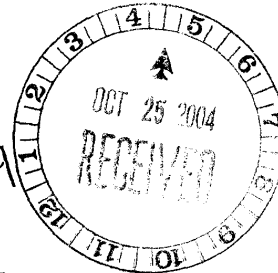


ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



212339
Finance Docket No. 34561

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

Finance Docket No. 34562, 212340

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 REVOKE THE CLASS
EXEMPTION FOR THE TWO NOTICES

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

October 25, 2004

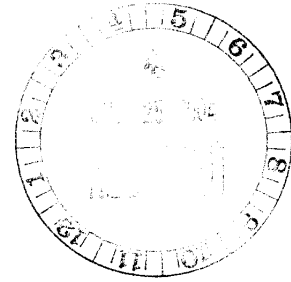
Attorney for Samuel J. Nasca

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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

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PETITION TO REVOKE THE CLASS
EXEMPTION FOR THE TWO NOTICES

Preliminary Statement

Samuel J. Nasca, for and on behalf of United Transportation-
Union New York State Legislative Board (UTU-NY), submits this
petition to revoke application of the trackage rights class
exemption,^{1/} for each of the two notices of exemption, filed
separately, on October 1, 2004, by Canadian Pacific Railway
Company (CPRC) in Finance Docket No, 34561, 69 Fed. Reg. 61903-4
(Oct. 21, 2004), for trackage rights over approximately 12.45

^{1/} 49 CFR 1180.2(d)(7),4(g); Railroad Consolidation Procedures, 1
I.C.C.2d 270 (1985), aff'd Illinois Commerce Com'n v. ICC, 819 F.2d
311 (D.C. Cir. 1987).

miles of NSR line at Buffalo, NY (CPRC Notice); and on October 1, 2004, by Norfolk Southern Railway Company (NSR) in Finance Docket No. 34562, 69 Fed. Reg. 61903 (Oct. 21, 2004), for trackage rights over approximately 155.24 miles of D&H line, generally, between, Binghamton and Saratoga Springs, NY. (NSR Notice).

The two notices of trackage rights exemptions were filed contemporaneously with, and are related to, the October 1, 2004 petition for exemption, filed by Delaware and Hudson Railway Company, Inc. (D&H), in Docket No. AB-156 (Sub-No. 25X), 69 Fed. Reg. 61904 (Oct. 21, 2004), from the provisions of 49 U.S.C. 10903, so as to discontinue trackage rights over the NSR line, generally, between Buffalo and Binghamton, NY, a distance of approximately 229.5 miles. (D&H Petition).

This petition to revoke is filed pursuant to 49 U.S.C. 10502(d), because the application of 49 U.S.C. 11323(a)(6) is necessary to carry out the policy of 49 U.S.C. 10101.

The Board should revoke the class exemptions noticed by CPRC in Finance Docket No. 34561, and by NSR in Finance Docket No. 34562. Such revocations, at this time, might be without prejudice to the filing of individual petitions for exemption,^{2/} or the filing of individual applications for relief.^{3/}

^{2/} 49 CFR 1121. Moreover, the Board could revoke the class exemption for the transactions in Finance Docket No. 34561-62, and treat the notices as individual petitions for exemption.

^{3/} 49 CFR 1180.4.

Verified Statements

This petition includes the verified statement of Samuel J. Nasca, dated October 5, 2004, and his Supplemental Verified Statement, dated October 25, 2004.

Background

1. Memorandum of Understanding. CPRC and NSR are parties to a Memorandum of Understanding (MOU), dated June 30, 2004, for the sharing of routes and facilities between CPRC and NSR (along with D&H and Soo Line Railroad Company as affiliates of CPRC) in the Northeast United States (NEUS). An important part of the agreement is the rationalization of D&H operations and facilities. Certain features of the MOU were announced June 30, 2004 by CPRC,^{4/} and by NSR.^{5/}

2. Filings with the Board. Pursuant to the MOU, on October 1, 2004, CRPC, NSR, and D&H filed the three captioned matters, each part of the MOU, accompanied by press announcements.^{6/} These STB filings were for CRPC "trackage rights" over NSR at Buffalo, N.Y., Finance Docket No. 34561, CPRC Notice; for NSR "trackage rights" over D&H between Binghamton and Saratoga Springs, NY, and related trackage, Finance Docket No. 34562, NSR

^{4/} For CPRC June 30, 2004 announcement, see: UTU-NY Pet. 10/5/04, Atta. 1.

