PUBLIC VERSION

ORIGINAL

Before the

SURFACE TRANSPORTATION BOARD

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Finance Docket No. 35873

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

Finance Docket No. 34209 (Sub-No. 1)

NORFOLK SOUTHERN RAILWAY COMPANY-TRACKAGE RIGHTS EXEMPTION -DELAWARE AND HUDSON RY.

Finance Docket No. 34562 (Sub-No. 1)

NORFOLK SOUTHERN RAILWAY COMPANY-TRACKAGE RIGHTS EXEMPTION -DELAWARE AND HUDSON RY.

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January 21, 2015
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Public Record

OPPOSITION STATEMENT

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

Attorney for Samuel J. Nasca

January 21, 2015

Before the

SURFACE TRANSPORTATION BOARD

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OPPOSITION STATEMENT

Preliminary Statement

Samuel J. Nasca,1/for and on behalf of SMART/Transportation Division, New York State Legislative Board (SMART/TD-NY), submits this Opposition Statement, pursuant to the Decision of the Surface Transportation Board (STB or Board), dated and served December 16, 2014. 79 Fed. Reg. 76446-51 (Dec. 22, 2014).2/

1/ New York State Legislative Director for SMART/TD, with offices at 35 Fuller Road, Albany, NY 12205.

2/ Decision, at 14. SMART/TD-NY has submitted three documents in this proceeding. (1) Reply to Classification as Minor Transaction (Dec. 9, 2014); (2) Notice of Intent (Dec. 19, 2014); (3) Petition for Reconsideration (Jan. 5, 2015).

The Board should deny the Application in FD No. 35873; and dismiss the notices of exemption in FD Nos. 34209 (Sub-No. 1) and 34562 (Sub-No. 1). If the application is not denied, the Board should impose the New York Dock conditions for the protection of rail employees.3/ If the notices of exemption are not dismissed, as duplicative of portions of Finance Docket Nos. 34209 & 34562, the Board should deem the trackage rights acquired in Finance Docket Nos. 34209 and 34562, but which are not shown for continuance in the two corresponding respective Sub-No. 1, to be approved for abandonment/discontinuance with the Oregon Short Line conditions4/ imposed for the protection of employees affected thereby.

Protest and Without Prejudice

This Opposition Statement is submitted under protest, and without prejudice to being supplemented, on or after January 21, 2015, for the following reasons, among others:

1. Petition for Reconsideration. SMART/TD-NY on January 5, 2015, petitioned the Board that the agency reconsider its decision, served December 16, 2014, erroneously finding the application to be complete, and require that applicants, particularly D&H, come forward with labor impact data, missing from the application. The Board at this time has not ruled on this peti-

3/ New York Dock Ry.-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), aff'd New York Dock Ry. v. U.S., 609 F.2d 83 (2d Cir. 1979).

4/Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979).

tion. SMART/TD-NY believes favorable STB action is necessary for full effective participation by SMART/TD-NY.5/

2. Extension of Time. The SMART/TD-NY petition requested a 30-day period within which to respond after receipt of the labor impact data.

ARGUMENT

I. THE FULL SCOPE OF THIS CONTROL TRANSACTION WARRANTS SEARCHING REVIEW IRRESPECTIVE OF INITIAL CLASSIFICATION BY THE BOARD.

The STB in its Decision No. 1, served December 16, 2014, referred to the primary application as Norfolk Southern Railway Company (NSR) seeking approval for the acquisition of control of some 282.55 miles of rail lines owned by Delaware and Hudson Railway Company, Inc.(D&H), a wholly owned subsidiary of Canadian Pacific Railway Company (CP). The STB termed the acquisition the "Control Transaction," as distinguished from the two related and contemporaneously-filed trackage rights exemption notices. The STB in Decision No. 1 found the application is complete, and that the Control Transaction is a minor transaction based upon the preliminary determination that the Control Transaction will not have any anticompetitive effects and that, to the extent any anticompetitive effects exist, they will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting

5/NSR and D&H on January 7, 2015, submitted replies to the petition for reconsideration. NSR, D&H, and CP on December 17, 2014 requested permission to confer with each other in furnishing data in these proceedings., See: Applicants' NS-3, para. Nos. 3 & 4. The STB Decision served Nov. 17, 2014, specifically mentioned sharing of data between NSR (applicant) and D&H.

significant transportation needs, citing 49 CFR §1180.2(b)(1),(c). (STB-Dec.1, 1-2).

The STB's preliminary determination should be revised, leading to denial of the proposed Control Transaction, and related

1. Not a Minor Transaction. The large number of participants in the proceedings indicates this is not a "minor" transaction. Moreover, the geographical scope is not limited to portions of New York and Pennsylvania, but extends as far west as Chicago, south to Washington, DC, and north to Montreal. The verified statement of S.J. Nasca sets forth in considerable detail the history of events, extending back to the year 2002, with the acquisition of CP rights in Finance Docket No. 34709, Soo Line Trackage Rights Exemption-Norfolk Southern Railway Company, 70 Fed. Reg. 36696 (June 24, 2005). (V.S. Nasca, 2-4) Of critical importance is a key aspect of new Buffalo-Chicago route. CP President Creel has testified in the STB's Ex Parte 724 hearing that 40 percent of all CP freight traffic "touches" Chicago. The CP's 2005 trackage rights over NSR into Chicago were an integral part of the D&H-NSR agreements approved by the STB in 2005. Finance Docket No. 34709 is attached hereto as Exhibit A.

