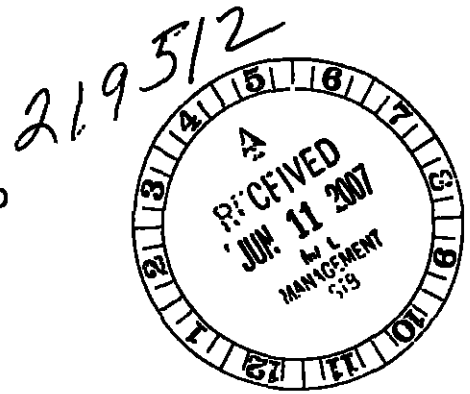


ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 35019

WESTERN NEW YORK AND PENNSYLVANIA RAILROAD, LLC
-LEASE AND OPERATION EXEMPTION-
CERTAIN ASSETS OF NORFOLK SOUTHERN RAILWAY COMPANY and
CHAUTAUQUA, CATTARAUGUS, ALLEGANY AND STEUBEN SOUTHERN TIER
EXTENSION RAILROAD AUTHORITY

SUPPLEMENT TO PETITION TO REJECT
OR TO STAY OPERATION OF NOTICE OF EXEMPTION

ENTERED
Office of Proceedings

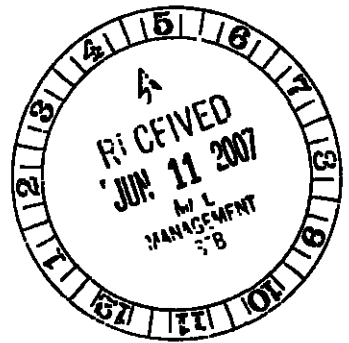
JUN 11 2007

Part of
Public Record

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

Due Date: June 11, 2007

Before the
SURFACE TRANSPORTATION BOARD



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STAY OPERATION OF NOTICE OF EXEMPTION

Preliminary Statement

Samuel J. Nasca,^{1/} on behalf of United Transportationn Un-
ion-New York State Legislative Board (UTU-NY), submits this
supplement to his petition for stay (and to reject), filed May 22,
2007. This supplement is responsive to the Board's decision dated
May 31, 2007 (served June 1).^{2/} The Board should stay operation
of the notice of exemption, pending completion of the required
employee notice period, and pending disposition of the forthcoming
UTU-NY petition to revoke or reject.^{3/}

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

^{2/} The Board's decision was not published until June 6. See: 72 Fed.
Reg. 31365-66 (June 6, 2007).

^{3/} The May 22 UTU-NY petition seeks to reject, as well as to stay,
the notice of exemption. This supplement to that petition is
addressed primarily to the stay portion of the earlier petition, in
view of the Board's May 31, 2007 decision.

ARGUMENT

I. NS EMPLOYEES HAVE NOT RECEIVED THE REQUIRED 60-DAY ADVANCE NOTICE.

Norfolk Southern Railway Company (NS) employees are entitled to receive a notice period of 60-days subsequent to the filing of certification that Western New York & Pennsylvania Railroad, LLC (WNYP) has served and posted the requisite notice of employment availability. 49 CFR §1150.42(e). The Board's decision served June 1, 2007 emphasized this requirement.

WNYP on June 4, 2007, filed the very same defective "certification" that earlier was filed May 17, 2007 with its notice of exemption. However, the June 4 "certification letter" was made by its counsel, who requested that the Board consider May 17 the "certification date" for compliance with 49 CFR §1150.42(e).

In actual fact, the verified statement of Samuel J. Nasca indicates that notice to personnel on the property that WNYP intended to startup, and NS intended to terminate operations, was not made until May 30, 2007. Nevertheless, such May 30 actual notice of NS intentions, does not serve to satisfy the Board's requirement of WNYP file its notice for implementing employee aspects of the transaction under §1150.42(e) some 60 days in advance.

The WNYP's June 4, 2007 "certification letter" is not credible. It does not indicate where, or by whom, the employee notices were posted. Moreover, the critical place or places where prospective employees would report for duty are not given. The Board should note that WNYP operates a lengthy line between Meadville

and Hornell, as well as the prospective 98-mile line between Machias and Driftwood.

II. A STAY OF EXEMPTION SHOULD NOT EXPIRE
PRIOR TO CONSUMMATION OF THE TRANSACTION.

The stay of the exemption should not expire prior to consummation of the transaction. The Board has frequently ruled that it may entertain petitions for stay of line acquisitions under its class exemptions until the time of consummation.

It is apparent it will be some time before the instant transaction may be consummated. Accordingly, the Board should stay the exemption until the time at which the transaction might be consummated.

III. THE BOARD SHOULD ISSUE NEW
AND ADDITIONAL PUBLIC ADVICE.

The Board's decision served June 1, and not published until June 6, failed to advise the public as to the consummation date, unlike the Board's usual practice. Cf. F.D. No. 34989, Ozark Valley Railroad-Acquisition and Operation Exemption-The Kansas City Southern Railway Company, 72 Fed. Reg. 31897 (June 8, 2006); F.D. No. 35016, Rock River Railroad, Inc.-Rail Lines of Renew Energy, LLC, 72 Fed. Reg. 20009-10 (Apr. 30, 2007).

The STB's publication also did not advise the public concerning WNYP's filing date.