^{5/} Ibid. Atta. 2.

^{6/} For the October 1, 2004 CPRC announcement, see: UTU-NY Pet. 10/5/04, Atta. 3; for NSR, ibid., Atta. 4.

Notice; and abandonment (discontinuance) by D&H between Buffalo and Binghamton, NY, and related trackage to Lanesboro, PA, Docket No. AB-156 (Sub-No. 25X), D&H Petition, The CPRC Notice and the NSR Notice were each accompanied by a motion for protective order to have certain terms of each trackage rights agreement placed under seal. There were no agreements filed with the D&H petition for discontinuance between Buffalo-Binghamton-Lanesboro, presumably because the Board's regulations (unlike those for trackage rights) do not require the filing of associated agreements.

3. Seven-Day Notice. The two trackage rights notices (Finance Docket Nos. 34561-62), were filed on 7-days notice to become effective October 8, 2004.

4. Stay Decision. The Board's Chairman, on October 7, 2004, granted a "housekeeping" stay of the effective date for the trackage rights notices until October 27, 2004, and directed that CPRC, D&H, and NSR shall file the MOU, and any other documents updating or superseding the MOU, with the Board by October 12, 2004:

A housekeeping stay of the effective dates of the exemptions is appropriate to allow the Board and UTU-NY time to consider the issues presented in the stay petition in a more orderly fashion. Even though the railroads assert that the MOU is superseded or not relevant, UTU-NY has requested access to the MOU and it will be given the opportunity to review it. Accordingly, CPRC, D&H, and NSR will be required to file the MOU, and any other documents updating or superseding the MOU, with the Board by October 12, 2004. If the parties wish, they may file the documents under seal, with a request for a protective order. This proceeding will be stayed until October 27,

2004, to allow for review of these documents, filing of petitions to revoke, and the Board's consideration of the stay request.

5. Protective Orders. The Board's Secretary, on October 8, 2004, granted the CPRC and NSR motions for protective orders.

6. Filing of MOU and Related Agreements. NSR and CPRC/D&H on October 12, 2004, filed the MOU completely under seal, but accompanied by a public 14-page "Summary of Documents Filed by Norfolk Southern Railway Company, Canadian Pacific Railway Company and Delaware and Hudson Railway Company, Inc." (NSR/CPRC-D&H Agreements Summary). According to these railroads, there are six "definitive" agreements relating to the Buffalo-Binghamton Corridor, and three additional "definitive agreements" relating to the Rouses Point-Binghamton Corridor. Seven of these nine agreements are in addition to the two trackage rights agreements filed in Finance Docket Nos. 34561-62.

The MOU, after listing the 9 "definitive agreements," attempts an "Overview of the MOU" (MOU, 2-8), and a brief statement for each of the nine agreements. (MOU, 8-12). The railroads claim the MOU as "was not a legally binding agreement," "not itself a binding agreement," and "the parties reached a different agreement with respect to the timing of implementing the various operating agreements," and the carriers otherwise attempt to disparage their own public press statements concerning the MOU. (NSR/CPRC/D&H Agreements Summary, 3, 5). The Board should remove the MOU from seal. UTU-NY has an entirely different reading of the MOU. The MOU is a comprehensive scheme between CPRC and NSR,

leading to adverse consequences for rail service and for rail competition in the Northeastern United States.

I. THE CLASS EXEMPTIONS FOR THE TWO
TRACKAGE RIGHTS SHOULD BE REVOKED.

The class exemptions for the two trackage rights noticed for exemption should be revoked. The 7-day trackage rights class exemption was never intended for the purpose of effectuating a major regional restructuring and consolidation of carrier properties. The primary standard governing revocation is whether the application of a provisions of Title 49 U.S.C. Part A is necessary to carry out the rail transportation policy of 49 U.S.C. 10101. 49 U.S.C. 10502(d). The Board has two additional grounds for revocation of a class exemption to a particular transaction. These are when the carrier provides false and/or misleading information, or if the integrity of the Board's process is abused. F.D. No. 33995, SF&L Railway, Inc.-Acquisition and Operation Exemption-Toledo, Peoria & Western Railway Corporation Between La Harpe and Peoria, IL (served Oct. 17, 2002); Minnesota Comm. Ry., Inc.-Trackage Exempt.-BN RR. Co., 8 I.C.C.2d 31, 37 (1991).

