

219921

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35065

**NORFOLK SOUTHERN RAILWAY COMPANY —
TRACKAGE RIGHTS EXEMPTION —
MICHIGAN CENTRAL RAILWAY, LLC**

REPLY TO PETITION FOR STAY

▲
AUG 2 2007
RECEIVED

**ENTERED
Office of Proceedings**

AUG 02 2007

**Part of
Public Record**

John V. Edwards
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
(757) 629-2838

G. Paul Moates
Jeffrey S. Berlin
Donald H. Smith
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Attorneys for
Norfolk Southern Railway Company

August 2, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35065

**NORFOLK SOUTHERN RAILWAY COMPANY —
TRackage RIGHTS EXEMPTION —
MICHIGAN CENTRAL RAILWAY, LLC**

REPLY TO PETITION FOR STAY

Norfolk Southern Railway Company (“NSR”) submits this Reply to the Petition for Stay submitted by the Brotherhood Of Locomotive Engineers & Trainmen, A Division Of The Rail Conference - International Brotherhood Of Teamsters (“BLET”) on July 31, 2007. BLET seeks a stay of the class exemption in this proceeding pending a decision in STB Finance Docket No. 35063, *Michigan Central Railway, LLC – Acquisition and Operation Exemption – Norfolk Southern Railway Company*.

BLET has not attempted to address, much less satisfy, the well-established standards for a stay.¹ In particular, BLET has not shown that it has a strong likelihood of prevailing on the merits, whatever they might be, nor has it shown any possibility of irreparable harm in the absence of a stay. BLET also has not shown that a stay is in the public interest.

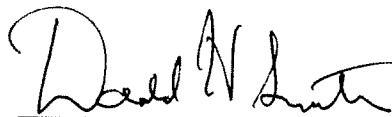
The Board already has noted NSR’s representation that it intends to consummate the trackage rights transaction in this proceeding “*after the Board has issued a final decision granting the petition for exemption in STB Finance Docket No. 35063.*” Decision served July

¹ See, e.g., *Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

27, 2007, at 2 (emphasis added); *see* Verified Notice of Exemption (filed July 13, 2007) at 5. In fact, it would be impossible for NSR to implement the trackage rights transaction at issue in this proceeding before the completion of the transactions at issue in Finance Docket No. 35063. In these circumstances, the issuance of a stay is unnecessary and would serve no purpose.

NSR does not agree with BLET's characterizations of the transactions at issue in this proceeding and in Finance Docket Nos. 35063 and 35064, and does not believe that the issuance of a stay is warranted in any of these proceedings. Nonetheless, NSR would not object if the Board elected to alter the effective date of the class exemption in this proceeding to coincide with the effective date of a final Board decision in Finance Docket No. 35063.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald H. Smith", written over a horizontal line.

John V. Edwards
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
(757) 629-2657

G. Paul Moates
Jeffrey S. Berlin
Donald H. Smith
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Attorneys for
Norfolk Southern Railway Company

Dated: August 2, 2007

CERTIFICATE OF SERVICE

I hereby certify this 2nd day of August, 2007, that I have caused the foregoing Reply to Petition For Stay to be served by first class mail, postage pre-paid, on all parties that have entered appearances in STB Finance Docket Nos. 35063, 35064 or 35065.

