



National Grain and Feed Association

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BEFORE THE SURFACE TRANSPORTATION BOARD

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

COMMENTS OF THE NATIONAL GRAIN AND FEED ASSOCIATION

The National Grain and Feed Association ("NGFA") hereby submits the following comments on certain aspects of the proposed "Transaction" encompassed by the application in this proceeding. The Transaction is described by the applicant Norfolk Southern Railway Company ("NS") as the purchase of 282.55 miles of rail lines owned by the Delaware and Hudson Railway, Inc. ("D&H"), and also numerous related transactions, including modifications to existing trackage rights agreements, the discontinuance of certain trackage rights agreements, and new agreements that have been entered into between NS and D&H. Some of these related transactions will alter the current railroad operations and railroad competition in the affected areas of New York, Pennsylvania, and New Jersey.

These comments by the NGFA address the agreement between NS and D&H, "as part of the negotiations leading to the proposed Transaction," whereby D&H agreed to separately file for authority to discontinue its trackage rights over certain NS rail lines in southern Pennsylvania

and in New Jersey generally described on page 28 of Volume I of the Application.¹ These trackage rights—and trackage rights over lines owned by short lines such as the Reading, Blue Mountain and Northern Railroad lines ("RBMN") connecting to the southern end of the D&H track being acquired by NS in the vicinity of Sunbury and Wilkes Barre, PA—enable the Canadian Pacific Railway ("CP") to provide a Class I railroad alternative to NS for rail service in this area. There are several members of the NGFA who use CP to ship feed ingredients, such as soymeal and canola meal, over these rail lines. Some of the trackage rights at issue also enable CP to use NS's tracks to access the Port of Philadelphia, which is part of the South Jersey/Philadelphia Shared Access Area.

The presence of the CP via the D&H trackage rights provides a potentially competitive alternative to the NS as well as a general cap on the rates NS can charge for service on its own account. It also means that CP can be available to provide an alternative to NS in the event that NS has rail service problems. The Application acknowledges that some of the trackage rights are currently being used. Application, Vol. 1, at 28. However, despite the existence of current traffic, and the effect of the presence of the D&H on rates and service over these lines, "D&H has determined that its trackage rights on [these] NS lines are not economically justified and should be discontinued." *Id.* at 27. The Application states that authority for discontinuance will be sought by D&H in the future in separate proceedings (although interestingly, the Application also states, "if the Transaction is denied, D&H may decide not to exercise its permissive authority to discontinue its trackage rights"). *Id.* at 27-28, note 24.

¹ From Lehighton to Allentown/Bethlehem, PA; from Allentown/Bethlehem PA to Oak Island, NJ; from Sunbury to Harrisburg, PA; from Harrisburg to Reading to Philadelphia, PA; and from Harrisburg PA to Perryville - Washington, D.C. area.

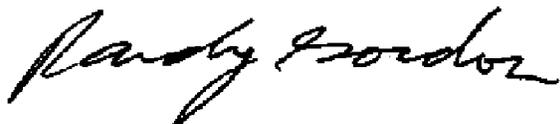
Once NS acquires the D&H main line from Sunbury to Binghamton, NY (and beyond) as part of the overall Transaction, the ability of shippers to ship via CP on the trackage rights lines subject to possible discontinuance would be eliminated, absent further agreements between NS and D&H. NS acknowledges this in the Application, stating, "once NS acquires the D&H South Lines, D&H will no longer physically connect with these trackage rights." *Id.* at 28. More specifically, if a shipper or group of shippers was to successfully contest a petition by D&H to discontinue its trackage rights on any of the subject lines after the Board approved the Transaction, the possibility exists that keeping the trackage rights in place would have no meaning or effect, since the tracks would now connect with track owned by NS, not D&H.

It is the NGFA's understanding that NS and D&H intend to try to address the reduction in competition resulting from this aspect of the Transaction through provisions included in the Direct Short Line Access Agreement found in Volume II of the Application starting at page 114. This agreement would, in part, require NS to provide haulage services for D&H over the former D&H line from Schenectady, NY to listed interchange points between D&H and other railroads. These interchange points include the current interchange between the RBMN and D&H at Taylor, PA. *See* Application, Vol. II, at 14. As stated above, the D&H rights over the RBMN connect with certain of the NS tracks over which D&H has trackage rights for which it intends to seek discontinuance authority. The haulage and other provisions of the Direct Short Line Access Agreement *might*, therefore, provide some level of continued access to CP service to shippers on the trackage rights lines if those rights are not discontinued. However, whether the various arrangements encompassed by the Transaction eliminate *all* of the anticompetitive impacts of removing the D&H as a transportation alternative to NS in these areas of Pennsylvania and New Jersey is not readily apparent from the Application, which generally asserts that the Transaction

"clearly qualifies as a minor transaction under 49 C.F.R. 1180.2(c)" in part because "[t]he Transaction also will not result in *any* anticompetitive impacts." Application, Vol. I at 10-11. For example, while in the scenario above NS would provide haulage of D&H/CP traffic received at the Taylor interchange, the Application also states that NS would seek to have the D&H's current rights over the RBMN assigned to NS. *Id.* at 28, note 25. The effect of such an assignment on the Direct Short Line Access Agreement is not explained.

In closing, the NGFA submits that the Board should closely examine the parts of the overall Transaction described above, and consider whether additional measures should be imposed as a condition on the Board's approval of the Transaction to ensure that shippers who currently enjoy access to both NS and D&H via the D&H trackage rights at issue are not harmed by the Transaction.

Respectfully submitted,



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Cc: All Parties of Record