

LEONARD
STREET
AND
DEINARD

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MINNEAPOLIS, MINNESOTA 55402
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LEIGH K. CURRIE
612-335-1955 DIRECT
LEIGH.CURRIE@LEONARD.COM



January 11, 2007

VIA FEDERAL EXPRESS

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

FILED
JAN 12 2007
SURFACE
TRANSPORTATION BOARD

**Re: Finance Docket No. 34981; Delaware and Hudson Railroad Company, Inc.
d/b/a Canadian Pacific Railway – Trackage Rights Exemption – CSX
Transportation, Inc.**

Dear Secretary Williams:

Enclosed for filing in the above proceeding are the following:

1. An original and ten (10) copies of a Verified Notice of Exemption and Caption Summary (Exhibit 3 to the Notice) pursuant to the trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7). The original Verification will follow by mail.
2. A payment form in the amount of \$1,400.00 for the filing fee required by 49 C.F.R. § 1002.2(f), Part IV(40)(iv).
3. Twenty (20) unbound copies of the Exhibit 1 map.

Please indicate receipt of the enclosed materials by returning a stamped copy of this letter in the self-addressed, stamped envelope enclosed for this purpose. Thank you for your time and attention to this matter.

Very truly yours,

LEONARD, STREET AND DEINARD

Leigh K. Currie

LKC:seo

Enclosures

cc: Chuck Hubbard, Canadian Pacific Railway (w/encls.)

FEE RECEIVED REGISTERED
Office of Proceedings
JAN 22 2007 JAN 12 2007
SURFACE Part of
TRANSPORTATION BOARD Public Record

ORIGINAL



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34981

**DELAWARE AND HUDSON RAILROAD COMPANY, INC. D/B/A CANADIAN
PACIFIC RAILWAY
-- TRACKAGE RIGHTS EXEMPTION --
CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

**ENTERED
Office of Proceedings**

JAN 12 2007

**Part of
Public Record**

FILED

JAN 12 2007

**SURFACE
TRANSPORTATION BOARD**

**DELAWARE AND HUDSON RAILROAD
COMPANY, INC. D/B/A CANADIAN PACIFIC
RAILWAY**

Leigh K. Currie
Attorney for Delaware and Hudson Railroad
Company, Inc. d/b/a Canadian Pacific Railway
Leonard, Street and Deinard
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
(612) 335-1500
(612) 335-1657 (fax)

Dated: January 11, 2007

FEE RECEIVED

JAN 22 2007

**SURFACE
TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings**

JAN 12 2007

**Part of
Public Record**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 34981

**DELAWARE AND HUDSON RAILROAD COMPANY, INC. D/B/A CANADIAN
PACIFIC RAILWAY
-- TRACKAGE RIGHTS EXEMPTION --
CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

Delaware and Hudson Railroad Company, Inc. d/b/a Canadian Pacific Railway (“D&H”) submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), for exemption of limited overhead trackage rights over a line of railroad of CSX Transportation, Inc. (“CSXT”) between D&H’s Kenwood Yard at Albany, New York and CSXT’s Selkirk Yard at Selkirk, New York. The trackage rights are necessary to permit D&H to handle CSXT’s trains between Rouses Point, New York and CSXT’s Selkirk Yard pursuant to a haulage agreement to be executed between the parties.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights covered by this notice (i) will be covered by a written

agreement, a draft of which is attached as Exhibit 2, and (ii) are not being filed or sought in responsive applications in a rail consolidation proceeding. As such, the § 1180.2(d)(7) exemption is applicable.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), D&H submits the following information:

§ 1180.6(a)(1)(i) Description of Proposed Transaction

The transaction covered by this notice is the acquisition of limited overhead trackage rights by D&H between the connection with D&H at D&H's Kenwood Yard, CSXT's milepost 7.14 +/-, and the connection with CSXT's Castleton Secondary at CSXT's milepost 0.10 +/-; and CSXT's Castleton Secondary at CP-SK and CSXT's Selkirk Yard, a distance of approximately 7.2 +/- miles (the "Line"). D&H will not provide local service over the Line. D&H's overhead service on the Line is limited to trains operated pursuant to a Haulage Agreement between D&H and CSXT.

