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SERVICE DATE - OCTOBER 21, 2004

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34561]

Canadian Pacific Railway Company—Trackage Rights Exemption—Norfolk Southern
Railway Company

Pursuant to a trackage rights agreement dated September 30, 2004, between Canadian Pacific Railway Company (CPRC) and Norfolk Southern Railway Company (NSR),¹ NSR has agreed to grant CPRC approximately 12.5 miles of overhead trackage rights in the vicinity of Buffalo, NY, over: (a) NSR's Southern Tier Line between milepost 413.0± and the western end of the Southern Tier Line at milepost 419.8± (including tracks into NSR's Bison Yard), a distance of approximately 6.8 miles; (b) NSR's Bison Running Track between the point of connection with the Southern Tier Line at milepost 419.8± and the point of connection with the lines of CSX Transportation, Inc. (CSXT) at milepost 423.3±, a distance of approximately 3.5 miles; and (c) NSR's Howard Street Running Track between the point of connection with the

¹ A redacted version of the trackage rights agreement between CPRC and NSR was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. A protective order was served on October 8, 2004.

Bison Running Track at milepost 420.15± and the point of connection with the lines of CSXT at milepost 422.3±, a distance of approximately 2.15 miles.²

The transaction will be consummated on a date mutually agreed in writing between CPRC and NSR, which shall not occur until the effective date of any required Board approval of the petition for exemption filed by D&H in Delaware and Hudson Railway Company–Discontinuance of Trackage Rights – in Susquehanna County, PA and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie and Genesee Counties, NY, STB Docket No. AB-156 (Sub-No. 25X) (including compliance with any conditions imposed by the Board in connection with such approval or exemption).³

The purpose of the trackage rights is to allow CPRC to access customers via switching in the Buffalo terminal area, and to interchange traffic with other rail carriers along the Southern Tier Line and in the Buffalo Terminal Area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.–Trackage

² CPRC will acquire the trackage rights by assignment from its affiliate, Delaware and Hudson Railway Company, Inc. (D&H).

³ By decision served on October 7, 2004, the effective date of this trackage rights exemption was stayed until October 27, 2004, to allow for review of certain documents, filing of a petition to revoke, and the Board's consideration of the stay request filed in this proceeding. Accordingly, consummation of the transaction cannot occur until October 27, 2004, at the earliest, but, as noted, the parties anticipate consummation at some time after the Board acts on the petition for exemption in STB Docket No. AB-156 (Sub-No. 25X).

Rights-BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34561, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Terence M. Hynes, Sidley Austin Brown & Wood LLP, 1501 K Street, N.W., Washington, D.C. 20005.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: October 13, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary