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March 30, 2015

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

**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 (the Task Force) seeks leave to file a response to the late filed objections to its petition to include the Canadian Pacific Railroad's right to serve Long Island within the rights to be transferred to Norfolk Southern Railroad in this transaction, should the Board allow those responses to be considered.

The opposition submitted by the New York & New Jersey Railroad (NY&NJ) and Congressman Jerrold Nadler is highly unusual in that neither even comment on the relief the Task Force is seeking. They both focus only on the right of the Task Force to be heard at all, claiming it is only two men. Like many not-for-profit public benefit corporations, the Task Force is governed by its directors. With the withdrawal of Congressman Nadler, the task force has only two directors, both of whom were instrumental in its creation and have been participants in its operations since its inception. As the result they are probably the most knowledgeable persons in the region on the subject this application pertains to.

Further, the Task Force as a public benefit corporation does not represent any private interest. It represents what it perceives to be the interests of the over 12 million residents of the New York and Connecticut East of Hudson region.

These submissions seem to be part of a personal campaign by officials of the Port Authority of New York & New Jersey, which owns and operates the NY&NJ and a member of the Congressman's staff, each seeking to end effective comment on the Authority's rail related activities or lack thereof. As such the comments of the Congressman and the NY&NJ have no place in this matter and leave to participate for such a purpose should be denied. It is of note that neither the Canadian Pacific Railroad nor Norfolk Southern have objected to the Task force's application, nor has CSX. All three have been participants in the Task Force meetings since its inception.

However, if the Board should wish to entertain these two submissions, then the Task Force seeks leave to file its response, which it attached.

Thank you for your attention to this matter.

Very truly yours,

John F. McHugh

Cc: Service list.

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

APPLICATION OF THE ESAT 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.
TO NORFOLK SOUTHERN RAILWAY COMPANY

The East of Hudson Rail Freight Transportation Task Force, Inc. (the Task Force) responds to the opposition of the New York & New Jersey Railroad and Congressman Jerold Nadler. The Task Force notes that the objection to its participation and submissions do not come from either Norfolk Southern or Canadian Pacific any other party with an interest in this transaction or with a stated public interest. Indeed, both New York and New Jersey Railroad and Congressman Nadler take no position on anything but the standing of the East of Hudson Task Force, thus, the basis for their intervention in this matter is a mystery.

STANDING

The Task Force is a 501-3(c) corporation organized under the laws of the State of New York. Pursuant to its mandate, arising from an effort to foster improved rail freight service east of the Hudson in the New York State and Southern New England region first raised in FD 88833 No. 89, the Task Force has worked for fifteen years, hosting and moderating regular meetings between State transportation officials, all the region's the railroads and rail system owners who facilitate the provision of freight services within this region. With the withdrawal of Congressman Jerold Nadler, the Task Force has two directors who are responsible for continuing its efforts and several participants who would like it to do so. It is dedicated to serving the public interest by competently calling the attention of the stakeholders to issues affecting freight services. This process has

caused the removal of many such obstacles, allowing more modern and efficient services access to the region,

In 88833 Decision No. 89, slip op. at 177, (1988) The Board stated:

CSX must attempt to negotiate, with CP, an agreement pursuant to which CSX will grant CP either haulage rights unrestricted as to commodity and geographic scope, or trackage rights unrestricted as to commodity and geographic scope, over the east-of-the-Hudson Conrail line that runs between Selkirk (near Albany) and Fresh Pond (in Queens), under terms agreeable to CSX and CP, taking into account the investment that needs to continue to be made to the line.

In this instance, the withdrawal of Canadian Pacific Railroad from providing direct service to the region has rendered the decision of this Board seeking to provide effective Class 1 competition in the region, a failure. As achieving Class 1 competition was the initial goal of the efforts which led to the creation of the Task Force, the directors of the Task Force seek to call the Board's attention to these facts and to point out that this defeat for competition can now be easily corrected by including all of the Canadian Pacific's rights in New York State, South of Albany in this transaction. That simple modification, similar to those used frequently by the Board, to foster competition in other transactions, is available here.

It is noted that the Task Force in this request is simply calling attention to an issue that has existed for many years and is suggesting that this proceeding presents the Board with an easy way to fix it. This approach has worked before, here are two examples of how the inclusive approach pioneered by the Task Force has helped the region's carriers to increase rail carloads more than 300 percent.