The name and business address of the applicant is:

Delaware and Hudson Railroad Company, Inc. d/b/a Canadian Pacific Railway
200 Clifton Corporate Parkway
Clifton Park, NY 12065

Questions regarding this transaction are to be addressed to the representatives named below:

Leigh K. Currie
Attorney for Delaware and Hudson Railroad Company, Inc. d/b/a Canadian Pacific
Railway
Leonard, Street and Deinard
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
(612) 335-1500
(612) 335-1657 (fax)

§ 1180.6(a)(1)(ii) Consummation Date

The Trackage Rights will be consummated on or after February 16, 2007.

§ 1180.6(a)(1)(iii) Purpose of the Transaction

CSXT and D&H have entered a Haulage Agreement for D&H to handle trains for CSXT between Rouses Point, NY and CSXT's Selkirk Yard, NY. D&H's line ends at its Kenwood Yard. In order for D&H to provide the haulage service over the approximately 7.2 miles of CSXT's line between Kenwood Yard and Selkirk Yard, CSXT has agreed to grant D&H limited overhead trackage rights to handle the haulage over the Line.

§ 1180.6(a)(5) States in which the Applicant Operates

D&H operates in the states of New York and Pennsylvania. The involved trackage rights are located in the State of New York.

§ 1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

§ 1180.6(a)(7)(ii) Agreement (Exhibit 2)

A redacted draft of the trackage rights agreement showing the principal terms proposed is attached as Exhibit 2. Public and confidential copies of the executed trackage rights agreement will be filed within 10 days of the date of its execution.

§ 1180.4(g)(1)(I) Labor Protection

D&H is agreeable to the labor protection conditions generally imposed in trackage rights proceedings as found in Norfolk and Western Ry. Co. - Trackage Rights - BN, 354 I.C.C. 605 (1978), as modified by Mendocino Coast R. Inc. -- Lease and Operate, 360 I.C.C. 653 (1980).

§ 1180.4(a)(2)(i) Caption Summary (Exhibit 3)

A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 3.

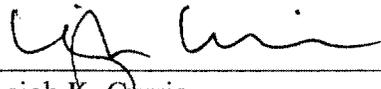
§ 1180.4(g)(3) Environmental Documentation

Environmental documentation is not required for this transaction. See 49 C.F.R.

§ 1105.6(c)(4) (no environmental documentation required for common use of rail terminals and trackage rights).

Respectfully submitted,

**DELAWARE AND HUDSON RAILROAD
COMPANY, INC. D/B/A CANADIAN PACIFIC
RAILWAY**

By:  _____

Leigh K. Currie
Attorney for Delaware and Hudson Railroad
Company, Inc. d/b/a Canadian Pacific Railway
Leonard, Street and Deinard
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
(612) 335-1500
(612) 335-1657 (fax)

VERIFICATION

JEFFREY WOOD being duly sworn, depose and state that I am the PRESIDENT of Delaware and Hudson Railroad Company, Inc. d/b/a Canadian Pacific Railway, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption in Finance Docket No. 34981 and know the facts stated herein, and that said facts are true as stated to the best of my knowledge, information and belief.

Dated: Jan 11/2007

J Wood

SWORN TO BEFORE ME this
11 day of Jan, 2007

Janice Erion
NOTARY PUBLIC

JANICE ERION
Barrister & Solicitor
Notary Public
in and for the Province of Alberta

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon the following
by first class United States mail.

CSXT attorney's name and address:

Louis E. Gitomer
600 Baltimore Avenue
Suite 301
Towson, MD 21204
(202) 466-6532

Dated at Minneapolis, MN this 11th day of January 2007.


Susan E. Olson

SWORN TO BEFORE ME this
11th day of January 2007.



NOTARY PUBLIC

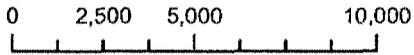


EXHIBIT 1



CPR's PROPOSED TRACKAGE RIGHTS OVER CSXT's PORT SUBDIVISION - ALBANY DIVISION

PORT SUBDIVISION
CSXT CPRS



Disclaimer:

Any user should obtain independent verification of all information contained on this MAP. CSX Real Property, Inc. GIS Department, its employees, agents, and personnel, disclaims, and shall not be held liable for, any and all damage, loss or liability, whether direct, indirect or consequential which arises or may arise from this MAP information or the use thereof by any person or entity.

Proprietary Information:

The CSX RPI GIS Dept has copyrighted the map product and databases on this MAP and they reserve all rights thereto. No portion of the products or databases on this MAP may be reproduced in any form or by any means without the express written authorization of the CSX RPI GIS Dept. or its authorized agents.



