

01/18/04



**Baker Hughes Incorporated**

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**George P. Bernhardt**  
Real Estate Counsel

November 29, 2004



**VIA FEDERAL EXPRESS**

Section of Environmental Analysis  
Surface Transportation Board  
1925 K Street, NW  
Washington, D.C. 20423

Re: Docket No. AB-298 (Sub-No. 9X), San Joaquin Valley Railroad Company -  
Discontinuance Exemption - in Kern County, CA (Between Levee and Taft)  
Docket No. AB-170 (Sub-No. 1X), Sunset Railway Company -  
Abandonment Exemption - in Kern County, CA (Between Levee and Taft)

Ladies and Gentlemen:

We recently received a notice of the intent to abandon the portion of the Sunset Railway Company rail line between mile posts 18.3 and 36.3. Baker Petrolite Corporation ("BPC") is the owner of the property located at mile post 18.99 shown on the attached local parcel map, on which BPC's parcels have been marked and highlighted.

Please be advised that the rail line currently services BPC and is essential to BPC's operations. We strongly object to the closure of this track and discontinuance of service up to our facility.

Should you have any questions, call me at 713-439-8061.

Very truly yours,

George P. Bernhardt  
Real Estate Counsel

GPB/br

cc: Michael Harless  
Bruce Nied  
Ralph Crabtree  
Frank Traylor  
Jose Solis  
Fred Porter  
Louis E. Gitomer

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Office of Proceedings

DEC 14 2004

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Public Record

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 34561**

**CANADIAN PACIFIC RAILWAY COMPANY-TRACKAGE RIGHTS  
EXEMPTION-NORFOLK SOUTHERN RAILWAY COMPANY-BUFFALO, NY**

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**REPLY OF CANADIAN PACIFIC RAILWAY COMPANY AND  
DELAWARE AND HUDSON RAILWAY COMPANY, INC. IN OPPOSITION  
TO UNITED TRANSPORTATION UNION-NEW YORK STATE  
LEGISLATIVE BOARD'S PETITION TO STRIKE**

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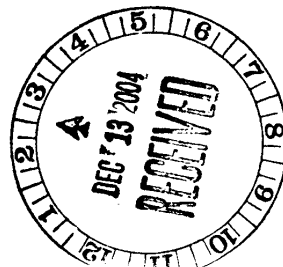
**Terence M. Hynes  
Gabriel S. Meyer  
Sidley Austin Brown & Wood LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
(202) 736-8000  
(202) 736-8711 (fax)  
Counsel for Canadian Pacific Railway and  
Delaware and Hudson Railway Company, Inc.**

**Dated: December 13, 2004**

**ENTERED  
Office of Proceedings**

**DEC 13 2004**

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Public Record**



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 34561**

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**REPLY OF CANADIAN PACIFIC RAILWAY COMPANY AND  
DELAWARE AND HUDSON RAILWAY COMPANY, INC. IN OPPOSITION  
TO UNITED TRANSPORTATION UNION-NEW YORK STATE  
LEGISLATIVE BOARD'S PETITION TO STRIKE**

**INTRODUCTION**

Canadian Pacific Railway Company ("CPRC") and its affiliate, Delaware and Hudson Railway Company, Inc. ("D&H"), hereby submit this Reply in opposition to the Petition To Strike ("UTU-NY Petition") filed in the above-captioned proceeding on November 30, 2004 by Samuel J. Nasca, for and on behalf of United Transportation Union – New York State Legislative Board ("UTU-NY"). The UTU-NY petition asks the Board to strike from the record a footnote contained in the "Reply of Canadian Pacific Railway Company and Delaware and Hudson Railway Company, Inc. In Opposition To Petitions To Revoke Exemptions" filed herein by CPRC and D&H on November 12, 2004 (the "CPRC/D&H Reply"). For the reasons set forth in this Reply, UTU-NY's Petition should be denied.

The Board's regulations at 49 C.F.R. § 1104.8 provide that the Board "may order that any redundant, irrelevant, immaterial, impertinent or scandalous matter may be stricken from any document." The UTU-NY Petition does not even mention – much less attempt to satisfy – this standard. Rather, UTU-NY argues that the challenged footnote should be stricken because (according to UTU-NY) it is "incorrect" and has "the apparent purpose of diminishing or discrediting arguments on the merits advanced by UTU-NY." UTU-NY Petition at 2-3. These assertions provide no basis for striking the challenged footnote.

