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Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 34561

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

Finance Docket No. 34562

NORFOLK SOUTHERN RAILWAY COMPANY-TRACKAGE RIGHTS
EXEMPTION-DELAWARE AND HUDSON RAILWAY COMPANY, INC.-
BETWEEN SARATOGA SPRINGS, NY, AND BINGHAMTON, NY

Docket No. AB-156 (Sub-No. 25X)

DELAWARE AND HUDSON RAILWAY COMPANY, INC.-DISCONTINUANCE
OF TRACKAGE RIGHTS-BETWEEN LANESBORO, PA, AND BUFFALO, NY

PETITION TO STAY OPERATION OF EXEMPTIONS^{*/}

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Public Record

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

October 5, 2004

Attorney for Samuel J. Nasca

*/ Expedited handling is requested, inasmuch as two exemptions
are published to become effective Friday, October 8, 2004, at
12:01 AM.

Before the
SURFACE TRANSPORTATION BOARD

OCT 5 2004
RECEIVED

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OF TRACKAGE RIGHTS-BETWEEN LANESBORO, PA, AND BUFFALO, NY

PETITION TO STAY OPERATION OF EXEMPTIONS

Preliminary Statement

Samuel J. Nasca,^{1/} for and on behalf of United Transportation Union-New York State Legislative Board (UTU-NY), submits this petition for stay of operation of the notices of exemption in (1) Finance Docket No. 34561, whereby Canadian Pacific Railway Company (CPR) would acquire by assignment from its affiliate Delaware and Hudson Railway Company (D&H), trackage rights over Norfolk Southern Railway Company (NS), between CSXT's Chicago Line, and Bison Yard, in Buffalo, NY, a distance of approximately 12.45 miles (CPR

^{1/} New York State Legislative Director for United Transportation Union, with offices at 35 Fuller Road, Albany, NY 12205.

Notice), and in (2) Finance Docket No. 34562, whereby Norfolk Southern Railway Company (NS), would acquire trackage rights over Delaware and Hudson Railway Company (D&H), between Saratoga Springs and Binghamton, NY, a distance of approximately 155.24 miles. (NS Notice).

Both notices are related to Docket No. AB-156 (Sub-No. 25X), wherein D&H has filed a petition for exemption from the provisions of 49 U.S.C. 10903, so as to discontinue (abandon) operations over its line between Buffalo and Binghamton, NY (the so-called "Southern Tier Line"), a distance of approximately 229.55 miles. (D&H Pet.)^{2/}

Both notices are published to become effective on 7-days notice, i.e., on Friday, October 8, 2004, at 12:01 AM. However, CPR states CPR service under the trackage rights shall not occur until the effective date of STB authorization or exemption for the D&H discontinuance in D&H Pet.. (CPR Notice 3-4, Ex. 3). NS does not make a similar qualification for its exemption notice. Indeed, D&H expressly states that the trackage rights in NS Notice are not dependent upon approval of D&H's petition for discontinuance. (D&H Pet. 8 n.4),^{3/}

UTU-NY requests that the STB stay the operation of both exemptions, pending disposition of its forthcoming petitions to revoke, and pending disposition of D&H's petition for exemption to discontinue operations between Buffalo and Binghamton, NY.

^{2/} The actual mileage of the Southern Tier Line involved is somewhat less (217 miles), inasmuch as the 229.55 miles includes some associated trackage.

^{3/} Indeed, the NS caption is confusing as to the effective date. (NS Notice 8; Ex. 3).

Background

CPR and NS, through their chief executives, Rob Ritchie and David R. Goode,^{4/} on June 30, 2004, announced they had signed a Memorandum of Understanding (MOU). The June 30 CRP announcement of the written MOU is Atta. 1 hereto; the June 30 NS announcement of the MOU is Atta. 2.

CPR and NS will consolidate yards at Buffalo and Binghamton, NY. CPR will cease yard operations in Buffalo, shifting all freight to NS at Buffalo; and NS will shift its yard operations in Binghamton to CPR's East Binghamton yard. (Atta. 1 & 2).

