

SURFACE TRANSPORTATION BOARD

DECISION

STB 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

MOTION TO COMPEL

Decided: July 13, 2007

On May 17, 2007, Western New York and Pennsylvania Railroad (WNYP), a Class III rail carrier, 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 to 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). 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). As stated by the Board in a decision served on June 26, 2007, the exemption is due to become effective on August 3, 2007.

On June 26, 2007, Samuel J. Nasca, for and on behalf of the United Transportation Union-New York State Legislative Board (UTU-NY), filed a motion to compel discovery of the underlying lease and operation agreement between WNYP and NSR (agreement). UTU-NY also requests expedited action on its request, asserting that WNYP has refused access to the agreement and has engaged in dilatory tactics. In a letter filed on June 27, 2007, WNYP states UTU-NY's allegations of WNYP's refusal to provide access and dilatory tactics are false and that, within 3 days of UTU-NY's request WNYP offered to provide the lease under the terms of a highly confidential protective order. In its letter, WNYP stated that it would file a response to the motion to compel within the time allowed under the Board's rules at 49 CFR 1104.13(a).

Based on its letter response, WNYP does not appear to be refusing to provide access or using dilatory tactics. WNYP has stated its willingness to provide the agreement under a highly confidential protective order, thus, there appears to be no reason why the Board should wait for WNYP's full response before dealing with this matter. Good cause exists to grant the motion to compel discovery subject to a protective order agreed to by the parties or imposed by the Board at the request of one or both parties.

It is ordered:

1. UTU-NY's motion to compel discovery is granted subject to a protective order agreed to by the parties or imposed by the Board at the request of one or both parties.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary