

Voting Conference, January 19, 2005

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Delaware and Hudson Railway Company — Discontinuance of Trackage Rights — in  
Susquehanna County, PA and Broome, Tioga, Chemung, Allegany, Livingston, Wyoming, Erie,  
and Genesee Counties, NY  
STB Docket No. AB-156 (Sub-No. 25X)

Canadian Pacific Railway Company — Trackage Rights Exemptions — Norfolk Southern  
Railway Company  
STB Finance Docket No. 34561

Norfolk Southern Railway Company — Trackage Rights Exemption — Delaware and Hudson  
Railway Company, Inc.

Good morning Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

The draft decision before you addresses all three proceedings involving trackage rights changes being undertaken by some of the rail carriers operating in New York State. The draft decision grants the petition for exemption filed by Delaware and Hudson Railway Company, Inc. (D&H) in AB-156 (Sub-No. 25X) to discontinue overhead trackage rights from Lanesboro, PA, to Buffalo, NY, including the Southern Tier Line, subject to the Oregon Short Line labor protective conditions. The draft decision also denies the petitions of the United Transportation Union - New York Legislative Board (UTU-NY) and the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters (BLET) to revoke the exemptions in STB Finance Docket Nos. 34561 and 34562, which authorized overhead trackage rights to Canadian Pacific Railway Company (CP) and the Norfolk Southern Railway Company (NS), respectively. Both trackage rights exemptions are subject to Norfolk and Western labor protective conditions.

The Unions assert that the three transactions are components of a larger consolidation among the carriers and, therefore, that New York Dock labor protective conditions should apply. They point to a Memorandum of Understanding between the railroads as evidence that these transactions are interdependent. The draft decision finds that what is determinative for Board purposes is not how the parties regard these transactions for negotiating or other purposes, but rather, whether the transactions constitute a carrier consolidation under section 11323 of the Interstate Commerce Act. The draft finds that the transactions, whether viewed separately or as a whole, do not fall under the provisions of either 49 U.S.C. 11323(a)(1) or (a)(2) because the transactions are not a consolidation or merger of the properties or franchises of at least two rail carriers into one corporation for combined ownership, management, and operation of the previously separately owned properties. Nor are they a “purchase, lease or contract to operate the property of a carrier by any number of carriers.”

Accordingly, the draft decision concludes that the standard labor protective conditions appropriate to discontinuance of trackage rights (Oregon Short Line) and the acquisition of trackage rights (Norfolk and Western) should apply.

The draft decision also finds that revocation of the exemptions for the trackage rights is not necessary to carry out the Rail Transportation Policy. In reaching this determination, the draft looks to the statutory provisions that would apply without the exemptions. In this case, section 11324(d) applies and under it, the Board must approve the transactions unless it finds that a substantial lessening of competition would likely result and that the anticompetitive effects of the transactions outweigh the public interest in meeting significant transportation needs. CP’s trackage rights will promote the efficiency of its operations in Buffalo, and NS’s trackage rights will shorten the routing and improve the efficiency of Canadian National Railway Company–NS

interline traffic moving between Eastern Canada and the Eastern United States. Therefore, the draft finds that the new trackage rights exemptions should not be revoked.

Finally, the draft decision grants the requested exemption for discontinuance of D&H's trackage rights. D&H seeks this discontinuance in an attempt to improve its efficiency and profitability. Currently, D&H hauls only one train a day over the Southern Tier Line. The draft decision finds that the criteria for exemption are met, that there will be sufficient competition in the region, and that the positive effects of increased efficiency essentially outweigh any potentially adverse competitive effects of this transaction. Moreover, the draft decision finds that the United States Railway Association's Final System Plan, which created the trackage rights in the first place, was not intended to be the final word on the structure of rail operations in the Northeast, and that granting the discontinuance is not contrary to it.

We will be happy to answer any questions you may have.