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May 11, 2015

238359  
ENTERED  
Office of Proceedings  
May 11, 2015  
Part of Public Record

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

**VIA ELECTRONIC FILING**

Re: *Delaware and Hudson Railway Company, Inc. – Discontinuance of Trackage Rights Exemption – In Broome County, NY; Middlesex, Essex, Union, Somerset, Hunterdon, and Warren Counties, NJ; Luzerne, Perry, York, Lancaster, Northampton, Lehigh, Carbon, Berks, Montgomery, Northumberland, Dauphin, Lebanon, and Philadelphia Counties, PA; Cecil, Harford, Baltimore, Anne Arundel, and Prince George's Counties, MD; The District of Columbia; and Arlington County, VA*  
STB Docket No. AB-156 (Sub-No. 27X)

Dear Ms. Brown:

Enclosed for filing please find Delaware and Hudson Railway Company, Inc.'s Reply to Motions to Consolidate in the above proceeding.

Please contact me should you have any questions.

Respectfully submitted,

STINSON LEONARD STREET LLP

A handwritten signature in black ink, appearing to read "David F. Rifkind", written over a horizontal line.

David F. Rifkind

cc: Parties of Record in the above referenced proceeding and in FD 35873

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB DOCKET NO. AB-156 (SUB-NO. 27X)

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

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REPLY TO MOTIONS TO CONSOLIDATE

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Railway Company, Inc.

Dated: May 11, 2015

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB DOCKET NO. AB-156 (SUB-NO. 27X)

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DELAWARE AND HUDSON RAILWAY COMPANY, INC.  
-- DISCONTINUANCE OF TRackage RIGHTS EXEMPTION --  
IN BROOME COUNTY, NY; MIDDLESEX, ESSEX, UNION, SOMERSET, HUNTERDON,  
AND WARREN COUNTIES, NJ; LUZERNE, PERRY, YORK, LANCASTER,  
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DISTRICT OF COLUMBIA; AND ARLINGTON COUNTY, VA

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REPLY TO MOTIONS TO CONSOLIDATE

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**INTRODUCTION**

Delaware and Hudson Railway Company, Inc. ("D&H") submits this Reply in response to the Motion to Consolidate filed by James Riffin ("Riffin") and the motion for consolidation contained in the Petition to Revoke and For Stay of Exemption filed by Samuel J. Nasca ("Nasca"), on behalf of SMART/Transportation Division, New York State Legislative Board. D&H opposes Riffin's and Nasca's motions to consolidate this trackage rights discontinuance proceeding with Finance Docket No. 35873 (the "Acquisition Proceeding"), where Norfolk Southern Railway ("NSR") seeks to acquire and operate 282.55 miles of rail lines from D&H (the "D&H South Lines"). No basis exists for consolidating these proceedings. Consolidation would unnecessarily increase the regulatory burden on both proceedings without any benefit whatsoever. Accordingly, consolidation is unwarranted and Riffin and Nasca's motions should be denied.

## ARGUMENT

In this proceeding, D&H has invoked the 2-year out-of-service class exemption to discontinue approximately 670 miles of trackage rights, which includes approximately 660 miles of overhead trackage rights and 10 miles of local terminal trackage rights in Philadelphia over which D&H has not operated since March 2013. The majority of the 670 miles of trackage rights have not been used in more than a decade for either overhead or local traffic and none of these trackage rights currently are economically justifiable. Under these circumstances, D&H's discontinuance of the trackage rights clearly is of limited scope and qualifies for the 2-year out-of-service class exemption. None of the trackage rights to be discontinued in this proceeding involve lines that NSR seeks to acquire in the Acquisition Proceeding. The fact that the trackage rights discontinuances are being sought contemporaneously with NSR's application to acquire and operate the D&H South Lines does not alter the fact that D&H is entitled to discontinuance authority independently of the Acquisition Proceeding.

Although Riffin and Nasca each cite the supposed anti-competitive effects of the two transactions taken together as the basis for consolidating this class exemption proceeding with the "minor" rail line sale proceeding, this is merely a pretext to serve their own interests. Indeed, Riffin and Nasca, neither of whom are shippers, are an unlikely pair of champions of shipper interests and, in fact, their positions are contrary to the more than 100 support statements received from shippers in the Acquisition Proceeding.

Importantly, consolidation of the proceedings would have negative consequences with no offsetting benefits. The record in the Acquisition Proceeding is complete and closed on March 31, 2015; the Board is scheduled to issue its final decision later this week. Consolidation could lead to delay and create procedural complications as different regulatory standards apply to

the two proceedings. *See Union Pac. R.R. Co.—Petition for Declaratory Order*, STB Docket No. 34090 (STB served Nov. 9, 2001) (denying consolidation of related proceedings involving the same line and parties when different statutory standards applied). Moreover, consolidation would undoubtedly prompt additional rounds of filing from Riffin and Nasca, each of whom have engaged in a campaign to obstruct and delay these proceedings with endless, sometimes impertinent, and frequently repetitive and groundless, filings.

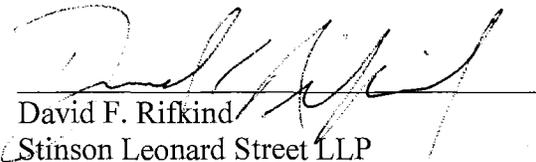
While consolidation would create further regulatory burdens, there is no reason to believe that consolidation here would better inform the Board's consideration of the Acquisition Proceeding, enhance the regulatory process, or otherwise affect the outcome of either proceeding. Importantly, NSR's Application specifically identified the trackage rights for which D&H would be seeking discontinuance authority and presented evidence as to the lack of impact of the proposed discontinuances on competition. Likewise, both Riffin and Nasca have addressed the trackage rights discontinuances in the Acquisition Proceeding. Thus, the Board has already heard and is able to take into account Riffin's and Nasca's concerns regarding the trackage rights discontinuances in the Acquisition Proceeding without consolidating the proceedings.

## CONCLUSION

For the foregoing reasons, D&H respectfully requests that the Board deny Riffin's and Nasca's motions to consolidate this trackage rights discontinuance proceeding with NSR's Acquisition Proceeding.

Respectfully submitted,

Dated: 5-11-15



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**CERTIFICATE OF SERVICE**

I, David F. Rifkind, hereby certify that I transmitted a copy of the foregoing Reply to Motion to Consolidate to the following parties of record in STB Docket AB-156 (Sub-No. 27x) and in FD 35783 by First Class United States mail and by e-mail where an e-mail address is included on the Board's official service list on this 11<sup>th</sup> day of May 2015.

  
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David F. Rifkind

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