1. Description of the Proposed Exemptions.

A. CPRC Exemption. The trackage rights noticed for exemption in the Buffalo, NY area is dated September 30, 2004, and is termed, "Restated Buffalo Trackage rights Agreement." (CPRC Notice, Ex. 2). However, the trackage rights agreement, by its terms, embraces and acknowledges other agreements, all dated September 30, 2004, such as "Partial Assignment of Trackage

Rights" (CPRC Notice, Ex. 2, p. 1), "Southern Tier Haulage Agreement" (CPRC Notice, Ex. 2, p. 2), "Bison Yard Terminal Services," (CPRC Notice, Ex. 2, p. 2), and "Surrender of SK Yard Lease" (CPRC Notice, Ex. 2, p. 18). It is clearly obvious, and also emphasized by the compensation feature of the Agreement, that the embraced related agreements are an integral part of the transaction. (CPRC Notice, Ex. 2, §5).^{7/}

Moreover, the transactions at Buffalo embraced in CPRC Notice involve yard consolidation at Buffalo. This reference to "yard consolidation" is set forth in the June 30, 2004 notice to employees, with Questions and Answers, as described in the Supplemental Verified Statement of Samuel J. Nasca, dated October 25, 2004, Appendix 1, at p. 1. To be sure, the railroads list the "Surrender of SK Yard Lease" as part of the "Buffalo-Binghamton Corridor," (NSR/CPRC/H&M Agreements Summary, 1), but the consolidation of SK Yard with Bison Yard is also an important element to the Buffalo trackage agreement. (CPRC Notice, Ex. 2, §2(c)(f)(g); §3(a)(c); §22(n). The Buffalo agreement establishes a joint CPRC/NSR Service Standards Committee to monitor performance, establish protocols, and otherwise administer the agreement. (CPRC Notice, Ex. 2, §4).

The trackage rights at Buffalo do not permit CPRC operation over the subject trackage until the effective date of any authorization or exemption of D&H discontinuance of trackage rights

^{7/} The "compensation" clause of the agreement appears to be the only portion of the agreement placed under seal, other than the related agreements, all of which have been placed under seal in their entirety.

between Buffalo and Binghamton. (CPRC Notice, Ex. 2, §13(a)). However, CPRC can exercise some rights under the Bison Yard Terminal Services Agreement prior to D&H discontinuance approval.^{8/}

The Buffalo coordinations are projected by CPRC to result in the elimination of 29 jobs. See: Supp. V.S. of S.J. Nasca, App. 1, p. 5.

B. NSR Exemption. The NSR trackage rights over D&H extends between Binghamton and Saratoga Springs, NY, a distance of approximately 155.24 miles. NSR would shift its yard operations in Binghamton to East Binghamton. Other agreements related to and incorporated in the NSR trackage rights are the "Rouses Point-Saratoga Haulage Services Agreement," (NSR Notice, Ex. 2, p. 2), the "East Binghamton Yard Terminal Services Agreement," (NSR Notice, Ex. 2, p. 2), and "Southern Tier Haulage Agreement" (NSR Notice, Ex. 2, p.3). However, the effective date for exercise of the NSR trackage rights is not contingent upon any prior STB approvals or exemptions, unlike CPRC Exemption. (NSR Notice, Ex. 2, §13(a)).^{9/} See: D&H Petition, p. 8 n.4.

NSR estimates it will abolish 4 train and engine positions at Binghamton, and establish 6 new road crews positions for its initial operations between East Binghamton and Saratoga Springs. (V.S. Nasca, 10/5/04, 2).

^{8/} Bison Yard Terminal Services Agreement, §7(a). This agreement is completely under seal.

^{9/} The portion of the "Saratoga-East Binghamton Trackage Rights Agreement" placed under seal appears to be (1) compensation, §5(a)(b), and (2) confidential appendix. UTU-NY believes the latter should be removed from confidentiality--for obvious reasons.

