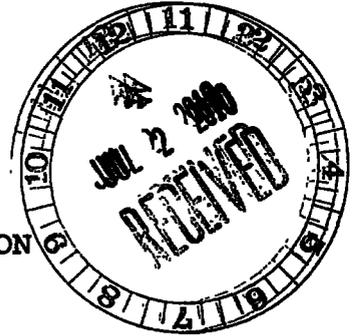


ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35348

CSX TRANSPORTATION, INC. and DELAWARE AND HUDSON
RAILWAY COMPANY, INC. - JOINT USE AGREEMENT



EVIDENCE AND ARGUMENT IN OPPOSITION

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Attorney for Samuel J. Nasca

Due Date: July 2, 2010

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35348

CSX TRANSPORTATION, INC. and DELAWARE AND HUDSON
RAILWAY COMPANY, INC.-JOINT USE AGREEMENT

EVIDENCE AND ARGUMENT IN OPPOSITION

Preliminary Statement

Samuel J. Nasca,^{1/} for and on behalf of United Transportation Union-New York State Legislative Board (UTU-NY), submits this evidence and argument in opposition to the application, filed April 27, 2010, by CSX Transportation, Inc. (CSX) and Delaware and Hudson Railway Company (D&H),^{2/} for Surface Transportation Board (STB) approval of their "Joint Use Agreement," (JUA) dated December 1, 2009, pursuant to 49 U.S.C. 11323(a)(6), under the provisions of 49 U.S.C. 11324.

The "Joint Use" lines extend between Rouses Point Junction, NY and Fresh Pond Junction, NY. However, with the possible exception of trackage between Saratoga Springs and the Albany area, the line is not to be used operationally by both CSX and D&H. Instead, the JUA provides for the exact opposite, i.e., the physical non-

^{1/} New York State Legislative Director for United Transportation Union, with offices at 35 Fuller Road, Albany, NY 12205.

^{2/} D&H is a wholly-owned indirect subsidiary of Canadian Pacific Railway Company (CPR). (Appl. 3).

joint use of the lines, to be carried out by the sole operation by CSX for the Albany-Fresh Pond Junction line segment, and the sole operation by D&H for the Saratoga Springs-Rouses Point Junction line segment.

The verified statement of Samuel J. Nasca, New York State Legislative Director for United Transportation Union (UTU-NY), is attached hereto as Appendix 1.

UTU-NY asks that the application be denied. In the event the transactions is nevertheless approved, the Oregon Short Line and Norfolk & Western employee conditions should be imposed.

I. THE JUA IS NOT WITHIN THE SCOPE OF §11323(a)(6).

The JUA does not embrace the joint use of a line by two carriers, so as to come within the scope of 49 U.S.C. 11343(a)(6):

"Acquisition by a rail carrier of trackage rights over, or joint ownership in or joint use of, a railroad line (and terminals incidental to it) owned or operated by another rail carrier."

The JUA does not provide for joint use by D&H and CSX of the Albany-Fresh Pond Junction segment; indeed, the only user of that line under the JUA would be CSX trains; similarly, the only user of the Saratoga Springs-Rouses Point Junction line would be D&H. The statute refers to operations, not to accounting or cartel relationships. The Applicants are proposing a major revision of §11323(a)(6) which would improperly extend anticompetitive activities far beyond the statutory language and intent.

The JUA does involve joint use of the Albany-Saratoga Springs line segment, with each carrier to operate its own trains. However, this part of he JUA is merely ancillary to the phantom joint use of the adjoining Saratoga Springs-Rouses Point Jct. and

Albany-Fresh Pond Junction segments.^{3/}

II. THE JUA IS CONTRARY TO THE PUBLIC INTEREST.

The JUA does not satisfy the terms of 49 U.S.C. 11324, even if within the scope of §11323. The transaction is not consistent with the public interest. §11324(c). Many of the adverse effects have been illustrated by other parties, and the impact upon railroad employees would be obvious and severe. The reduction in competition between CSX and D&H(CPR), along with that provided by connections NS and CN, would be substantial, and would act as a restraint of trade in the Northeastern United States, which would outweigh the public interest in meeting significant transportation needs. §11324(d).

III. HEARINGS SHOULD BE HELD.

The STB should assign the proceeding for hearings, particularly with respect to effects of the JUA on the Massena line. Attached hereto as Appendix 2 is recent news article in the Watertown area. UTU-NY does not present the article for the truth of its contents, but only to demonstrate concern from interests on the line with respect to the nature and effects of the proposed shift of traffic from the Massena line.

III. CONCLUSION

The application should be denied.

^{3/} UTU-NY is not in agreement with the STB's inference that the Albany-Saratoga Springs segments serves to bring the phantom segments under the statute. (STB, 5/27/10, p. 4, n.7).

Respectfully submitted,



GORDON P. MacDOUGALL
1025 Connecticut Ave.
Washington DC 20036

July 1, 2010

Attorney for Samuel J. Nasca

Certificate of Service

I hereby certify I have served a copy of the foregoing and attached appendices upon all parties of record as shown on the Decision No. 3 service list, by first class mail postage-prepaid.

Washington DC



Gordon P. MacDougall

F.D. No. 35348

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 United Transportation Union (UTU-NY), a full-time elective position I have held since March 1984. My 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 captioned proceeding. I have read the application, and the various notices and decisions of the Surface Transportation Board (STB) in this proceeding, and I have reviewed all of the public filings at the STB made by applicants and various parties. I also have read a number of the discovery requests made by the parties, as well as the answers submitted by applicants to my discovery requests.

The United Transportation Union (UTU) represents persons employed by applicants Delaware & Hudson Railway Company (Canadian Pacific Ry.), and CSX Transportation, Inc. (CSX), and also by Providence & Worcester Railroad Company (P&W), that perform work as engineers, conductors, brakemen, and switchmen.

The transaction embraced in the so-called "Joint Use" agreement would have an adverse impact upon railroad employees, and would likely result in a substantial lessening of competition in the Northeast region of the United States, and the anticompetitive effects of the transaction clearly outweigh any public interest in meeting significant transportation needs. I ask that the application be denied. If despite my opposition, and that of other

parties, the application is nevertheless approved, the STB should impose employee protective conditions, embracing the so-called Oregon Short Line, as well as the Norfolk & Western conditions suggested by applicants.

1. Class 1 Rail Carriers. I view the agreement as between two Class 1 carriers, rather than between one Class 1 carrier and one Class 2 carrier. I say this because D&H is considered Canadian Pacific Railway (CPR) in the mind of the public. This is certainly true for marketing purposes with respect to the public, but it is also true for operations. Indeed, our UTU Directory lists D&H as CPR. Although CPR and Canadian National (CN) may choose to operate within the United States through a series of subsidiaries (Soo Line, D&N, Grand Trunk, etc.), I believe the collective impact is that the CPR and CN railroad operations in North America are coordinated into two major systems, each comparable in size to a Class 1 carrier. Accordingly, I believe this "joint use" application should be subject to the Class 1 standards for purposes of the STB's regulations governing this transaction.

2. The Three Principal Corridors. I view the transaction, as described in the application, and set forth in Exhibit 2, as embracing three major rail corridors.

A. Albany-New York City. D&H(CPR) would discontinue its service on the Albany-New York City corridor, although technically retaining dormant trackage rights, for use in the event the agreement is terminated. In my mind, this would be a discontinuance of service, even though D&H(CPR) cars would be handled in CSX trains. There would be no "joint use" of line from a physical

standpoint; rather, D&H(CPR) would be turning the traffic over to CSX in this corridor. CSX would be the operator, and D&H(CPR) trains would no longer operate on the line. D&H(CPR) employees would lose their work. There would be an obvious and substantial reduction in competition. My experiences is that the shipping public will quickly become aware the CSX will be the carrier to deal with concerning service, and possibly rates as well. D&H(CPR) would be a phantom carrier in this corridor if the transaction is consummated. If the transaction is nevertheless approved, railroad employees are entitled to the standard minimum protective conditions, which are the Oregon Short Line conditions in abandonment/discontinuance situations.

B. Saratoga Springs-Rouses Point. This line currently is congested. It is utilized by Amtrak, and D&H(CPR) trains which also perform haulage for Norfolk Southern (NS)-Canadian National (CN) traffic. The 2004 Memorandum of Understanding, and the Rouses Point-Binghamton cluster agreement, are described in the STB's decision in AB-156 (Sub-No. 25), et al. (served Jan. 19, 2005), a proceeding in which I participated. My examination of the current operating conditions indicates there are frequent and numerous delays in operating this line. The proposal to take CSX-CN through traffic off the Massena line, and route it via the D&H(CPR)-NS/CN Saratoga Springs-Rouses Point line, would seriously increase an already difficult operating situation. Moreover, it would be highly anticompetitive. The two major U.S. rail carriers in the Northeast would be in a combined single route with the two major Canadian carriers. This would be a very unhealthy operating and marketing situation, and with adverse impacts upon railroad

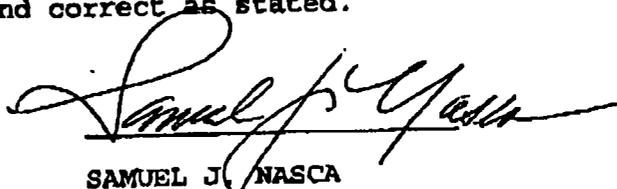
employees. In my experience, rail carriers for the most part prefer reduced volume with higher rates, often with the result of reduced service, and a need for fewer employees.

