

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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CLASS EXEMPTION FOR EXPEDITED )  
ABANDONMENT PROCEDURE FOR ) EX PARTE  
CLASS II AND CLASS III RAILROADS ) NO. 647

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**REPLY COMMENTS <sup>1/</sup>**

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ALBANY & EASTERN RAILROAD COMPANY  
DAKOTA NORTHERN RAILROAD, INC.  
DENVER ROCK ISLAND RAILROAD COMPANY  
HEART OF GEORGIA RAILROAD, INC.  
IOWA TRACTION RAILROAD COMPANY  
MINNESOTA NORTHERN RAILROAD, INC.  
MISSISSIPPI TENNESSEE RAILROAD, LLC  
PROGRESSIVE RAIL INCORPORATED  
RIO VALLEY SWITCHING COMPANY  
SOUTHERN SWITCHING COMPANY  
ST. CROIX VALLEY RAILROAD COMPANY  
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DATE FILED: April 4, 2006

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<sup>1/</sup> A listing of the names and addresses of the Class III rail carriers in whose behalf these comments are filed appears in Appendix A.

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Pursuant to the Board's Advance Notice of Proposed Rulemaking (ANPR), served January 19, 2006, the Class III rail carriers listed on the cover page (referred to as "Albany & Eastern, et al.") hereby reply to Comments filed in this matter.

**REPLY**

**1. Abandonment and OFA Filing Fees**

An excellent point is made at pages 9-10 of the Comments of Delta Southern Railroad, Inc., et al. that abandonment filing fees are unreasonably high for Class III rail carriers, i.e., \$18,700 for an abandonment application, \$5,300 for a petition for exemption, and \$3,100 for a notice of class exemption (all fees as of April 19, 2006). *See Regulations Governing Fees for Services - 2006 Update*, \_\_\_\_ S.T.B. \_\_\_\_, 2006 STB LEXIS \_\_\_\_ (Ex Parte No. 542 [Sub-No. 13], decision served March 20, 2006).

The OFA filing fees are even worse, i.e., \$1,300 to file an offer and \$19,100 for a request that the Board determine the purchase price of the rail line to be acquired! The latter fee especially deters entities from seeking to acquire rail lines for continued rail operation. That is contrary to the policy of the OFA statute, 49 U.S.C. § 10904, as well as the national rail policy in

favor of continuation of a sound rail transportation system to meet the needs of the public and the national defense. See 49 U.S.C. § 10101(4).

These filing fees should be more nominal -- perhaps \$200 for abandonment filings regardless of whether the filing is an application, petition or notice, \$100 for filing an OFA and \$500 for a request to determine a purchase price.

A reduction of these filing fees need not be included in a Notice of Proposed Rulemaking in this proceeding. The reduction can be implemented as an amendment to the 2006 update of filing fees without there having been prior notice or opportunity for comment. *See Regulations Governing Fees for Services - 2006 Update, supra*, decision served March 20, 2006 at \_\_\_\_\_ (“... Accordingly, notice and comment are unnecessary for this proceeding . . .”). Filing fees can be modified more than once per year, if necessary. *See* 49 C.F.R. § 1002.3(a).

The Board should reduce the abandonment and OFA filing fees for Class II and III rail carriers without delay.

## **2. OFA Regulations**

The regulations governing offers of financial assistance (OFAs) for continued rail service in lieu of abandonment should not be amended because they have worked well to facilitate rail line acquisitions (except for the unduly high filing fees identified above). The extremely accelerated procedures can be somewhat difficult to comply with, but parties have become quite familiar with the rules and compliance has become commonplace.

In particular, Albany & Eastern, et al. oppose the proposal of Rail America, Inc. (Comments at 5) that OFAs be required to contain a stronger showing of financial responsibility, and either match the owner’s estimate of net liquidation value or provide a strong rationale for a

lower valuation.<sup>2/</sup> We have seen no evidence that financially irresponsible entities have become involved in the OFA process. Nor is there any reason to believe that the owner's estimate of NLV is entitled to greater initial weight than the estimate of an offeror.

**3. Attempts By Class I Railroads To Broaden The Rulemaking**

This is a rulemaking for the benefit of Class II and Class III rail carriers in the matter of abandonment. We oppose attempts by the Association of American Railroads (AAR) and BNSF Railway Company (BNSF) to broaden the rulemaking to amend abandonment regulations for general application, i.e., for Class I rail carriers as well as Class II and Class III rail carriers. Thus, the Board should not consider AAR's proposals in regard to trackage rights acquired through an OFA (Comments at 5) and for a right to reply to protests in petitions for exemption of abandonment (*id.* at 7). Nor should the Board consider BNSF's proposal for a new class exemption for abandonments as to which shippers have expressed no objection (Comments at 1). Those general matters do not belong in a rulemaking for the benefit of Class II and Class III rail carriers.

**4. Shortening The Time Frame For Out-of-Service Abandonments**

Albany & Eastern, et al. continue to believe that Class II and Class III rail carriers would benefit significantly from reduction of the out-of-service period for the class exemption for abandonment from two years to one year. That proposal has the benefit of simplicity and the absence of radical change from current abandonment regulations. The initial comments do not contain any persuasive arguments against that proposal. Consequently, we urge the Board to include that proposal in the notice of proposed rulemaking.

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<sup>2/</sup> See, also, the claim of Delta Southern Railroad, Inc., et al. (Comments at 12) about "bogus" OFAs and OFAs submitted by financially irresponsible persons. We don't agree that this is a serious problem.

**5. Accelerated Approval Where A Petition For Exemption Is Not Opposed**

Albany & Eastern, et al. continue to support an accelerated approval process where there have been no protests filed in response to a Petition for Exemption of abandonment. Thus, if no protests are filed within 30 days after publication of notice in the Federal Register, the proposed abandonment should stand as approved 30 days thereafter, subject to OFAs and request for a public use condition. Assuming Federal Register publication 20 days after filing of the Petition, the foregoing procedure would result in final approval of abandonment 70 days after the filing of the Petition. That would be the same time frame for approval as a notice of class exemption for abandonment of an out-of-service rail line. Where a Petition for Exemption of abandonment is not opposed, there is no need nor justification for withholding a decision approving the abandonment until 10 days before the fourth month after filing of the Petition.

WHEREFORE, the Board should take the foregoing Reply into account in arriving at a proposal for a Notice of Proposed Rulemaking.

Respectfully submitted,

ALBANY & EASTERN RAILROAD COMPANY  
DAKOTA NORTHERN RAILROAD, INC.  
DENVER ROCK ISLAND RAILROAD COMPANY  
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