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TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
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212123

WRITER'S DIRECT NUMBER
(202) 736-8198

WRITER'S E-MAIL ADDRESS
thynes@sidley.com

October 1, 2004

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

OCT - 1 2004
RECEIVED

Re: STB Docket No. 34561, Canadian Pacific Railway Company – Trackage
Rights Exemption – Norfolk Southern Railway Company, Buffalo, NY

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten (10) copies of a Notice of Exemption (the "Notice") filed by Canadian Pacific Railway Company ("CPRC") pursuant to 49 C.F.R. § 1180.2(d)(7). Also enclosed, in accordance with 49 C.F.R. § 1180.6(a)(6), are twenty (20) unbound copies of the maps submitted as Exhibit 1 to the Notice, as well as a check in the amount of \$950.00 to pay the required filing fee.

A diskette containing an electronic version of the Notice is also enclosed.

Please acknowledge receipt of the Notice for filing by date-stamping the enclosed extra copies of the Notice and returning them via our messenger. If you have any questions, please contact the undersigned counsel.

FILED

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SURFACE
TRANSPORTATION BOARD

Sincerely,

Terence M. Hynes
Terence M. Hynes
Gabriel S. Meyer

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BEFORE THE
SURFACE TRANSPORTATION BOARD



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Finance Docket No. 34561

SURFACE
TRANSPORTATION BOARD

CANADIAN PACIFIC RAILWAY COMPANY
--TRackage RIGHTS EXEMPTION--
--NORFOLK SOUTHERN RAILWAY COMPANY--
BUFFALO, NY

VERIFIED NOTICE OF EXEMPTION

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SURFACE
TRANSPORTATION BOARD

Terence M. Hynes
Gabriel S. Meyer
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
(202) 736-8711 (fax)

Counsel for Canadian Pacific Railway
Company

Dated: October 1, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 34561

**CANADIAN PACIFIC RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
--NORFOLK SOUTHERN RAILWAY COMPANY--
BUFFALO, NY**

VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), Canadian Pacific Railway Company ("CPRC") files this Verified Notice of Exemption (the "Notice") from the prior approval requirements of 49 U.S.C. § 11323, *et seq.*, to permit CPRC to acquire, by assignment from its affiliate, Delaware and Hudson Railway Company, Inc. ("D&H"), and exercise overhead trackage rights over approximately 12.45 miles of track owned and operated by Norfolk Southern Railway Company ("NSR") in the vicinity of Buffalo, 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. § 11323.

CPRC files this Notice in furtherance of the transaction, and submits the following information in support thereof, in accordance with the Board's regulations set forth at 49 C.F.R. §§ 1180.4(g)(1) and 1180.6:

A. Correspondence

The person to whom correspondence with respect to this Notice should be sent is:

Terence M. Hynes
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, DC 20005
202 736-8000
202 736-8711 (fax)

B. Transaction Summary

The following is a summary of the transaction, its proposed timing, and the purpose of the transaction:

CPRC is a Canadian corporation whose business address and telephone number are:

Canadian Pacific Railway Company
Gulf Canada Square
401 9th Ave. SW
Calgary, Alberta T2P 4Z4
Canada
(403) 319-7000

CPRC is a Class I rail carrier which, in conjunction with its U.S. affiliates, D&H and Soo Line Railroad Company ("SOO"), operates a 14,000 mile railroad network in Canada and the United States.

The carrier that owns and operates the rail lines that are the subject of this Notice is NSR, a Virginia corporation, whose business address and telephone number are:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510
(757) 629-2600

Under the proposed transaction, CPRC will acquire, by assignment from D&H, overhead trackage rights over the following NSR rail lines in the vicinity of Buffalo, NY:

1. NSR's Southern Tier Line between Milepost 413.0 $\pm$ and the western end of the Southern Tier Line at Milepost 419.8 $\pm$ (including tracks into NSR's Bison Yard), a distance of approximately 6.8 miles;
2. NSR's Bison Running Track between the point of connection with the Southern Tier Line at MP 419.8 $\pm$ and the point of connection with the lines of CSX Transportation, Inc. ("CSXT") at MP 423.3 $\pm$, a distance of approximately 3.5 miles; and
3. NSR's Howard Street Running Track between the point of connection with the Bison Running Track at MP 420.15 $\pm$ and the point of connection with the lines of CSXT at MP 422.3 $\pm$, a distance of approximately 2.15 miles, for a total distance of approximately 12.45 miles.

The trackage rights covered by this Notice may be used by CPRC only to deliver to, and to receive from, NSR at NSR's Bison Yard in Buffalo, NY (i) traffic interchanged between CPRC and NSR at Buffalo, NY; (ii) CPRC/D&H through traffic that will be handled by NSR between Buffalo, NY and Binghamton, NY pursuant to a haulage agreement between NSR and D&H, and (iii) traffic that will be switched by NSR for the account of D&H (or CPRC) between Bison Yard, on the one hand, and industries or points of interchange with other carriers in the Buffalo Terminal Area to which D&H has commercial access, on the other hand, pursuant to a switching agreement between NSR and D&H.

In a Petition for Exemption filed concurrently with this Notice in Docket No. AB-156 (Sub-No. 25X), *Delaware and Hudson Railway Company, Inc. – Discontinuance of Trackage Rights Between Lanesboro, PA and Buffalo, NY, In Susquehanna County, PA and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie and Genesee Counties, NY* (the "D&H Discontinuance Petition"), D&H seeks an exemption pursuant to 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 *et seq.* for D&H to discontinue its existing trackage rights over NSR's lines between Lanesboro, PA (southeast of Binghamton, NY) and Buffalo, NY. As described more fully in the D&H Discontinuance Petition, the trackage rights acquired by CPRC pursuant to this Notice, in conjunction with the services provided to D&H by NSR under new haulage and switching agreements between D&H and NSR, will give D&H the same ability to access customers via switching in the Buffalo terminal area, and to interchange traffic with other railcarriers along the Southern Tier Line and in the Buffalo Terminal Area, as D&H has today under its current trackage rights and switching arrangements.

CPRC service under the trackage rights that are the subject of this Notice will commence on a date (the "Commencement Date") mutually agreed in writing between CPRC and NSR, which shall not occur until the effective date of any required Board authorization or exemption

of D&H's Discontinuance Petition in Docket No. AB-156 (Sub-No. 25X) (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption).

C. Applicant's Location

CPRC and its United States affiliates, D&H and SOO, operate rail lines in the States of Illinois, Indiana, Kentucky, Maryland, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, and Wisconsin, and in the District of Columbia, as well as the Canadian Provinces of Alberta, British Columbia, Manitoba, Ontario, Quebec, and Saskatchewan.

D. Map

Pursuant to 49 C.F.R. § 1180.6(a)(6), a map depicting the trackage rights that are the subject of this Notice, and a system map showing the lines of CPRC and D&H in relation to the lines of NSR and other carriers in the territory, are attached hereto as Exhibit 1.

E. Agreement

A copy of the agreement under which CPRC will exercise the trackage rights that are the subject of this Notice (redacting confidential business terms) is attached hereto as Exhibit 2. Concurrently with this Notice, CPRC has filed a Petition for Protective Order relating to the terms of the trackage rights agreement between CPRC and NSR, as well as an unredacted version of the executed trackage rights agreement (filed under seal).

F. Labor Protection

Any employees who are adversely affected by the acquisition of the trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in *Norfolk and Western Railway Co. – 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).

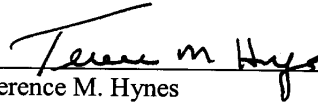
G. Environmental and Historical Reports

In accordance with 49 C.F.R. § 1105.6(c)(4), no environmental documentation is required in connection with the transaction that is the subject of this Notice. Likewise, in accordance with 49 C.F.R. § 1105.8(b)(3), no historical report is required in connection with the transaction that is the subject of this Notice.

H. Caption Summary

A caption summary suitable for publication in the Federal Register is attached hereto as Exhibit 3.

Respectfully submitted,



Terence M. Hynes
Gabriel S. Meyer
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
(202) 736-8711 (fax)

Counsel for Canadian Pacific Railway Company

Dated: October 1, 2004

VERIFICATION

I, Fred Green, Executive Vice President – Operations and Marketing of Canadian Pacific Railway Company, hereby verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Notice of Exemption. Executed on September 30, 2004.

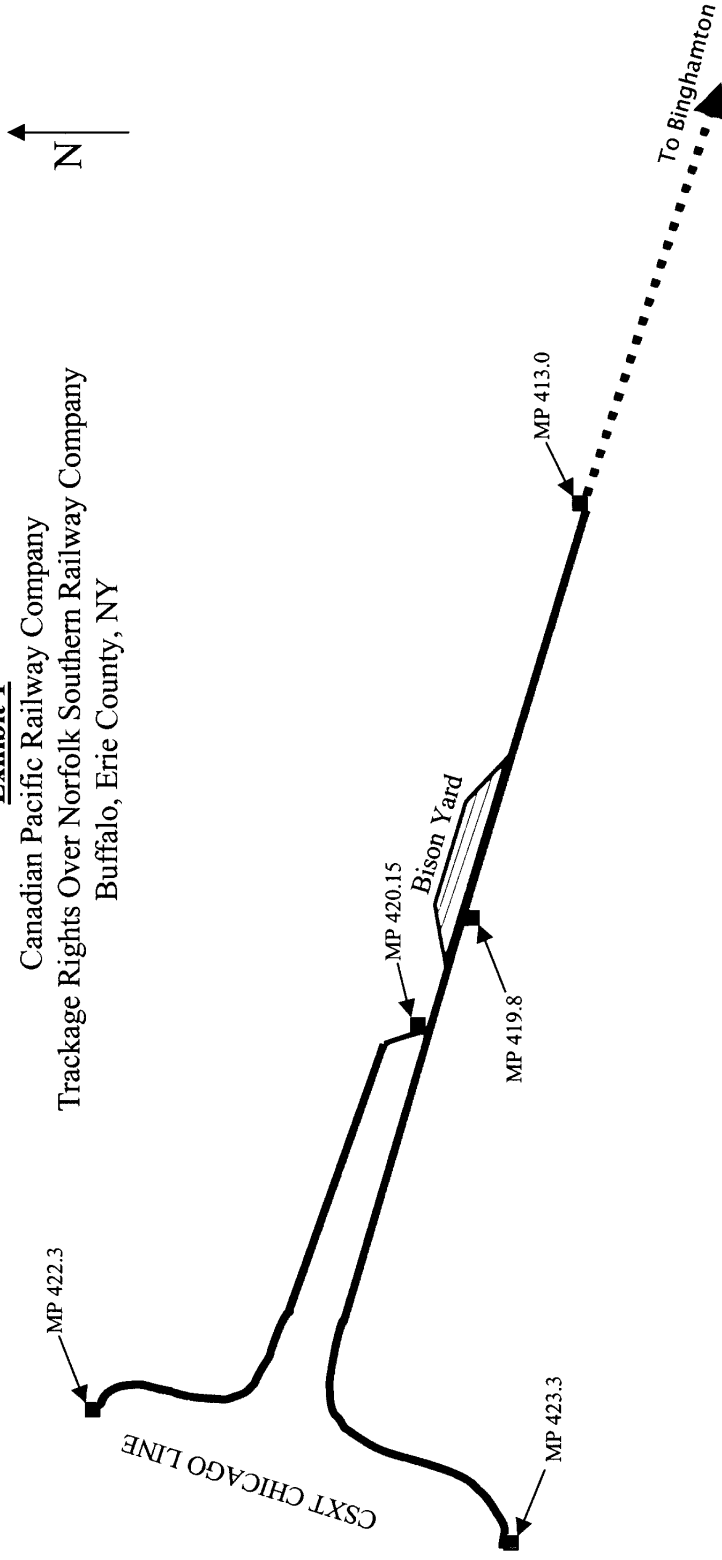


Fred Green
Executive Vice President
Operations and Marketing

EXHIBIT 1

Exhibit 1

Canadian Pacific Railway Company Trackage Rights Over Norfolk Southern Railway Company Buffalo, Erie County, NY



Description

- Bison Running Track Mile Post MP 423.3 to MP 419.8, including operation in Bison Yard.
- Howard Street Running Track MP 422.3 to 420.15.
- NS Southern Tier Line MP 413.0 at Buffalo to MP 217.0 at Binghamton, NY.
- Note: All mileposts are designated +/-

09/27/2004

Map not to scale

Created by E.J. Hall

EXHIBIT 2

RESTATED BUFFALO TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT ("Restated Buffalo Trackage Rights Agreement" or "Agreement") is made this 30th day of September, 2004 by and between NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation ("Norfolk Southern") and CANADIAN PACIFIC RAILWAY COMPANY, a Canadian corporation ("CPRC"). Norfolk Southern and CPRC are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Consolidated Rail Corporation and CPRC's affiliate, Delaware and Hudson Railway Company, Inc. ("D&H") are parties to that certain Agreement dated as of April 25, 1979 (the "1979 Agreement") and that certain Supplemental Agreement dated as of December 13, 1990 (the "1990 Supplement"), pursuant to which D&H exercises trackage rights over certain lines of railroad now owned and operated by Norfolk Southern; and