2. Anticompetitive Effects. The STB's December 16, 2014 decision errs in not considering the full "package" involved in the Control Transaction. The STB apparently restricted its analysis to the physical transfer of certain D&H lines. More is involved, such as the Chicago connection, the discontinuance of the D&H haulage service over NSR's "Southern Tier Line" between Buffalo and Binghamton, reducing competition across New York State from three carriers, CSX, NSR, and CP, to only two.

The fact that D&H is apparently willing to give up its trackage rights to Oak Island, Philadelphia, Washington DC, and other points, see V.S. Nasca at 9, would be an important reduction in competition. To be sure, D&H traffic may have been reduced in recent years on some of these routes and points, but the possibility of increased D&H activity can serve to temper or restrain the activity of other carriers in terms of rates and services. Clearly, there will be significant anticompetitive effects as matters presently stand.

The STB should reclassify the Control Transaction, as significant or major, and allow further evidence and argument. One of the problems associated with the current classification is that opponents and supporters of the proposed transaction had a common January 21, 2015 date for their submissions, without the ability of opponents to respond. Ordinarily, the applicants are required to put in their case at the time of filing the application. Apparently neither applicants nor the STB contemplated the scope of the interests desiring to be heard. The result has been continued confusion, with an absence of due process.

II. THE STB SHOULD REQUIRE LABOR IMPACT INFORMATION AND IMPOSE APPROPRIATE EMPLOYEE CONDITIONS IN THE EVENT THE APPLICATION IS NEVERTHELESS APPROVED.

SMART/TD-NY on January 5, 2015 petitioned fr reconsideration of the STB's December 16, 2014 decision, when D&H on December 24, 2014 advised the STB that it now acknowledged that D&H is an "applicant" Accordingly, SMART/TD-NY on January 5, 2015 sought to have the employee impact information, required under the STB rules, made of record, and that the STB either reject the application as incomplete, or require that applicants include the required employee information in a supplement or exhibit, with the schedule extended for response thereto. D&H's January 7, 2015 reply to the SMART/TD-NY petition was to the effect that its intent behind the December 24 filing was only to give notice of its rights as a party, and claimed that D&H as an applicant seller is not an applicant from which information normally is required.

SMART/TD-NY need not repeat its petition, which is on file. Clearly, D&H which stands to lose 254 employees in the Control Transaction is in the best, and perhaps only, position to furnish the required information. The D&H reply is irresponsible. Moreover, the STB's Decision No. 2, presumes NSR and D&H will collaborate in furnishing the needed information, and in Appendix items 3 & 4 authorizes such joint efforts.

The appropriate employee conditions for the Control Transaction are those in <u>New York Dock</u>, without the <u>Wilmington Terminal</u> modification. See: V.S. Nasca, 6-8. In addition to current cooperation between NSR and D&H operating employees, the application would provide cooperation in personnel facilities and in crew bus transportation:

In addition to current cooperation between NSR and D&H operating employees, the application would provide cooperation in personnel facilities and in crew bus transportation arrangements:

[redacted]

[redacted]

x

The employee protection for trackage rights are ordinarily &W-Mendocino. However, since the instant proposal is to terminate the trackage rights presently exercised, to the extent such rates are included in the Control Transaction. As recognized in STB Decision No. 1, neither of the new notices would provide for new trackage rights. (STB-No. 1, 2). Accordingly, Oregon Short Line also be imposed in addition to N&W-Mendocino. (V.S. Nasca, 8).

CONCLUSION

The STB should deny the Control Transaction, and dismiss the related notices of exemption. If the transactions are approved, the appropriate employee conditions are New York Dock, N&W-Mendocino, and Oregon Short Line.

Respectfully submitted,

Gordon P. MacDougall

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

January 21, 2015

Attorney for Samuel J. Nasca

CERTIFICATE OF SERVICE

I hereby certify I have served a copy of the foregoing upon all persons shown on the STB's Decision No. 3, by first class mail postage prepaid.

Gordon P. MacDougall

Washington DC

Gordon P. MacDougall

x

x

x

carrier identified in the Atlantic & Western Railway, *et al.* group. RP 2 will acquire 100% ownership of KWT Railway, Inc., the entire limited partnership interest of Rail Partners, L.P., and the entire managing member interest of each rail carrier identified in the AN Railway, *et al.* group.