2. Revocation Necessary to Carry Out RTP.

Revocation of the trackage rights class exemption for CPRC Exemption, and for NSR Exemption, is necessary to carry out the rail transportation policy. 49 U.S.C. 10101.

A. D&H Petition. The involved trackage rights cannot be evaluated in isolation from D&H Petition. At the time of the Chairman's stay decision of October 7, 2004, it was unclear whether the Board would institute an investigation in D&H Petition. The Board on October 21, 2004, instituted an investigation into the proposal by D&H to discontinue service over its so-called Southern Tier line between Binghamton and Buffalo. Implicit in the Board's decision was the finding that the impact of the proposed exemption could not be ascertained or significant adverse impacts might occur if the proposed exemption were granted. 49 CFR 1121.4(c)(1):

If the impact of the proposed individual exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, the Board may, in its discretion....(ii) publish a notice in the Federal Register requesting public comments.

The implicit findings of the Board on October 21, 2004, in D&H Petition, precludes separate evaluation of the trackage rights exemptions filed by CPRC and NSR, if the policy of the rail transportation policy is to be promoted. This is seemingly understood by CPRC, which states it will not commence service under the trackage rights until the decision in D&H Trackage is made known. CPRC Notice 3-4, Ex. 3. Permitting the CPRC notice to become effective prior to Board decision in D&H Petition may

preclude, or make difficult, the ability of the Board to deny the D&H's petition for discontinuance, or to effectively impose conditions upon any discontinuance exemption. Under the CPRC Notice, and accompanying agreement, CPRC may take certain actions apart from instituting service over NSR lines. Moreover, the MOU indicates that the agreement between CPRC and NSR extends beyond the transactions specifically embraced in CPRC Notice, NSR Notice, and D&H Petition, but also includes arrangements between Buffalo, NY and Chicago, IL via Butler, IN. According to CPRC/NSR advice to employees, the Chicago/Buffalo operation is anticipated to be an important feeder for CPRC NEUS operations. (Supp. V.S. Nasca, App. 1, p. 4).

The relationship of the NSR trackage rights between Binghamton and Saratoga Springs, to the Binghamton-Buffalo line in D&H Petition is obvious. As with CPRC, and even more so, the Board should not tie its hands by permitting the NSR trackage to be determined in advance of D&H Petition.

B. Memorandum of Understanding. UTU-NY is also very concerned that NSR's Rouses Point-Birmingham Corridor agreements (which are embraced in Saratoga-East Binghamton Trackage), will be utilized to carry out, and effectively pre-determine Board review of important aspects of the MOU in advance of filing appropriate petitions or applications with the Board. Unfortunately, the entire MOU is under seal, so we merely point to the CPRC/NSR contemplated developments in the NEUS. (MOU, III(F), III(G), among others).

C. RTP Criteria. The CPRC and NSR trackage rights are merely part of a NEUS restructuring between CPRC and NSR. The two agreements do not stand in isolation, to D&H Petition or to MOU. Revocation of the 7-day class exemption to the CPRC and NSR exemptions would allow the transactions to be considered as petitions for exemption, to be decided concurrently with D&H Petition, or as separately-filed applications.

In evaluating the application of the rail transportation policy to revocation of an exemption, the Board looks primarily (but not exclusively) to the underlying statutory provisions that would govern in the absence of an exemption. Minnesota Comm. Ry., Inc.-Trackage Exempt.-BN RR. Co., 8 I.C.C.2d 31, 35-38 (1991), aff'd Winter v. ICC, 992 F.2d 824 (8th Cir. 1993).

Both trackage rights agreements, along with their associated agreements, are anti-competitive. The trackage rights agreements permit the reduction of competition. The elimination of D&H service competition on the Southern Tier line, is facilitated by the trackage rights arrangements. The trackage rights, along with the related transactions, should be evaluated under the policies of 49 U.S.C. 11324(d), as reflected in the RTP criteria dealing with competition, i.e., 49 U.S.C. 10101(1), (4), (5), (12). Here, revocation of the exemptions is required for the Board to undertake this task.

3. Revocation is Necessary for Proper Employee Protection. The exemptions should be revoked for employee protection. The two trackage rights agreements are part of a larger consolidation of facilities which should be subject to minimum New York

Dock conditions. Employee conditions are an appropriate ground for trackage rights revocation.