The June 30 MOU also involves the movement of NS freight between Rouses Point and Saratoga Springs, NY, under a haulage agreement, with NS operating its own trains over CPR between Saratoga Springs and Binghamton, NY; and CPR freight between Binghamton and Buffalo, NY, is to move in NS trains under a haulage agreement, replacing a trackage rights agreement under which CPR operates its own trains.

Finally, the MOU provides that CPR will operate over a new NS route between Detroit, MI, and Chicago, IL, under a trackage rights agreement.

On October 1, 2004, CPR (Atta. 3) and NS (Atta. 4) announced they had filed with the STB for authority for trackage rights between Saratoga Springs and Binghamton, NY, and between Binghamton and Buffalo, NY; and for authority to discontinue D&H trackage rights between Buffalo and Binghamton, along with yard changes at

^{4/} Rob Ritchie is President and CEO of CPR; David R. Goode is Chairman, President, and CEO of NS.

Buffalo and Binghamton, and haulage agreements between Rouses Point/Saratoga and between Binghamton/Buffalo.

The October 1 announcements also stated they expected their new route between Detroit and Chicago to be open in 2005.

REASONS FOR STAY

The STB should stay the operation of both notices of exemption. Thereafter, on its own motion, the STB should consolidate the three proceeding,^{5/} and require that CPR, NS, and D&H, file the June 30, 2004 MOU with the STB, and make the MOU available to the parties.

1. Failure of NS to Postpone Operations. CPR, but not NS, is apparently willing to await the outcome of the D&H discontinuance, prior to exercising new trackage rights for revised operations at Buffalo. But NS is unwilling to defer its Binghamton/Saratoga Springs trackage rights. (CPR Notice, 3-4, Ex. 3; D&H Pet.8 n.4). The STB should stay both trackage rights exemptions.

Moreover, the STB should not rely upon either carrier to voluntarily postpone exercise of its trackage rights. A carrier may suddenly change its mind. At one time, the STB (and its predecessor) would hold a carrier to its statement in the trackage rights notice as to when the transaction would become effective, requiring that a notice be amended with any change in effective date. This practice has changed as a result of an apparent staff

^{5/} Consolidation should be for all purposes, but need not be at this stage. It is important that the pleadings and evidence be consolidated, to avoid undue repetition. The decisions need not be issued at the same time.

decision in Finance Docket No. 33380, The Indiana Rail Road Company --Trackage Rights Exemption--Consolidated Rail Corporation, 62 Fed. Reg. 23290 (served Apr. 30, 1997).^{6/} Today, a carrier can announce an effective date for operations, yet put the change into effect earlier upon the statutory notice period, to the surprise and prejudice of parties. For an example, see; F.D. No. 34225, Portland & Western Railroad, Inc.-Lease and Operation Exemption-The Burlington Northern and Santa Fe Railway Company (BNSF letter filed Dec. 30, 2002).

The failure of NS to stay its trackage rights operation, even though a considerable portion of its trackage rights deals with service over the Southern Tier trackage under named agreements between NS and D&H, among others (NS Notice, Ex. 2, pp. 2-4), requires the intervention of the STB. The STB should stay the operation of the CPR exemption, and the NS exemption.^{7/}

2. Irreparable Injury. NS estimates the loss of 4 train and engine service employees at Binghamton, but the gain of 6 road crew positions. (NS Notice 4-5). Of course, this does not eliminate any adverse effect upon NS employees. One can be adversely affected by a change in yard assignment from Binghamton to East

^{6/}For prior practice, see: F.D. No. 31110, Chicago-Chemung Railroad Corporation-Exemption, Acquisition and Operation-Rail Line of Chicago and North Western Transportation Company Between Harvard and Chemung in McHenry County, IL (served Sept. 20, 1987); F.D. No. 32574, Finger Lakes Railway Corp. Acquisition and Operation Exemption-Rail Lines of Consolidated Rail Corporation (served Oct. 14, 1994); F.D. No. 32867, Canadian National Railway Company-Trackage Rights Exemption-Grand Trunk Western Railroad, Inc. (served Feb. 28, 1996).

