of confidentiality undertakings that accompany it. RBMN has authorized Norfolk Southern to advise the Board that RBMN joins in this request.

³ The redacted version of the trackage rights agreement was submitted with the original Notice of Exemption.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Edwards', is written over a horizontal line.

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

Dated: August 5, 2002

APPENDIX A

PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "Confidential Information" means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, or carriers, confidential financial and cost data, and other confidential or proprietary business or personal information.

(c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such materials.

(d) "Proceedings" means those before the Surface Transportation Board ("Board") concerning the application in Finance Docket No. 34225, and any related proceedings before the Board, and any judicial review proceedings arising from Finance Docket No. 34225 or from any related proceedings before the Board.

2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter.

3. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a

transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains shipper-specific rate or cost data, trackage rights compensation levels or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter.

4. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

5. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this order.

6. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

7. Designated material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in Finance Docket No. 34225, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Finance Docket No. 34225 and/or with any related proceedings.

8. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings,

including any petitions for reconsideration, appeals, or remands.

9. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

10. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

11. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

12. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 9 of this Protective Order.

13. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2 or 3 above, such production, disclosure, holding, and use of the materials and of

the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904 or of any other relevant provision of the ICC Termination Act of 1995.

14. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

15. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

Exhibit A

UNDERTAKING -- CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served _____, 2002, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 34225, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in Finance Docket No. 34225, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Finance Docket No. 34225 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing confidential information or confidential documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

Exhibit B

UNDERTAKING -- HIGHLY CONFIDENTIAL MATERIAL

I, _____, am outside [counsel] [consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on _____, 2002, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 34225, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in Finance Docket No. 34225, any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with Finance Docket No. 34225 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as "HIGHLY CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this undertaking and that Applicants or other parties producing confidential information or confidential documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____

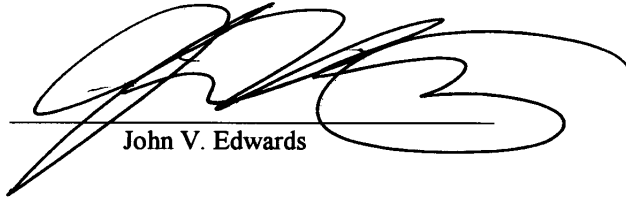
CERTIFICATE OF SERVICE

I, John V. Edwards, hereby certify that I have caused to be served the foregoing
Petition for a Protective Order in Finance Docket No. 34225, by overnight courier to:

Gordon P. MacDougall
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorney for Samuel J. Nasca, UTU-NY

Dated this 5th day of August, 2002.



John V. Edwards