

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 283X)

NORFOLK SOUTHERN RAILWAY COMPANY–
ABANDONMENT EXEMPTION–IN ORANGE COUNTY, NY

Decided: June 22, 2007

Mr. James Riffin petitions the Board to toll the time period for submitting an offer of financial assistance (OFA) to acquire a 1.64-mile rail line which Norfolk Southern Railway Company (NSR) sought to abandon in this proceeding. For the reasons set out herein, Mr. Riffin's petition will be granted.

By petition filed on January 12, 2007, NSR sought an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 1.64-mile line of railroad, extending from milepost ZU 45.00 to milepost ZU 46.64 at Harriman, Orange County, NY. NSR also sought an exemption from the OFA requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (72 FR 4767) on February 1, 2007, instituting an exemption proceeding. On February 20, 2007, Mr. Riffin filed a motion for leave to intervene in this proceeding for the purpose of opposing the proposed exemption from the OFA provisions of section 10904. Also on February 20, 2007, Mr. Riffin filed with the Board a notice of his intent to file an offer of financial assistance and requested that NSR provide him with the financial data and information necessary to determine the line's net liquidation value (NLV). Mr. Riffin also filed on February 20, 2007 a petition to toll the due date for an OFA.

By a decision served on May 2, 2007 (May 2007 decision), the Board granted the exemptions from 49 U.S.C. 10903 and 49 U.S.C. 10905, subject to environmental and standard employee protective conditions, but denied the request for an exemption from 49 U.S.C. 10904, thus permitting the filing of an OFA. The May 2007 decision stated that an OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the Board by May 11, 2007. The Board did not rule on Mr. Riffin's request for tolling the OFA due date in the May 2007 decision, saying that any such request was premature before NSR had learned the outcome of its abandonment petition and petition for exemption from the OFA provisions.

On May 11, 2007, Mr. Riffin filed a second petition requesting that the Board toll the time period for submitting an OFA until 30 days after Mr. Riffin's receipt of the financial data requested from NSR. Mr. Riffin states that he has not received any of the information he requested from NSR, and that he cannot prepare an informed OFA without first reviewing this information.

Under 49 CFR 1152.27(c)(1)(C), if a party who has petitioned for an abandonment exemption has failed to provide a potential offeror with the information necessary to compile an OFA, the Board will entertain petitions to toll the 10-day period for submitting OFAs. The petition must be filed with the Board within 5 days after service of the decision granting the petition for exemption. Mr. Riffin's second petition to toll the due date for his OFA was not filed within 5 days of the service of the May 2007 decision. Under the unusual circumstances presented by Mr. Riffin's earlier filing of a petition to toll and the Board's determination not to address that petition in the May 2007 decision, however, the earlier petition to toll will be considered at this time. Because NSR has not provided Mr. Riffin with the requested financial data, the deadline for filing an OFA will be tolled, as requested, until 30 days after NSR notifies the Board that it has provided the information to him. The effective date of the abandonment exemption will be postponed until 10 days after the new due date for an OFA.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to toll the due date for an OFA in this proceeding is granted.
2. OFAs will be due in this proceeding 30 days after NSR notifies the Board that it has provided Mr. Riffin with the requested financial information.
3. The abandonment exemption in this proceeding is postponed until 10 days after the due date for OFAs.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary