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January 20, 2015

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Ms. Cynthia T. Brown
Chief of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
January 20, 2015
Part of
Public Record

**RE: FD 35873, Norfolk Southern Railway Company-Acquisition and
Operation-Certain Rail Lines of the Delaware And Hudson Railway
Company, Inc.
Late-filed Notice of Intent to Participate by the East of Hudson Rail
Freight Service Task Force, Inc.**

Dear Ms Brown:

The East of Hudson Rail Freight Service Task Force, Inc. was created pursuant to a settlement between Norfolk Southern Corporation, CSX Transportation Co. and a Twenty Four Member Congressional Delegation which was appealing the Board's decision in FD 88833, acquisition of Conrail by those two carriers. The settlement agreement was dated March 1999 and was filed for approval with the Board at that time.

The Task Force was to conduct regular meetings between the signatures and all the rail carriers operating services in New York State East of the Hudson, and in Connecticut. Due to internal issues related to the Task Force's status and due to the holidays the Task Force was not able to react to this proposed transaction until today. It was determined that as the Task Force is a not for profit corporation dedicated to improved freight service in this region, it had an obligation to raise the

issues set forth in this application. This is particularly true where, as here, no participant, to date, has raised a critical issue related to this transaction, the fate of Canadian Pacific Railway's now dormant access to the region East of the Hudson including New York City, Long Island and Connecticut.

The Task Force seeks to have the Board include the trackage rights awarded by the Board to Canadian Pacific Railway, FD 88833, from its lines in Mechanicsville, New York into the City of New York on the Hudson Line as a part of the services transferred to Norfolk Southern as part of the transaction here in question. The Task force's application is attached.

Thank you for your attention to this matter.

Very truly yours,

John F. McHugh

SURFACE TRANSPORTATION BOARD

Docket No. FD 35873

NORFOLK SOUTHERN RAILWAY COMPANY—ACQUISITION AND OPERATION—
CERTAIN RAIL LINES OF THE DELAWARE AND HUDSON RAILWAY COMPANY,
INC.

APPLICATION OF THE EAST OF HUDSON RAIL FREIGHT SERVICE TASK
FORCE, INC. TO APPEAR AND FILE OUT OF TIME A REQUEST FOR
MODIFICATION OF THE PROPOSED TRANSACTION TO INCLUDE
TRANSFER OF DELAWARE AND HUDSON'S TRACKAGE RIGHTS FROM
MECHANICSVILLE, N.Y. TO AN INTERCHANGE WITH THE NEW YORK
AND ATLANTIC RAILWAY AT FRESH POND, JT. QUEENS COUNTY, NY.

The East of Hudson Rail Freight Transportation Task Force, Inc. would like to participate. The Task Force was organized upon the acquisition of Conrail by Norfolk Southern and CSX Transportation in settlement of an appellate challenge to the decision of the Board allowing that acquisition by a Twenty Four Member Congressional Delegation (the Delegation) which had intervened in that proceeding. FD 88833. The Stipulation is dated March 1999 and was approved by the Board. In that proceeding the Delegation sought to obtain increased rail competition in the area east of the Hudson River and New York Harbor in the States of New York and Connecticut. The Board had directed CSX Transportation to meet regularly with State and Local officials to attempt to increase service in the region. The settlement with the Delegation expanded that obligation to both CSX Transportation and Norfolk Southern and to require regularly scheduled meetings of all carriers, asset owners and community in the region to resolve any issues or facts which obstructed improved freight services. While the 76 meetings conducted by the Task Force contributed to the solution of numerous problems and contributed to a 300% increase in freight traffic in the region, that traffic remains less than 3% of the regions freight market.

Due to the holidays and internal issues, the Task Force was not in a position to organize a response to the petition until now.

The lines in issue here are designated those of the Delaware and Hudson Railroad. In 1991 Canadian Pacific Limited, a Canadian Corporation (hereinafter CPR) purchased certain assets and rights of the former Delaware and Hudson Railway Company, a bankrupt railroad. This purchase and assumption of trackage rights was approved by the Interstate Commerce Commission, Canadian Pacific Limited-Purchase & Trackage Rights-Delaware & Hudson Railway Company, Finance Docket 31700, 7 I.C.C. 2d 95 (1990).