C. Massena Line. The proposal to shift through CSX-CN business from CSX's former Conrail (New York Central) line through Massena, in favor of routing via Saratoga Springs-Rouses Point, clearly would have an adverse impact upon railroad employees servicing the Massena line. Moreover, the loss of the through service would impact upon local service for shippers. The through traffic moving over the Massena line is not confined to business moving to or from the U.S. South, as implied by CSX's presentation in this proceeding. My investigation into the routings indicates that much of this through business has its origin or destination in the U.S. Midwest, or the Western states. The current routing is shorter on much of this business, than would be a routing further east via Saratoga Springs-Rouses Point. Moreover, the establishment of a "shuttle service" from Syracuse (DeWitt) to handle traffic on the Massena line would not satisfactorily replace the existing operation.

3. Additional Evidence. There are a number of parties in this proceeding that have served detailed discovery requests, but the time between discovery responses and the STB's schedule for evidence in opposition did not permit my inquiries or review. I would like the opportunity to supplement this verified statement after review of the discovery responses which may be publically available.

VERIFICATION

Under the penalties of perjury, I affirm that the foregoing
Verified Statement is true and correct as stated.

A handwritten signature in cursive script, appearing to read "Samuel J. Nasca", written over a horizontal line.

SAMUEL J. NASCA

Dated at
Albany, NY
July 1, 2010

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CSX Cutback Creates Worries

By **LAURA BOMYEA**
WEDNESDAY, JUNE 30, 2010

ARTICLE OPTIONS



MASSENA - Alcoa says it will not likely be hurt by a move by CSX Transportation to reduce daily rail service through the North Country, but local officials are not sure other firms or projects will be so lucky.

CSX has applied to the federal Surface Transportation Board for permission to move its trains along a line spanning from New York City to Rouses Point, on the Canadian border, instead of along the Massena Line it currently uses, which runs from Syracuse to Huntingdon, Que.

If approved, the change would involve reducing rail service to communities along the Massena Line to two or three days a week and save CSX an estimated \$280,000 annually.

Alcoa spokeswoman Laurie A. Marr said the aluminum company was initially concerned about how the change would impact shipping there.

"We ship out a small amount of product by rail, but by far our biggest rail use is inbound raw materials, particularly alumina," Ms. Marr said. "When we first heard the news, we were very concerned."

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After talking with officials from CSX and Rail America, which operates rail spurs running directly to the Massena plants, Ms. Marr said the company has determined it will most likely not be harmed by the proposed change.

Because Alcoa's alumina shipments come in large batches, usually taking up several rail cars, Ms. Marr said the decrease in days CSX plans to serve the area will not necessarily disrupt Alcoa's ability to bring in the materials on schedule.

"We're going to monitor the situation and make sure it doesn't start to impact us," Ms. Marr said.

While Alcoa may not be affected by the change, Business Development Corporation Executive Director Jason A. Clark said other projects and shippers may suffer.

"It's potentially devastating for Massena," Mr. Clark said. "We already have limited rail service as it is. A reduction in that service can only do more harm."

In particular, the BDC's proposal to build a rail spur into the Massena Industrial Park could be threatened by the change.

Tenants in the industrial park, such as Curran Renewable Energy, have expressed interest in taking advantage of rail service there, especially since CSX's line already runs directly behind the property. The BDC has been looking for the money from state transportation funds to build the spur for over a year, but has been unsuccessful.

"We're trying to make the park, and a few other locations, more attractive by adding rail spurs," Mr. Clark said. "The reduction is counterproductive to that effort. The project was still going - in recent weeks we had discussed new options for funding it and spoken with other agencies about funding, as an alternative to the delays we've been seeing with the state."

Mr. Clark said he and Ogdensburg Bridge and Port Authority Executive Director Wade A. Davis have discussed the issue and a meeting with potentially impacted companies is planned in the coming weeks.

Another potential challenge is the demolition and

cleanup of the General Motors Powertrain plant, bids for which are due Thursday.

The United States Environmental Protection Agency would prefer demolition and cleanup contractors rid the site of contaminated soils and other debris by using existing on-side rail infrastructure, instead of shipping the material by truck. The use of rail has been factored in during the bid preparation process, officials said.

"That's potentially a huge issue," Mr. Clark said. "Will that delay the whole process? EPA had been pushing for using rail options, but if those aren't there anymore because of this change, how will that affect the process?"

If the Surface Transportation Board approves CSX's plan, it would become effective Nov. 21. The GM demolition is projected to start Sept. 1 and last for 16 to 18 months.

Motors Liquidation Corporation, the owners of the GM site, did not return calls for comment Tuesday on potential impacts to their demolition project.