The combination of N&W Trackage conditions for the consolidations at Buffalo and at Binghamton, coupled with Oregon Short Line for any D&H Discontinuance, would leave railroad employees-- particularly those employed by D&H--without the effective protection of New York Dock for the entire transaction.

Revocation of the trackage rights class exemptions is required so as to consider the appropriate employee protective conditions.

4. Discovery Request. UTU-NY requests that the MOU be made publicly available. 49 CFR 1121.2. This discovery is addressed to the Board by this petition. Public disclosure may bring other important interests into the proceedings, and adduce additional evidence, to the benefit of UTU-NY, and the public generally.

CONCLUSION

The Board should revoke the exemptions for trackage rights noticed by CPRC and NSR. The Board may wish to revoke the exemptions, and consider the carrier notices as petitions for exemption, and subject to handling contemporaneously with D&H Petition. In this manner, evidence and contentions urged in the latter proceeding, may be useful in determining any individual consideration of trackage rights exemption petitions.

The consideration of appropriate employee conditions, in light of the breath of the transactions, and related transactions

and proceedings, requires revocation of the trackage rights class exemptions at this time.

Respectfully submitted,


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

October 25, 2004

Attorney for Samuel J. Nasca

Certificate of Service

I hereby certify I have served a copy of the foregoing upon counsel for all parties of record by first class mail postage-prepaid

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.

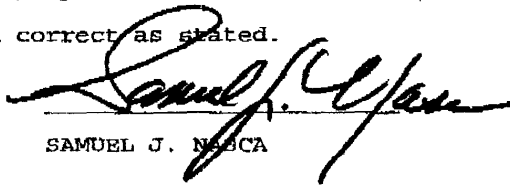
Moreover, although additional NS positions would be created, some NS employees would be adversely affected in the process of exercising seniority, and similarly would be unable to seek damages, or have the status quo restored.

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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Calgary, Alberta

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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Investment Community

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June 30, 2004

CPR and NSR Move to Improve Performance of Northeastern Rail Network

CALGARY – 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.

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- 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.



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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.

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 route 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 www.nscorp.com.

CPR contacts

Norfolk Southern contacts

October 1, 2004

Canadian Pacific Railway and Norfolk Southern Railway Seek U.S. Departmental Authority for Trackage Rights Arrangements

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

SUPPLEMENTAL VERIFIED
STATEMENT OF SAMUEL J. NASCA

My name is Samuel J. Nasca. I am the same person of same name that submitted a verified statement, dated October 5, 2004, in this proceeding.

I have reviewed my October 5, 2004 statement, and incorporate the same herein.

Attached as my Appendix 1 is the 6-page notice by D&H given to its employees, together with Questions and Answers, dated June 30, 2004. Appendix 1 gives information supplemental to the general press releases attached to my earlier verified statement.

I am further concerned about permitting the Rouses Point-Binghamton corridor agreements, listed in the "Summary of Documents" filed October 12, 2004, by NS, CPR, and D&H, which include the "Saratoga-East Binghamton Trackage Rights Agreement," to become effective prior to determination of the D&H discontinuance proceeding, which the Board instituted on October 21, 2004. My fear is that the trackage rights might be utilized to purposes other than traffic now having a movement on the D&H line between Binghamton and Buffalo.

VERIFICATION

STATE OF NEW YORK
COUNTY OF ALBANY

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

/s/ Samuel J. Nasca

SAMUEL J. NASCA

October 25, 2004

To Employees

JUNE 30, 2004

**CPR AND NORFOLK SOUTHERN MOVE TO IMPROVE PERFORMANCE
OF NORTHEASTERN U.S. NETWORK**

CPR and Norfolk Southern Railway (NSR) announced today they have signed a memorandum of understanding that will increase operations efficiency and enhance rail services to customers in the northeastern U.S. The agreement provides a new opportunity to quickly begin the turnaround needed on CPR's northeastern U.S. (NEUS) franchise. It will also strengthen the U.S. portion of CPR's highly competitive Montreal-Chicago corridor by opening up a new lane that will be the shortest, swiftest route between the key hubs of Detroit and Chicago.