End Port Subdivision
QCP 7.14

KENWOOD YARD

QCP 7

QCP 6

GLENMONT

QCP 5

QCP 4

QCP 3

QCP 2

QCP 1

SELKIRK

Begin Port Subdivision
QCP 0.10

SELKIRK YARD

Rensselaer County, New York

Albany County, New York

Hudson River

CASTLETON



For Copies, Comments or Revisions, Contact: gis@csx.com
Drawn By: L. Fenwick
Rev. Date: Jan. 3, 2007

EXHIBIT 1

EXHIBIT 2

TRACKAGE RIGHTS AGREEMENT
Between
CSX TRANSPORTATION, INC.
And
DELAWARE AND HUDSON RAILWAY COMPANY
d/b/a CANADIAN PACIFIC RAILWAY

THIS AGREEMENT, entered into as of this _____ day of _____ 2007, by and between CSX TRANSPORTATION, INC., a Virginia corporation, (hereinafter referred to as "Owner") and Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway (hereinafter referred to as "User"), sometimes individually referred to as "Party" and sometimes collectively referred to as "Parties";

WITNESSETH:

WHEREAS, the Parties have (

)

WHEREAS, this Agreement is (

)

WHEREAS, Owner is agreeable to granting limited overhead trackage rights over the Subject Trackage, defined below, to User under the following terms and conditions.

NOW, THEREFORE, the Parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate trains () with User's own crews (hereinafter referred to as the "Trackage Rights") over the following segments of Owner's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "I" (hereinafter referred to as the "Subject Trackage"):

- (i) Owner's Port Subdivision between the connection with User at User's Kenwood Yard (Owner's Milepost 7.14+/-), Albany, New York and the connection with Owner's Castleton Secondary at CP-SK (Owner's Milepost 0.10+/-); and
- (ii) Owner's Castleton Secondary at CP-SK and Owner's Selkirk Yard.

ARTICLE 2. USE OF SUBJECT TRACKAGE

- A. User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.
- B. Except as may otherwise be provided by this Agreement (), User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purposes.
- C. Owner shall have exclusive control of the management and operation of the Subject Trackage.

ARTICLE 3. RESTRICTION ON USE

The Trackage Rights herein granted are limited overhead rights, and are granted for the sole purpose of User using same for trains operated () only between the terminals of Subject Trackage and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

- A. () User over the Subject Trackage, are equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.
- B. Procedures for qualification and occupancy of the Subject Trackage shall be arranged by the local supervision of each carrier. All control and usage shall be subject to the approval of Owner's representative or his designee.

ARTICLE 5. COMPENSATION

- A. The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be () (hereinafter referred to as the "Current Charge"). The Parties agree that the Subject Trackage shall be considered 7.24 miles in length for purposes of applying the terms of Article 5 herein.

- B. User shall pay Owner a sum computed by multiplying: (i) the Current Charge, as may be revised in accordance with Article 6 by (ii) the number of cars (loaded and empty) and locomotives moved by User with its own crews over the Subject Trackage by (iii) the miles of Subject Trackage used. Each locomotive unit for the purpose of this Agreement shall be counted as one car.
- C. Owner shall on or about the fifteenth of each month render billing to User for User's previous month's use of the Subject Trackage computed in accordance with the terms and conditions of this Agreement based on the Monthly Statement prepared pursuant to ().

ARTICLE 6. REVISION OF CURRENT CHARGE

- A. The Current Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.
- B. The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of July 2007 to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2006 Index for the first annual adjustment) as related to the index for the previous calendar year (2005 Index for the first annual adjustment) and applying that percent rounded to the third decimal place to the Current Charge.
- C. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2005; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2006; "C" to be the Current Charge; and "D" to be the percent of increase or decrease; the revised Current Charge stated herein would be revised by the following formula:
 - (1) $\frac{B - A}{A} = D$ (rounded to the third decimal place)
 - (2) $(D \times C) + C =$ revised Current Charge (rounded to the third decimal place) effective July 1 of the year being revised.
- D. In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued

by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the event the Parties are unable to reach agreement on a suitable replacement for the AAR Index provided above within six (6) calendar months after the discontinuance of said publication then, either party may submit the matter to binding arbitration as provided hereinafter.

