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Before the
SURFACE TRANSPORTATION BOARD

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AUG 2 2007
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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

PETITION FOR STAY OF EFFECTIVE DATE */

ENTERED
Office of Proceedings

AUG 2 - 2007

Part of
Public Record

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

August 2, 2007

Attorney for Samuel J. Nasca

*/ Expedited handling requested, inasmuch as the exemption otherwise would become effective Friday, August 3, 2007, at 12:01AM.

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PETITION FOR STAY OF EFFECTIVE DATE

Samuel J. Nasca,^{1/} for and on behalf of United Transportation Union-New York State Legislative Board (UTU-NY), petitions for stay of the effective date for the exemption in this proceeding, pending expiration of the employee notice date, August 27, 2007, in Finance Docket No. 35044, Buffalo & Pittsburgh Railroad, Inc.-Lease and Operation Exemption-Norfolk Southern Railway Company (BPRR).

Background

1, The effective date for exemption for the instant 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 (WNY) has been estab-

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

lished as August 3, 2007,^{2/} The notice of exemption involves WNYP's lease of the Norfolk Southern Railway Company (NSR) line between Machias, NY, and Driftwood, PA.

2. The effective date proposed for the exemption in BPRR is August 27, 2007. See: BPR Petition, 8-9, filed July 3, 2007;^{3/} the BPRR petition for exemption involves BPRR's lease of the NSR line between Buffalo (Gravity) and Machias, NY.

3. The NSR Buffalo-Machias-Olean-Driftwood line being leased to BPRR (northern portion), and to WNY (southern portion), is part of a through route of the former Pennsylvania Railroad Company (then ConRail) line.

4. The verified statement of Samuel J. Nasca, dated June 11, 2007, and filed in this proceeding, is attached as Appendix 1. The operating facts have been unchanged until announced yesterday and today. The train service consists of a train in each direction, on alternate days, between Buffalo and Renovo, the latter point being apx. 27 miles south of Driftwood; and two traveling switchers at Olean.

5. WNY yesterday advised it will exercise its Machias-Driftwood exemption beginning on and after August 3. There will be no interchange with NSR at Olean, and no interchange with NSR at Machias. This affects NSR employees based at Olean, which lies between Machias and Driftwood. These NSR employees had been

^{2/} See: F.D. No. 35019, Decision, served June 26, 2007, at 3; F.D. No. 35019, Decision, served July 26, 2007, at 1.

^{3/} It may be that a late addition to BPRR/NSR employee notice may push the effective date to August 31, 2007. See: BPRR Letter, filed July 2, 2007.

advised of the WNY lease by the 60-day WNY notice. However, today protestant was advised by NSR that the Buffalo-Renovo train will no longer operate or service the Buffalo (Gravity)-Machias segment.^{4/} This will affect NSR operating employees based at Buffalo (where the Buffalo-Renovo crew is based) without being afforded the requisite 60 days BPRR notice prior to August 27, 2007.

REASONS FOR STAY

1. A stay is required to afford the requisite 60-days notice to employees based at Buffalo. These persons were notified in BPRR, but are not being afforded the 60-days notice, because NSR is permitting WNY and BPRR to exercise their lease exemptions at different times, even though the same integral line of railroad between Buffalo (Gravity) and Driftwood. The exercise of the WNY exemption at this time, deprives those subject to the BPRR notice of their 60-days notice period.

2. The lease of the NSR line between Machias and Driftwood, without an interchange between NSR and WNY at Machias, also serves to cut-off the traditional flow of traffic. The local traffic is minimal between Buffalo (Gravity) and Machias, such that the existing daily service is being canceled, as a result of the WNY action.

3. The Board's 60-day requirement has been difficult to enforce since adoption, with frequent requests for waiver. The

^{4/} This NSR train (H5W and H4W) handles traffic to and from south of Machias; WNY counsel advises the interchange between NSR and WNY may take place at Meadville, PA. This would seem circuitous and impractical to this protestant.

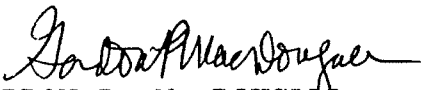
instant situation is another attempt to circumvent the required employee protection.

4. NSR employees represented by UTU will be adversely by the cancellation of the daily Buffalo (Gravity)-Machias train service.

CONCLUSION

The Board should stay the effective date for the exemption to and including August 27, 2007, or until the BPRR exemption becomes effective.

Respectfully submitted,


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

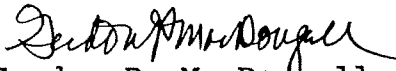
August 2, 2007

Attorney for Samuel J. Nasca

Certificate of Service

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

Washington DC


Gordon P. MacDougall

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.

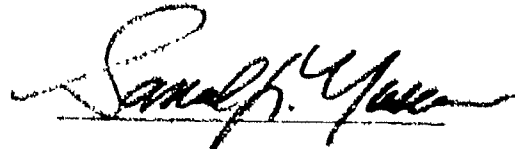
NS advised employees on May 30, 2007, as to the transaction, with a "Startup Notification," that NS will no longer serve Franklinville, Olean, East Olean and Portville, NY; Eldred, Turtlepoint, Port Allegany, Emporium, Emporium Aly and Farmers Valley, PA. NS stated its interchange with WNYP at Olean 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.

A handwritten signature in dark ink, appearing to read "Samuel J. Nasca", written over a horizontal line.

SAMUEL J. NASCA

Dated at
Albany, NY
June 11, 2007