

ORIGINAL



219632

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

MOTION TO COMPEL ^{*/}

ENTERED
Office of Proceedings

JUN 26 2007

Part of
Public Record

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

Attorney for Samuel J. Nasca

Dated: June 26, 2007

*/ Expedited handling requested.

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

MOTION TO COMPEL

Samuel J. Nasca, for and on behalf of United Transportation Union-New York State Legislative Board (UTU-NY), in accordance with 49 CFR 1114.31(a), asks the Board to compel the production of document(s) in the possession of respondent Western New York & Pennsylvania Railroad, LLC (WNYP), and that the Board issue an order on an expedited basis, without awaiting the time for reply otherwise provided by 49 CFR 1131.31(a)(1) & 49 CFR 1104.13. See: 49 CFR 1100.3, 1110.9, and 1117.1.

1. The document(s) sought to be produced are set forth in the letter to respondent's counsel, dated June 15, 2007, Appendix 1 hereto. The material is the agreement between WNNY and Norfolk Southern Railway Company (NSR), for lease and operation of certain properties, as mentioned in WNYP's verified notice of exemption, filed May 17, 2007. The material is highly relevant.

2. The agreement(s) sought to be discovered are required to be filed with the Board in the ordinary lease and operation

application. 49 CFR 1180.6(a)(7)(ii). Under the § 10902 class exemption, lease agreements are not required to be submitted as a precondition to filing a notice of exemption; however, the lease agreements are subsequently required to be furnished to parties, as a matter of course, by the Board in contested situations, although often subject to a protective order where confidentiality is sought. Indeed, access to the lease agreements is often helpful to the Board itself so as to better understand the issues involved.

3. Respondent WNYP has refused access to the sought WNYP-NSR agreements, and has engaged in dilatory tactics. The respondent has requested highly-confidential treatment for the entire agreement(s), but has refused to enter into a voluntary written protective agreement between counsel. Protestant's counsel is of the view that WNYP believes it can delay production until after the transaction may be consummated, and therefore effectively frustrate any timely petition for further stay, or for revocation.

4. Good cause exists for the Board to waive the period for reply to this motion, 49 CFR 1104.13, 1114.31(a)(1). See: 49 CFR 1100.3, 1110.9, 1117.1. The class exemption process is established for expedited proceedings, such that the tactics displaced here should not be countenanced, and are contrary to the public interest in prompt disposition.

WHEREFORE, the Board should order WNYP to furnish the agreement(s) between WNYP and NSR for lease and operation of certain properties, as set forth in the verified notice of exemp-

tion, filed May 17, 2007. The Board's action should become effective upon service, and require compliance within 24 hours.

Respectfully submitted,



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

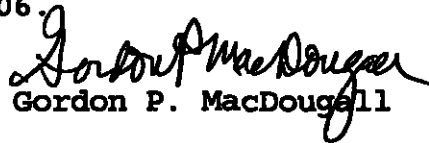
June 26, 2007

Attorney for Samuel J. Nasca

Certificate of Service

I hereby certify I have served a copy of the foregoing upon counsel for WNYP, by personal service upon Kevin M. Sheys, 1601 K Street, N.W., Washington DC 20006.

Washington DC



Gordon P. MacDougall

1 LAW OFFICES
GORDON P. MACDOUGALL
1005 CONNECTICUT AVE, N.W.
WASHINGTON, D.C. 20036

APPENDIX 1

TELEPHONE
AREA CODE 202
220-9738

June 15, 2007

Ms. Janie C.I. Sheng
K&L Gates
1601 K Street, N.W.
Washington DC 20006-1600

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 Ms. Sheng:

I was unsuccessful in several attempts to reach you today regarding the entitled proceeding pending at the Surface Transportation Board (STB).

Please consider this letter a discovery request for the production of documents, etc. pursuant to 49 CFR §1114.30.

I desire to inspect and copy the agreement between Western New York & Pennsylvania Railroad, LLC (WNYP) and Norfolk Southern Railway Company (NSR) for lease and operation of certain properties, as mentioned in the Verified Notice of Exemption in this proceeding, filed May 17, 2007.

The WNYP/NSR agreement is mentioned at pages 3, 4, 5, and Exhibit C.

It is desired that I secure a copy at your office, or be permitted to reproduce the same at my office. I direct that you comply with this discovery request this coming Wednesday, June 20, 2007, which is a reasonable time. 49 CFR §1114.30(b).

Please advise whether you intend to satisfy this discovery request, or if there are any problems in connection therewith which we need to discuss.

Very truly yours,



cc: S.J. Nasca