ARTICLE 7. PAYMENT OF BILLS

- A. All payments called for under this Agreement shall be made by User within sixty (60) days after receipt of bills provided, however, that (1) no exception to any charge shall be honored, recognized or considered if filed after the expiration of one year from the invoice date and (2) no invoice shall be rendered no more than one (1) year (a) after the last day of the calendar month in which the expense covered thereby is incurred or (b) in the case of charges disputed as to the amount of liability, after the amount owed or liability therefore is established.
- B. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of one (1) year from the date of billing.
- C. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner for User.

ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE

- A. Owner shall maintain, repair and renew the Subject Trackage with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover shall not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions shall be kept to a minimum.

ARTICLE 9. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

- A. Existing connections or facilities that are jointly used by the Parties hereto shall continue

to be maintained, repaired and renewed by and at the expense of the Party or Parties responsible for such maintenance, repair and renewal under such agreements.

ARTICLE 10. ADDITIONS, RETIREMENTS AND ALTERATIONS

- A. Owner, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

ARTICLE 11. MANAGEMENT AND OPERATIONS

- A. User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of trains (locomotives and cars) while such trains, locomotives, cars, and equipment are being operated by User over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.
- B. User in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of trains (locomotives and cars) over the Subject Trackage by User shall at all times be subject to the orders of the transportation officers of Owner.
- C. User shall make such arrangements with Owner as may be required to have all of its employees who shall operate trains, locomotives and cars over the Subject Trackage qualified for operation thereover, and the Parties agree that each will bear its own costs associated with the qualification of such employees of User, with the expectation that User's crews will be qualified during Owner's normal operations.
- D. Owner's employees qualifying User crews over the Subject Trackage shall remain employees of the Owner.

- E. Owner may conduct an investigation at its option if a User's employee working on Owner's property is alleged to have violated Owner's safety rules, operating rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, Owner shall schedule the investigation and notify User's local Transportation Officer in the territory thereof, who shall, in turn, arrange to issue proper notice to the User's employee(s) of the investigation. Owner's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner shall provide its regulations, supplements, and safety rules to User at no cost.
- F. If Owner conducts an investigation, Owner shall have the right to exclude from the Subject Trackage any employee of User except officers, determined by Owner, as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.
- G. In a major offense, such as violation of Rule "G", dishonesty, insubordination, or a serious violation of operating rules, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification shall be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.
- H. If Owner conducts an investigation, its officer shall conduct the investigation, but an officer of User shall be present to assure compliance with User's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, Owner shall promptly furnish User with two copies of the transcript and a recommendation as to the discipline to be assessed. User's Transportation Officer shall arrange to assess discipline, subject to receipt of Owner's recommended discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory.
- I. It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner shall be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.
- J. The trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without

Draft dated January 11, 20076 Submitted to the Surface Transportation Board

prejudice or partiality to either party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.

- K. Subject to (), if it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner at its sole cost and expense.

ARTICLE 12. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in trains operated by User on the Subject Trackage shall () and reported and paid by it directly to the owner of such cars.

ARTICLE 13. CLEARING OF WRECKS

Whenever circumstances require wrecking service or wrecking train service in connection with User's use of the Subject Trackage, then the Owner shall arrange for such services to be performed as promptly as reasonably possible, and the cost thereof shall be allocated as between the Parties in accordance with the terms of Article 14 herein.

ARTICLE 14. LIABILITY

(Redacted)

ARTICLE 15. CLAIMS

- A. If any suit or action shall be brought against any Party for Loss or Damage which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said responsible Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay its share of the judgment and the costs and expense incurred in such suit in accordance with the terms of Articles 14 and 15 herein.
- B. In every case of death or injury suffered by an employee of Owner or User, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal worker's compensation, occupational disease, employers' liability or other law, and one or more of the Parties under provisions of this Agreement is/are required to pay same or a portion of same in installments over a period of time, said Party or Parties shall not be released from paying any such future installment(s) by reason of the expiration or other termination of this Agreement prior to

any of the respective date(s) upon which any such future installments are to be paid.