GWI states: (1) That neither the KWT Railway, Inc. carriers in the AN Railway, *et al.* group nor the carriers in the Atlantic & Western, *et al.* group (collectively, Acquired Railroads) will connect with any of the Affiliates; (2) that the control transaction is not part of a series of anticipated transactions that would connect any of the Acquired Railroads with the Affiliates; and (3) that no Class I railroad is involved in the control transaction. Therefore, the control transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves at least one Class II and one or more Class III rail carriers, the exemption is subject to the labor protection requirements of 49 U.S.C. 11326(b).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34708, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Rose-Michele Nardi, Weiner Brodsky Sidman Kider PC, 1300 Nineteenth Street, NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 20, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–12491 Filed 6–23–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34709]

Soo Line Railroad Company—Trackage Rights Exemption—Norfolk Southern Railway Company

Pursuant to a trackage rights agreement dated May 25, 2005, between Soo Line Railroad Company (Soo Line) and Norfolk Southern Railway Company (NSR),[1] NSR has agreed to grant Soo Line overhead trackage rights over the following segments: (1) Between Delray Interlocking in Detroit, MI, at milepost 4.4 ± of the Detroit District, and the point of connection of the new 1,982 foot long Butler Connecting Track at milepost D113.65 ± of NSR's Huntingdon District Line; (2) between the point of connection of the Butler Connecting Track at milepost D113.65 ± of NSR's Huntingdon District Line and the point of connection of the Butler Connecting Track with NSR's Chicago Line at milepost CD358.56 ±; and (3) between the point of connection of the Butler Connecting Track with NSR's Chicago Line at milepost CD358.56 ±, and one of the following two points in Chicago, IL: (a) CP–502 at milepost 502.8 ± and (b) CP 509 at milepost 509.7 ±, a total distance of 253.9 miles (in the case of CP–502) and 260.8 miles (in the case of CP–509).

The three segments are non-separable portions of a single unified route over which Soo Line will operate under the trackage rights. Whether Soo Line trains will operate over the route via CP–502 or via CP–509 will be determined, on a train-by-train basis, pursuant to the procedures and protocols set forth in the trackage rights agreement.

Soo Line states that the trackage rights will be effective on a date mutually agreed to in writing between Soo Line and NSR, which shall not occur until the latest of (1) the date upon which construction of the Butler Connecting Track is completed; (2) the effective date of any required Board authorization or exemption of the trackage rights (including compliance with any condition(s) imposed by the Board); and (3) the expiration of any required labor notices.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34709, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Terence M. Hynes, Sidley Austin Brown & Wood LLP, 1501 K Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 21, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–12569 Filed 6–23–05; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted version of the trackage rights agreement between NSR and Soo Line was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. A protective order was served on June 21, 2005.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–441 (Sub–No. 4X)]

San Pedro Railroad Operating Company, LLC—Abandonment Exemption—in Cochise County, AZ

On June 6, 2005, San Pedro Railroad Operating Company, LLC (SPROC)[1] filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon approximately 76.2 miles of railroad in Cochise County, AZ, as follows: (1) The Bisbee Branch, between milepost 1085.0 at Bisbee Junction and milepost 1090.6 at Bisbee, a distance of 5.6 miles; and (2) the Douglas Branch (a) between milepost 1097.3 near Paul Spur and milepost 1106.5 near Douglas, a distance of 9.2 miles, (b) between milepost 1055.8 near Charleston and milepost 1097.3 near Paul Spur, a distance of 41.5 miles, and (c) between milepost 1040.15 near Curtiss and milepost 1055.8 near Charleston, a distance of 19.9 miles. The lines traverse U.S. Postal Service ZIP Codes

[1] SPROC is a wholly owned subsidiary of Arizona Rail Group.

FD35873
FD34209-Sub1
FD34562-Sub1

VERIFIED STATEMENT
OF SAMUEL J. NASCA

My name is Samuel J. Nasca, with offices at 35 Fuller Road, Albany, NY 12205. I serve as New York State Legislative Director for International Association of Sheet Metal, Air, Rail and Transportation Workers/Transportation Division (SMART/TD-NY). SMART/TD is the successor to United Transportation Union (UTU), by merger implemented in August 2014, for which I had served the latter as New York State Legislative Director (UTU-NY) at the same address.

I have served as a full-time UTU position and now SMART position, which have been and are now elective offices, continuously since March 1984. My railroad seniority commenced in 1967 on the former Erie-Lackawanna Railroad Company.

I am fully familiar with railroad operations in New York State, and with the lines involved in the three captioned proceedings. I have read the carrier submissions in Finance Docket No. 35873, filed November 17, 2014, along with the notices of exemption filed the same day in Finance Docket Nos. 34209 (Sub-No. 1) and 34562 (Sub-No. 1). I have also reviewed the various pleadings, notices, and letters filed with the Surface Transportation Board (STB), as shown in the STB's public docket.

SMART-TD represents persons employed by Delaware and Hudson Railway Company,Inc.(D&H), Norfolk Southern Railway Company (NSR), and Canadian Pacific Railway Company (CP), that perform work as engineers, conductors, brakemen, and switchmen.

In addition to the present three active proceedings, I have extensive experience involving the prior agency actions which underlay the present carriers' efforts to modify and extend those actions in initiating the present captioned proceedings. I have served on various UTU negotiation and adjustment committees specifically dealing with D&H, and other rail carriers, dealing with the lines involved in the present transactions. The key background facts are as follows;

I. Background.

FD 34209. NSR in July, 2002, filed this notice of exemption for trackage rights over D&H, simultaneously with FD 34225, for trackage rights over Reading Blue Mountain and Northern Railroad Company (RBMN). The NSR-D&H agreement gives NSR trackage rights between Sunbury, PA and Mechanicsville, MA for interchange with Gilford and CN. The NSR-RBMN agreement is between Leighton Yard and Dupont, PA.

