

LAW OFFICE  
**THOMAS F. MCFARLAND, P.C.**  
208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
*mcfarland@aol.com*

THOMAS F. MCFARLAND

January 23, 2015

237618  
ENTERED  
Office of Proceedings  
January 23, 2015  
Part of  
Public Record

By e-filing

Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

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

Dear Ms. Brown:

This is an errata directed at the Objections and Request for Condition filed in behalf of CNJ Rail Corporation on January 21, 2015.

On page 18 of that filing, there is reference to a Verified Statement of Witness Milano in line 2 of the second full paragraph and in line 3 of the third full paragraph. Those references should be stricken. A corrected page 18 is attached to this Errata.

Respectfully submitted,



Thomas F. McFarland  
*Attorney for CNJ Rail Corporation*

*TMcf:mg:\1664\efSTB6*

cc: William Mullins, Esq., *by e-mail, wmullins@bakerandmiller.com & first-class U.S. mail*  
All other parties of record, *by first-class, U.S. mail*

to Delaware-Lackawanna RR, Inc. (DL) at or near Portland, PA (also known as Slateford Jct., PA). Alternatively, CNJ seeks a condition requiring assignment to CNJ of D&H's trackage rights over NS between Oak Island and point of connection to Reading, Blue Mountain & Northern Railroad Company (RBMN) at or near Lehigh, PA.

The Board has authority to require assignment of trackage rights in a rail line acquisition proceeding regardless of terms in a trackage right agreement that prohibit or limit such assignment. *Canadian Pacific Ltd. - Pur. & Trackage - D&H Ry. Co., supra*, 7 ICC 2d at 112. *The public interest requires that the requested condition be imposed in order to replicate the competition with NS provided by D&H between Oak Island and Northeast Pennsylvania that otherwise would be lost if NS were to acquire D&H's South Lines and D&H were to discontinue its trackage rights.* *Id.*, at 118; VS Nelson, Appdx. 1 at 6-7.

Reference is made to the attached verified statements of Witness Nelson and Strohmeyer, for detailed support of the condition sought by CNJ. CNJ responds here to several egregious misstatements and misleading statements in the Application.

It is misleadingly stated at page 28 of the Application that D&H's trackage rights between Oak Island and Allentown-Bethlehem have not been used since June, 2012. As explained in the Verified Statement of Mr. Strohmeyer, that nonuse has not been attributable to an absence of demand for rail service between those points, but instead is the result of CP's decision to cause D&H to discontinue shipments to and from Oak Island after CP's lessee of the Oak Island facility declared bankruptcy in 2012. If Applicants believe that there will be little or no demand for rail transportation to and from Oak Island, they should not fear competition from CNJ between Oak Island and Northeast Pennsylvania.