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1501 K STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com
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WRITER'S DIRECT NUMBER
(202) 736-8198

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WRITER'S E-MAIL ADDRESS
thynes@sidley.com

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The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

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Re: Finance Docket No. 34561, *Canadian Pacific Railway Company – Trackage Rights Exemption – Norfolk Southern Railway Company, Buffalo, NY*

Finance Docket No. 34562, *Norfolk Southern Railway Company—Trackage Rights Exemption—Delaware and Hudson Railway Company, Inc. between Saratoga Springs, NY and Binghamton, N* 212344

Dear Secretary Williams:

After the close of business on October 25, 2004, Canadian Pacific Railway Company ("CPRC") and Delaware and Hudson Railway Company, Inc. ("D&H") were served with two pleadings filed in the above-captioned proceedings: (1) a "Petition To Revoke The Class Exemption For The Two Notices" filed by Samuel J. Nasca, for and on behalf of United Transportation Union, New York State Legislative Board (the "UTU-NY Revocation Petition"), and (2) a "Petition To Revoke Exemptions And To Stay Transactions" filed by The Brotherhood of Locomotive Engineers and Trainmen (the "BLET Revocation Petition"). Both UTU-NY and BLET ask the Board to revoke the class exemptions invoked by CPRC in Finance Docket No. 34561 and by Norfolk Southern Railway Company ("NSR") in Finance Docket No. 34562, in each case for overhead trackage rights pursuant to 49 C.F.R. § 1180.2(d)(7). The BLET Revocation Petition also requests that the Board stay the class exemption invoked by NSR in Finance Docket No. 34562 pending the Board's decision on the Petition for Exemption filed by D&H in Docket No. AB-156 (Sub-No. 25X), *Delaware and Hudson Railway Company, Inc. – Petition for Exemption – Discontinuance of Trackage Rights Between Lanesboro, PA and Buffalo, NY, in Susquehanna County, PA and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie and Genesee Counties, NY* ("the D&H Discontinuance Petition"). The UTU-NY Revocation Petition does not make any request for a further stay of the effectiveness of the class exemptions at issue in the above-captioned proceedings.

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The timing of these Petitions, which leaves CPRC/D&H only one full day to respond before the housekeeping stay issued by the Board in its decision served on October 7, 2004 (the "*Stay Order*") is scheduled to expire, is highly prejudicial to CPRC/D&H. Both UTU-NY and BLET have been aware of the trackage rights transactions at issue in these proceedings since they were publicly announced on October 1, 2004. As required by the *Stay Order*, CPRC/D&H and NSR filed with the Board the Memorandum of Understanding ("MOU") and definitive documents relating to the transactions at issue, and made those documents available to interested parties, on October 12, 2004. Yet, UTU-NY and BLET waited nearly two more weeks to file their Revocation Petitions. In these circumstances, CPRC/D&H is denied the opportunity to submit complete responses on the merits to the UTU-NY Revocation Petition and the BLET Revocation Petition prior to the Board's disposition of the pending petitions for stay. CPRC/D&H will reply to the revocation petitions in due course, pursuant to 49 C.F.R. § 1104.13(a). However, to the extent that the BLET Revocation Petition requests a stay of the class exemption in Finance Docket No. 34562 pending a decision on the merits of the D&H Discontinuance Petition (BLET Revocation Petition at 9), CPRC/D&H provides the following response to BLET's stay request.

As an initial matter, neither UTU-NY nor BLET has requested a further stay with respect to CPRC's Notice of Exemption in Finance Docket No. 34561. Accordingly, the housekeeping stay issued by the Board in its *Stay Order* should be permitted to expire insofar as it applies to the transaction at issue in Finance Docket No. 34561.