WHEREAS, pursuant to that certain Partial Assignment of Trackage Rights (the "Assignment") among D&H, CPRC and Norfolk Southern of even date herewith, D&H has assigned to CPRC, and CPRC has accepted from D&H assignment of, D&H's existing trackage rights over certain lines of Norfolk Southern in the vicinity of Buffalo, NY, which D&H holds pursuant to the 1979 Agreement and the 1990 Supplement; and

WHEREAS, Norfolk Southern and CPRC desire to amend and restate the terms and conditions upon which CPRC shall exercise the trackage rights over Norfolk Southern's lines in the vicinity of Buffalo, NY assigned to it by D&H pursuant to the Assignment;

NOW, THEREFORE, the Parties hereto, intending to be legally bound, agree as follows:

SECTION 1. GRANT OF TRACKAGE RIGHTS

(a) On the terms and subject to the conditions herein provided, Norfolk Southern hereby grants to CPRC the right to operate its trains, locomotives, cars and equipment with its own crews (such rights being referred to hereinafter as the "Subject Trackage Rights") over the following Norfolk Southern railroad lines, all as shown in detail on Exhibit A to this Agreement:

(i) Norfolk Southern's Southern Tier Line between MP 413.0 $\pm$ and the western end of the Southern Tier Line at MP 419.8 $\pm$, including tracks into Norfolk Southern's Bison Yard; and

(ii) Norfolk Southern's Bison Running Track between the point of connection with the Southern Tier Line at MP 419.8 $\pm$ and the point of connection between the lines of Norfolk Southern and the lines of CSX Transportation Inc. ("CSXT") at MP 423.3 $\pm$; and

(iii) Norfolk Southern's Howard Street Running Track between a point of connection with the Bison Running Track at MP 420.15 $\pm$ and the point of connection between

the lines of Norfolk Southern and the lines of CSXT at MP 422.3 ±. The lines described in this Section 1(a) are referred to collectively hereinafter as the "Subject Trackage."

SECTION 2. USE OF SUBJECT TRACKAGE

(a) CPRC's use of the Subject Trackage shall be in common with Norfolk Southern, and Norfolk Southern's right to use the Subject Trackage shall not be diminished by this Restated Buffalo Trackage Rights Agreement.

(b) CPRC may operate trains in either direction over the Subject Trackage.

(c) CPRC may use the Subject Trackage solely for the following purposes:

(i) delivering to, and receiving from, Norfolk Southern at Bison Yard rail cars interchanged between CPRC, on the one hand, and Norfolk Southern, on the other hand ("CPRC-NS Buffalo Interchange Cars");

(ii) delivering to, and receiving from, Norfolk Southern at Bison Yard D&H Haulage Cars (as defined in Section 1.01 of that certain Southern Tier Haulage Agreement between Norfolk Southern and D&H of even date herewith);

(iii) delivering to, and receiving from, Norfolk Southern at Bison Yard Buffalo Switch Cars (as defined in Section 2(b)) of that certain Bison Yard Terminal Services Agreement between Norfolk Southern, on the one hand, and CPRC and D&H, on the other hand, of even date herewith); and

(iv) turning locomotives used by CPRC in connection with the operations permitted by Sections 2(c)(i), (ii) and (iii).

(d) CPRC locomotives and crews operating over the Subject Trackage shall be equipped to communicate with Norfolk Southern on radio frequencies normally used by Norfolk Southern in directing train movements on the Subject Trackage.

(e) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. CPRC's operations over the Subject Trackage shall at all times be subject to the direction and control of the Norfolk Southern operating officer in charge of the Subject Trackage and to applicable provisions of Norfolk Southern's safety and operating rules.

(f) Before a CPRC train enters the Subject Trackage, CPRC shall confirm to Norfolk Southern that the crew operating such CPRC train has the ability to make a complete and continuous movement over the Subject Trackage between the point of entry and Bison Yard (or vice versa).

(g) Norfolk Southern shall use its best efforts to allow, at no charge to CPRC, CPRC operating (train and engine) crews to utilize Norfolk Southern's personnel facilities at Bison Yard solely for changing crews on CPRC trains moving over the Subject Trackage. If

Norfolk Southern's existing personnel facilities are not adequate to accommodate both Norfolk Southern's and CPRC's personnel, Norfolk Southern shall permit CPRC to construct or locate its own facilities for such purpose at Bison Yard. In such event, CPRC shall pay the cost to establish such facilities at Bison Yard, and Norfolk Southern shall pay the cost of utilities provided to the facilities established by CPRC.

(h) Norfolk Southern shall provide CPRC equal access to the Norfolk Southern crew bus services in Buffalo, NY, if that is possible under Norfolk Southern's current contract for such services. If the provision of crew bus services to CPRC under Norfolk Southern's current contract is not possible, Norfolk Southern shall use its best efforts to obtain an amendment to its current contract to permit the provision of crew bus services to CPRC crews, and the incremental cost thereof shall be the responsibility of CPRC. If Norfolk Southern's current contract cannot be amended to permit the provision of crew bus services to CPRC, CPRC may arrange for its own crew bus services in Buffalo, NY.

(i) CPRC shall have the right to move in its own trains all dimensional loads and excess clearance rail cars which it may approve for movement over the Subject Trackage, subject to a clearance file (the "Clearance File") applicable to traffic of both Parties maintained by Norfolk Southern. Norfolk Southern shall promptly inform CPRC of any changes made to the Clearance File. Before any dimensional load or excess clearance rail car is proposed for movement by CPRC under this Agreement, it shall first notify Norfolk Southern in writing, giving all pertinent physical facts, and requesting verification. Norfolk Southern shall respond promptly either confirming the physical facts related to the proposed dimensional load(s) or excess clearance rail car(s) or specifically identifying the physical facts which would interfere with a planned move. In no event shall Norfolk Southern deny to CPRC the ability to tender a specific rail car for movement over the Subject Trackage and then subsequently grant approval for the same or similar movement over the Subject Trackage in a Norfolk Southern train unless CPRC receives timely notice that the limiting clearance or other reason for denial has been removed. The Parties shall cooperate to accommodate all dimensional loads and excess clearance rail cars, subject to compensation to Norfolk Southern for any special services necessary or advisable for the movement thereof at the rate charged by D&H to Norfolk Southern from time to time under that certain letter agreement between D&H and Norfolk Southern dated as of May 14, 2003.