^{7/} The NS position to move forward immediately is inconsistent with its press announcements that its trackage rights are related to the other transactions, and to the MOU. (Atta. 2, 4).

Binghamton, as well as in road assignments.

There will be a severe impact upon D&H employees if the NS trackage rights are allowed to become effective. Today, NS does not operate between Binghamton and Saratoga Springs, a distance of approximately 155 miles, other than a limited movement to Mechanicsville.^{8/} The injury would be irreparable, inasmuch as if the NS rights are allowed to become effective, and then the exemption revoked, the status quo could not be restored. Moreover, the D&H employees would be unable to recover from NS under their collective bargaining agreements with D&H. See: Verified Statement of Samuel J. Nasca, attached hereto.

3. Success on the Merits. UTU-NY has a high probability of success on the merits in revoking the two exemptions. The two notices are merely part of a single MOU which embraces not only the two notices, and discontinuance of service between Buffalo and Binghamton, but also several haulage arrangements, as well as trackage rights between Detroit and Chicago.

UTU-NY believes the MOU must be made of record, and that the transaction involves a significant transaction for carrier consolidation under 49 U.S.C. 11323(a)(2). Thus, the required employee conditions would be New York Dock.

UTU-NY likely will succeed in revoking the exemptions in the absence of a prior determination of the D&H discontinuance request; and UTU-NY will prevail without a prior determination that the MOU satisfies the requirements of 49 U.S.C. 11323(a)(2).

8/ See: F.D. No. 34209, Norfolk Southern Railway--Trackage Rights Exemption--Delaware and Hudson Railway Company--Between Sunbury, PA and Mechanicsville, NY

4. No Adverse Effect on Others. Issuance of a stay will not harm other parties. NS will merely be stopped from establishing a jump start and preferable advantage over other parties.

5. Public Interest. The MOU and related transactions are highly anti-competitive. UTU-NY believes the STB will disapprove the MOU and related transactions. The public presently has two active carriers on the route between Buffalo and Binghamton, whereas it will have only one with the MOU. There is a history, going back to the bankruptcy of Penn-Central, and the establishment of USRA and the Final System Plan, in support of rail competition across New York State. The trade-off for eliminating that competition, by adding some additional competition between Binghamton and Rouses Point, is of public concern. The STB should not foreclose the opportunity for an effective analysis of competition, by permitting part of the MOU to become effective now.

CONCLUSION

The STB should stay the effective date for operation of the CPR and NS exemptions, pending disposition of the UTU-NY petitions revoke or disposition of the D&H petition for exemption.

Respectfully submitted,


GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
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October 5, 2004

Attorney for Samuel J. Nasca

Certificate of Service

I hereby certify I have served a copy of the foregoing upon
following by personal service:

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Terrence M. Hynes
1501 K St., N.W.
Washington DC 20005

Washington DC


Gordon P. MacDougall

F.D. No. 34561
F.D. No. 34562
AB-156 (Sub-25X)

VERIFIED STATEMENT
OF SAMUEL J. NASCA

My name is Samuel J. Nasca, with offices at 35 Fuller Road Albany, NY 12205. I serve as New York State Legislative Director for United Transportation Union (UTU-NY), a full-time elective position I have held since March 1984. My seniority commenced in 1967 on the former Erie-Lackawanna Railroad Company.

I am fully familiar with railroad operations in New York State, and with the lines involved in the three captioned proceedings. I have read the notices of exemption in F.D. No. 34561, and in F.D. No. 34562, involving trackage rights in the Buffalo area, and trackage rights between Binghamton and Saratoga Springs, NY, and I have also read the D&H petition in AB-156 (Sub-No. 25X), where D&H would discontinue its operations between Buffalo and Binghamton.

The United Transportation Union (UTU) represents persons employed by D&H, NS, and CPR that perform work as engineers, conductors, brakemen, and switchmen.