- C. Whenever any liability, cost or expense is assumed by or allocated to a Party under this Articles 14 and 15 herein, that Party shall (i) forever protect, defend, indemnify and save harmless the other Party and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense, regardless of whether such liability, cost and expense was caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the indemnitees or their directors, officers, agents or employees, and (ii) defend such indemnitees against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.
- D. Each Party shall investigate, adjust and defend all cargo related claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.
- E. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit (other than cargo-related claims made against a Party by a customer whose traffic was moving in the revenue and/or car hire account of such Party) under this Agreement shall be included as costs and expenses in applying the liability provisions of Articles 14 and 15 herein; provided, however, that salaries or wages of full-time agents, full-time attorneys and other full-time employees of any Party engaged directly or indirectly in such work shall be borne by such Party.
- F. No Party shall settle or compromise any claim, demand, suit or cause of action (other than a cargo-related claim filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709) for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds Thirty-Five Thousand Dollars (US) (\$35,000). The foregoing amount of Thirty-Five Thousand Dollars (\$35,000) shall be adjusted annually in accordance with the provisions of Article 6 herein.

ARTICLE 16. DEFAULT

- A. In the event of any substantial failure on the part of either Party to perform its obligations under this Agreement, and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from the other Party, the non-defaulting Party shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by such Party of any prior breach thereof, to refer such matter to arbitration pursuant to Article 20 and seek damages and/or specific performance of this Agreement from the defaulting Party. In the case of a substantial default by either Party which

continues after adjudication of such default through arbitration, the terminating Party may terminate this Agreement if the other Party fails to cure such substantial default within: (i) thirty (30) days of the receipt of notice of continued default in the case of such a default in an obligation of User to pay Owner, and (ii) ninety (90) days of the receipt of notice of continued default in the case of any other such default under this Agreement.

ARTICLE 17. REGULATORY APPROVAL

- A. Should this Agreement require the prior authorization of the Surface Transportation Board (“STB”), User at the Owners sole cost and expense shall initiate and thereafter diligently pursue an appropriate notice, application, or petition to secure such authorization. Owner shall assist and support efforts of User to secure any necessary STB exemption or approval of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the approval or exemption of this Agreement from regulation, each Party shall be responsible for any and all payments in satisfaction of such conditions associated with their own employees..
- C. ()

ARTICLE 18. TERM and TERMINATION

- A. This Agreement shall be effective the day and year first above written or, in the event Surface Transportation Board approval or exemption is required, on the effective date such approval or exemption is secured (the “Effective Date”), and shall automatically terminate upon (), subject to the authorization of the STB, which shall have been received in advance pursuant to Section 17C.
- B. Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

ARTICLE 19. FORCE MAJEURE

- A. The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (including strikes, riots, floods, accidents, Acts of God, acts or threats of terrorism, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such

obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take all reasonable measures to restore performance of its obligations in a timely manner.

- B. The Party invoking force majeure shall immediately notify the other party by telephone followed by written notice no later than five (5) days thereafter giving details of the force majeure event. Upon cessation of the force majeure event, the invoking Party shall immediately notify the other Party of its cessation as provided in the preceding sentence. Any dispute respecting the occurrence or cessation of the force majeure event shall be subject to arbitration pursuant to Article 20 of this Agreement.

ARTICLE 20. ARBITRATION

Except as provided for in (), any dispute arising between the Parties with respect to this Agreement shall be referred to their respective senior operating officers for resolution. In the event such officers are unable to resolve the dispute within one hundred eighty (180) days, either Party may submit the dispute for binding arbitration by a single arbitrator before the American Arbitration Association under the Commercial Arbitration Rules. The decision of the arbitrator shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The reasonable compensation, costs and expenses of the arbitrator, if any, shall be borne by Owner and User, with each paying fifty percent (50%) of such compensation, costs and expenses. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision of the arbitrator.

ARTICLE 21. SUCCESSORS AND ASSIGNS

- A. This Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns.
- B. Except as provided in Articles 21C and 21D, neither Party may assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, without the prior consent in writing of the other Party, which consent may be withheld by such other Party at its discretion.
- C. In the event of a sale of substantially all of the assets or business of Owner, or the merger or consolidation of Owner into a firm or corporation not controlled by Owner may, with

the prior consent of User, assign this Agreement to such firm or corporation acquiring substantially all of the assets or business of Owner, or merging or consolidating with Owner. Owner acknowledges that such assignment shall not transfer or extinguish any liability or obligation of Owner under this Agreement that existed prior to such assignment.

- D. User may assign this Agreement with the prior written consent of Owner to any person or corporation succeeding to the ownership of substantially all of the assets and business of User; provided, however, that such assignment shall not transfer or extinguish any liability or obligation of User under this Agreement that existed prior to such assignment.