UTU-NY filed a petition to reject/revoke and for stay of both notices, which was denied by STB decision served December 3, 2002. The NSR/D&H and NSR/RBMN trackage agreements were shown to be part of a larger NSR/CPR Northeastern U.S. Restructuring Agreement, dated June 27, 2002, involving other proposed transactions as well, some of which perhaps might not require prior agency approval.

FD 34562. NSR in October, 2004, filed this notice of exemption for trackage rights over D&H between Saratoga Springs and Binghamton, NY, simultaneously with FD 34561, Canadian Pacific Railway Company-Trackage Rights Exemption-Norfolk Southern Railway

Company-Buffalo, NY, whereby CP would acquire by assignment from D&H, trackage rights over NSR between the CSX Chicago Line, and Bison Yard in Buffalo, NY. The proceeding also embraced Docket No. AB-156 (Sub-No. 25), Delaware and Hudson Railway Company, Inc.-Discontinuance of Trackage Rights-Between Lanesboro, PA., and Buffalo, NY,, whereby D&H would discontinue operations over its "Southern Tier" line between Buffalo and Binghamton, NY. The three proceedings were the subject of a single decision served January 19, 2005, approving or not rejecting or revoking all of the transactions. The carriers on October 12, 2004, had filed their Memorandum of Understanding (MOU) with the STB under seal, but accompanied by a public 14-page summary of nine definitive agreements, seven of which were in addition to the two trackage rights agreements in FD Nos. 34561-62. The ancillary agreements are not set forth in the STB's January 19, 2005 decision in a coherent fashion.1/ However, I attach hereto four attachments and one Appendix to my October 5 and October 25, 2004 verified statements in that proceeding, indicating the major components of the MOU as yard changes at Buffalo and Binghampton; CPR to move NSR freight between Rouses Point and Saratoga Springs, NY; NSR to move CPR freight by haulage between Buffalo and Binghamton; NSR to operate its own trains between Saratoga Springs and Binghamton; and CPR to operate over a new NSR route between Detroit and Chicago.

These 2002 and 2005 transactions between NSR and CP/D&H had a

1/ STB Board Member Mulvey authored a separate commenting expression, callling into question the STB's procedures.

severe impact upon D&H employees. In addition to job losses, a number of railroad employees were required to leave to New York/Pennsylvania area, and seek jobs elsewhere, such as at Elkhart, IN.

II. Chicago Developments.

Subsequent to the STB's January 19, 2005 decision, NSR and CP, through its U.S. subsidiary, Soo Line Railroad Company, on May 25, 2005, entered into an agreement to carry out the "Chicago Connection" feature of the October 12, 2004 MOU. The implementing trackage rights were docketed as Finance Docket No. 34709, Soo Line Railroad Company-Trackage Rights Exemption-Norfolk Southern Railway Company. I reviewed the notice and redacted agreement, providing for interchange with other carriers in Chicago at two points, either CP-502 or CP-509; however, after study by myself and counsel, UTU-NY concluded nothing could be gained in pursuing the matter. The STB's November 16, 2014 decision chides the comment that rail transportation in this control transaction extends westward beyond the Buffalo gateway, the STB claiming that the control transaction involves only lines in a relatively small area of Pennsylvania and New York. (Decision, 9). The hard fact is that the control transaction embraces and amends various agreements amending the MOU, of which Chicago transportation is very important.

III. Current Concerns.

My review of the current application in FD 35873, and related notices in FD 34209 (Sub-No. 1)/FD 34562 (Sub-No. 1), indicates a very harmful effect would be visited upon rail carrier employees. The so-called Wilmington Terminal conditions suggested by the Application would be wholly inadequate to address the situation. Where today NSR enjoys certain trackage rights over D&H lines, the situation would be reversed in many situation such that NSR would be the owner-operator, with D&H limited to trackage rights. NSR is considered a Class I rail carrier, whereas D&H is deemed a Class II rail carrier. However, D&H is a wholly-owned subsidiary of CP, confirmed by the application at Vol. I, p.9, which, if a U.S. carrier, would be considered of Class I standing. The STB's November 16, 2014 decision states D&H is an "independent" subsidiary of CP. (Decision, 9). To the contrary, there is nothing "independent" about D&H's subsidiary relationship to CP.

Status of D&H. D&H is not really considered a separate carrier from the standpoint of the public, or by some rail employees. There is no public timetable/map for D&H; rather, there is a CP map, but the CP map does not indicate any D&H lines--everything is CP. The instant application does not give the CP map, but it is available to the STB. I participated in Finance Docket No. 35348, CSX Transp. Inc and Delaware and Hudson Ry. Co., Inc.--Joint Use Agreement, cited in the application, Vol. 1, at 11 n.5, where the CP map was included in that case. The instant application contains the NSR system map but likewisw there is no indication of D&H lines.

D&H employees are paid by CP checks, not D&H checks. The employee timetable is not a D&H timetable, but instead is a CP employee timetable. The D&H is inseparable from its parent CP. From a realistic standpoint the transaction is between two Class I carriers.

