

SERVICE DATE – APRIL 14, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 412X)

NORFOLK SOUTHERN RAILWAY COMPANY—
ABANDONMENT EXEMPTION—IN THE CITY OF BALTIMORE, MD.

Digest:¹ This decision finds that the Acting Director of the Office of Proceedings was correct to grant a railroad’s request to withdraw its verified notice of exemption.

Decided: April 11, 2025

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption to abandon its freight rail easement over an approximately one-mile rail line in Maryland. Before the exemption was due to become effective, NSR sought to withdraw the verified notice, and the Acting Director of the Office of Proceedings granted that request. James Riffin (Riffin) then filed a “petition for stay,” challenging the decision and noting that he would seek judicial review. As discussed below, Riffin’s request—treated appropriately as one for reopening, but also evaluated under the stay factors—will be denied.

BACKGROUND

On October 31, 2024, NSR filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon its freight rail easement over an approximately one-mile rail line extending from milepost +/- UU 0.00 to milepost +/- UU 1.00 in the City of Baltimore, Md. (the Line).² Notice of the exemption was served and published in the Federal Register on November 20, 2024 (89 Fed. Reg. 91,869).

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² The Line is a segment of what was a longer line known as the Cockeysville Industrial Track (the CIT). See Norfolk S. Ry.—Pet. for Exemption—in Balt. City, Md., AB 290 (Sub-No. 311X) (STB served Apr. 5, 2010) (granting abandonment authority for a portion of the CIT). The Board previously determined that Maryland Transit Administration (MTA) did not require agency authorization to acquire the CIT in 1990 because no common carrier rights or obligations were transferred to or assumed by MTA by virtue of its acquisition of the CIT. See Md. Transit Admin.—Pet. for Declaratory Ord., FD 34975, slip op. at 7-8 (STB served Oct. 9, 2007).

On November 25, 2024, Riffin filed a notice of intent to file an offer of financial assistance (OFA), under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27 to purchase a portion of the Line from milepost +/- UU 0.00 to approximately milepost UU 0.90. (Notice of Intent to File OFA 2.)³ On December 6, 2024, NSR filed a motion to withdraw its verified notice, stating that certain unresolved real estate and other issues had come to its attention and further noting that notices of exemption are not intended for controversial proceedings where there are open questions of fact. (NSR Mot. 1 & n.1.) The Acting Director granted withdrawal in a decision served on December 9, 2024. Norfolk S. Ry.—Aban. Exemption—in the City of Balt., Md. (December 9 Decision), AB 290 (Sub-No. 412X) (STB served Dec. 9, 2024).

On December 12, 2024, Riffin filed what he styled a “petition to stay” the December 9 Decision and notified the Board that he would seek judicial review. (Pet. for Stay 1.)⁴ Among other things, Riffin objects to not receiving 20 days to file a response to NSR’s December 6 motion to withdraw and claims that this material error warrants a stay. (Pet. for Stay 2, 6.) He argues that the Board’s addition of the preliminary financial responsibility requirement in Offers of Financial Assistance (Final Rule), EP 729 (STB served June 29, 2017), creates a changed circumstance. (Pet. for Stay 3-4.) He also argues that because he filed his notice of intent to file an OFA and the notice was not rejected within 10 days under 49 C.F.R. § 1152.27(c)(ii), he was then presumed to be financially responsible on December 5, 2024. (Pet. for Stay 5.) He asserts that at this point he was vested with a right to OFA information as well as a right to file an OFA and that NSR could no longer request to withdraw its verified notice on December 6. (Id. at 4-5.) According to Riffin, “staying” the December 9 Decision would mean that NSR’s notice of exemption “remains effective” and that certain adverse consequences associated with NSR being “re-vested with **all** of its common carrier obligations” would be avoided. (Id. at 6-8.) He concludes that his “ultimate goal is to acquire a mile or so of line, somewhere in the Baltimore area, so that he can provide rail service for the shipper that has been identified.” (Id. at 8.)

On December 23, 2024, NSR filed a response opposing Riffin’s petition and describing his recent communications with the railroad and MTA. NSR asserts that the Acting Director has the authority to dismiss a proceeding and did so properly in this case. (NSR Reply 3-4.) Furthermore, NSR argues that neither a stay nor an appeal should be granted here. (Id. at 6.)