SECTION 3. RESTRICTIONS ON USE

(a) The Subject Trackage Rights are granted for the sole purpose of CPRC using the Subject Trackage to operate its trains in overhead movements. CPRC trains may enter and exit the Subject Trackage only at (i) Milepost 422.3 ± of Norfolk Southern's Howard Street Running Track in Buffalo, NY, (ii) Bison Yard, and (iii) Milepost 423.3 + of Norfolk Southern's Bison Running Track in Buffalo, NY for the purpose of wying locomotives. The points of ingress and egress designated in this Section 3(a) are referred to herein as the "End Points." CPRC shall not have the right to enter or leave the Subject Trackage except at the End Points.

(b) CPRC shall not perform any local freight service whatsoever at any point located on Subject Trackage.

(c) CPRC shall not interchange any traffic with any other carrier, except with Norfolk Southern and D&H at Bison Yard, at any point on or along, or at the End Points of, the Subject Trackage. CPRC shall not have the right to serve existing or future shippers at facilities located on or along, or at the End Points of, the Subject Trackage.

(d) CPRC shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains, except as necessary for the handling of locomotives, cars or cabooses bad ordered en route, and to comply with customs requirements; provided, that CPRC shall use such auxiliary Subject Trackage as may be designated by NSR for such purposes.

(e) CPRC may not grant trackage rights of any nature on the Subject Trackage to other parties.

(f) Notwithstanding any other provision of this Restated Buffalo Trackage Rights Agreement to the contrary, CPRC may not permit or admit any third party to the use of all or any part of the Subject Trackage, nor may CPRC contract or make any agreement to provide haulage over the Subject Trackage 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 CPRC, or in any other way provide haulage service for other carriers over the Subject Trackage; provided, that this Section 3(f) shall not be construed to prohibit CPRC from using the locomotives, cars and cabooses of another railroad as its own in CPRC trains pursuant to a run-through agreement with any railroad, or a bona fide equipment lease.

(g) The Parties agree that rebilling of traffic in the Buffalo, NY area is not a permissible method of avoiding any direct traffic limitation set forth in this Agreement.

(h) This Restated Buffalo Trackage Rights Agreement is not intended to, and shall not operate to, expand or contract any Party's existing commercial access to, or right to serve (directly or through switching) any particular shipper facility. If, following the Commencement Date of this Agreement (as defined in Section 13(a) hereof), a new facility (including a transload facility) opens up, an existing facility expands or an existing facility changes ownership (in each case, a "New Facility"), CPRC's commercial access or right to serve such facility shall be the same as if such New Facility had existed prior to the Commencement Date of this Agreement, and shall be neither expanded nor reduced by this Agreement.

(i) The length of CPRC trains (including locomotives and other motive power units) operating on the Subject Trackage shall comply with operating policies applied to Norfolk Southern's own trains.

SECTION 4. SERVICE STANDARDS

(a) CPRC shall provide the Service Standards Committee notice of the schedules for regularly scheduled CPRC trains operating over the Subject Trackage, as well as any proposed modifications. CPRC shall provide the Service Standards Committee at least seven (7) days prior written notice of such changes in CPRC train schedules or frequencies, and notice as

reasonably practicable in the case of train annulments and extra trains necessitated by sudden or seasonal surges in traffic volumes.

(b) Norfolk Southern and CPRC shall establish a Service Standards Committee, consisting of appropriate operating personnel of each Party, which shall: (i) monitor, and periodically review, the performance of the Parties under this Restated Buffalo Trackage Rights Agreement, (ii) carry out such duties as may be assigned to it in this Agreement, including without limitation the prescription of protocols specifying the method and length of advance notice by CPRC to Norfolk Southern of train annulments and extra trains necessitated by sudden or seasonal surges in traffic volumes, (iii) review, and adjust as required from time to time, schedules for trains operating on the Subject Trackage, and (iv) address any other operating issues that may arise in connection with CPRC's operations hereunder. Meetings of the Service Standards Committee may be convened by either Party as required to fulfill its duties under this Agreement. The Service Standards Committee may meet by telephone or at such location as the Parties may agree.

SECTION 5. COMPENSATION

(a) []

SECTION 6. MAINTENANCE OF SUBJECT TRACKAGE

(a) Norfolk Southern shall be solely responsible for the maintenance, repair and renewal of the Subject Trackage. Norfolk Southern shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, such condition not to be less than Federal Railroad Administration Class 2 (or any replacement of it), subject to slow orders and the like, but Norfolk Southern does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Norfolk Southern shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts to avoid such interruptions.

(b) Norfolk Southern shall, in planning program maintenance of the Subject Trackage, take into account the schedule of CPRC trains on the Subject Trackage as well as Norfolk Southern trains. Norfolk Southern shall from time to time throughout the term of this Restated Buffalo Trackage Rights Agreement, through the Service Standards Committee, advise CPRC of its schedule for planned maintenance, and any revisions to such schedule, as soon as practicable after such maintenance plan is determined or revised. Norfolk Southern shall further provide the designated officer of CPRC with seven (7) days prior notice (or such lesser notice period as is reasonable in the circumstances) of substantial delays or line outages on the Subject Trackage due to planned maintenance.

SECTION 7. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

(a) 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.

SECTION 8. ADDITIONS, RETIREMENTS AND ALTERATIONS

(a) Norfolk Southern, from time to time and at its sole cost and expense, may make changes in, additions and betterments to, or retirements from, the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation of the Subject Trackage or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental entity having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

SECTION 9. MANAGEMENT AND OPERATIONS

(a) Norfolk Southern shall have exclusive control of the management and operation (including dispatching) of the Subject Trackage. Operation and control, including dispatching, of the Subject Trackage shall be conducted in a manner as to afford each of the Parties, and any other present or future user of the Subject Trackage (or any portion thereof) the most economical and efficient movement of its traffic over the line. For the purposes of dispatching, NSR's and CPRC's trains of the same class shall be treated with equal priority, with the four (4) classes of trains being:

1. Passenger
2. Intermodal and automotive
3. Regular (unit and freight trains not scheduled to set off/pick up en route)
4. Other (includes trains and equipment that must operate at restricted speeds, i.e., local, work, or other such equipment movements);

provided, that in the event of a conflict, the NSR dispatcher shall be empowered to deviate from the priorities set forth herein in order to employ best practices to efficiently move all trains.

(b) Norfolk Southern shall provide CPRC with read-only access to Norfolk Southern's Central Traffic Control screens covering the Subject Trackage in the offices of CPRC designated by CPRC. Norfolk Southern shall be responsible for the cost of modifying its system to the extent necessary to provide CPRC access to its Central Traffic Control screens, and CPRC shall be responsible for the cost of the communications link with CPRC and the costs to use such link incurred in CPRC's offices. Such access, and the information derived therefrom, shall be restricted to CPRC operating personnel designated by the Services Standards Committee, who shall only use said access, and the information derived therefrom, to monitor CPRC train movements and for no other purpose, and shall further protect the confidentiality of the information derived therefrom.