Coordination of NSR/D&H Work. D&H and NSR employees currently coordinate their work assignments. They use common yards, tracks, and other facilitries. I anticipate this situation will continue and perhaps be strengthened if the control transaction and other features are approved. This is illustrated, in part, in the application (public version):

> NSR's operations over the Subject Trackage shall at all times be subject to the direction and control of the D&H operating officer in charge of the subject trackage and to applicable provisions of D&H's safety and operating rules. (Vol. II, 132).
>
> NSR locomotives and crews operating over the Subject Trackage shall be equipped to communicate with D&H on radio frequencies normally used by D&H in directing train movements on the Subject Trackage. (Vol. II, 132, 155).

Employee Protection-Control Transaction. I do not seek employee protection as the preferred outcome of this proceeding. Instead, SMART/TD-NY seeks denial of the FD 35873 transaction. However, if the STB nevertheless grants approval, the Wilmington Terminal conditions would be most inappropriate. I have read the STB's December 16, 2014 decision, which cites the Wilmington Terminal agency decision, and that of the reviewing court. (Decision, 4). The STB has promised to address this issue in its final decision. (Decision, 9). I hope this does not indicate that the agency has already concluded to approve the control transaction, such as to require employee conditions, which denial would not.

In my many years as a full-time union official, I have had many occasions to work with ICC or STB employee conditions, although I am always in the learning process. The appropriate employee protective conditions for the control transaction would be those set forth in New York Dock, without the Wilmington Terminal modifications. The NSR and D&H employees, are unionized properties and, with respect to operating employees (and most other employees) are represented by the same unions. The employees are subject to similar, or nearly similar, national wage rates of pay. This control transaction is entirely different from the facts in Wilmington Terminal, where the purchaser (Wilmington Terminal), a non-union short-line, had only 4 employees, but would purchase CSX trackage, a unionized rail carrier, requiring 44 additional employees. The STB deviated from its standard conditions, with an umbrella requirement, in previous line sales between existing rail carriers.

The instant control application would displace some 254 D&H employees on the involved trackage, with an estimated 150 being offered employment with NSR, and the balance to exercise seniority elsewhere on D&H, if employment is available. I am aware that NSR has stated CP may provide opportunities for displaced or dismissed D&H personnel, but there have been no details forthcoming from either CP or its so-called "independent" subsidiary D&H. The application does not advise the current or proposed location of the involved employees, and the applicants NSR and D&H have not held meetings with their employees which has been customary in the industry, and contemplated in the application. (Vol. II, 42).

The NSR and D&H operations have been coordinated, such that this control transaction, if approved, should have the standard control transaction employee conditions, which are those mandated in New York Dock.

Employee Protection-Trackage Right. NSR proposes to substitute the trackage rights embraced in FD 34209 (Sub-No. 1) and in FD 34562 (Sub-No. 1), for those presently in effect in FD 34209 and in FD 34562. NSR is agreeable to the imposition of the N&W-Mendocino employee conditions for these trackage rights, which is the standard conditions for trackage rights transactions.

I am opposed to the substitution, without the imposition of protective conditions for the trackage rights being discontinued in FD 34209 and FD 34562. To be sure, I understand the discontinued portions of FD 34209 & FD 34562, are to be subsumed in the FD 35873 control transaction. However, there may be, and probably will be, some employees adversely affected by the transfer from tenant carrier operator to owner carrier operator. Employee conditions for discontinuance are mandatory and in standard form are the Oregon Short Line. I do not believe it fair that NSR employees should be deprived of their Oregon Short Line conditions in the discontinuance by revision of the trackage rights. Of course, the N&W-Mendocino conditions are appropriate for adverse effects of the continued trackage rights.

Unapproved Transactions. There are a number of announced transactions which have a strong bearing upon whether the STB should approve the control transaction. These unapproved transactions would affect employees, some of them also require employee conditions.

Southern Tier Line. As a result of the 2005 approval of D&H's discontinuance of operations between Buffalo and Binghamton,NY, D&H was accorded haulage rights by NSR. This continuation of D&H service via the Southern Tier was part of the January 19, 2005 decision in AB-156 (Sub-No. 25), in which I participated. See page 3 in that decision. The current control transaction would eliminate this competitive route. (Vol. I, 73 n.3).

Leighton-Allentown/Bethlehem. This is an important market to be discontinued by D&H. (Vol. I, 28).

Oak Island, NJ. This is D&H's entry into the Newark and NJ markets, to be discontinued.

Sunbury-Harrisburg. This is an important interchange point for D&H.

Philadelphia. This is an important market to be discontinued by D&H.

Washington,DC. This is an important link to the South for D&H to be discontinued.

Various Haulage Agreements. D&H would discontinue various haulage agreements.

It is clear that approval of the instant control transaction would substantially reduce D&H as a competitor in the Northeast.

VERIFICATION

STATE OF NEW YORK
COUNTY OF ALBANY

Under the penalties of perjury, I affirm the foregoing verified statement is true and correct as stated.

SAMUEL J. NASCA

Dated at
Albany, NY
January 21, 2015

June 30 2004
Calgary, Alberta

Canadian Pacific Railway (CPR) and Norfolk Southern Railway (NSR) today signed a memorandum of understanding for an exchange of trackage rights, freight haulage and yard services that will increase operational efficiency and enhance rail service to customers.