MTA filed in support of NSR’s reply on the same date. MTA argues that Riffin’s petition changes the principle underpinning the OFA process—from the Board compelling a carrier to sell rather than abandon a line, to the Board compelling a sale where a carrier has decided to retain a rail line and the associated common carrier obligation. (MTA Support

³ Also on November 25, 2024, Riffin filed a notice of intent to participate with a comment attached, a request that NSR provide him with information (which he later amended on November 27, 2024), and a motion requesting that the Board issue a protective order that would allow him to submit certain documents and information in connection with this docket under seal, including the identity of the shipper he would serve. The motion for protective order was granted in a decision served on December 2, 2024.

⁴ Riffin subsequently filed a petition for review before the United States Court of Appeals for the District of Columbia Circuit. See Riffin v. S.T.B., No. 24-1385 (filed Dec. 31, 2024).

Statement 1.) MTA adds that Riffin's contention that he obtained a vested right to acquire NSR's interest when NSR decided to terminate its efforts to extinguish that obligation is unsupported by any authority. (*Id.*)

DISCUSSION AND CONCLUSIONS

On its face, Riffin expressly asks for a stay of the December 9 Decision. But because that decision is already effective, there is nothing to stay. Chi., Mo. & W. Ry.—Trackage Rts.—Chi. S. Shore & S. Bend R.R., FD 31038 (ICC served May 22, 1987) (“An effective decision is not subject to a stay.”). Rather, by seeking to have NSR's notice of exemption “remain [] effective,” Riffin is in effect seeking reversal of the December 9 Decision. Accordingly, the Board will construe Riffin's petition as one for reopening. See generally CSX Transp., Inc.—Aban. Exemption—in Floyd Cnty., Ky., AB 55 (Sub-No. 745X), slip op. at 2 (STB served Dec. 18, 2015) (treating a letter opposing a verified notice of exemption to abandon as a petition to reopen the proceeding). Viewed in that light, Riffin's petition will be denied. And even if the Board were to evaluate Riffin's petition under the factors for granting a stay, no relief would be warranted.

Reopening.

Under 49 U.S.C. § 1322(c) and 49 C.F.R. § 1152.25(e)(4), the Board may reopen a proceeding because of “material error, new evidence, or substantially changed circumstances.” The alleged grounds must be sufficient to convince the Board that its prior decision in the case would be materially affected for reopening to be granted. See Neb., Kan., & Colo. Ry.—Aban. Exemption—in Decatur, Norton, & Phillips Cntys., Kan., & Harlan Cnty., Neb., AB 1032X, slip op. at 2 (STB served May 24, 2018).

Riffin alleges both material error and changed circumstances, but the record does not support either argument. The December 9 Decision is consistent with Board precedent.⁵ Generally, the Board will grant a railroad's request to withdraw a filing seeking an abandonment. See, e.g., V&S Ry.—Discontinuance Exemption—in Pueblo, Crowley, Kiowa, & Otero Cntys., Colo., AB 603 (Sub-No. 4X) (STB served May 6, 2016); Norfolk S. Ry.—Aban. Exemption—in Hamilton Cnty., Ohio, AB 290 (Sub-No. 289X) (STB served Sept. 3, 2008); Me. Cent. R.R.—Aban. Exemption—in Androscoggin Cnty., Me., AB 83 (Sub-No. 16X) (STB served Sept. 15, 2000); Bessemer & Lake Erie R.R.—Aban. Exemption—in Erie Cnty., Pa., AB 88 (Sub-No. 5X) (ICC served Oct. 18, 1989). In Almono, LP—Abandonment Exemption—in Allegheny County, Pa., AB 842X (STB served Jan. 28, 2004), the Board granted a railroad's request to withdraw its filing seeking abandonment authority over the objection of the potential offeror. The Board explained that, because carriers are not compelled to abandon lines, the Board normally grants a carrier's motion to withdraw. Almono, AB 842X, slip op. at 1-2. The Board has also permitted withdrawal after a potential offeror has filed a notice of intent to file an OFA or requested