ARTICLE 22. NOTICE

- A. Any notice required or permitted to be given by one Party to the other Party under this Agreement shall be deemed given on the date sent by certified mail, confirmed receipt e-mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows:

- (a) If to Owner:

Director Passenger & Joint Facility Contracts
CSX Transportation, Inc.
500 Water Street, J315
Jacksonville, FL 32202

- (b) If to User:

General Manager – Interline Management
Canadian Pacific Railway Company
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta, Canada T2P 4Z4

with a copy to:

Manager Interline Agreement Management
Canadian Pacific Railway Company
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta, Canada T2P 4Z4

- B. Either Party may provide notice of changes in the above addressees to the other Party in the manner provided in Article 22A.

ARTICLE 23. GENERAL PROVISIONS

- A. This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the Parties hereto.
- B. This Agreement contains the entire understanding of the Parties hereto with respect to the subject matter hereof and supersedes any and all oral understandings between the Parties.
- C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all Parties.
- D. Each definition in this Agreement includes the singular and the plural, and references in this Agreement to the neuter gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the word "including" means "without limitation", and the words "herein", "hereof" and "hereunder" refer to this Agreement as a whole. All dollar amounts stated herein are in United States currency.
- E. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- F. The division of this Agreement into articles and subarticles and the insertion of headings and references are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, all references to articles are to articles of this Agreement.
- G. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the Parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by such Party and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such Party.
- H. This Agreement is the result of mutual negotiations between the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.
- I. No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of

how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

- J. If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by an arbitrator or a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner that produces a result which is substantially equivalent to the terms of this Agreement in all material respects.
- K. Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between User and Owner. Owner and User each shall indemnify and hold harmless the other against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made, or lawsuits brought, by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency or pursuant to a collective bargaining agreement. It is the Parties' intention that Owner and User each shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and grievances filed by its own employees arising under its collective bargaining agreement with its employees.
- L. This Agreement shall be governed and interpreted in accordance with the laws of the State of New York, without regard to application of the choice of law principles thereof.
- M. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument.
- N. If any of the transactions contemplated by this Agreement which requires approval or exemption by the STB result in the imposition of any condition (other than standard labor protective conditions) which would, in the sole judgment of Owner or User, materially reduce the benefits to that Party from the same, then the materially affected Party may, in its sole discretion: (a) accept the condition and proceed with the transactions contemplated by said agreements; (b) terminate said transactions collectively, or (c) appeal such condition judicially and postpone the Commencement Date for up to thirty (30) months until final action on its appeal; and if such appeal is unsuccessful, either (i) reject the condition and terminate said transactions collectively, or (ii) accept the condition and proceed with said transactions.

O. The Delaware and Hudson Railway Company is a wholly owned subsidiary of Canadian Pacific Railway Company ("CPRC") and is covered by CPRC's insurance policies and self insurance programs. In the event there is an asset sale to, or acquisition of control of the Delaware and Hudson Railway Company by, a third party, User shall use reasonable efforts to obtain agreement from the third party to obtain standard railroad industry coverage in that respect.

P. ().

Draft dated January 11, 20076 Submitted to the Surface Transportation Board

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

Witness for CSXT:

CSX TRANSPORTATION, INC.

By: _____ DRAFT _____

Name: _____

Title: _____

Witness for D&H :

DELAWARE AND HUDSON RAILWAY
COMPANY, INC

By: _____ DRAFT _____

Name: _____

Title: _____

EXHIBIT 3

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34981**

**DELAWARE AND HUDSON RAILROAD COMPANY, INC. D/B/A CANADIAN
PACIFIC RAILWAY
-- TRACKAGE RIGHTS EXEMPTION --
CSX TRANSPORTATION, INC.**

CSX Transportation, Inc. ("CSXT") will agree to grant limited overhead trackage rights to Delaware and Hudson Railroad Company, Inc. d/b/a Canadian Pacific Railway ("D&H") on CSXT's line between the connection with D&H at D&H's Kenwood Yard, CSXT's milepost 7.14 +/-, and the connection with CSXT's Castleton Secondary at CSXT's milepost 0.10 +/-; and CSXT's Castleton Secondary at CP-SK and CSXT's Selkirk Yard, a distance of approximately 7.2 +/--miles. The trackage rights will become effective on or after February 16, 2007.

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:
By the Board,

Vernon A. Williams,
Secretary