In the early years two physical problems endangered competitive rail freight service to this region. The rail industry was increasingly moving toward the use of freight cars with a 286,000 Gross Weight-On-Rail capacity and away from the standard and universal 263,000 lb. Gross-Weight-On Rail freight cars. The 23,000 lb difference rendered trucking from west of Hudson terminals less costly than rail service into the East of Hudson region, and would add hundreds of trucks to already overcrowded highways. Something had to be done. At the same time another serious problem had been uncovered, the freight track on the Hell Gate Bridge was in very bad condition, it was close to being dangerous. It was and still

remains the only direct rail access to geographic Long Island. Conrail (the original) had not maintained the track.

Once these issues were understood, particularly by the governmental track owners, including Amtrak, the Task Force participants decided as a group to focus on the task of achieving 286,000 weight limits on the main line system east of the Hudson. Metro North was convinced to accept the conclusions of an Amtrak study that found that well maintained, high level track suffered little increased wear and tear due to 286 cars. Further the expense of upgrades to some culvert's and bridges was low. Thus Metro North agreed to allow 286,000 lb. cars to operate on the Hudson Line to the Bronx.

About that time Congressman Nadler managed to secure Port Authority funds for rail freight improvements east of the Hudson. The Task Force's railroad members put together a priority list. The Hell Gate Freight Track rebuild was at the top of the list as were several investments to bring about track upgrades from 263,000 lbs to 286,000 lbs on Long Island.

The problem faced by this region was and remains issues which restrict access by modern freight equipment and thus efficient services which were not deemed important enough by either Conrail or its successors, to invest effort or capital in correcting them. The Task Force filled the effort portion of this gap.

A classic example was the clearances on the Hudson Line.

In the 1970's the State of New York invested bond funds to raise clearances on the Hudson Line from Albany to Oak Point Yard in the Bronx, including building a new connection from the Hudson Line to the former New Haven lines around the tip of the Bronx called the Oak Point Connection. By the time Conrail's rights were acquired by CSX with CP's trackage rights, a gas pipe had been installed over the Hudson Line in Metro North territory. In addition ballast had been installed under those tracks by the Metro North Railroad during routine maintenance, reducing clearances and in effect reversing the costly clearance improvements paid for with public funds just a few years earlier. The Task Force called attention to this problem diplomatically at a Task Force meeting. In a very short time, the pipe was removed and the ballast adjusted and the clearances restored.

Indeed, many of the entities which participate in the Task Force cannot raise important issues directly due to their commercial or other dependent relationships

with the entity causing the problem. They use the Task Force to champion their interests where those interests are also in the public interest.

In this region the Task Force has been effective largely due to the efforts of its directors, one of whom was Congressman Nadler, in calling the attention of stake holders to problems. Congressman Nadler's withdrawal from the Task Force was unfortunate and will reduce its effectiveness until replaced by another elected official with his enthusiasm for a balanced freight system in the east of Hudson region. But the task Force's purpose remains to represent the public interest in a region where neither the stakeholders nor governmental entities have the expertise or interest to do so

THE NEW YORK AND NEW JERSEY RAILROAD.

The Task Force's application was not critical of the New York & New Jersey Railroad (NY&NJ). However, as it seems to be saying that it provides sufficient competition in the region, it places its competence and capacity before the Board in this proceeding. As bringing adequate competition to the East of Hudson Region was the Board's goal in FD 88833 No. 89 and remains the goal of the Task Force, a reply is in order.

It is noted that The NY&NJ has been owned by the Port Authority of New York and New Jersey (PA) since 2008. Roughly \$90 million from an earmark secured by Congressman Nadler was available to purchase, repair and upgrade the NYNJ. It is still using an older 14 60' car barge to provide service.

Its current plans for improving that operation with the Earmark funds, calls for construction of a barge with an eighteen car capacity and replacing a float bridge destroyed by Hurricane Sandy with a float bridge to be placed at the bottom of a 4,5% grade. Assuming this is deemed safe by the US Federal Railroad Administration, the US Coast Guard and the National Transportation Safety Board before it is built, that grade will render the operation slow and expensive. The NY&NJ does not own a tug but has a contract with an operator. The assigned tug is not equipped to move barges secured to its side, thus it can handle only one barge at a time. There is no plan to buy or lease the last

properly built railroad carfloat tug in service in the Port or to build a properly equipped vessel. Thus, the capacity of the NY&NJ will remain miniscule.