⁵ Riffin objects that he did not receive 20 days to respond to NSR's motion to withdraw. But the Board has considered Riffin's challenge to the December 9 Decision and determined that nothing he has argued in this petition would have warranted denial of NSR's motion to withdraw.

information from the railroad to formulate an offer. See Norfolk S. Ry.—Aban. Exemption—in Orange Cnty, N.Y., AB 290 (Sub-No. 283X) (STB served Sept. 15, 2008) (granting withdrawal despite notice of intent to file an OFA and request for information); Norfolk S. Ry.—Aban. Exemption—in Bergen Cnty, N.J., AB 290 (Sub-No. 288X) (STB served May 14, 2008) (granting withdrawal and finding the notice of intent to file an OFA and motion to compel the production of valuation information moot); The Cin., New Orleans & Tex. Pac. Ry.—Aban. Exemption—in Scott Cnty., Tenn., AB 290 (Sub-No. 279X) (STB served Apr. 24, 2007) (granting withdrawal and finding that the notice of intent to file an OFA is moot); Bessemer & Lake Erie R.R.—Aban. Exemption—in Armstrong & Butler Cntys., Pa., AB 88 (Sub-No. 8X) (STB served Feb. 26, 1997) (granting withdrawal despite the submission of a notice of intent to file an OFA and the OFA due date already having been tolled by the Board to allow for the production of valuation material).⁶

Moreover, in NSR’s request to withdraw its verified notice, it states that “certain real estate and other issues have come to NSR’s attention that need time to resolve and cannot be resolved in the statutory period afforded to notices of exemption.” (NSR Mot. 1.) Indeed, Riffin himself alleged that the verified notice was false and misleading because it stated that MTA “owns the entire Line.” (Riffin Notice of Intent to Participate with Verified Comments at 2-5; NSR Verified Notice 2.) According to Riffin, Amtrak owns some of the real property within the right-of-way. (Riffin Notice of Intent to Participate with Verified Comments at 2-5.) Allowing NSR to withdraw its verified notice so that it may resolve such issues will facilitate a future request for abandonment authority, should NSR choose to pursue one. See Norfolk S. Ry.—Aban. Exemption—in Maryville, Tenn., AB 290 (Sub-No. 153X) (ICC served Dec. 13, 1994).

Riffin acknowledges the railroad may move to withdraw but claims that the Board removed the option once a potential offeror has been presumed to be financially responsible when it amended its OFA regulations in 2017. (Pet. for Stay 3-4.) He explains that “[t]he newest version of 49 CFR 1152.27, made significant changes to the OFA process. Relevant to this Proceeding, the present version has a newly-added ‘Preliminary Financial Responsibility’ section. 49 CFR 1152.27(c)(ii).” (Pet. for Stay 3-4.) He asserts that his rights to information and to file and serve an OFA on NSR vested when he became preliminarily financially responsible. (*Id.* at 4.) He adds that NSR cannot “interfere with” or “subvert” those rights by filing its motion to withdraw. (*Id.*)

⁶ The Board has previously exercised its discretion in denying withdrawal where doing so would be “highly adverse” to the OFA scheme. See Trinidad Ry.—Aban. Exemption—in Las Animas Cnty., Colo., AB 573X, slip op. at 5-6 (STB served Dec. 12, 2001) (recognizing that while the Board normally grants carrier requests to withdraw abandonment proceedings, the agency has the ability to address particular circumstances). In that case, however, the Board allowed another carrier to acquire the subject line during the pendency of the OFA process based on the acquiring carrier’s “specific acknowledgment that the line remained subject to [the OFA] process.” *Id.* at 6. The acquiring carrier’s subsequent efforts to “renege on its commitment” raised serious concerns regarding its credibility and threatened the “integrity” of the OFA process. *Id.* at 5-6. No such concerns are present here.