(c) CPRC shall comply with the provisions of 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 while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. CPRC shall indemnify, protect, defend, and save harmless Norfolk Southern and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon Norfolk Southern or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction, when attributable solely to the failure of CPRC to comply with its obligations in this regard.

(d) CPRC in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Norfolk Southern, and the movement of CPRC's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Norfolk Southern; provided, however, that such safety rules, operating rules, other regulations and orders of the transportation officers of Norfolk Southern shall not unjustly discriminate between the Parties. Norfolk Southern will not make any rule or restriction applying to CPRC's trains that does not apply equally to Norfolk Southern's trains. CPRC's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage 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 Norfolk Southern's operating rules and regulations, without the prior consent of Norfolk Southern. The Service Standards Committee shall make proper accommodation for exceptions, should that be reasonable, necessary and practicable. All CPRC trains shall be powered to permit operation at posted speeds.

(e) CPRC shall make such arrangements with Norfolk Southern as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover. Norfolk Southern shall provide reasonable cooperation and assistance in the qualification of CPRC operating (train and engine) crews for service over the Subject Trackage as soon as the date such crews and Norfolk Southern personnel are available and the notice of exemption relating to the trackage rights governed by this Agreement has been filed with the STB. CPRC shall pay to Norfolk Southern, upon receipt of bills therefor, any cost incurred by Norfolk Southern in connection with the qualification of such employees of CPRC, as well as the cost of pilots furnished by Norfolk Southern until such time as such CPRC employees are deemed by the appropriate examining officer of Norfolk Southern to be properly qualified for operation as herein contemplated. CPRC or D&H supervisory personnel who have been qualified to operate over the Subject Trackage by an appropriate examining officer of Norfolk Southern may qualify other CPRC employees for operation of trains over the Subject Trackage.

(f) If any employee of CPRC shall neglect, refuse or fail to abide by the instructions and restrictions governing the operation on or along the Subject Trackage, Norfolk Southern shall so notify CPRC. Norfolk Southern shall have the right to require CPRC promptly to

withhold any CPRC employees from service over the Subject Trackage pending the results of a formal investigation of the alleged neglect, refusal or failure. After the notice is given to CPRC, CPRC and Norfolk Southern shall promptly hold a joint investigation, in which each of the Parties shall bear the expenses of its own employees and witnesses. Notice of such investigation to CPRC employees shall be given by CPRC officers. The investigation shall be conducted in accordance with any applicable terms and conditions of schedule agreements between CPRC and its employees. If the result of such investigation warrants, such employee shall, upon written request by Norfolk Southern, be restricted by CPRC from service on the Subject Trackage, and CPRC shall release and indemnify Norfolk Southern from and against any and all claims and expenses because of such withdrawal.

(g) In the event that a CPRC train shall be forced to stop on the Subject Trackage, due to mechanical failure of CPRC's equipment or any other cause (mechanical or otherwise) not resulting from an accident or derailment, and such train is unable to proceed, or if a CPRC train fails to maintain the speed required by Norfolk Southern on the Subject Trackage, or if in emergencies, bad ordered or otherwise defective cars are set out of a CPRC train on the Subject Trackage, Norfolk Southern shall have the option to furnish motive power or such other assistance (mechanical or otherwise) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage. CPRC shall reimburse Norfolk Southern for the cost of rendering any such assistance. If it becomes necessary to make repairs to or adjust or transfer the lading of such disabled or defective cars in order to move them off the Subject Trackage, Norfolk Southern shall arrange for such work to be done, and CPRC shall reimburse Norfolk Southern for the cost thereof.

(h) Whenever CPRC's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, Norfolk Southern shall arrange for the provision of such service, including the repair and restoration of roadbed, the Subject Trackage and structures. 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 11 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by CPRC at the time of such wreck, shall be promptly delivered to it.

(i) If any cars, cabooses, or locomotives of CPRC are bad ordered en route on the Subject Trackage and it is necessary that they be set out, those cars, cabooses or locomotives shall, after being repaired, be picked up by CPRC. Norfolk Southern may, upon request of CPRC and at the expense of CPRC, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the AAR, 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 AAR.

(j) CPRC shall not have any claim against Norfolk Southern for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by CPRC is interrupted or delayed at any time from any cause.

(k) Norfolk Southern shall make best efforts to provide the designated officer of CPRC with prompt notice of any unplanned substantial delays or line outages on the Subject Trackage, and shall promptly advise the designated officer of CPRC of the resumption of normal service on the Subject Trackage.

SECTION 10. MILEAGE AND CAR HIRE

(a) All mileage and car hire charges accruing on cars in CPRC's trains on the Subject Trackage shall be assumed by CPRC and reported and paid by it directly.

SECTION 11. LIABILITY

The responsibility between the Parties hereto for loss of, damage to, and destruction of any property whatsoever and injury to and death of any person or persons whomsoever, arising out of, incidental to or occurring in connection with this Restated Buffalo Trackage Rights Agreement, also expressly including, without limitation, all liabilities arising after the Commencement Date hereof under FELA and environmental laws but excluding consequential damages of any Party hereto (which are always borne by the Party which sustained them) and excluding claims for exemplary and punitive damages, hereinafter referred to as "Damage," shall be apportioned as follows without regard to fault or negligence:

(a) If Damage occurs involving solely the trains, locomotives, equipment or employees of one of the Parties, then that Party shall be solely responsible for such Damage, even if caused partially or completely by another Party.

(b) If Damage occurs involving the trains, locomotives, equipment and/or employees of both Norfolk Southern and CPRC, then (i) Norfolk Southern and CPRC each shall be solely responsible for any Damage to its own employees, locomotives and equipment and those cars in its own revenue account (including lading) ("Norfolk Southern Equipment" and "CPRC Equipment," respectively, and collectively, the "Equipment"), and (ii) the Parties shall each be responsible for 50 percent of the Damage to the Subject Trackage and associated facilities and any Damage sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Damage.

(c) For the purposes of assigning responsibility for Damage under this Section as between the Parties hereto, the trains of a third party or parties operating on the Subject Trackage shall be considered to be the trains of Norfolk Southern.

