

LAW OFFICE  
**THOMAS F. MCFARLAND, P.C.**  
208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
*mcfarland@aol.com*

THOMAS F. MCFARLAND

December 29, 2014

237337

By e-filing

Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

ENTERED  
Office of Proceedings  
December 29, 2014  
Part of  
Public Record

Re: Finance Docket No. 35873, *Norfolk Southern Railway Company -- Acquisition and Operation -- Certain Rail Lines of The Delaware and Hudson Railway Company, Inc.*

Dear Ms. Brown:

CNJ Rail Corporation (CNJ) hereby moves that the Board reject the Application in the above proceeding on the following grounds:

- (1) publication of notice of the Application in the *Federal Register* did not occur by the end of the 30<sup>th</sup> day after the Application was filed with the Board, as required by 49 U.S.C. § 11325(a)<sup>1/</sup>;
- (2) parties have not been given at least 30 days after publication of notice of the Application in the *Federal Register* to file comments on the Application, as required by 49 U.S.C. § 11325(d)(1)<sup>2/</sup>; and
- (3) the time between publication of notice of the Application in the *Federal Register* and the deadline for filing notice of intent to participate in the proceeding is so unreasonably short as to violate due process of law.

---

<sup>1/</sup> The pertinent provision in 49 U.S.C. § 11325(a) states:  
“...The Board shall publish notice of the application under Section 11324 in the *Federal Register* by the end of the 30<sup>th</sup> day after the application is filed with the Board...”

<sup>2/</sup> The pertinent provision of 49 U.S.C. § 11325(d)(1) states:  
“Written comments about an application ...may be filed with the Board within 30 days after notice of the application is published under subsection (a) of this section.”

Ms. Cynthia T. Brown, Chief  
December 29, 2014  
Page 2

Inasmuch as the Application was filed with the Board on November 17, 2014, 49 U.S.C. § 11325(a) required that publication of notice of the Application in the *Federal Register* occur by the end of December 17, 2014. Publication of notice of the Application in the *Federal Register* did not occur until December 22, 2014. 79 F.R. 76446 (Dec. 22, 2014).

Inasmuch as publication of notice of the Application in the *Federal Register* occurred on December 22, 2014, 49 U.S.C. § 11325(d)(1) required that parties be given until January 21, 2015 to file written comments on the Application. Under the procedural schedule adopted by the Board, written comments on the Application are required to be filed by January 15, 2015.

Publication of notice of the Application in the *Federal Register* occurred on December 22, 2014. Notices of intent to participate in the proceeding regarding the Application were required to be filed only seven days later on December 29, 2014. It is not reasonable to require parties to obtain and review the very lengthy Application and to determine whether or not to participate in the proceeding regarding the Application in only seven days.

In view of the explicit violation of applicable statutes and disregard of procedural due process of law, the Application is required to be rejected. The violations of law can only be cured by refiling the Application; by publication of notice of the Application in the *Federal Register* on a timely basis; by providing at least 30 days after such publication for filing written comments on the Application; and by providing sufficient time after such publication for filing notices of intent to participate in the proceeding.

In the event that the Application is not rejected as required by law, the Board should grant the following request for an extension of time to file requests for conditions to approval of the Application.

Such requests for conditions are currently required to be filed by January 15, 2015. This is to respectfully request an extension of 15 days of that filing date, to January 30, 2015.

Prior to filing this request for extension, counsel for CNJ asked counsel for Applicants to agree to the extension. Counsel for Applicants refused to agree.

The requested extension is justified because *the 24-day period in the midst of the Christmas-New Year Holiday*<sup>31</sup> is inadequate for preparation of requests for conditions, and

---

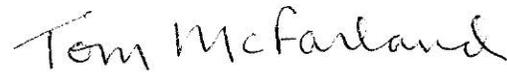
<sup>31</sup> It is 24 days between publication of notice of the Application in the *Federal Register* on December 22, 2014 and the current due date for requests for conditions on January 15, 2015, with intervention of both Christmas Day and New Years Day and associated vacation time further reducing the available time for preparation.

THOMAS F. MCFARLAND

Ms. Cynthia T. Brown, Chief  
December 29, 2014  
Page 3

because the resulting 60 days<sup>4/</sup> for Applicants' response to such requests is more than adequate for preparation of such response, especially in light of the numerous expressions of support for the Application that have been filed to date and the few requests for conditions likely to be filed. In fact, the current 24-day period for requesting conditions and the 75-day period for Applicants to respond to such requests is so skewed in favor of the Applicants that a failure to grant the requested extension would constitute a denial of procedural due process of law.

Respectfully submitted,



Thomas F. McFarland  
*Attorney for CNJ Rail Corporation*

*TMcF:mg:\1664\efSTB9*

cc: William Mullins, Esq., *by e-mail, wmullins@bakerandmiller.com & first-class U.S. mail*  
All other parties of record, *by first-class U.S. mail*

---

<sup>4/</sup> It would be 60 days between the extended due date for requests for conditions on January 30, 2015 and the due date for responses to such requests on March 31, 2015.