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SERVICE DATE – JUNE 1, 2007

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35019]

Western New York and 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

Western New York and Pennsylvania Railroad, LLC (WNYP), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority (STERA), and Norfolk Southern Railway Company (NSR), and operate approximately 98.3 miles of rail line extending between Machias Junction, NY, and Driftwood, PA, in Cattaraugus County, NY, and McKean, Potter and Cameron Counties, PA (the line).¹ The end points of the line are as follows: (1) between milepost BR 44.7 and milepost BR 134.0 (the Buffalo Line); (2) between milepost FV 0.0 and milepost FV 6.6 (the Farmer’s Valley Secondary Line); and (3) between milepost YS 114.5 and milepost YS 116.9 (the Olean Branch). NSR will retain detour rights over the line pursuant to a standard form detour agreement adopted by the Association of American

¹ STERA owns the portion of the line located in Cattaraugus County. NSR owns the portion of the line located in McKean, Potter and Cameron Counties, and is the current operator of the entire line. In accordance with the lease provisions, the lease term is 14 years, with a renewal term of 10 years, which may be terminated by either party prior to the end of the term.

Railroads.

WNYP certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier. Because the projected annual revenues of the line, together with WNYP's projected annual revenue will exceed \$5 million, WNYP states that it has served the national offices of all labor unions with employees on the line with a copy of a notice of its intent to undertake this transaction and posted such notice at the workplace of the employees on the affected line on April 18, 2007.

By petition filed on May 22, 2007, the United Transportation Union-New York State Legislative Board (UTU-NY) requests that the Board reject WNYP's notice of exemption for failure to meet the requirements of 49 CFR 1150.42(e).² UTU-NY maintains that WNYP was required to notify the Board at least 60 days prior to the proposed effective date of the exemption that the required notice had been given to employees. Alternatively, UTU-NY requests that the exemption not become effective until July 16, 2007. WNYP asserts that it served and posted the required information for employees on April 18, 2007, but it has not certified to the Board that it has done so.

² Under 49 CFR 1150.42(e), "If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so" (emphasis added).

In a letter filed May 25, 2007, WNYP seeks a waiver of the requirements of 49 CFR 1150.42(e) insofar as it relates to certifying to the Board that it has complied with those requirements at least 60 days prior to the effective date of the exemption. WNYP thus seeks a Board ruling that would permit the exemption in this proceeding to become effective on June 25, 2007. WNYP acknowledges that, although the Board's regulations do not require the filing of the labor notice with the Board, the Board has interpreted the 60-day advance notice requirement in 49 CFR 1150.42(e) not only to apply to service and posting of the required labor notice, but also to certification to the Board of that service and posting.

UTU-NY replied in opposition to the petition for waiver on May 29, 2007. The Board will rule on WNYP's waiver request in a subsequent decision. Unless the Board grants the waiver request, the earliest this transaction may be consummated will be 60 days after certification of compliance with the requirements of 49 CFR 1150.42(e) is received by the Board.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than June 11, 2007.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35019, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. Also, a copy of each pleading must be served on Janie Sheng, Kirkpatrick & Lockhart Preston Gates Ellis LLP, 1601 K Street, NW,

Washington, DC 20006.

Board decisions and notices are available on our website at
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Decided: May 31, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary