



CNJ Rail Corporation

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May 4, 2010

The Honorable Cynthia T. Brown
Chief - Section of Administration
Surface Transportation Board
395 E Street SW, Room 100
Washington, D C 20024

Re: STB Docket AB 290 (Sub 311) X,

Norfolk Southern Railway Company

Petition for Exemption
Abandonment of Rail Freight Service
In Baltimore City and Baltimore County, MD

Dear Ms. Brown,

On April 30th, 2010, Mr James Riffin filed a petition to reopen the above captioned proceeding. Earlier today, I was served, via Email, Ms. Lois Lowe's reply to that petition. I would simply like to state that I am generally in favor of, and support all the positions that both Mr Riffin and Ms Lowe have appear to taken.

However, Ms. Lowe has now raised issues in this proceeding that I was preparing to argue in my own separate petition for review of the Board's April 5th, 2010 before the DC Circuit Court of Appeals. As a courtesy to the Board, I would like to inform the Board that two (Mr Riffin and myself), and possibly three parties (Ms Lowe) will be filing separate petitions for review of the Board's April 5th decision.

As Ms Lowe correctly stated, a number of parties were clearly disenfranchised by the Board's two decisions of March 22nd, 2010 and the April 5th decision. In addition, I'm very disturbed by the Board's representations in its April 5th decision that appear to reference an apparently unpublished "decision" of March 18th by the Section of Environmental Analysis (SEA).

In addition, it was not until both the **NSR** and the **MTA** (not Mr Riffin) raised the prospect that the Final System Plan only conveyed to Conrail up to Milepost 15.4, not 15.44 like NSR's petition states, did it become apparent that the Board will have to now interpret whether or not the Final System Plan allowed for conveyance of rail lines

greater than what the FSP expressly called for. It is important to realize that challenges to jurisdiction can be raised at anytime during the course of a proceeding. Here, a “bright line” was drawn by both NSR and the MTA when both parties represented the FSP only permitted a conveyance to MP 15.4, anything beyond that requires the Board to interpret what was conveyed.

I too, like Ms. Lowe, now challenge the Board’s jurisdiction to determine the scope of this abandonment. NSR clearly has made the statement that it got to MP 15.44, yet the FSP does not indicate it got anything more than to MP 15.4. NSR attributes this to rounding, but nothing in the FSP appears to express that interpretation. In order for the Board to determine the scope of the abandonment, it must reconcile the the two milepost locations. The only clearly point of reference is the FSP. Since the mileposts in the FSP and NSR petitions don’t match, the Board must look at the conveyance and interpret what was conveyed. As the Courts have recently stated, the Board lacks the jurisdiction to do that.

On April 20th, 2010, Mr Riffin asked the Board to stay their April 5th decision. While I think it would be highly prudent for the Board to do so, I’ve come to the realization that the Board will simply ignore Mr Riffin no matter what he says. In my opinion, given the serious flaws in the Board’s decision, the likelihood of the April 5th decision being affirmed is far from guaranteed.. Not withstanding my opinion, I expect that the Board will still choose to not stay its decision. That result is fine with me, because staying the decision and reopening the proceeding delays judicial review of the Board’s decision. I would rather have the April 5th decision be final and ripe for judicial review. I would prefer litigating the Board’s decision with all its fatal flaws intact.

The Boards regulations permit all parties of record 20 days to reply to any pleading made by a party in a proceeding before the Board. Given the serious issues raised by both Mr Riffin and Ms Lowe, I am informing the Board that I will require my full 20 days in order to prepare a proper reply to the new issues raised.

Respectfully submitted,

Eric S. Strohmeyer /s/

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CC: All parties of record