In the FD 33388, (the Conrail case), the Delegation sought to have the Shared Assets Operator, created by that transaction to operate facilities and services in New Jersey as agent for both acquiring carriers, to be granted and ordered to operate the New York Cross Harbor Railroad and to be granted overhead trackage rights from Bay Ridge, Brooklyn, over lines owned or operated by the former New Haven Railroad, with connections to all carriers operating East of the Hudson, to a northernmost junction with the Providence and Worcester railroad in New Haven, Ct.. The goal was to provide all shippers located East of the Hudson with one interchange access to both surviving class one carriers.

That petition was rejected in favor of the solution to the one operator problem put forth by the State of New York, Department of Transportation. It proposed that CPR be given trackage rights into the City of New York on the Hudson Line.

Both the State's petition and that of the Congressional Delegation were aimed at providing rail to rail competition within New York City, Long Island and Southern Connecticut. While the STB mentioned that it had never before attempted to rectify a lack of competition within a proceeding which did not itself create the monopoly, it did determine that granting such relief was appropriate. However it granted the State's petition giving CPR trackage rights to the end of Conrail's rights at Fresh Pond, Jt. Queens County, in New York City as the solution to the problem.

Thereafter CPR operated carload service between its lines and Fresh Pond, Jt. Until 2010. It then entered into a haulage agreement with CSX Transportation which thereafter has handled CPR cars in its trains to date. CPR retains the right to exercise the trackage rights and terminate the haulage agreement. Traffic using the haulage agreement is believed to be miniscule, if any at the present time. Thus the grant of trackage rights to CPR has proved to be ineffective in meeting the goal of the Board articulated in the Conrail case.

The Port Authority of New York and New Jersey has acquired the successor of the New York Cross Harbor Railroad in 2006, renamed the NYNJ Railroad. That entity still provides car float service between Jersey City, NJ and Bay Ridge, Brooklyn, but despite five years in that position and the availability of 80 million dollars in public funds, the hope that the NS and the NYNJ together would create a cost/price/service alternative to CSX Transportation and a more direct route to the South, from the region East of the Hudson has not occurred. This has become evident, especially on long distance freight movements from regions west and southwest of Chicago that are not CSX or NS online users. Due to the difficulty of the balkanized NYNJ route, any traffic bound East of the Hudson must be shipped CSX Transportation.

Norfolk Southern (NS) controls the Southern Tier line from Buffalo through Binghamton. The D&H lines here in issue meet the current NS system at Binghamton, N.Y. NS controls and operates on the former Nickle Plate lines from Cleveland to Buffalo as well as the former New York Central main line to Chicago west of Cleveland. A freight car forwarded from a western carrier destined for Long Island receivers East of the Hudson, would travel only about sixty miles further using the NS Cleveland-Buffalo-Binghamton-Albany route if the CPR trackage rights from the Albany area to Fresh Pound Jt. were transferred to the NS in this proceeding. This would make the Norfolk Southern a strong viable competitor within the East of Hudson region for freight received from or delivered to rail carriers west and southwest of the NS and CSX. It would also provide the NS an opportunity to overcome the physical, institutional hurdles associated with freight movements that include using Conrail (the shared assets carrier) and NYNJ.

While the proposed transaction, unmodified, will improve service to northern New England, it leaves the one carrier status in place in New York City, Long Island and Southern New England. Freight revenue carloadings via the Land-Water-Land, Conrail-NYNJ route have not passed 4,000 carloads in all the years since the CSX/NS acquired CONRAIL and the NYNJ was purchased by the Port Authority of NYNJ. As presently proposed this acquisition would end any possibility of using the Norfolk Southern's Southern Tier system as an effective competitor for East of Hudson Traffic to and from points west of Buffalo.

Therefore, the East of Hudson Rail Freight Task Force, Inc., respectfully requests that the transfer of rights here in issue include the CPR's Delaware and

Hudson trackage rights from the Albany area to Fresh Pond Junction in Queens County, New York. The conditions which caused the Board to deem such relief appropriate in the Conrail case have not changed. The solution selected by the Board at that time has proved ineffective. It is assumed that as Norfolk Southern has near equal access to a major share of the East of Hudson's trading partners, it may have more interest in this market than CPR and thus, the grant of rights should be far more effective in dealing with the monopoly here in issue and markedly increase the rail share of this market which remains less than 3%.

Dated, New York, N.Y.
January 20, 2014

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Except for Miller, Deb who gave no address.

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