(d) Notwithstanding anything to the contrary in Sections 11(a), (b) and (c), above, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, occurs with one or more trains of the Parties involved, then, as between themselves, the Parties agree that (i) Norfolk Southern shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a

substance transported in Norfolk Southern Equipment from which there was a release, (ii) CPRC shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in CPRC Equipment from which there was a release, and (iii) Norfolk Southern and CPRC shall be responsible, in proportion to the total number of pieces of Equipment of each Party from which there was a release, for any damage or destruction to the environment and to third parties which results solely from one or more substances transported in both Norfolk Southern Equipment and CPRC Equipment from which there was a release.

(e) CPRC and Norfolk Southern each shall be responsible for the payment, handling, administration and disposition of all Damage for which it bears exclusive responsibility under this Section 11, and CPRC and Norfolk Southern shall have joint responsibility for the payment, handling, administration and disposition of all Damage for which they are jointly responsible under this Section 11. In assigning joint responsibility to both CPRC and Norfolk Southern, it is not intended that CPRC and Norfolk Southern will, in all instances, actually act jointly, but rather that they will agree between themselves on the most practical and efficient arrangement for handling, administering, and disposing of Damage for which they bear joint responsibility, with the objective of eliminating unnecessary duplication of effort and minimizing overall costs.

(f) Each Party covenants and agrees (i) to indemnify and save harmless the other Party from and against any payments which are the responsibility of such Party under this Restated Buffalo Trackage Rights Agreement, and all expenses, including attorney's fees and expenses, and any other expenses of any court or regulatory proceeding, incurred by the indemnified Party in defending any claim for which the responsible Party is liable, and (ii) to defend such indemnified Party against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.

(g) Notwithstanding anything to the contrary in this Section 11, whenever Damage occurs with one or more trains being involved, and one or more of the involved trains is a CPRC train, and such Damage is attributable solely to the gross negligence or willful or wanton misconduct of only one of the Parties to this Agreement, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Damage, then the Party to which such gross negligence or willful or wanton misconduct is attributable shall assume all liability, cost and expense in connection with such Damage. The Parties agree that, for purposes of this Section 11(g), "gross negligence or willful or wanton misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness."

(h) Notwithstanding any provision of this Section 11 to the contrary, each Party shall assume and bear all responsibility for any Damage caused by acts or omissions of any its employees while under the influence of drugs or alcohol.

(i) If any suit or action shall be brought against either Party for Damage which under the provisions of this Restated Buffalo Trackage Rights Agreement is in whole or in part

the responsibility of the other Party, said other Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expenses and attorneys' fees incurred in such suit according to its liability assumed hereunder.

(j) For purposes of determining liability under this Section 11, pilots furnished by Norfolk Southern to CPRC pursuant to this Restated Buffalo Trackage Rights Agreement shall be considered to be the employees of CPRC while such pilots are on board or getting on or off CPRC trains.

(k) Notwithstanding any provision of this Restated Buffalo Trackage Rights Agreement to the contrary, for the purpose of this Section 11, the word "Equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right of way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

SECTION 12. CLAIMS

(a) The Parties shall agree between themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each Party shall be responsible for losses occurring to lading in its possession for the account of such Party and (ii) the Parties shall follow applicable AAR rules and formulas in providing for the allocation of losses which are either of undetermined origin or in cars handled in interline service by or for the account of the Parties.

(b) Each of CPRC and Norfolk Southern shall indemnify and hold harmless the other Party against, any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of lawsuits, claims or grievances brought 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 pursuant to a collective bargaining agreement. It is the Parties' intention that CPRC and Norfolk Southern each shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

SECTION 13. TERM, DEFAULT AND TERMINATION

(a) This Restated Buffalo Trackage Rights Agreement shall become effective ("Effective Date") as of the first date executed by each of the Parties. However, CPRC operations over the Subject Trackage shall not commence until a date (the "Commencement Date") mutually agreed in writing between NSR and CPRC, which shall not occur until the effective date of any required U.S. Surface Transportation Board ("STB") authorization or exemption of D&H's proposed discontinuance of trackage rights on NSR's line between Buffalo

and Binghamton, NY (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption).

(b) This Restated Buffalo Trackage Rights Agreement shall remain in full force and effect until mutually terminated by the Parties. The Initial Term of this Agreement shall be twenty-five (25) years from the Commencement Date, and shall be renewable continuously thereafter for additional periods of ten (10) years ("Additional Term(s)"). At the end of the Initial Term, CPRC may, at its option, (i) extend this Agreement under the same terms and conditions for one Additional Term, or (ii) require renegotiation of the Agreement. At the end of the first (and any subsequent) Additional Term, either NSR or CPRC may extend the Agreement under the then-current terms and conditions, or require renegotiation of the agreement. In either case, the notice to continue the then-current terms and conditions or to require renegotiation shall be given by CPRC or NSR, as the case may be, by giving the other Party advance written notice at least six (6) months prior to the expiration of the then-current term. If the Parties cannot agree upon the terms and conditions upon which the trackage rights granted herein may be exercised by CPRC during such Additional Term, either Party may submit any open provisions to binding arbitration pursuant to Section 14. The arbitrator shall be instructed to take into consideration the relative economic positions of the Parties under this Agreement, and intent of the Parties, in each case at the time this Agreement was executed, as well as any significant operating, economic and/or technological changes that have occurred in the interim. The effective date for the new terms and conditions, whether reached by negotiation or arbitration, shall be deemed to be the first day of the relevant Additional Term.

(c) In the event that railroad operations, technology or other events create, in the view of one Party to this Agreement, a disparity such that the terms and conditions of this Agreement over time no longer reflect the intention of the Parties in a substantial and material way, and such disparity has a material and substantial adverse effect on said Party, that Party may give notice of such to the other Party, who shall negotiate in good faith modification of this Agreement in order to address and possibly remove said perceived disparity. Should the Parties fail to reach agreement with regard to such perceived disparity, the concerned Party may invoke mediation or other methods of non-binding alternative dispute resolution, in which the other Party agrees to participate in good faith.

(d) CPRC shall have the right to terminate this Restated Buffalo Trackage Rights Agreement upon giving Norfolk Southern at least thirty (30) days prior written notice of such termination. Such termination shall be considered to be a termination of both this Restated Buffalo Trackage Rights Agreement and the underlying right of movement.

(e) Termination of this Restated Buffalo Trackage Rights Agreement shall not relieve or release either Party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Restated Buffalo Trackage Rights Agreement prior to termination thereof.