The transactions embraced in the three dockets would have a catastrophic impact upon D&H employees. D&H employees would lose their work at Buffalo, including the SK yard, and also their employment on D&H trains operating between Buffalo and Binghamton. Further, D&H employees would suffer if NS is accorded trackage rights over D&H's line between Binghamton and Saratoga Springs.

I ask that the STB stay the operation of the two exemption notices. I include the CPR notice for Buffalo, as well as the NS

notice for Binghamton/Saratoga Springs, because it is not clear to me that CPR will not seek to change its operations in anticipation of other events.

This verified statement is primarily directed to the trackage rights noticed by NS over D&H lines, inasmuch as it is my understanding that exercise of the CPR trackage noticed for Buffalo is dependent upon prior STB authorization of D&H's discontinuance of service between Buffalo and Binghamton. A stay of the NS notice is necessary to protect D&N employees now engaged in the D&H yard at Binghamton, as well as in service over the 155-mile line between Binghamton and Saratoga Springs.

The employees engaged in D&H train and engine service will suffer from the diversion of business presently handled by D&H. NS does not have its own line or trackage rights between Binghamton and Saratoga Springs. NS estimates it will abolish 4 train and engine positions at Binghamton, and establish 6 new road crews positions for its initial operation between East Binghamton and Saratoga Springs. This would mean less work for D&H crews, who presently perform the service. Employee conditions would be insufficient, and are limited in terms. If the exemption ultimately is revoked, there is no known way D&H employees could recover damages from D&H under their CBA with D&H, and the status quo could not be restored.

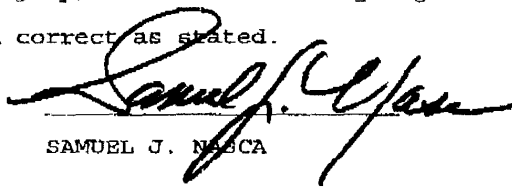
Moreover, although additional NS positions would be created, some NS employees would be adversely affected in the process of exercising seniority, and similarly would be unable to seek damages, or have the status quo restored.

The three proceedings before the STB are not likely to be the only filings concerning this restructuring. D&H employees have been advised they may have employment opportunities in the forthcoming trackage rights to be accorded between Detroit and Chicago. Yet this is not imminent. It is a further reason for stay at this time.

VERIFICATION

STATE OF NEW YORK
COUNTY OF ALBANY

Under the penalties of perjury, I affirm the foregoing
Verified Statement is true and correct as stated.


SAMUEL J. NACCA

Dated at
Albany, NY
October 5, 2004

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Canadian Pacific Railway (CPR) and Norfolk Southern Railway (NSR) today signed a memorandum of understanding for an exchange of trackage rights, freight haulage and yard services that will increase operational efficiency and enhance rail service to customers.

CPR (TSX/NYSE: CP) announced in June 2003 it was restructuring its northeastern U.S. operations and was seeking proposals for ways to increase freight volumes, reduce operating costs and improve earnings. CPR's northeastern U.S. network is operated as the Delaware and Hudson Railway.

"This agreement with NSR opens up new opportunity to move our northeastern U.S. franchise into a position of profitability," Rob Ritchie, President and Chief Executive Officer of CPR, said. "We expect the changes will generate higher traffic volumes and revenues, greater productivity and lower operating costs."

David R. Goode, Norfolk Southern Chairman, President and Chief Executive Officer, said, "This is an excellent example of railroads cooperating to better serve our customers. We will be able to jointly provide transportation solutions that will improve efficiency and quality of service for both carriers in the northeast U.S."

Under the agreement, CPR and NSR will consolidate freight marshalling at yards in Buffalo and Binghamton, N.Y.:

- CPR will cease yard operations in Buffalo, shifting all freight marshalling to the NSR yard there.
- Similarly, NSR will shift its yard operations in Binghamton to CPR's East Binghamton yard.