The argument that moving 4,000 +- cars a year is at all relevant to the needs of this region is simply evidence of the inability of the Port Authority to understand its obligations as a common carrier as set forth in 49 U.S.C. 11121. Indeed, the NY&NJ's present and future role in the area will continue to be very limited. In November, 2015 the Cross Harbor Tier 1-Draft Environmental Impact Study was issued by the Port Authority (DEIS). It reviewed ways to solve the problem of the East of Hudson Region's overdependence on trucks to support its economy. According to the PA's DEIS the NY&NJ's current design with the 4.5% grade was reviewed as the NO-Build Alternative. An improved rail float system was referred to as the "Enhanced Marine Alternative". Both are, at best, minor performers in the movement of freight into, out of and through the East of Hudson Region.

According to the nationally recognized consultants who conducted the studies for the PA, by 2035, 326.4 million tons of freight will originate, terminate or pass thru the 54 County East of Hudson Study Area. These nationally recognized consultants project that the NY&NJ with major, (100 to 600 million dollars) improvements to enhance its productivity, could haul 2.8 million tons of the 326.4 million tons, .0087 percent.

A tunnel, which the PA, as the owner of the NY&NJ, has the right to build, see *Canadian National Railway Company, St. Clair Tunnel Company, Grand Trunk Corporation, Grand Trunk Western Railroad, Inc., And Grand Trunk Western Railroad Company*, FD No. 32243, (11/12/93) (a larger tunnel replacing an older tunnel and float services for high cars does not need Board approval) would move in 2035, 8.1 million tons, 3.5 times as much as the Enhanced Marine Alternative. A 50/50 Rail-Truck alternative studied as part of the DEIS would handle 24.1 million tons or nearly 9 times the Enhanced Marine Alternative. The 78,000 cars potential of the NY&NJ put forth in their opposition, would consist of 38,000 of carload traffic and the 40,000 revenue carloads of intermodal traffic, but it is as noted on .0087 percent of the 2035 east of Hudson freight volume considered divertable. This traffic may happen in 2035 as predicted, but not using the current car float system, as claimed in the PA filing, because the working space allocated to the rail float system in the

Greenville Yard Redevelopment Program is not sufficient to process even 78,000 carloads in a timely and reliable fashion annually. To accommodate the expansion of other uses at the Greenville Yard, most notably the support and storage tracks for the expanded Global Marine Container Transfer Facility, railfloat working capacity has been dramatically shrunk. The working space historically available to support rail-float services will no longer exist at Greenville Yard, perhaps a violation of 49 U.S.C. 11101(a) .

If anything, the Authority appears to be grudgingly operating a 19th Century antique which it is physically downsizing to accommodate other uses for the Greenville Yard.

CONCLUSION

The 12,663,662 persons living in the East of Hudson Region need someone to speak for them competently on issues related to their supply lines. The East of Hudson Task Force, Inc. which has been dealing with precisely these issues with some level of success for fifteen years, has the expertise and mandate to do so. It is a 501-3c corporation formed solely to serve the public interest with regard to precisely these issues.

Therefore, the Task Force urges the Board to consider modifying this transaction to the extent of transferring the Canadian Pacific's overhead right to access the Long Island market by allowing it to operate overhead from the Albany area to Fresh Pond Junction, New York.

Dated, New York, N.Y.
March 31, 2015

Respectfully submitted
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CERTIFICATION OF SERVICE

Suzan McDonald certifies under penalty of perjury that on this 31st day of March, 2015 I served a true copy of this response by United States Mail upon:

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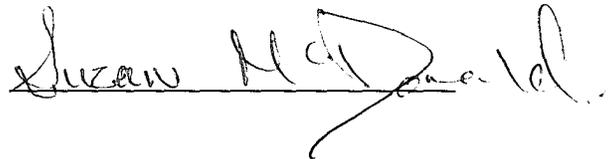
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A handwritten signature in black ink, appearing to read "Susan McDonald". The signature is written in a cursive style and is positioned to the right of the typed contact information for John B. Vermynen.