



ENTERED
Proceedings

July 30, 2007

AUG 13 2007

Via Electronic Filing
Hon Vernon A Williams, Secretary
Surface Transportation Board
395 E Street S W
Washington, DC 20024

Part of
Public Record

220034



Re. STB Docket No AB-290 (Sub. No. 288X), Norfolk Southern Railway Company
Abandonment - In Bergen County, New Jersey -

Dear Secretary Williams,

B P Rail Corporation D/B/A BP Rail ("BPR") is in receipt of Norfolk Southern Railway Company's ("NSR") Request or Motion to Modify Notice and Exemption granted on May 31, 2007 in the aforementioned matter.

In order to clear the air with the Board and all concerned parties, BPR is not in the Solid Waste Business, nor has any intentions of building a Solid Waste Trans-Load Facility on this or any other lines it may acquire. Further more, BPR is not in any way connected or affiliated with any Solid Waste interests or entities. Therefore the assumption that NSR was trying to expose, as BPR's possible interest for this dead end spur is not at all correct. Nonetheless our intended use is *in fact in the realm of freight rail service.*

BPR Objects to NSR's Request or Motion to Modify Notice and Exemption for the following reasons

The mere fact that NSR was negotiating a possible public use agreement with governmental entities when these entities never filed a Notice of Interim Trail Use ("NITU") or any other notice with the Board to date is questionable at best. Additionally for NSR to only want to modify their exemption at this late a date from an abandonment to a discontinuance of service (especially on a line that they were raring to beguine immediate salvage operations on two months ago) is without debate highly questionable, especially after BPR's June 11, 2007 Notice of Intention to File an OFA

NSR's July 25th request is essentially proposing to only discontinue service (on an already out of service spur) so that at a later date they would file to abandon the line but possibly and only when the governmental entities are ready to strike a deal. This whole issue seems convoluted and detracts from the Boards jurisdiction in these proceedings

To further matters, In NSR's original filing of May 9, 2007 (STB Filing No. 219284) NSR clearly states that "NSR does not have fee title to the entire right-of-way underlying the line proposed for abandonment, therefore NSR will not have a contiguous corridor available for public use" With this said the only obvious use for this line would be a continuation of Rail Service, which BPR intends to provide by OFA.

BPR is waiting to prepare and enter an OFA as per our previous filings if NSR were ever to produce the documentation asked for under; 49 CFR 1152.27(a). NSR has blatantly avoided our request since June 11, 2007 and now six and a half weeks later wishes to use a discontinuance of service so as not to allow BPR's OFA and ultimately its entry in to the market as a Short Line

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In all fairness if the governmental entities are or were truly interested they could have and did have ample time to file a the appropriate documentation under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and public use condition under 49 U.S.C. 10905, pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) and additionally requested an extension of time accordingly to hash out terms with NSR

The fact that these "governmental entities" did not do this indicates that their possible intentions for this line are not that of Public Use and that they and NSR would like to work outside the Boards jurisdiction.

In its July 25, 2007 request to the Board NSR states, *"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"* Indicative that NSR does not wish to attempt to work towards a healthy National Freight Rail Network and only wishes to block out a start up short line We at BPR are prepared to negotiate whatever agreements are necessary with NJ Transit to arrange interchange with NSR when the time comes.

BPR respectfully requests that the Board deny NSR's Request or Motion to Modify Notice and Exemption and additionally Compel NSR to provide the requested information to BPR as per BPR's previous requests

Indisputably BPR's Intent to file an OFA takes precedence over NSR,s and the governmental agencies external negotiations for this line.

It is further within the Boards Jurisdiction under 49 USC §10101 (4), (5), (7), (9), and (15) to expedite and find in favor of BPR and allow the OFA process to continue.

Best regards,



Vincent Caruso, Jr
Authorized Representative
Bergen Passaic Rail Corp.
(973) 798-6233

VC/mc



I, Vincent Caruso, Jr., certify that copies of BPR's letter of objection dated July 30, 2007,

RE: STB Docket No. AB-290-288-X, Norfolk Southern Railway Company
Abandonment - In Bergen County, New Jersey -

Were served July 30, 2007, on the following By First Class United States mail to

Norfolk Southern Railway Company (Party of Record)
James R. Paschall
Three Commerce Place
Norfolk, VA 23510-2191

Vincent Caruso, Jr.
Authorized Representative
BP Rail Corporation

Dated: June 11, 2007