UTU-NY's suggestion that the footnote should be stricken because it appears to be intended to "diminish" or "discredit" UTU-NY's "arguments on the merits" is nonsensical. The very purpose of the CPRC/D&H Reply – indeed, the purpose of any opposition pleading – is to demonstrate that the adverse party's arguments on the merits are wrong. Nor does UTU-NY's claim that the challenged footnote is "incorrect" provide any grounds for striking it from the record. The mere fact that UTU-NY may disagree with the substance of a statement set forth in CPRC/D&H's Reply does not render that statement objectionable under Section 1104.8.

The transparent purpose of UTU-NY's Petition is not to remove objectionable material from the record, but rather to provide an occasion for UTU-NY to tender a surrebuttal to the challenged footnote. The majority of the UTU-NY Petition consists of a substantive response to the facts set forth in that footnote. UTU-NY Petition at 2-3. It is well-established that such a "reply to a reply" is not permitted under the Board's regulations. *See* 49 C.F.R. § 1104.13(c). Thus, UTU-NY's Petition, not the footnote to which it is addressed, ought to be excluded from the record.

In any event, UTU-NY's surrebuttal does not demonstrate that the challenged footnote is incorrect in any respect. CPRC/D&H's observation that the United Transportation Union ("UTU") – not UTU-NY – represents D&H employees for collective bargaining purposes is undeniably true. D&H's collective bargaining agreement with UTU, dated July 18, 1990, specifies that "[t]he right to make and interpret contracts, rules, rates and working agreements for Conductors and Brakemen shall be vested in the regularly constituted representatives of the United Transportation Union." D&H has no collective bargaining agreement with UTU-NY, and UTU has never designated UTU-NY as its representative in negotiations with D&H. The UTU-NY Petition does not take issue with these facts, but merely asserts (at 3) that the UTU's state organizations have "primary responsibility to appear before regulatory agencies in connection

with proposals for change in train service, and where service may be discontinued.”

CPRC/D&H’s Reply did not dispute UTU-NY’s right to participate in this proceeding.

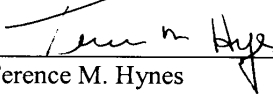
However, that participation has nothing to do with the negotiation of collective bargaining agreements or implementing agreements.

CPRC/D&H’s statement (in the challenged footnote) that, while UTU petitioned for a stay of the class exemption at issue here, it did not file a petition for revocation of the class exemption in this proceeding or submit comments in connection with the proposed trackage rights discontinuance in Docket No. AB-156 (Sub-No. 25X), is likewise correct. UTU-NY points out that the “International UTU” submitted “a general statement of support” for the stay petition filed by UTU-NY on October 5, 2004. UTU-NY Petition at 3. That fact does not render incorrect CPRC/D&H’s observation that UTU did not subsequently file a petition to revoke the class exemption (as UTU-NY did on October 25, 2004). Thus, UTU-NY’s improper surrebuttal does not demonstrate that the challenged footnote was incorrect in any respect.

### CONCLUSION

For all of the foregoing reasons, CPRC and D&H respectfully request that the Board deny UTU-NY’s Petition to Strike.

Respectfully submitted,



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Counsel for Canadian Pacific Railway and  
Delaware and Hudson Railway Company, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 13<sup>th</sup> day of December 2004, I served the foregoing Reply Of  
Canadian Pacific Railway Company And Delaware And Hudson Railway Company, Inc. In  
Opposition To United Transportation Union-New York State Legislative Board's Petition To  
Strike by causing a copy thereof to be hand-delivered to:

Gordon P. MacDougall  
1025 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Richard A. Allen  
Zuckert Scoutt & Rasenberger, L.L.P.  
888 17th Street, N.W., Suite 700  
Washington D.C. 20006

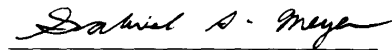
Michael S. Wolly  
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Washington, D.C. 20036

Kelvin J. Dowd  
Slover & Loftus  
1224 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20036-3003

and by prepaid First Class Mail to the following parties:

Daniel R. Elliott, III  
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14600 Detroit Avenue  
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Eric B. Lee  
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415 Woodland Road  
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Gabriel S. Meyer