The agreement is for an exchange of trackage rights, freight haulage and yard services, and is the initial outcome of a comprehensive review of options for addressing our challenges in the NEUS.

Here are the major components:

- **Yard consolidation** to reduce operating costs and increase productivity. CPR will cease yard operations in Buffalo and shift all freight marshalling to the NSR yard there. NSR will shift its yard operations in Binghamton to CPR's East Binghamton yard.
- **Freight haulage arrangements.** CPR will be able to move NSR freight traffic between Rouses Point and Saratoga Springs. NSR will move CPR's freight traffic between Binghamton and Buffalo. (This new haulage arrangement replaces CPR's current trackage rights agreement with NSR between Binghamton and Buffalo.)
- **Trackage rights arrangements.** CPR will operate its own trains over a new shorter and lower-cost NSR route between *Detroit and Chicago, once NSR connects two existing rail lines.* NSR will operate its trains over CPR's line between *Saratoga Springs and Binghamton.*

The yard consolidation will create new efficiencies for both CPR and NSR. The trackage rights and haulage arrangements with NSR will provide opportunities to generate new revenue and reduce operating costs on our NEUS franchise. NSR is expected to complete the track connection for the new Detroit-Chicago route in the next year.

It will take hard work and dedication from all involved to quickly translate these changes into profitability for our NEUS franchise. There may be further opportunities to optimize our assets so that our NEUS franchise achieves a level of profitability that makes it self-sustaining. This is our goal and we will continue to examine opportunities that will, in concert with the NSR agreement, help us achieve it as quickly as possible.

The impact on employment at CPR is mixed. Four new jobs will be created and 29 will be eliminated on the NEUS for a net reduction of 25 positions. CPR also expects to add between 40 and 45 train crew positions in Elkhart, Indiana, as a result of the new route between Detroit and Chicago. Many of these new crew positions will be available to NEUS employees whose positions are eliminated. The process for filling these positions will be communicated as details are ironed out. CPR will pay the cost of relocation.

CPR will follow established guidelines for employee reductions, including federally mandated labor protection, which is expected to be imposed by the U.S. Surface Transportation Board.

More information on these new arrangements with NSR is available on RailTown.

We established CPR's presence in the NEUS with the purchase of the D&H in 1991, when it was in bankruptcy protection. We have worked tirelessly since then to turn it around. The NEUS franchise is positioned solidly as a bridge carrier with access to a market of more than 45 million people. Let's work to make it a success for the long-term.

Fred Green
Executive Vice-President, Operations and Marketing
and President, D&H

Q&A for Employees

JUNE 30, 2004

What does the memorandum of understanding with NSR achieve for CPR?

The main benefits are:

- A more cost effective and flexible franchise;
- Higher traffic volumes and greater revenues;
- Increased productivity and reduced operating costs;
- Optimization of assets;
- We remain a competitive player in the NEUS rail market.

Is the agreement with NSR subject to government approvals? If so, when will we know whether the required approvals will be given?

Two areas of the agreement require approval of the U.S. Surface Transportation Board:

- 1) *Discontinuance of the trackage rights agreement between CPR and NSR, under which CPR currently moves its own trains over NSR track between Binghamton and Buffalo, N.Y.*
- 2) *New trackage rights arrangements under which:*
 - a. NSR will operate its own trains over CPR track between Saratoga Springs and Binghamton, N.Y.; and
 - b. CPR will operate its own trains over NSR track between Detroit and Chicago.

New trackage rights arrangements can be approved in a matter of weeks. *Discontinuance* of trackage rights typically requires a few months. However, this is entirely in the hands of the STB.

What is the duration of the new agreement with NSR?

There is no specific termination date.

Have past CPR-NSR initiatives been successful?

CPR and NSR have a history of successful mutually beneficial arrangements. In 1999, after NSR acquired part of the Conrail assets, D&H began providing haulage services enabling NSR to reach the New England market. More recently, CPR and NSR entered into a trackage rights agreement whereby NSR transferred four trains per day to the D&H south of Binghamton.

The new agreement calls for NSR to connect two separate lines to give CPR a new and shorter route between Detroit and Chicago. Where are these lines and when will NSR connect them?