CPR (TSX/NYSE: CP) announced in June 2003 it was restructuring its northeastern U.S. operations and was seeking proposals for ways to increase freight volumes, reduce operating costs and improve earnings. CPR's northeastern U.S. network is operated as the Delaware and Hudson Railway.

"This agreement with NSR opens up new opportunity to move our northeastern U.S. franchise into a position of profitability," Rob Ritchie, President and Chief Executive Officer of CPR, said. "We expect the changes will generate higher traffic volumes and revenues, greater productivity and lower operating costs."

David R. Goode, Norfolk Southern Chairman, President and Chief Executive Officer, said, "This is an excellent example of railroads cooperating to better serve our customers. We will be able to jointly provide transportation solutions that will improve efficiency and quality of service for both carriers in the northeast U.S."

Under the agreement, CPR and NSR will consolidate freight marshalling at yards in Buffalo and Binghamton, N.Y.:

- CPR will cease yard operations in Buffalo, shifting all freight marshalling to the NSR yard there.
- Similarly, NSR will shift its yard operations in Binghamton to CPR's East Binghamton yard.

There are three major components to the new trackage rights and freight haulage arrangements between CPR and NSR:

- CPR will be able to move NSR freight traffic between Rouses Point and Saratoga Springs, N.Y., under a haulage arrangement. NSR will operate its own trains over CPR's line between Saratoga Springs and Binghamton, N.Y., under a trackage rights arrangement. The arrangements will generate higher revenue for CPR and provide NSR with a substantially shorter route to Quebec and the Maritime provinces.
- CPR's freight traffic between Binghamton and Buffalo, N.Y., will move in NSR trains under a haulage arrangement, replacing a trackage rights agreement under which CPR operated its own trains between the two cities. The arrangement will reduce CPR's operating costs and generate additional revenue for NSR.
- CPR will operate over a new NSR route using existing rail lines between Detroit and Chicago under a trackage rights agreement. It will be the shortest rail route between the two cities and will provide CPR with a faster, lower-cost lane.

"CPR's challenge remains to take this part of our network to a level of profitability that will make it self-sustaining," Mr. Ritchie said. "We are prepared to examine additional measures that, in concert with our NSR agreement, will further optimize our assets and drive up profitability."

New trackage rights arrangements and the discontinuance of trackage rights require approval of the U.S. Surface Transportation Board.

Mr. Ritchie will hold a conference call with analysts and reporters today at 3:30 p.m. Eastern time to discuss details of the agreement with NSR. The telephone numbers for the call are 1-800-814-4857 or 416-640-1907. Callers should dial in 10 minutes prior to the call. A telephone replay of the call will be available through July 7 at 1-877-289-8525 or 416-640-1917, pass code 21056014 followed by the pound key. The call will also be webcast live on CPR's website. To access the webcast, click on . The webcast will be archived

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June 30, 2004

CALGARY – Canadian Pacific Railway (CPR) and Norfolk Southern Railway (NSR) today signed a memorandum of understanding for an exchange of trackage rights, freight haulage and yard services that will increase operational efficiency and enhance rail service to customers.

CPR (TSX/NYSE: CP) announced in June 2003 it was restructuring its northeastern U.S. operations and was seeking proposals for ways to increase freight volumes, reduce operating costs and improve earnings. CPR's northeastern U.S. network is operated as the Delaware and Hudson Railway.

"This agreement with NSR opens up new opportunity to move our northeastern U.S. franchise into a position of profitability," Rob Ritchie, President and Chief Executive Officer of CPR, said. "We expect the changes will generate higher traffic volumes and revenues, greater productivity and lower operating costs."

David R. Goode, Norfolk Southern Chairman, President and Chief Executive Officer, said, "This is an excellent example of railroads cooperating to better serve our customers. We will be able to jointly provide transportation solutions that will improve efficiency and quality of service for both carriers in the northeast U.S."

Under the agreement, CPR and NSR will consolidate freight marshalling at yards in Buffalo and Binghamton, N.Y.:

- CPR will cease yard operations in Buffalo, shifting all freight marshalling to the NSR yard there.

- Similarly, NSR will shift its yard operations in Binghamton to CPR's East Binghamton yard. There are three major components to the new trackage rights and freight haulage arrangements between CPR and NSR:

- CPR will be able to move NSR freight traffic between Rouses Point and Saratoga Springs, N.Y., under a haulage arrangement. NSR will operate its own trains over CPR's line between Saratoga Springs and Binghamton, N.Y., under a trackage rights arrangement. The arrangements will generate higher revenue for CPR and provide NSR with a substantially shorter route to Quebec and the Maritime provinces.

- CPR's freight traffic between Binghamton and Buffalo, N.Y., will move in NSR trains under a haulage arrangement, replacing a trackage rights agreement under which CPR operated its own trains between the two cities. The arrangement will reduce CPR's operating costs and generate additional revenue for NSR.

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"CPR's challenge remains to take this part of our network to a level of profitability that will make it self-sustaining," Mr. Ritchie said. "We are prepared to examine additional measures that, in concert with our NSR agreement, will further optimize our assets and drive up profitability."

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October 1, 2004
Calgary, Alberta

Canadian Pacific Railway (CPR) and Norfolk Southern Railway (NSR) today filed with the United States Surface Transportation Board (STB) seeking authority for trackage rights arrangements that will improve operational efficiency and enhance rail service in the U.S. Northeast.

