

ENTERED
Office of Proceedings
May 14, 2015
Part of
Public Record
JR - 9

**Before the
Surface Transportation Board
Finance Docket No. 35873**

**NORFOLK SOUTHERN RY. CO.
- ACQUISITION AND OPERATION APPLICATION -
CERTAIN LINES OF THE DELAWARE AND HUDSON RY.**

JAMES RIFFIN'S MOTION TO STAY MAY 19, 2015 DECISION

1. James Riffin (“**Riffin**”) herewith moves the Surface Transportation Board (“**STB**”) to **stay** its scheduled **May 19, 2015 decision** in this proceeding for seven days, and in support hereof states:
2. The STB is presently scheduled to issue its decision in this proceeding on May 19, 2015.
3. In a decision served on May 13, 2015, the Office of Proceedings held AB 156 (Sub-No. 27X) in abeyance, and permitted the Delaware and Hudson Railway Company to file a supplement to its Notice of Exemption to Discontinue a large portion of its trackage rights.
4. While this FD 35873 proceeding and the AB 156 (Sub-No. 27X) proceeding have not been consolidated (to date), the two proceeding are intimately related.
5. Mr. Eric Strohmeyer, in a separate pleading, will argue that if the D&H’s trackage rights are not discontinued simultaneously with Norfolk Southern’s Acquisition Petition, then Norfolk Southern will need to seek **additional** STB approval before it can consummate its acquisition of 282 miles of D&H line.

6. Riffin prepared an Open Letter on May 6, 2015. The Open Letter was addressed to the STB, and to all of the parties of record in this FD 35873 proceeding. A copy of that open letter is appended hereto. (It has been modified to reflect the Third Circuit's May 11, 2015 decision dismissing Riffin's Petitions for Review, and Riffin's Writ of Prohibition, due to a lack of jurisdiction to hear the Petitioners for Review / Writ of Prohibition.)

7. The Open Letter suggested that the parties make an attempt to reach a settlement. The Open Letter further suggested that if a settlement were to be reached, and if as a condition of that settlement, the parties waive their objections to the infirmities in the D&H's Notice of Exemption, then it could be possible for Norfolk Southern's acquisition of 282 miles of D&H Line, to still be consummated by July, 2015.

8. Riffin sent a copy of the Open Letter to William Mullins, counsel for Norfolk Southern, and to Karl Hansen and David Rifkind, counsel for the D&H.

9. On Tuesday, May 12, Riffin spoke with Mr. Mullins. Mr. Mullins indicated that Norfolk Southern had no present interest in attempting to reach a settlement.

10. On Wednesday, May 13, 2015, the Director of the Office of Proceedings served her decision, finding that the D&H's Notice of Exemption, as filed, did not fully comply with the STB's regulations. Rather than rejecting the D&H's Notice of Exemption, the Director permitted the D&H to supplement its Notice of Exemption.

11. The Director's Decision raises several new issues, which Riffin believes only the Full Board may address, pursuant to a timely filed appeal of the Director's decision.

12. At this point in time, one of two things will occur: Either the parties will reach a settlement, or the proceeding will continue on its present course. If the proceeding continues on its present course, then final resolution of the issues is not likely to occur for a considerable period of time.

13. If, on the other hand, a settlement were reached, Norfolk Southern's acquisition of 282 miles of D&H Line could well be consummated by July, 2015.

14. Given the Office of Proceedings May 13, 2015 decision, Riffin believes that it would be appropriate for the STB to stay its presently scheduled May 15, 2015 decision for seven days, in order for the parties to mull over the Office of Proceedings's May 15, 2015 decision, and to weigh the pros and cons of a settlement.

15. If by Wednesday, May 20, 2015, Norfolk Southern and the D&H decide that they have no desire to attempt to reach a settlement, then they can so inform the STB.

16. Delaying the STB's May 15, 2015 decision until May 22, 2015, would not unduly delay the proceeding. If the effective date were to remain June 15, 2015, as presently scheduled, then there would be no delay in the effective date.

17. Delaying the STB's May 15, 2015 decision until May 22, 2015, would also give the parties five business days to file pleadings addressing the issue of whether Norfolk Southern's acquisition of 282 miles of D&H Line can be done without additional STB filings by Norfolk Southern, given the fact that it no longer is possible for the D&H to discontinue its trackage rights simultaneously with Norfolk Southern's acquisition of 282 miles of D&H Line.

18. Riffin acknowledges that because this is Norfolk Southern's proceeding, Norfolk Southern's position regarding a seven-day stay, would carry considerable weight in deciding whether to grant a seven-day stay. (However, Riffin believes that the STB has the authority to stay the proceeding for seven days without the consent of Norfolk Southern, or any other party.)

19. WHEREFORE, for the foregoing reasons, Riffin respectfully moves the STB to **Stay** its scheduled May 19, 2015 decision in the above entitled proceeding, for at least seven days, to permit the parties time to ascertain whether they have any desire to make an attempt to reach a settlement in this proceeding, and for such other and further relief as would be appropriate.

Respectfully,

James Riffin
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2015, a copy of the foregoing Motion for Stay, was served on the parties noted below, by E-mail.

James Riffin

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