One line extends southwest from Detroit to Fort Wayne, Indiana, and the other is the former Conrail line that extends east from Chicago to Toledo, Ohio. The two cross at Butler, Indiana, north of Fort Wayne. A track connection will be installed over the next year.

The Detroit-Chicago route is not in the northeastern U.S. Why is it part of a deal designed to turn around CPR's northeastern U.S. (NEUS) operation?

The Detroit-Chicago change was negotiated at the same time and has broad benefits for CPR. The link is also an important feeder corridor to the NEUS. The new 300-mile link is 50 miles shorter than the current route we use over CSX. The new NSR route will be the shortest and swiftest of any route between Detroit and Chicago and will give CPR a lower-cost connection for freight moving to or originating in the NEUS.

What will happen if the STB does not grant approval?

We expect approval to be granted. If it is not granted, we would need to evaluate the reasons for refusal before deciding our next step.

Is the agreement with CSX still in effect and when does it expire?

The agreement with CSX, which is a haulage arrangement, remains in effect. It expires in 2015.

What was driving CPR's need to restructure its NEUS network?

CPR acquired the Delaware and Hudson Railway in 1991. At the time, the D&H (which we now call our northeastern U.S. network) was in bankruptcy protection. Since then, CPR has worked tirelessly to make the NEUS a success. However, during this time, NEUS expenses have been virtually the same as its revenue. A company is not profitable when it has to spend a dollar for every dollar of revenue it earns.

While the rest of the CPR operation is profitable, it should not be used to prop up an unprofitable segment of the business. Restructuring was the best method to ensure this rail line was making a positive contribution to our success.

Are the new arrangements with NSR really enough to fix the problem?

We expect our agreement with NSR will quickly move our NEUS franchise to a position of profitability whereby revenues exceed operating expenses. It will take hard work and dedication from everyone involved. There may be further opportunities to optimize our assets so that the NEUS achieves a level of profitability that makes it self-sustaining. This is our goal and we will continue to examine opportunities that, in concert with the NSR agreement, will help us achieve it as quickly as possible.

What kind of message does this send to shippers?

Our agreement with NSR sends a message that CPR wants to ensure shippers have a viable competitive alternative in the U.S. Northeast. We expect to achieve efficiencies that will help make our NEUS franchise stronger for the shipping community.

What is the job impact of these changes?

The impact on employment is mixed. We will create between 40 and 45 new crew positions at Elkhart, Indiana, for the new route between Detroit and Chicago.

On the NEUS, there will be a net reduction of 25 job positions. Here is a breakdown:

Some 29 positions will be eliminated as a result of the yard consolidation and discontinuance of CPR's trackage rights between Buffalo and Binghamton. In Buffalo, these include 22 train crew positions as well as two positions in track maintenance, one in car repair, two in yard management, one in terminal management and one in police management.

Four new train crew positions will be created at Saratoga Springs.

Many of the new crew positions at Elkhart will be available to NEUS employees whose positions are eliminated and the process for filling these positions will be communicated as details are ironed out. CPR will pay the cost of relocation.

Unionized employees on the NEUS will be entitled to exercise seniority rights as provided in existing labor contracts. CPR will follow established guidelines for employee reductions, including federally mandated labor protection, which is expected to be imposed by the U.S. Surface Transportation Board.

Will the investment community be satisfied with this? Were investors and analysts expecting major job reductions in CPR's northeastern U.S. network?

Investors and analysts want to see that we are operating efficiently and productively, and are generating a profit. Whether they are satisfied will depend on the level of profitability we generate in the operation, not on the number of job positions eliminated.

What were the other proposals received by CPR?

All proposals include a confidentiality agreement, which we must respect. As a result, we cannot comment on the proposals or divulge who made them. We continue to explore options for further improving the economic performance of our NEUS franchise.

Will D&H remain a wholly owned subsidiary of CPR, or will its corporate structure change in any way as a result of the new arrangements with NSR?

No changes in our corporate structure are contemplated at this point.

Will CPR put any expansion or improvement capital into its NEUS franchise?

Our first priority is to make the existing infrastructure as profitable as possible by decreasing our operating costs and increasing revenue and yield. *We need sufficient free cash flow and profitability to make capital investments above those required to maintain the track network. Beyond this, we are interested at any time in public-private partnerships by which government provides the needed capital to provide a rail service that offers public benefits.*