

Before the  
SURFACE TRANSPORTATION BOARD



Docket No. AB-156 (Sub-No. 27)

DELAWARE AND HUDSON RAILWAY COMPANY, INC.  
DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION  
IN BROOME COUNTY, NY; ESSEX, UNION, SOMERSET,  
HUNTERDON, and WARREN COUNTIES, NJ; LUZERNE  
PERRY, YORK, LANCASTER, NORTHAMPTON, LEHIGH,  
CARBON, BERKS, MONTGOMERY, NORTHUMBERLAND,  
DAUPHIN, LEBANON, and PHILADELPHIA COUNTIES,  
PA; HARFORD, BALTIMORE, ANNE ARUNDEL, and PRINCE  
GEORGE'S COUNTIES, MD; THE DISTRICT OF COLUMBIA;  
and ARLINGTON COUNTY, VA.

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MOTION TO STRIKE  
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ENTERED  
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May 11, 2015  
Part of  
Public Record

GORDON P. MacDOUGALL  
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Washington DC 20036

May 11, 2015

Attorney for Samuel J. Nasca

FILED  
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MOTION TO STRIKE

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Preliminary Statement

Samuel J. Nasca, <sup>1/</sup> for and on behalf of SMART/Transportation Division, New York State Legislative Board (SMART/TD-NY), submits this Motion to Strike, in part, the Reply to Petitions to Revoke Exemption, filed May 8, 2015, by Delaware and Hudson Railway Company, Inc. (D&H).

The Surface Transportation Board (STB or Board) should strike the D&H Reply at pp. 8-11, together with the accompanying verified statement of James D. Clements, at pp. 2-3 & Ex. 1, amid other

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

scattered contentions, insofar as they attempt to deal with the SMART/TD-NY Petition to Revoke, filed April 20, 2015.

#### ARGUMENT

The May 8, 2015 D&H Reply attempts to deal with the merits of the massive 670-mile line discontinuances, as if D&H has filed a petition for exemption, or an application. The D&H Reply is an attempt, through asserted factual information, to support an exemption request on the merits. This effort, particularly at this time, is improper and misplaced. Moreover, not an issue with respect to the SMART/TD-NY petition to revoke is whether D&H gave adequate notice to the public;<sup>2/</sup> rather, an important issue for SMART/TD-NY is whether the transaction(s) come within the intent and/or scope of the class exemption. SMART/TD-NY urges that the 9 lines operated by 7 different railroads, most primarily instituted for overhead service through the Final System Plan (FSP)<sup>3/</sup> should not be processed under the class exemption. The proper avenue for D&H's belated evidence, advanced in its May 8 Reply, is to file either a petition for exemption or an application.

The D&H's Reply deprives SMART/TD-NY of an opportunity to respond to D&H's particularized evidence of each line. Many railroad employees have considerable experience with factual

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<sup>2/</sup>The adequacy of the D&H notice appears to be an important issue advanced in the James Riffin petition (JR-6) to reject/revoke. (Riffin, 4/20/15).

<sup>3/</sup>The FSP was deemed approved by the Congress when neither chamber passed a resolution stating it did not favor the plan. 3-R Act, §208. 87 Stat. 999 (1974).

matter dealing with the involved overhead lines. They should be heard.

D&H's attempt to make out a case for its discontinuances by means of the May 8, 2015 Reply should be stricken.

Respectfully submitted,



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May 11, 2015

Attorney for Samuel J. Nasca

Certificate of Service

I hereby certify I have served a copy of the foregoing upon all parties of record by first class mail postage- prepaid.

Washington DC



Gordon P. MacDougall