When the Board establishes the date the earliest the transaction may be consummated, it should also advise the public the date within which petitions for stay may be filed, or supplemented. For

example, the usual STB language is (Ozark Valley, 72 Fed. Reg at 31897:

The earliest this transaction may be consummated is June 24, 2007, the effective date of the exemption (30 days after the exemption was filed).

.....
Petitions to stay must be filed no later than June 15, 2007 (at least 7 days before the exemption becomes effective.

When the STB reissues its notice in this proceeding, it should advise the public as to the effective date, and the date for seeking a stay. The failure of WNYP to file its certification of employee notice prior to filing its notice of exemption, requires that the Board issue a new notice. In essence, WNYP's course of action served to invalidate its notice of exemption, such that the Board's current notice is misleading, and does not afford adequate information and protection for the public.

IV. THE BOARD SHOULD STAY THE NOTICE OF EXEMPTION, AND THE EXEMPTION.

WNYP did not oppose the UTU-NY petition for stay, filed May 22, 2007. The stay request is fully justified. Moreover, UTU-NY has now supplemented its earlier petition with evidence of irreparable injury to employees. The Board does not impose protective conditions in this sort of transaction. There is no known method under existing collective bargaining agreements for compensation from NS in the event the transaction is unwound at a later date.

CONCLUSION

The Board should stay the operation of the notice of exemption for a period of 60 days from WNYP's filing of a valid employee notice certification,^{4/} and for such period thereafter to dispose of the UTU-NY petition to reject or for revocation.

Respectfully submitted,



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

June 11, 2007

Attorney for Samuel J. Nasca

Certificate of service

I hereby certify I have served a copy of the foregoing by personal service upon Janie Sheng, 1601 K Street, N.W., Washington DC 20006.

Washington DC


Gordon P. MacDougall

^{4/} The UTU-NY petition to reject or to stay, filed May 22, had suggested the 60-day period ran from May 17; however, it now appears that the WNYP filing was defective, and not even attempted until June 4, and still appears invalid.

**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 (EL).

I am fully familiar with railroad operations in New York State, and with the lines involved in this proceeding. I have read the notice of exemption in Finance Docket No. 35019, by Western New York & Pennsylvania Railroad, LLC (WNYP) to lease approximately 98.3 miles of line currently operated by Norfolk Southern Railway (NS) between Machias Junction, NY, and Driftwood, PA, including a branch line to Farmers Valley, PA, and trackage at Olean, NY.

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

The transfer of operations from NS to WNYP would have a very severe impact upon NS employees. The NS line between Machias Junction, NY, and Driftwood, PA is a former Pennsylvania Railroad Company (PRR) and Conrail line which passes through Olean, NY., where it intersects with the WNYP line operating between Meadville, PA. and Hornell, NY. The Meadville-Hornell WNYP operation is over a former EL line. Both the former PRR and EL lines were acquired by NS in the break-up of the Consolidated Railroad Corporation (CR) operations beginning 1999.

Present NS service between Machias Junction and Driftwood consists of a train 6 days/week between Buffalo, NY, and Renovo, PA, in each direction (H5W and H4W). These train will perform work at Olean, Port Allegany, and Driftwood, as required. Additional service is provided by two traveling switchers, H-16 and H-19, based at Olean, which service customers at Driftwood, North Drury, Port Allegany, Olean, Holland, and other locations.

It is anticipated the two traveling switchers will be discontinued. and remaining work of the Buffalo-Renovo through train will be reassigned to other NS trains operating between Buffalo and NS points in NY or PA on other NS lines; and the operations between Driftwood Renovo assigned to other service based at Renovo or Enola (Harrisburg).

I estimate the NS personnel losses to be 3 engineers, 3 conductors, 2 trainmen, 1 track foreman, 2 trackmen, 1 car maintenance, 1 car inspector, 2 shop mechanics, 1 extra board engineer, and 1 extra board conductor. NS employees who exercise seniority will have to travel long distances to continue employment on NS or relocate their families.

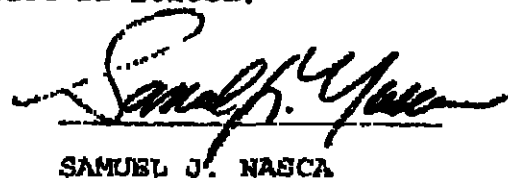
NS advised employees on May 30, 2007, as to the transaction, with a "Startup Notification," that NS will no longer serve Franklinville, Olean, East Olean and Portville, NY; Eldred, Turtlepoint, Port Allegany, Emporium, Emporium Aly and Farmers Valley, PA. NS stated its interchange with WNYP at Olean will be terminated, and a new interchange will be created with WNYP at North Driftwood, PA. No interchange will be created at Mahias. NS will have detour rights over the WNYP line.

NS employees have not been advised when the transaction will actually occur. The NS advise is merely, "It is currently anticipated that startup will be at 12:01 AM (EST), Monday, June 25, 2007."

I ask that the Surface Transportation Board stay the effective date and operation of the WNYP notice of exemption. I know of no STB protective conditions which are available to protect or to ameliorate the obvious irreparable injury which would occur if the transaction is permitted to proceed to consummation.

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. NASCA

Filed at
Albany, NY
June 11, 2007