There are three major components to the new trackage rights and freight haulage arrangements between CPR and NSR:

- CPR will be able to move NSR freight traffic between Rouses Point and Saratoga Springs, N.Y., under a haulage arrangement. NSR will operate its own trains over CPR's line between Saratoga Springs and Binghamton, N.Y., under a trackage rights arrangement. The arrangements will generate higher revenue for CPR and provide NSR with a substantially shorter route to Quebec and the Maritime provinces.
- CPR's freight traffic between Binghamton and Buffalo, N.Y., will move in NSR trains under a haulage arrangement, replacing a trackage rights agreement under which CPR operated its own trains between the two cities. The arrangement will reduce CPR's operating costs and generate additional revenue for NSR.
- CPR will operate over a new NSR route using existing rail lines between Detroit and Chicago under a trackage rights agreement. It will be the shortest rail route between the two cities and will provide CPR with a faster, lower-cost lane.

"CPR's challenge remains to take this part of our network to a level of profitability that will make it self-sustaining," Mr. Ritchie said. "We are prepared to examine additional measures that, in concert with our NSR agreement, will further optimize our assets and drive up profitability."

New trackage rights arrangements and the discontinuance of trackage rights require

approval of the U.S. Surface Transportation Board.

Mr. Ritchie will hold a conference call with analysts and reporters today at 3:30 p.m. Eastern time to discuss details of the agreement with NSR. The telephone numbers for the call are 1-800-814-4857 or 416-640-1907. Callers should dial in 10 minutes prior to the call. A telephone replay of the call will be available through July 7 at 1-877-289-8525 or 416-640-1917, pass code 21056014 followed by the pound key. The call will also be webcast live on CPR's website. To access the webcast, click on . The webcast will be archived

Canadian Pacific Railway is a transcontinental carrier operating in Canada and the U.S. Its 14,000-mile rail network serves the principal centres of Canada, from Montreal to Vancouver, and the U.S. Northeast and Midwest regions. CPR feeds directly into America's heartland from the East and West coasts. Alliances with other carriers extend its market reach throughout the U.S. and into Mexico. Canadian Pacific Logistics Solutions provides logistics and supply chain expertise worldwide. For more information, visit CPR's website at

Norfolk Southern Railway operates 21,500 routes miles in 22 states, the District of Columbia and Ontario, serving every major container port in the eastern United States and providing superior connections to western rail carriers. NSR operates the most extensive intermodal network in the East and is the nation's largest rail carrier of automotive parts and finished vehicles. For more information, visit NSR's website at

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June 30, 2004

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Canadian Pacific Railway (CPR) and Norfolk Southern Railway (NSR) today filed with the United States Surface Transportation Board (STB) seeking authority for trackage rights arrangements that will improve operational efficiency and enhance rail service in the U.S. Northeast.

The railways said today's filings are an important milestone in implementing improvements that will benefit shippers in the Northeastern U.S. market. The filings arise from a series of transactions announced by CPR and NSR on June 30, 2004, involving trackage rights, freight haulage and yard services.

Under the filings, NSR is seeking STB authority for new trackage rights to operate its trains on CPR's Delaware and Hudson Railway subsidiary between Saratoga Springs and Binghamton, N.Y. CPR is seeking STB authority to discontinue trackage rights under which the Delaware and Hudson Railway currently operates its trains on NSR track between Binghamton and Buffalo, N.Y.

Along with the trackage rights:

- CPR will move NSR freight traffic between Rouses Point and Saratoga Springs under a freight haulage arrangement;
- NSR will move CPR traffic between Buffalo and Binghamton under a freight haulage arrangement;
- NSR will provide yard switching services for CPR freight cars in Buffalo; and
- CPR will provide yard switching services for NSR freight cars in Binghamton.

The two railways also announced on June 30 that NSR would create a new route between Detroit and Chicago. The route, which is expected to be open in 2005, will be the shortest rail route between the two cities, providing CPR with a faster, lower-cost lane between two of North America's biggest transportation hubs.

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CPR contacts

Norfolk Southern contacts

October 1, 2004

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