While BLET asks the Board to stay the class exemption at issue in Finance Docket No. 34562, the BLET Revocation Petition does not even address – much less attempt to satisfy – the well-established criteria for issuance of a stay. As CPRC/D&H has previously shown, the Petition To Stay Operation of Exemption filed by UTU-NY on October 6, 2004 failed to satisfy any of the criteria for the issuance of a stay in this case. *See* Reply of CPRC/D&H In Opposition To Petition To Stay Operation Of Exemptions filed by CPRC/D&H on October 6, 2004 ("CPRC/D&H Opposition"). Nothing in the BLET Revocation Petition supports a different conclusion.

In particular, there is no substance to BLET's claim that D&H employees would be adversely affected by implementation of the overhead trackage rights granted to NSR in Finance Docket No. 34562. BLET Revocation Petition at 7. The only traffic that NSR will be permitted to handle between Saratoga Springs and East Binghamton under those trackage rights is Canadian National ("CN")-NSR interline traffic, which will be handled by D&H for NSR's account between Rouses Point and Saratoga Springs, NY pursuant to the Rouses Point – Saratoga Springs Haulage Agreement (*see* Summary of Documents, Tab 8, Saratoga – East Binghamton Trackage Rights Agreement, Section 2(c)), and by NSR between Saratoga Springs and Binghamton, NY pursuant to the subject trackage rights. That traffic is not currently handled by D&H; rather it is handled today by CN and NSR over a far more circuitous route via the Buffalo gateway. CPRC/D&H Opposition at 10. Implementation of the trackage rights at issue in Finance Docket No. 34562 and the proposed D&H-NSR haulage arrangement will not "diver[t] ... business presently handled by D&H" (UTU-NY Revocation Petition, V.S. Nasca at 2), but rather will bring new traffic to D&H's lines and create greater opportunities for employment with D&H. Indeed, D&H plans to add three new locomotive engineer positions, and three new conductor positions, at Saratoga Springs, NY in connection with these arrangements. *See* D&H Discontinuance Petition at 15.

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In any event, the labor protective conditions imposed by the Board in connection with the trackage rights class exemption provide that, should there be any unforeseen adverse effects on D&H employees, those employees will receive appropriate monetary benefits. The economic benefits provided to employees under the *Mendocino Coast* conditions are the same as those that would be provided under the *New York Dock* conditions that UTU-NY and BLET request in their Petitions. See Finance Docket No. 34209, *Norfolk Southern Railway Company—Trackage Rights Exemption—Delaware and Hudson Railway Company, Inc.* (served July 25, 2002) at n. 2 (by Chairman Morgan, denying stay request). Accordingly, denial of the stay requested by BLET in Finance Docket No. 34562 would not jeopardize the economic interests of D&H employees.

However, staying NSR's Saratoga Springs – Binghamton trackage rights pending disposition of the D&H Discontinuance Petition as proposed by BLET (BLET Revocation Petition at 9) would be harmful to the interests of D&H and NSR, and to the public interest. D&H and NSR desire to implement those trackage rights, and the haulage rights granted to NSR by D&H between Rouses Point, NY and Saratoga Springs, NY (see Summary of Documents, Tab 9), as soon as practicable. Those arrangements will create a far more efficient route for CN-NSR interline traffic moving between Quebec and the Maritime Provinces, on the one hand, and points in the Eastern United States, on the other hand. The proposed route via Rouses Point, NY is 330 miles shorter than the current CN-NSR route via Buffalo. Consummation of the arrangements in the Rouses Point – Binghamton corridor will generate substantial transportation benefits for the public. CPRC/D&H Opposition at 10. In addition, those arrangements will assist D&H's efforts to achieve profitability, by providing a significant new source of bridge traffic (and associated revenue). D&H Discontinuance Petition at 7-8.

Therefore, CPRC/D&H respectfully requests that the Board deny the pending petitions for stay of the exemptions in the above-captioned proceedings.

Sincerely,


Terence M. Hynes
Gabriel S. Meyer

TMH:aat

cc: Richard A. Allen, Esq.
Gordon P. MacDougall, Esq.
Michael S. Wolly, Esq.
Daniel R. Elliott, III, Esq.
Eric B. Lee, Esq.