

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

ROBERT A. WIMBISH

(202) 663-7824 (Direct Dial)
E-Mail: rwimbish@bakerandmiller.com

September 10, 2013

BY HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: *The Alabama Great Southern Railroad Company – Abandonment
Exemption – In Saint Bernard Parish, Louisiana,
STB Docket No. AB-290 (Sub-No. 323X)*

Motion for Partial Withdrawal of Exemption Authority

Dear Ms. Brown:

The Alabama Great Southern Railroad Company (“AGS”), a wholly-owned subsidiary of Norfolk Southern Railway Company, hereby requests STB authorization partially to withdraw its exemption in the above-referenced proceeding. Specifically, AGS seeks authorization to withdraw without prejudice its invocation of the class exemption to *abandon* the subject rail line (the “Line”),¹ but wishes to preserve the exemption insofar as it has permitted AGS legally to discontinue rail common carrier service.

As background, the Board issued notice of AGS’ invocation of the class exemption procedures to abandon the Line on April 7, 2011 (the “STB Notice”). In response to an Environmental Assessment issued by the Board’s Office of Environmental Analysis (“OEA”) on April 8, 2011, the Board issued a supplemental decision in this proceeding on May 3, 2011 (the “May 3 Decision”), reopening the matter and imposing certain preconditions upon abandonment consummation and salvage activities. (These conditions are set forth in Ordering Paragraph 2 at

¹¹ The 3.50-mile Line extends between milepost 1.00 PT and milepost 4.50 PT in Saint Bernard Parish, Louisiana.

BAKER & MILLER PLLC

Cynthia T. Brown
September 10, 2013
Page 2

pages 2-3 of the May 3 Decision.) Of note, Condition 1 in Ordering Paragraph 2 of the May 3 Decision provides that AGS may not consummate the proposed abandonment or engage in any salvage activities related thereto until AGS has (a) completed consultation with the Louisiana Department of Natural Resources' Office of Coastal Management; (b) in the process, obtained a state coastal management consistency certification ("Certification"); and (c) notified OEA of the satisfactory completion of such consultations and the issuance of the Certification; and until the Board has, in turn, removed Condition 1.

The record in this proceeding, including OEA's Environmental Correspondence database, reflects that AGS has not, to date, advised OEA of a satisfactory consultation with Louisiana's Office of Coastal Management, and, for that reason, the Board has not lifted the subject bar to abandonment consummation and salvage. Apparently having lost sight of the still-applicable consummation barrier, AGS sought on March 14, 2012 a 1-year extension of the April 7, 2012 notice of consummation deadline included in the April 7, 2011 Notice. The Board's Director of Proceedings granted the extension request on March 20, 2012, although an extension appears to have been unnecessary. This two-step extension process was repeated again (for another 1-year postponement) on April 4 and 15, 2013, notwithstanding the still-applicable consummation barrier included in the Board's May 3 (2011) Decision.

Needless to say, the record in this proceeding reflects that AGS has not consummated, and indeed cannot consummate, the proposed abandonment. AGS, however, has acted upon authority implicit in the subject STB Notice, and has discontinued common carrier service over the Line upon the effective date of the STB Notice.

AGS since has consulted with the appropriate Louisiana authorities regarding the steps that would need to be taken in light of the Line's location within a coastal zone, all with the goal of satisfying the Board's preconditions to consummation and salvage. As a result of this consultation process, AGS has determined that it no longer wishes to abandon the Line. So, AGS will retain the Line as a strategic rail asset, albeit one over which AGS is not bound by a common carrier obligation in light of its Board-sanctioned discontinuance of service.

For the foregoing reasons, AGS respectfully requests leave to withdraw the subject notice of exemption without prejudice to the extent that the notice grants AGS conditional authority to abandon and salvage the Line. As the Board has stated in a similar such proceedings:

When a carrier is authorized to abandon a line, that authority is permissive, not mandatory. The carrier can choose to exercise that authority or not. Because carriers are not compelled to abandon lines, the Board normally grants a carrier's motion to withdraw its request for abandonment authority. See Almono LP—Abandonment Exemption—In Allegheny County, PA, STB Docket No. AB-842X (STB served Jan. 28, 2004). Until

BAKER & MILLER PLLC

Cynthia T. Brown
September 10, 2013
Page 3

[the carrier] exercises its abandonment authority, which it has not (and indeed cannot ...), the line is not abandoned and the Board's primary jurisdiction over the line continues.²

Here, guided by the line of prior abandonment and discontinuance cases represented by NSR-Bergen, AGS has elected to exercise part, but not all, of the permissive authority conferred upon it by virtue of the subject class exemption. As mentioned, AGS has acted upon the authority implicit in its invocation of the abandonment class exemption to discontinue service over the Line, and AGS intends to retain its discontinuance authority as a protection against any possible (although unlikely) future demand for common carriage. NSR acknowledges that, should it later elect to abandon the Line or any part of it, NSR will need to seek appropriate authority under a new proceeding, subject also to the then-applicable environmental review process.

Respectfully submitted,



Robert A. Wimbish
Attorney for The Alabama Great Southern
Railroad Company

cc: All parties of record
Maquiling Parkerson, Marc Kirchner, Lawada Poarch

² E.g., Norfolk Southern Railway Company – Abandonment Exemption – In Bergen County, NJ, STB Docket No. AB-290 (Sub-No. 288X), slip op. at 2 (STB served May 14, 2008) (“NSR-Bergen”).