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July 25, 2007

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Honorable Vernon A. Williams, Secretary
 Surface Transportation Board
 395 E Street, S.W.
 Washington, DC 20024



Re: STB Docket No. AB-290 (Sub-No. 288X), Norfolk Southern Railway Company - Abandonment Exemption - In Bergen County, NJ - Request or Motion to Modify Notice and Exemption

Dear Mr. Williams:

Norfolk Southern Railway Company ("NSR") requests or, as may be required, moves, that the Board modify the exemption granted to NSR by the Board in a notice of exemption served May 31, 2007 in the subject proceeding. The exemption permits NSR's abandonment of a 1.40-mile line of railroad between Milepost UQ 8.80 and Milepost UQ 10.20, in Rutherford, Bergen County, NJ (the "Line"). NSR asks that the Board modify the exemption to permit only the formal discontinuance of service over the Line. NSR also asks, or as may be required moves, that NSR be granted leave to amend its notice of exemption in this docket, which was dated May 9, 2007 and filed with the Board on May 11, 2007, if such amendment is technically required for the Board to modify the abandonment exemption already granted. Discontinuance of service authority is a more limited authority and only a part of the abandonment exemption authority already granted. If the Board modifies the exemption, NSR would need to file a further notice or petition for exemption to obtain authority to abandon the Line in the future. This change also would moot BP Rail's pending notice of intent to file an Offer of Financial Assistance and its accompanying request to NSR for information.

The subject Line is a dead-end spur or industrial lead track that was once part of a longer Erie Lackawanna line that was acquired by Consolidated Rail Corporation ("Conrail") under the Final System Plan. NSR acquired the Line on June 1, 1999 as part the Conrail Transaction approved by the Board in *CSX Corp. et al. - Control - Conrail Inc. et al.*, 3 S.T.B. 196 (1998), as modified in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway*

Company - Control and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388 (Sub-No. 94) (STB served Nov. 7, 2003). NSR's environmental report noted that the subject track had been out of service since before NSR acquired it in 1999.

NSR has discussed the sale of the right-of-way of this Line with governmental entities which are considering acquisition of the property for public use, including trail use. Those discussions have proceeded slowly. The parties have reached no final agreement or conditional final agreement that might depend, for example, on the imposition of a public use condition or a trail use condition or on the abandonment exemption becoming effective or the abandonment being consummated. No request for a public use condition or a trail use condition has yet been made in this proceeding.

Inasmuch as the Line has been out of service for so long that the governmental entities thought that it likely had been abandoned when they approached NSR about acquiring the property, NSR and those entities did not anticipate the filing of an OFA to acquire the property for continued rail service. Moreover, the Line is a dead-end spur off a New Jersey Transit main line that NSR operates over as a successor to part of Conrail's rights, franchises and properties in New Jersey, pursuant to the Trackage Rights Agreement previously entered into by Conrail and New Jersey Transit. New Jersey Transit is not likely to permit a short line to use its main line for interchange or other purposes and NSR can not require New Jersey Transit to do so. Thus, any interchange of freight traffic between an offeror which would resume any rail freight operations on this track and NSR would have to be accommodated on the track itself. NSR is not prepared to comment on, much less try to work through, the viability of such an operation at this time. NSR believes BP Rail is aware that the subject track springs from a New Jersey Transit main line, but does not know whether BP Rail has fully considered how this might complicate its proposal.

Especially given the unanticipated OFA and NSR's negotiations with local governmental entities concerning their possible acquisition of the right-of-way, NSR is not prepared to present the net liquidation value of the real estate along the Line in accordance with the Board's regulations and precedents at this time.

An OFA made to acquire a long out-of-service rail line generally may be (or at least may be strongly suspected to be) for a purpose other than continuing rail freight service. In this case, however, BP Rail appears to contemplate setting up a solid waste or construction debris transfer or shipping operation on the Line, a proposal that might be more than mere speculation. Of course, such a proposal could cause an additional

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set of problems or complications because of the controversy currently surrounding most such recent proposals and the mixed residential and industrial land uses in the area of the subject track. It likely would raise some opposition from governmental entities. NSR is not prepared to get caught in the middle of such a controversy, either voluntarily or involuntarily, or directly or indirectly, or to deal with an unexpected and potentially complicated OFA at this time in order to abandon a short segment of long unused railroad line, the final disposition of which is under discussion but which somewhat unexpectedly is not yet agreed upon.

No rail shippers have been located along this track for many years. But for the appearance of BP Rail and its possible trash or debris transfer or shipping operation, it seemed most unlikely that any would locate on a track in the area in the future.

When the Board authorizes a railroad to abandon a rail line, the Board grants authority or an exemption that is permissive, not mandatory. The railroad can choose to exercise that authority or exemption or not. Because railroads are not compelled to abandon rail lines, the Board normally grants a railroad's motion to withdraw its request for abandonment authority or exemption. See *The Cincinnati, New Orleans and Texas Pacific Railway Company - Abandonment Exemption - in Scott County, TN*, STB Docket No. AB-290 (Sub-No. 279X) (STB served April 24, 2007); *Norfolk Southern Railway Company - Abandonment Exemption - in Lorain County, OH*, STB Docket No. AB-290 (Sub-No. 268X) (STB served October 25, 2006); *Almono LP - Abandonment Exemption - in Allegheny County, PA*, STB Docket No. AB-842X (STB served January 28, 2004).

Although NSR requests modification of the exemption, not its complete withdrawal, NSR will be taking a less permanent action than abandonment of the Line as a result of that modification. The modification also will require NSR to make a future filing to obtain full abandonment authority for the Line, just as NSR would need to do if the exemption notice was withdrawn. No active shippers will be affected by the modification of the exemption. This change in the exemption and the resulting conclusion of this proceeding will give NSR additional time to discuss the Line with the governmental entities, to gather additional valuation information, to research or research again the status of the Line on the effective date of the Final System Plan and to evaluate the future disposition of the Line while putting the subject long unused track in formally discontinued status.

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Therefore, NSR requests that the Board modify the exemption to permit only discontinuance of service over the subject Line and declare the notice of intent to submit an OFA and accompanying request for line valuation information moot.

Very truly yours,



James R. Paschall

Via DHL

cc: Mr. Vincent Caruso, Jr.
BP Rail Corporation
22 Somerset Place
Clifton, NJ 07012