The railways said today's filings are an important milestone in implementing improvements that will benefit shippers in the Northeastern U.S. market. The filings arise from a series of transactions announced by CPR and NSR on June 30, 2004, involving trackage rights, freight haulage and yard services.

Under the filings, NSR is seeking STB authority for new trackage rights to operate its trains on CPR's Delaware and Hudson Railway subsidiary between Saratoga Springs and Binghamton, N.Y. CPR is seeking STB authority to discontinue trackage rights under which the Delaware and Hudson Railway currently operates its trains on NSR track between Binghamton and Buffalo, N.Y.

Along with the trackage rights:

- CPR will move NSR freight traffic between Rouses Point and Saratoga Springs under a freight haulage arrangement;
- NSR will move CPR traffic between Buffalo and Binghamton under a freight haulage arrangement;
- NSR will provide yard switching services for CPR freight cars in Buffalo; and
- CPR will provide yard switching services for NSR freight cars in Binghamton.

The two railways also announced on June 30 that NSR would create a new route between Detroit and Chicago. The route, which is expected to be open in 2005, will be the shortest rail route between the two cities, providing CPR with a faster, lower-cost lane between two of North America's biggest transportation hubs.

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CPR contacts Norfolk Southern contacts

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To Employees

JUNE 30, 2004

CPR AND NORFOLK SOUTHERN MOVE TO IMPROVE PERFORMANCE OF NORTHEASTERN U.S. NETWORK

CPR and Norfolk Southern Railway (NSR) announced today they have signed a memorandum of understanding that will increase operations efficiency and enhance rail services to customers in the northeastern U.S. The agreement provides a new opportunity to quickly begin the turnaround needed on CPR's northeastern U.S. (NEUS) franchise. It will also strengthen the U.S. portion of CPR's highly competitive Montreal-Chicago corridor by opening up a new lane that will be the shortest, swiftest route between the key hubs of Detroit and Chicago.

The agreement is for an exchange of trackage rights, freight haulage and yard services, and is the initial outcome of a comprehensive review of options for addressing our challenges in the NEUS.

Here are the major components:

- **Yard consolidation** to reduce operating costs and increase productivity. CPR will cease yard operations in Buffalo and shift all freight marshalling to the NSR yard there. NSR will shift its yard operations in Binghamton to CPR's East Binghamton yard.
- **Freight haulage arrangements.** CPR will be able to move NSR freight traffic between Rouses Point and Saratoga Springs. NSR will move CPR's freight traffic between Binghamton and Buffalo. (This new haulage arrangement replaces CPR's current trackage rights agreement with NSR between Binghamton and Buffalo.)
- **Trackage rights arrangements.** CPR will operate its own trains over a new shorter and lower-cost NSR route between Detroit and Chicago, once NSR connects two existing rail lines. NSR will operate its trains over CPR's line between Saratoga Springs and Binghamton.

The yard consolidation will create new efficiencies for both CPR and NSR. The trackage rights and haulage arrangements with NSR will provide opportunities to generate new revenue and reduce operating costs on our NEUS franchise. NSR is expected to complete the track connection for the new Detroit-Chicago route in the next year.

It will take hard work and dedication from all involved to quickly translate these changes into profitability for our NEUS franchise. There may be further opportunities to optimize our assets so that our NEUS franchise achieves a level of profitability that makes it self-sustaining. This is our goal and we will continue to examine opportunities that will, in concert with the NSR agreement, help us achieve it as quickly as possible.

The impact on employment at CPR is mixed. Four new jobs will be created and 29 will be eliminated on the NEUS for a net reduction of 25 positions. CPR also expects to add between 40 and 45 train crew positions in Elkhart, Indiana, as a result of the new route between Detroit and Chicago. Many of these new crew positions will be available to NEUS employees whose positions are eliminated. The process for filling these positions will be communicated as details are ironed out. CPR will pay the cost of relocation.

CPR will follow established guidelines for employee reductions, including federally *mandated labor protection, which is expected to be imposed by the U.S. Surface* Transportation Board.

More information on these new arrangements with NSR is available on RailTown.

We established CPR's presence in the NEUS with the purchase of the D&H in 1991, when it was in bankruptcy protection. We have worked tirelessly since then to turn it around. The NEUS franchise is positioned solidly as a bridge carrier with access to a market of more than 45 million people. Let's work to make it a success for the long-term.

Fred Green
Executive Vice-President, Operations and Marketing
and President, D&H

Q&A for Employees

JUNE 30, 2004

What does the memorandum of understanding with NSR achieve for CPR?

The main benefits are:

- A more cost effective and flexible franchise;
- Higher traffic volumes and greater revenues;
- Increased productivity and reduced operating costs;
- Optimization of assets;
- We remain a competitive player in the *NEUS* rail market.

Is the agreement with NSR subject to government approvals? If so, when will we know whether the required approvals will be given?

Two areas of the agreement require approval of the U.S. Surface Transportation Board:

1) *Discontinuance* of the trackage rights agreement between CPR and NSR, under which CPR currently moves its own trains over NSR track between Binghamton and Buffalo, N.Y.
2) New trackage rights arrangements under which:
    a. NSR will operate its own trains over CPR track between Saratoga Springs and Binghamton, N.Y.; and
    b. CPR will operate its own trains over NSR track between Detroit and Chicago.

