

August 3, 2007

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Via Electronic Filing

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

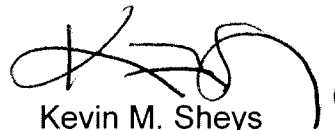
**RE: Finance Docket No. 35019
Western New York & Pennsylvania Railroad, LLC
-- Lease and Operation Exemption --
Certain Assets of Norfolk Southern Railway Company and
Chautauqua, Cattaraugus, Allegany and Steuben Southern
Tier Extension Railroad Authority**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Response to Petition for Stay** filed by Western New York & Pennsylvania Railroad, LLC ("WNYP").

Please contact me if you have any questions regarding this matter. Thank you.

Respectfully submitted,



Kevin M. Sheys
**Attorney for Western New York &
Pennsylvania Railroad, LLC**

cc: Gordon McDougall (via facsimile)

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 PETITION FOR STAY

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

Dated: August 3, 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 PETITION FOR STAY

Western New York & Pennsylvania Railroad, LLC ("WNYP") hereby files this Response to the Petition For Stay of Effective Date ("Stay Petition") filed yesterday 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 verified notice of exemption to lease and operate approximately 98.3 miles of rail line extending generally between Machias Junction, NY, and Driftwood, PA (the "Subject Line").

By a letter received by WNYP on June 19, 2007, UTU-NY sought discovery of the underlying lease between WNYP and NSR. On June 22, WNY&P offered to provide the Lease to UTU-NY under the terms of a jointly-sought Protective Order, but UTU-NY declined to agree to such an order. Instead, on June 26, 2007, UTU-NY filed a motion to compel discovery of the Lease.¹ In a decision served July 16, 2007, the Board granted the motion to compel, subject to a protective order to be agreed to by the

¹ In a decision served that same day, the Board provided that exemption would become effective, and therefore the parties would be free to consummate the Lease, on August 3, 2007.

parties or imposed by the Board at the request of one or both parties. The next day, after learning that UTU-NY still would not stipulate to entry of a standard protective order, WNYP filed a request for a protective order, which the Board granted in a decision dated July 26, 2007. The next day, WNYP produced a copy of the Lease to UTU-NY.

Yesterday, at approximately 3:00 p.m., six days after receipt of the Lease and only hours before the notice of exemption became effective, UTU-NY served its Stay Petition on WNYP.

Early this morning, WNYP and NSR consummated the Lease, and WNYP filed a letter informing the Board of the consummation.

II. Argument

The Stay Petition is moot, because WNYP and NSR have consummated the Lease.

UTU-NY has known since June 26, 2007 that the parties would be free to consummate the Lease on August 3, 2007, yet it waited six full days after receipt of the Lease, until only hours before the notice of exemption became effective, to file the Stay Petition. In addition, it served the Stay Petition on WNYP only two hours before the Board closed yesterday and gave counsel no other notice that it planned to make such an extremely last-minute filing and service.

UTU-NY would have had several weeks to review the Lease if it had acted in a cooperative and reasonable fashion with respect to discovery. UTU-NY did not receive the Lease until July 27 because it twice refused to stipulate to a standard protective

order (even though it later acknowledged to the Board that it did not oppose such an order).

In any case, the allegations contained in the Stay Petition have no merit. The UTU-NY requested that the Board stay the effective date of the exemption to match the effective date of the lease and operation exemption in Finance Docket No. 35044,² arguing that a stay was required to give NSR employees based at Buffalo, NY sixty (60) days notice of the discontinuance of NSR's rail service between Buffalo and Renovo, PA, by way of a segment of the Subject Line from Machias Junction, NY and Driftwood, PA. Stay Petition at 4. The WNYP labor notice informed all affected employees of the Lease and identified the Subject Line. It thereby gave such employees notice that WNYP would be operating the line between Machias Junction, NY and Driftwood, PA and that NSR would not be operating through service between Buffalo and Renovo. Thus, the labor notice in Finance Docket 35044 (and the sixty (60) notice requirement in that proceeding) is not relevant to this case.

UTU-NY also argues that NSR employees based at Olean and Buffalo need notice of the fact that NSR and WNYP will not interchange traffic at those two locations. Stay Petition at 3-4. However, the Stay Petition acknowledges that WNYP's labor notice, which was posted at Olean and Buffalo, informed affected employees of the end of the Olean interchange, see id. at 3-4, and NSR and WNYP did not (and will not) have an interchange at Machias. All affected employees have had at least sixty (60) days notice of all material changes arising from the Lease transaction.

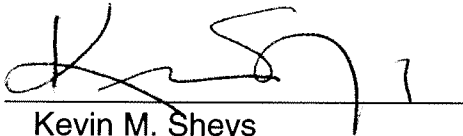
² Buffalo & Pittsburgh Railroad, Inc. – Lease and Operation Exemption – Norfolk Southern Railway Company.

Finally, UTU-NY claims that it was advised on August 2nd that WNYP would close on or soon after August 3, 2007. However, as noted above, August 3rd has been the known effective date of the exemption since the Board's decision on June 26, 2007.

III. Conclusion

For the foregoing reasons, the Board should deny the Stay Petition as Moot.

Respectfully submitted,

By: 

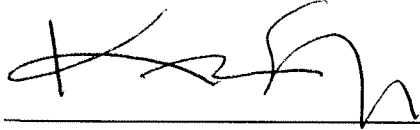
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**ATTORNEYS FOR WESTERN NEW YORK
& PENNSYLVANIA RAILROAD, LLC**

Dated: August 3, 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 facsimile on August 3, 2007.



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