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December 13, 2004

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

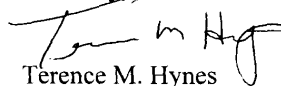
Re: Finance Docket No. 34561, *Canadian Pacific Railway Company—
Trackage Rights Exemption—Norfolk Southern Railway Company—
Buffalo, NY*

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten (10) copies of the Reply of Canadian Pacific Railway Company and Delaware and Hudson Railway Company, Inc. in Opposition to United Transportation Union—New York State Legislative Board's Petition to Strike ("Reply"), filed on November 30, 2004. A diskette containing an electronic version of the Reply is also enclosed.

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

Sincerely,



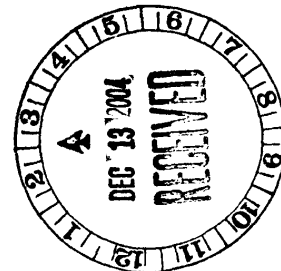
Terence M. Hynes
Gabriel S. Meyer

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Enclosures

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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**

**REPLY OF CANADIAN PACIFIC RAILWAY COMPANY AND
DELAWARE AND HUDSON RAILWAY COMPANY, INC. IN OPPOSITION
TO UNITED TRANSPORTATION UNION-NEW YORK STATE
LEGISLATIVE BOARD'S PETITION TO STRIKE**

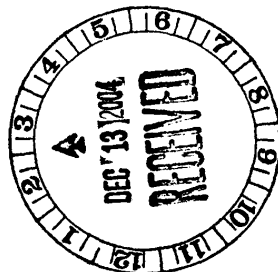
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Counsel for Canadian Pacific Railway and
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Dated: December 13, 2004

**ENTERED
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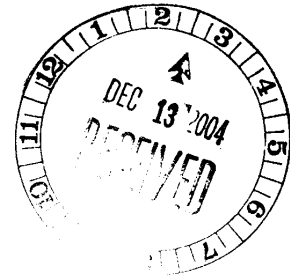
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34561



**REPLY OF CANADIAN PACIFIC RAILWAY COMPANY AND
DELAWARE AND HUDSON RAILWAY COMPANY, INC. IN OPPOSITION
TO UNITED TRANSPORTATION UNION-NEW YORK STATE
LEGISLATIVE BOARD'S PETITION TO STRIKE**

INTRODUCTION

Canadian Pacific Railway Company ("CPRC") and its affiliate, Delaware and Hudson Railway Company, Inc. ("D&H"), hereby submit this Reply in opposition to the Petition To Strike ("UTU-NY Petition") filed in the above-captioned proceeding on November 30, 2004 by Samuel J. Nasca, for and on behalf of United Transportation Union – New York State Legislative Board ("UTU-NY"). The UTU-NY petition asks the Board to strike from the record a footnote contained in the "Reply of Canadian Pacific Railway Company and Delaware and Hudson Railway Company, Inc. In Opposition To Petitions To Revoke Exemptions" filed herein by CPRC and D&H on November 12, 2004 (the "CPRC/D&H Reply"). For the reasons set forth in this Reply, UTU-NY's Petition should be denied.

The Board's regulations at 49 C.F.R. § 1104.8 provide that the Board "may order that any redundant, irrelevant, immaterial, impertinent or scandalous matter may be stricken from any document." The UTU-NY Petition does not even mention – much less attempt to satisfy – this standard. Rather, UTU-NY argues that the challenged footnote should be stricken because (according to UTU-NY) it is "incorrect" and has "the apparent purpose of diminishing or discrediting arguments on the merits advanced by UTU-NY." UTU-NY Petition at 2-3. These assertions provide no basis for striking the challenged footnote.

UTU-NY's suggestion that the footnote should be stricken because it appears to be intended to "diminish" or "discredit" UTU-NY's "arguments on the merits" is nonsensical. The very purpose of the CPRC/D&H Reply – indeed, the purpose of any opposition pleading – is to demonstrate that the adverse party's arguments on the merits are wrong. Nor does UTU-NY's claim that the challenged footnote is "incorrect" provide any grounds for striking it from the record. The mere fact that UTU-NY may disagree with the substance of a statement set forth in CPRC/D&H's Reply does not render that statement objectionable under Section 1104.8.

The transparent purpose of UTU-NY's Petition is not to remove objectionable material from the record, but rather to provide an occasion for UTU-NY to tender a surrebuttal to the challenged footnote. The majority of the UTU-NY Petition consists of a substantive response to the facts set forth in that footnote. UTU-NY Petition at 2-3. It is well-established that such a "reply to a reply" is not permitted under the Board's regulations. *See* 49 C.F.R. § 1104.13(c). Thus, UTU-NY's Petition, not the footnote to which it is addressed, ought to be excluded from the record.

In any event, UTU-NY's surrebuttal does not demonstrate that the challenged footnote is incorrect in any respect. CPRC/D&H's observation that the United Transportation Union ("UTU") – not UTU-NY – represents D&H employees for collective bargaining purposes is undeniably true. D&H's collective bargaining agreement with UTU, dated July 18, 1990, specifies that "[t]he right to make and interpret contracts, rules, rates and working agreements for Conductors and Brakemen shall be vested in the regularly constituted representatives of the United Transportation Union." D&H has no collective bargaining agreement with UTU-NY, and UTU has never designated UTU-NY as its representative in negotiations with D&H. The UTU-NY Petition does not take issue with these facts, but merely asserts (at 3) that the UTU's state organizations have "primary responsibility to appear before regulatory agencies in connection

with proposals for change in train service, and where service may be discontinued.”

CPRC/D&H’s Reply did not dispute UTU-NY’s right to participate in this proceeding.

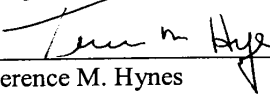
However, that participation has nothing to do with the negotiation of collective bargaining agreements or implementing agreements.

CPRC/D&H’s statement (in the challenged footnote) that, while UTU petitioned for a stay of the class exemption at issue here, it did not file a petition for revocation of the class exemption in this proceeding or submit comments in connection with the proposed trackage rights discontinuance in Docket No. AB-156 (Sub-No. 25X), is likewise correct. UTU-NY points out that the “International UTU” submitted “a general statement of support” for the stay petition filed by UTU-NY on October 5, 2004. UTU-NY Petition at 3. That fact does not render incorrect CPRC/D&H’s observation that UTU did not subsequently file a petition to revoke the class exemption (as UTU-NY did on October 25, 2004). Thus, UTU-NY’s improper surrebuttal does not demonstrate that the challenged footnote was incorrect in any respect.

CONCLUSION

For all of the foregoing reasons, CPRC and D&H respectfully request that the Board deny UTU-NY’s Petition to Strike.

Respectfully submitted,



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Counsel for Canadian Pacific Railway and
Delaware and Hudson Railway Company, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of December 2004, I served the foregoing Reply Of
Canadian Pacific Railway Company And Delaware And Hudson Railway Company, Inc. In
Opposition To United Transportation Union-New York State Legislative Board's Petition To
Strike by causing a copy thereof to be hand-delivered to:

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

Richard A. Allen
Zuckert Scoutt & Rasenberger, L.L.P.
888 17th Street, N.W., Suite 700
Washington D.C. 20006

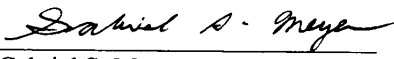
Michael S. Wolly
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Washington, D.C. 20036

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and by prepaid First Class Mail to the following parties:

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Gabriel S. Meyer