

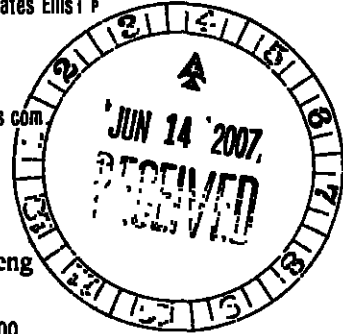
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June 14, 2007

Via Hand Delivery

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Honorable Vernon A Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

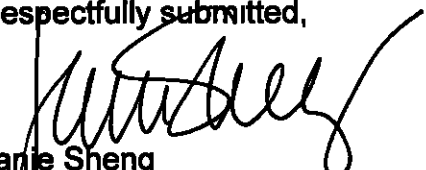
**RE: Finance Docket No. 35019
Western New York & Pennsylvania Railroad, LLC
-- Lease and Operation Exemption --
Certain Assets of Norfolk Southern Railway Company and
Chautauqua, Cattaraugus, Allegany and Steuben Southern
Tier Extension Railroad Authority**

Dear Secretary Williams

On behalf of Western New York & Pennsylvania Railroad, enclosed for filing in the above-referenced docket are an original and ten copies of a Response to the Supplement to Petition to Reject or to Stay Operation of Notice of Exemption filed by the United Transportation Union-New York State Legislative Board, and a Certificate of Service

Please acknowledge receipt of this filing by file-stamping the attached extra copy of this letter and filing and return to me

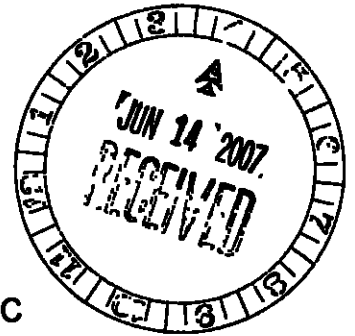
Respectfully submitted,


Janie Sheng

Attorney for Western New York &
Pennsylvania Railroad, LLC

Cc Gordon McDougall (via hand delivery)

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO 35019
WESTERN NEW YORK & 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

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

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**ATTORNEYS FOR WESTERN NEW YORK
& PENNSYLVANIA RAILROAD, LLC**

Dated June 14, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 35019
WESTERN NEW YORK & 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

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

Western New York & Pennsylvania Railroad, LLC ("WNYP") hereby files this Response to the Supplemental Petition to Reject or to Stay Operation of Notice of Exemption ("Supplemental Petition") filed on June 11, 2007, by Samuel J Nasca on behalf of the United Transportation Union-New York State Legislative Board ("UTU-NY")

I. Background

On May 17, 2007, WNYP filed a Notice of Exemption in the above-referenced proceeding, attaching a copy of the labor notice required by 49 C F R §1150 42(e) and certifying, by the notarized and sworn Verification of its President and Chief Operating Officer, that the labor notice had been posted and served on the required parties. On May 25, 2007, WNYP filed a waiver petition to permit the exemption to become effective on June 25, 2007.

On June 1, 2007,¹ the Board issued a Notice in this proceeding indicating that

¹ Finance Docket No 35019, Western New York & 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, dated June 1, 2007 (The "Notice") at 3. The Notice also was published in the Federal Register on June 6, 2007.

unless it granted WNYP's pending waiver request,² "the earliest this transaction may be consummated will be 60 days after certification of compliance" with the requirements of §1150 42(e). Thus, the June 1 Board Notice implicitly rejected the sufficiency of WNYP's labor notice posting and service certification, notwithstanding the fact that it was a notarized and sworn Verification.

On June 4, 2007, in response to the Board's Notice, WNYP submitted a letter *explicitly certifying* that the labor notice had been posted and served in compliance with §1150 42(e). WNYP also requested that the Board treat May 17, 2007 as the certification date, based upon WNYP's sworn and notarized Verification.

On June 11, 2007, the UTU-NY filed the Supplemental Petition, arguing that WNYP's June 4th certification letter is not "credible" because it was filed by counsel and it did not include the posting details. See Supplemental Petition at 3. UTU-NY also seeks a stay on the effective date of the exemption until the expiration of the 60-day employee notice period and pending disposition of a petition to revoke or reject it plans to file at some point in the future. See Supplemental Petition at 1. Finally, UTU-NY seeks republication of the Board's June 1, 2007 issued Notice of this transaction on the grounds that the Notice was not published in the Federal Register until June 6, 2007, three business days later, and did not state the effective date of the exemption.

² By a separate filing dated May 25, 2007, WNYP has requested a waiver of the 60-day advance certification requirement of §1150 42(e) to allow the notice to become effective on June 25, 2007. That waiver request is pending before the Board.

II. Argument

A WNYP Has Met The Certification Requirement Of 49 C F R §1150 42(e)

UTU-NY asserts that WNYP's June 4th certification letter is not "credible" because it was filed by counsel and it did not include the posting details See Supplemental Petition at 3. These arguments have no merit. The Board has accepted labor notice certifications filed by counsel See, e.g. STB Finance Docket No. 34633, Wisconsin & Southern Railroad Co –Acquisition Exemption–Union Pacific Railroad Company, decided January 19, 2005. Moreover, the Board's rules provide that if a party is represented by an attorney, the signature of the attorney on a filing constitutes a certification that (among other things) the attorney is authorized to file it and believes that there are good grounds for the filing. A document thus signed need not be verified or accompanied by affidavit unless required elsewhere in the Board's rules, see 49 C F R §1104 4(a), and there is no requirement in §1150 42(e) that the labor certification be made by a principal.

