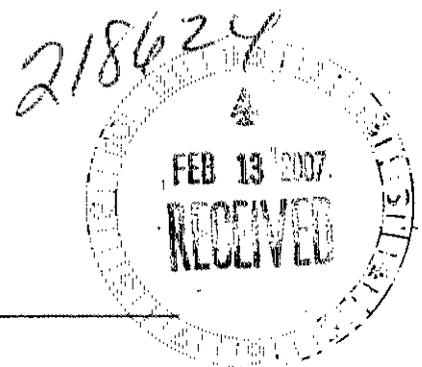


**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



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**STB DOCKET NO. AB-6 (Sub- No. 430X)**

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**BNSF RAILWAY COMPANY  
ABANDONMENT EXEMPTION  
IN OKLAHOMA COUNTY, OK**

**ENTERED  
Office of Proceedings  
FEB 13 2007  
Part of  
Public Record**

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**PETITION TO TOLL DATE  
AN OFFER OF FINANCIAL ASSISTANCE MUST BE FILED BY**

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Edwin Kessler, ("Kessler" or "Petitioner") herewith files this Petition to Toll Date an Offer of Financial Assistance Must Be Filed By, and for reasons states:

1. On October 13, 2005, the Surface Transportation Board ("Board") served notice that the BNSF Railway Company ("BNSF") had filed an Abandonment Exemption ("AE") to abandon 2.95 miles of line situated in Oklahoma County, OK, which AE is the subject matter of the above entitled proceeding.

2. On October 13, 2005, the Board served notice that Stillwater Central Railroad, Inc. ("SLWC") had filed a Notice of Discontinuance of Service Exemption ("DSE") to discontinue service over portions of the Line that was the subject of BNSF's AE.

3. On January 26, 2007, the Board served a decision denying a Petition to Reject BNSF's AE, granting a Petition to Reject SLWC's DSE, and granting, on the Board's own motion, SLWC an exemption to discontinue service over the Line.

4. In the Board's January 26, 2007 decision, the Board stated the due date for filing an Offer of Financial Assistance in the above entitled case was February 5, 2007.

5. On February 5, 2007, your Petitioner sent a letter to the Board indicating that he had an interest in filing an Offer of Financial Assistance to purchase the line which is the subject of the above entitled proceeding.

6. On February 12, 2007, Kessler, pursuant to the applicable regulations of the Surface Transportation Board ("STB" or "Board"), faxed a copy, and sent via overnight delivery, his formal Notice of Intent to File an Offer of Financial Assistance ("OFA Notice"), to purchase from BNSF the portion of a line of railroad located in Oklahoma County, Oklahoma, between milepost 539.96 and 542.91, in the city of Oklahoma, a distance of 2.95 miles more or less, which line of railroad is the subject of the above entitled proceeding ("Line"). The line traverses Postal Zip Codes 73102, 74108, and 73129.

7. On February 12, 2007, a copy of Kessler's OFA Notice was mailed, via first class mail, to Sidney Strickland, counsel for BNSF, and to the other parties of record. In that OFA Notice, Kessler requested BNSF provide Kessler with 49 CFR §1152.27(a) information regarding the Line. Kessler cannot prepare an informed Offer of Financial Assistance without first reviewing the information Kessler requested.

8. Publication of the notice of exemption was published in the Federal Register on October 13, 2005.

9. 49 CFR 1152.27 (b) (2) (ii) states Offers of Financial Assistance must be filed no later than 30 days after the date of the Federal Register publication giving notice of the exemption, or November 12, 2005 in the instant proceeding.

10. In the Board's *Delaware and Hudson* decision, AB 156 (Sub No. 25X), served March 30, 2005, the Board held a line cannot be subject to an OFA until all authority to operate over the line has been abandoned (until a total loss of service is imminent).

11. In the Board's *Robbinsville Industrial Track* decision, AB 167 (Sub-No. 1185X), served January 26, 2007, the Board held before Conrail could abandon the line, both CSXT and Norfolk Southern Railway had to file Notices of Discontinuances, since they both had common carrier obligations over the line.

12. The Board, in its January 26, 2007 decision in this case, created a situation which contravenes the Board's *Delaware and Hudson* and *Robbinsville* decisions: By granting BNSF's AE, the Board granted BNSF the right to abandon the line **effective November 12, 2005**. Unfortunately, since SLWC's DSE was denied, from November 12, 2005, the effective date of BNSF's AE, through January 26, 2007, SLWC still had common carrier obligations over the line. And, pursuant to the Board's *Delaware and Hudson* decision, the line that is the subject of this proceeding, was **not** subject to the Board's OFA procedures prior to January 26, 2007. And consequently, Kessler would not have had the right to request from BNSF, nor would BNSF have had the obligation to provide, the information specified in 49 CFR 1127.52(a).

13. Normally, an OFA in an exemption proceeding is due no later than 30 days after the date the exemption notice is published in the Federal Register. Under 49 CFR 1152.27 (c), the offeror may ask that the Board toll the time period within which an OFA must be submitted, in order to provide sufficient time for the abandoning railroad to provide the offeror with the information specified in 49 CFR 1152.27(a).

14. Your Petitioner would argue, since the line was not subject to the Board's OFA procedures prior to the Board's January 26, 2007 decision, the time period within which an OFA must be submitted, or a Stay of the Date an OFA must be submitted in order to obtain the information specified in 49 CFR 1152.27(a), would be **30 days from the Board's January 26, 2007 decision**. This would permit Kessler sufficient time to request the 49 CFR 1152.27(a) information from BNSF, evaluate the information, then submit an informed OFA.

15. In a letter dated September 19, 2006, BNSF indicated it would not be able to consummate the abandonment of this line any sooner than December 31, 2007, and requested an extension of the time within which it had to consummate the abandonment.

16. Once Kessler receives the information he has requested from BNSF, he anticipates it will take 30 days to have experts evaluate the data, then provide him with guidance regarding the economic viability of the line.

17. Granting this Petition is in conformity with 49 USC §10101 (7) [reducing regulatory barriers to entry into the industry]; (13) [to ensure the availability of accurate cost information in regulatory proceedings; (15) [to provide for the expeditious handling and resolution of all proceedings]. Granting this Petition would not significantly adversely affect BNSF's ability to exit the industry along this line, for BNSF has already indicated the earliest it could consummate abandonment of this line is December 31, 2007.

18. For the above reasons, your Petitioner would request:

A. The time period within which to file a Petition to Toll Date an Offer of Financial Assistance Must Be Filed By, be extended to 30 days from the date of the Board's January 26, 2007 decision.

B. The time period within which to file an OFA be 30 days from the date of the Board's January 26, 2007 decision, or until 30 days after receipt by Kessler of the 49 CFR 1152.27(a) information Kessler has requested, whichever is later.

Respectfully,

  
Edwin Kessler

#### CERTIFICATE OF SERVICE

I hereby certify that on this 12<sup>th</sup> day of February, 2007, a copy of the foregoing Petition to Toll Date an Offer of Financial Assistance Must be Filed By, was served by first class mail, postage prepaid, upon the parties of record noted on the following page.

  
Edwin Kessler

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