(f) In the event of any substantial failure on the part of any Party to perform its obligations provided under the terms of this Restated Buffalo Trackage Rights Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified

mail from another Party, the non-defaulting Party shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by such Party of any prior breach thereof, to refer such matter to arbitration pursuant to Section 14 and seek damages and/or specific performance of the terms of this Agreement from the defaulting Party. In the case of a substantial default by CPRC which continues after adjudication of such default through arbitration, Norfolk Southern may terminate this Restated Buffalo Trackage Rights Agreement and the underlying right of movement if CPRC fails to cure such substantial default within: (i) thirty (30) days of the receipt of notice of continued default in the case of such a default in an obligation to pay Norfolk Southern of CPRC, (ii) fourteen (14) days of the receipt of notice of continued default in the case of such a default under Section 3(b), (c), (d), (f), (g) or (h); and (iii) ninety (90) days of the receipt notice of continued default in the case of any other such default under this Restated Buffalo Trackage Rights Agreement.

SECTION 14. ARBITRATION

(a) Any dispute arising between the Parties with respect to this Restated Buffalo Trackage Rights Agreement shall be referred to their respective senior operating officers for resolution. In the event such officers are unable to resolve the dispute, either Party may submit the dispute for binding arbitration by a single arbitrator before the American Arbitration Association under the Commercial Arbitration Rules. The decision of the arbitrator shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne by the Parties, with CPRC paying fifty (50) percent and Norfolk Southern paying fifty (50) percent. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Restated Buffalo Trackage Rights Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision of the arbitrator.

SECTION 15. ABANDONMENT

(a) Norfolk Southern shall have the right, subject to securing any necessary regulatory approval or exemption, to abandon the Subject Trackage or any portion thereof (the "Abandonment Segment") during the Initial Term, or any Additional Term, of this Restated Buffalo Trackage Rights Agreement. Norfolk Southern shall provide CPRC no less than ninety (90) days prior notice of its intention to seek to abandon any Abandonment Segment.

(b) If Norfolk Southern elects to abandon an Abandonment Segment, Norfolk Southern shall, not less than ninety (90) days prior to any submission to the Surface Transportation Board (or successor agency having jurisdiction over said abandonment) of an application or exemption for authority to abandon such Abandonment Segment, offer CPRC the first right to purchase the Abandonment Segment for the fair market value of such Abandonment Segment at the time of purchase, and on such other terms and conditions as are customary with respect to line sales by Norfolk Southern at the time. CPRC shall have sixty (60) days

("Abandonment Notice Period") within which to advise Norfolk Southern that it will exercise its right to purchase ("Exercise Notice"). If the Parties are unable to agree upon the fair market value of the Abandonment Segment that CPRC wishes to purchase, either Party may refer the issue to arbitration pursuant to Section 14, which such arbitration shall determine all issues relating to terms and conditions for the sale not then (at the time of the initiation of the arbitration) agreed to by the Parties. Such arbitration shall be conducted on an expedited basis, with a selection of the arbitrator within forty-five (45) days of the initiation of arbitration, all submissions to be made by the Parties within ninety (90) days of the initiation of arbitration, and a decision to be rendered within thirty (30) days following the final submissions of the Parties.

(c) The Parties shall consummate the sale contemplated by this Section 15 within forty-five (45) days of the latest of: (a) the rendering of an arbitration decision, should issues related to the sale proceed to arbitration; (b) the execution of a purchase and sale agreement, should the Parties execute the same; and (c) the grant of authority, or exemption from the need to obtain a grant of authority, from any regulatory body having jurisdiction over the same.

(d) If CPRC elects not to purchase the Abandonment Segment, it shall so advise Norfolk Southern within the same sixty (60) day Abandonment Notice Period by delivering to Norfolk Southern a notice of waiver of right to purchase said segment ("Waiver Notice"). Failure of CPRC to provide Norfolk Southern with either an Exercise Notice or a Waiver Notice within the aforesaid sixty (60) day period shall constitute a Waiver Notice.

(i) In the event of a Waiver Notice, CPRC shall promptly file such application, petition or exemption notice as may then be required to obtain regulatory authority or exemption for the discontinuance of its trackage rights over the Abandonment Segment.

(e) A Waiver Notice shall constitute a waiver by CPRC of its statutory rights, if any at the time of the abandonment, to purchase or otherwise subsidize operations over the Abandonment Segment pursuant to an offer of financial assistance or other applicable method.

SECTION 16. SUCCESSORS AND ASSIGNS

(a) This Restated Buffalo Trackage Rights Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and assigns.

(b) Except as provided in Section 16(c) and (d), CPRC may not assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, without the prior consent in writing of Norfolk Southern, which consent Norfolk Southern may withhold at its discretion.

(c) In the event of a sale of substantially all of the assets or business of CPRC, or the merger or consolidation of CPRC into a firm or corporation not controlled by CPRC, CPRC may assign this Agreement to such firm or corporation acquiring substantially all of the assets or business of CPRC, or merging or consolidating with CPRC.

(d) In the event of a sale or lease of substantially all of the assets or business of NSR, or the merger or consolidation of NSR into a firm or corporation not controlled by Norfolk

Southern Corporation, NSR may, without the prior consent of D&H, assign this Agreement to such firm or corporation acquiring the assets or business of NSR, or merging or consolidating with NSR.

SECTION 17. NOTICE

Any notice required or permitted to be given by one Party to another under this Restated Buffalo Trackage Rights Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may agree, and shall be addressed as follows:

If to CPRC: General Manager – Interline Management
Canadian Pacific Railway Company
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta, Canada T2P 4Z4

with a copy to:

Manager Interline Agreement Management
Canadian Pacific Railway Company
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta, Canada T2P 4Z4

If to Norfolk Southern:

Executive Vice President Operations
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191

with a copy to:

Senior Director – Joint Facilities
Norfolk Southern Corporation
185 Spring Street, SW, Box 158
Atlanta, Georgia 30303

Either Party may provide changes in the above addresses to the other Party by personal service or certified mail.

SECTION 18. FORCE MAJEURE

The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (including strikes, riots, floods, accidents, Acts of God, acts of terrorism, and other causes or circumstances beyond the control of the Party invoking such force majeure as

an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Restated Buffalo Trackage Rights Agreement, said Party shall take all reasonable measures including providing routing over alternate rail lines to the extent practicable (subject to reimbursement for incremental costs), and granting the right to enter and exit the Subject Trackage at locations other than the End Points in the case of a necessary detour, to restore performance of its obligations in a timely manner.

SECTION 19. CONFIDENTIALITY

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Restated Buffalo Trackage Rights Agreement, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Restated Buffalo Trackage Rights Agreement, during the Initial Term and any Additional Terms, the terms and provisions of this Restated Buffalo Trackage Rights Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential, and will not be disclosed by either Party to any person other than such Party's officers, employees, and attorneys, without the prior written approval of the other Party.