New trackage rights arrangements can be approved in a matter of weeks. *Discontinuance* of trackage rights typically requires a few months. However, this is entirely in the hands of the STB.

What is the duration of the new agreement with NSR?

There is no specific termination date.

Have past CPR-NSR initiatives been successful?

CPR and NSR have a history of successful mutually beneficial arrangements. In 1999, after NSR acquired part of the Conrail assets, D&H began providing haulage services enabling NSR to reach the New England market. More recently, CPR and NSR entered into a trackage rights agreement whereby NSR transferred four trains per day to the D&H south of Binghamton.

The new agreement calls for NSR to connect two separate lines to give CPR a new and shorter route between Detroit and Chicago. Where are these lines and when will NSR connect them?

One line extends southwest from Detroit to Fort Wayne, Indiana, and the other is the former Conrail line that extends east from Chicago to Toledo, Ohio. The two cross at Butler, Indiana, north of Fort Wayne. A track connection will be installed over the next year.

The Detroit-Chicago route is not in the northeastern U.S. Why is it part of a deal designed to turn around CPR's northeastern U.S. (NEUS) operation?

The Detroit-Chicago change was negotiated at the same time and has broad benefits for CPR. The link is also an important feeder corridor to the NEUS. The new 300-mile link is 50 miles shorter than the current route we use over CSX. The new NSR route will be the shortest and swiftest of any route between Detroit and Chicago and will give CPR a lower-cost connection for freight moving to or originating in the NEUS.

What will happen if the STB does not grant approval?

We expect approval to be granted. If it is not granted, we would need to evaluate the reasons for refusal before deciding our next step.

Is the agreement with CSX still in effect and when does it expire?

The agreement with CSX, which is a haulage arrangement, remains in effect. It expires in 2015.

What was driving CPR's need to restructure its NEUS network?

CPR acquired the Delaware and Hudson Railway in 1991. At the time, the D&H (which we now call our northeastern U.S. network) was in bankruptcy protection. Since then, CPR has worked tirelessly to make the NEUS a success. However, during this time, NEUS expenses have been virtually the same as its revenue. A company is not profitable when it has to spend a dollar for every dollar of revenue it earns.

While the rest of the CPR operation is profitable, it should not be used to prop up an unprofitable segment of the business. Restructuring was the best method to ensure this rail line was making a positive contribution to our success.

Are the new arrangements with NSR really enough to fix the problem?

We expect our agreement with NSR will quickly move our NEUS franchise to a position of profitability whereby revenues exceed operating expenses. It will take hard work and dedication from everyone involved. There may be further opportunities to optimize our assets so that the NEUS achieves a level of profitability that makes it self-sustaining. This is our goal and we will continue to examine opportunities that, in concert with the NSR agreement, will help us achieve it as quickly as possible.

What kind of message does this send to shippers?

Our agreement with NSR sends a message that CPR wants to ensure shippers have a viable competitive alternative in the U.S. Northeast. We expect to achieve efficiencies that will help make our NEUS franchise stronger for the shipping community.

What is the job impact of these changes?

The impact on employment is mixed. We will create between 40 and 45 new crew positions at Elkhart, Indiana, for the new route between Detroit and Chicago.

On the NEUS, there will be a net reduction of 25 job positions. Here is a breakdown:

Some 29 positions will be eliminated as a result of the yard consolidation and discontinuance of CPR's trackage rights between Buffalo and Binghamton. In Buffalo, these include 22 train crew positions as well as two positions in track maintenance, one in car repair, two in yard management, one in terminal management and one in police management.

Four new train crew positions will be created at Saratoga Springs.

Many of the new crew positions at Elkhart will be available to NEUS employees whose positions are eliminated and the process for filling these positions will be communicated as details are ironed out. CPR will pay the cost of relocation.

Unionized employees on the NEUS will be entitled to exercise seniority rights as provided in existing labor contracts. CPR will follow established guidelines for employee reductions, including federally mandated labor protection, which is expected to be imposed by the U.S. Surface Transportation Board.

Will the investment community be satisfied with this? Were investors and analysts expecting major job reductions in CPR's northeastern U.S. network?

Investors and analysts want to see that we are operating efficiently and productively, and are generating a profit. Whether they are satisfied will depend on the level of profitability we generate in the operation, not on the number of job positions eliminated.

What were the other proposals received by CPR?

All proposals include a confidentiality agreement, which we must respect. As a result, we cannot comment on the proposals or divulge who made them. We continue to explore options for further improving the economic performance of our NEUS franchise.

Will D&H remain a wholly owned subsidiary of CPR, or will its corporate structure change in any way as a result of the new arrangements with NSR?

No changes in our corporate structure are contemplated at this point.

Will CPR put any expansion or improvement capital into its NEUS franchise?

Our first priority is to make the existing infrastructure as profitable as possible by decreasing our operating costs and increasing revenue and *yield. We need sufficient free* cash flow and profitability to make capital investments above those required to maintain the track network. *Beyond this, we are interested at any time in public-private* partnerships by which government provides the needed capital to provide a rail service *that offers public benefits.*