In addition, 49 C F R §1150 42(e) does not require that the labor notice certification include posting details. Thus, WNYP's June 4th letter met the labor notice certification requirements of §1150 42(e).³

B There Is No Basis For The Issuance Of A Stay

A party seeking a stay from the Board must establish that (1) there is a strong likelihood that it will prevail on the merits of any challenge to the action sought to

³ UTU-NY also discusses a later notification of the transaction, made by Norfolk Southern Railway Company ("NSR") on May 30, 2007, but then argues that this notice does not meet the labor notice requirements of §1150 42(e). See Supplemental Petition at 3. This communication was not intended to be a labor notice under §1150 42(e) and therefore is irrelevant to the certification issue. The fact that NSR and WNYP have undertaken additional efforts to notify employees of this transaction should not be allowed to confuse the issues before the Board, lest railroads become reluctant to make such supplementary notification efforts.

be stayed, (2) it will suffer irreparable harm in the absence of a stay, (3) other interested parties will not be substantially harmed, and (4) the public interest supports the granting of the stay Hilton v. Braunskill, 481 U.S. 770, 776 (1987), Washington Metro Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977), Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958). A party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

The UTU-NY requests that the Board stay the effective date of the exemption based on the alleged deficiency of the WNYP labor notice certification. See Supplemental Petition at 1-3. UTU-NY has not established that there is a strong likelihood that it will prevail on the merits of its challenge to the validity of WNYP's labor notice certification. For the reasons explained in Subsection A, above, UTU-NY is unlikely to prevail on the merits.

UTU-NY has not established that it will suffer irreparable harm from the exemption becoming effective on August 3rd (or sooner) as opposed to some later date, in the absence of a stay. Notwithstanding UTU-NY's objections to the content of the labor notice certification, the labor notice was posted and served and it is undeniable that affected employees have actual notice of the transaction. There is no conceivable harm to employees in the absence of a stay.

UTU-NY has not established that other interested parties will not be substantially harmed by a stay. In fact, WNYP has hired three employees and has seven additional employment offers outstanding. Thus, at least three and as many as ten persons will

begin employment with WNYP when it takes over service on the subject line. These persons are not represented by the UTU, but they are nevertheless eager to start their new jobs and a stay would delay their start.

UTU-NY has not established any public interest that supports the granting of a stay. In fact, UTU-NY's initial objection in this proceeding was that WNYP had not made its labor notice certification until the time of the filing of its Notice of Exemption on May 17, 2007. See UTU-NY Petition to Reject, dated May 22, 2007, at 2. At that time, UTU-NY sought a stay until July 16, 2007. From that date forward, UTU-NY has not offered any argument that delay beyond July 16th is in the public interest.

The UTU-NY also requests that the Board stay the effective date of the exemption, pending disposition of a "forthcoming UTU-NY petition to revoke or reject." See Supplemental Petition at 1, 5. Obviously, UTU-NY cannot meet its burden of persuasion on all of the elements required for a stay on the promise of a "forthcoming" petition to revoke.

C The Board Need Not Reissue its June 1, 2007 Decision

UTU-NY seeks republication of the Board's June 1, 2007 issued Notice of this transaction on the grounds that the Notice was not published in the Federal Register until June 6, 2007, did not state the effective date of the exemption and therefore was misleading. See Supplemental Petition at 4-5.

The June 1 Notice was not misleading in any way. The Board did not state the effective date of the WNYP exemption because the effective date was not a date certain at the time the Board issued the Notice. Moreover, the Board did specify that unless it granted WNYP's waiver request, "the earliest this transaction may be consummated will

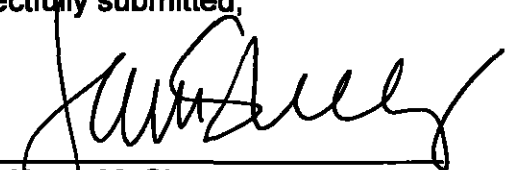
be 60 days after certification of compliance with the requirements of §1150 42(e) " See
Notice at 3

III. Conclusion

For the foregoing reasons, the Board should deny the stay petitions and republication requested by UTU-NY. In addition, WNYP respectfully renews its requests that the Board either grant WNYP's pending waiver petition and allow WNYP's exemption to become effective on June 25, 2007, or if it does not grant the waiver request, acknowledge the Verification accompanying the Notice of Exemption and permit the exemption to become effective on July 17, 2007.

Respectfully submitted,

By



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**ATTORNEYS FOR WESTERN NEW YORK
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Dated June 14, 2007

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon Gordon P MacDougall, 1025 Connecticut Ave , N W , Washington, D C 20036, by hand delivery on June 14, 2007

A handwritten signature in black ink, appearing to read 'Janie Sheng', is written over a horizontal line.

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**ATTORNEY FOR WESTERN NEW YORK
& PENNSYLVANIA RAILROAD, LLC**

Dated June 14, 2007