SECTION 20. INDEMNITY COVERAGE

(a) As part of the consideration hereof, each Party hereby agrees that each and all of its indemnity commitments in this Restated Buffalo Trackage Rights Agreement in favor of the other Party shall also extend to and indemnify the parent corporation, subsidiaries and affiliates of such other Party, and all of its directors, officers, agents and employees.

SECTION 21. REGULATORY APPROVAL

(a) Upon execution of this Restated Buffalo Trackage Rights Agreement by each of the Parties hereto, CPRC shall promptly file with the STB, and diligently prosecute, an appropriate notice of exemption with respect to the trackage rights covered by this Agreement.

SECTION 22. GENERAL PROVISIONS

(a) This Restated Buffalo Trackage Rights Agreement and each and every provision hereof are for the exclusive benefit of the Parties hereto and not for the benefit of any other person. Nothing herein contained shall be taken as creating or increasing any right of any other person to recover by way of damages or otherwise against any of the Parties hereto.

(b) This Restated Buffalo Trackage Rights Agreement contains the entire understanding of the Parties hereto with respect to its subject matter and supersedes any and all other agreements (including without limitation the 1979 Agreement and the 1990 Supplement) and understandings between the Parties.

(c) No term or provision of this Restated Buffalo Trackage Rights Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all of the Parties.

(d) Each definition in this Restated Buffalo Trackage Rights Agreement includes the singular and the plural, and references in this Restated Buffalo Trackage Rights Agreement to the neuter gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Restated Buffalo Trackage Rights Agreement, the word "including" means "without limitation", and the words "herein", "hereof" and "hereunder" refer to this Restated Buffalo Trackage Rights Agreement as a whole. All dollar amounts stated herein are in United States currency.

(e) All words, terms and phrases used in this Restated Buffalo Trackage Rights Agreement shall be construed in accordance with the generally applicable definition or meaning of such words terms and phrases in the railroad industry.

(f) The division of this Restated Buffalo Trackage Rights Agreement into sections and subsections, and the insertion of headings and references are for convenience of reference only, and shall not affect the construction or interpretation of this Restated Buffalo Trackage Rights Agreement. Unless the context otherwise requires, all references herein to sections are to sections in this Restated Buffalo Trackage Rights Agreement.

(g) As used in this Restated Buffalo Trackage Rights Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the Parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or moving in the trains of such Party. Whenever such locomotives, cars or equipment are owned or leased by one Party, but are in the possession of, or are being operated in a train of the other Party, such locomotives, cars and equipment shall be considered those of that other Party in whose possession or train such locomotives, cars and equipment are located.

(h) This Restated Buffalo Trackage Rights Agreement is the product of mutual negotiations of the Parties hereto, none of whom shall be considered the drafter for purposes of contract construction.

(i) No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

(j) If any provision of this Restated Buffalo Trackage Rights Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of

competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Restated Buffalo Trackage Rights Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner which produces a result which is substantially equivalent to the terms of this Restated Buffalo Trackage Rights Agreement in all material respects.

(k) Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between Norfolk Southern and CPRC.

(l) This Restated Buffalo Trackage Rights Agreement shall be governed and interpreted in accordance with the laws of the State of New York, without regard to application of the choice of law principles thereof.

(m) This Restated Buffalo Trackage Rights Agreement may be executed in several counterparts, each of which will be deemed an original, and such counterparts shall constitute one and the same instrument.

(n) If the STB, in approving or exempting (if so required) any of the transactions contemplated by this Agreement, the Bison Yard Terminal Services Agreement, the Partial Assignment of Trackage Rights Agreements, the Surrender of SK Yard Lease, or the discontinuance of D&H's trackage rights over the Southern Tier line, imposes any condition (other than standard labor protective conditions) which would, in the sole judgment of NSR or D&H, materially reduce the benefits to that Party from said transactions, then the materially affected Party may in its sole discretion: (a) accept the condition and proceed with said transactions; (b) terminate said transactions collectively, or (c) appeal such condition judicially and postpone the Commencement Date for up to thirty (30) months until final action on its appeal; and if such appeal is unsuccessful, either (i) reject the condition and terminate said transactions, or (ii) accept the condition and proceed with said transactions..

IN WITNESS WHEREOF, the Parties hereto have caused this Restated Buffalo Trackage Rights Agreement to be duly executed as of the date first above written.

WITNESS:

NORFOLK SOUTHERN RAILWAY
COMPANY

W.E. Chapman

By

Charles W. Moorman
Charles W. Moorman
~~Executive Vice President - Corporate~~
~~Planning & Services~~

WITNESS:

CANADIAN PACIFIC RAILWAY
COMPANY

By

Fred Green, Executive Vice President
Operations and Marketing

IN WITNESS WHEREOF, the Parties hereto have caused this Restated Buffalo Trackage Rights Agreement to be duly executed as of the date first above written.

WITNESS:

NORFOLK SOUTHERN RAILWAY
COMPANY

By _____

WITNESS:

CANADIAN PACIFIC RAILWAY
COMPANY

D. F. R. A.

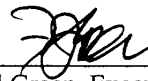
By 
Fred Green, Executive Vice President
Operations and Marketing

EXHIBIT 3

Exhibit 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 34561

Canadian Pacific Railway Company – Trackage Rights Exemption – Norfolk Southern Railway Company

Norfolk Southern Railway Company (“NSR”) has agreed to grant overhead trackage rights to Canadian Pacific Railway Company (“CPRC”) to permit CPR to operate over the following NSR lines in Buffalo, Erie County, NY,: (i) NSR’s Southern Tier Line between Milepost 413.0 $\pm$ and the western end of the Southern Tier Line at Milepost 419.8 $\pm$ (including tracks into and within NSR’s Bison Yard); a distance of approximately 6.8 miles; (ii) NSR’s Bison Running Track between the point of connection with the Southern Tier Line at MP 419.8 $\pm$ and the point of connection with CSX Transportation, Inc. (“CSXT”) at the western end of the Bison Running Track at MP 423.3 $\pm$, a distance of approximately 3.5 miles; and (iii) NSR’s Howard Street Running Track between a point of connection with the Bison Running Track at MP 420.15 $\pm$ and the point of connection between the lines of NSR and the lines of CSXT at MP 422.3 $\pm$, distance of approximately 2.15 miles, for a total distance of approximately 12.45 miles.

The trackage rights will be effective on a date mutually agreed in writing between CPRC and NSR, which shall not occur until the effective date of any required Board approval of the Petition for Exemption filed by CPRC’s affiliate, Delaware and Hudson Railway Company, Inc. in Docket No. AB-156 (Sub-No. 25X), *Delaware and Hudson Railway Company – Discontinuance of Trackage Rights Between Lanesboro, NY and Buffalo, NY* (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption).

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