Riffin cites no authority for his assertion that the revised OFA rules granted him any sort of right that would prevent NSR from voluntarily withdrawing its request for abandonment authority. His position reflects an incorrect understanding of the preliminary financial responsibility requirement. The Board explained the purpose of the new requirement in the notice of proposed rulemaking leading to the Final Rule:

[t]he Board proposes to amend its regulations at 49 C.F.R. § 1152.27(c)(1) to require a preliminary showing of financial responsibility with the filing of an NOI, before the railroad is required to provide financial information to the potential offeror. The Board has identified an initial minimal financial responsibility showing as a useful tool to ensure offerors are legitimately interested in, and capable of, participating in the OFA process and are not seeking to abuse the Board's processes or cause delay in abandonment or discontinuance proceedings.

Offers of Financial Assistance, EP 729, slip op. at 16 (STB served Sept. 30, 2016). As such, the preliminary financial responsibility requirement adopted in the Final Rule in 2017 is a safeguard for railroads seeking abandonment and for the Board, rather than a new right for a potential offeror.⁷ The new requirement did not grant Riffin a new right or preclude NSR from moving to withdraw at this point in the OFA process, and therefore is not a changed circumstance warranting reopening or a basis for finding material error.

Petition for Stay.

Even if there were an action to be stayed at this point (which there is not), Riffin has failed to satisfy the requirements for a stay. Under 49 U.S.C. § 1321(b)(4), the Board may issue an appropriate order, such as a stay, when necessary to prevent irreparable harm. In deciding a petition for a stay, the Board considers: (1) whether the party seeking the stay has made a strong showing that it is likely to prevail on the merits; (2) whether the party seeking the stay will suffer irreparable harm in the absence of a stay; (3) whether other interested parties will be substantially harmed by a stay; and (4) the public interest in granting or denying the stay. See, e.g., R.J. Corman R.R. Prop.—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn., AB 1296X, slip op. at 2-3 (STB served Dec. 1, 2020); Ind. Harbor Belt R.R.—Trackage Rts.—Consol. Rail Corp. (IHB), FD 36099 et al., slip op. at 4 (STB served Mar. 14, 2017) (citing

⁷ Moreover, even if Riffin had acquired certain rights when he became preliminarily financially responsible, it would still be “within the agency’s discretion” to permit the withdrawal of NSR’s verified notice of exemption. See Trinidad Ry., AB 573X, slip op. at 5 & n.8 (noting the agency’s discretion regarding notice withdrawals even where an OFA offeror had been found to be financially responsible). In exercising that discretion, the Board considers whether withdrawal would be “consistent with the public interest.” See, e.g., Conrail Aban. of a Portion of the W. 30th St. Secondary Track in N.Y., N.Y., AB 167 (Sub-No. 493N), slip op. at 5-6 (ICC served Feb. 11, 1988). Withdrawal here is plainly consistent with the public interest for the reasons explained elsewhere in this decision: e.g., the permissive nature of abandonment authority, the fact that the OFA process was still in a preliminary stage when NSR sought to withdraw, NSR’s professed need to resolve certain real estate issues, and the absence of concerns regarding NSR’s credibility or ability to fulfill its common carrier obligation.

Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977)). The party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief. Id. (citing Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974)). The threshold consideration in deciding whether injunctive relief is appropriate is whether the petitioning party will be irreparably harmed without it. See R.J. Corman, AB 1296X, slip op. at 3; see also 49 U.S.C. § 1321(b)(4). As to irreparable harm, the party seeking a stay must demonstrate that the injury claimed is “imminent, certain and great.” IHB, FD 36099 et al., slip op. at 4 (quoting Sault Ste. Marie Bridge Co.—Acquis. & Operating Exemption—Lines of Union Pac. R.R., FD 33290, slip op. at 6 (STB served Jan. 24, 1997)).

Here, the stay factors clearly militate in favor of denying Riffin’s petition. As explained above, there is no merit to the petition, including because Riffin does not have a vested right to information under these circumstances or a right to acquire the Line. In addition, Riffin has failed to demonstrate that the December 9 Decision has caused him harm that is imminent, certain, and great. Rather, any harm to Riffin is speculative at best. It assumes that he would file an OFA, that it would not be rejected by the Board, that he accepts the terms and conditions of sale agreed to by the parties or set by the Board, that his shipper tenders traffic, that he is able to provide service, and that he earns a profit. As for potential harm to other parties, the December 9 Decision merely restored the status quo that existed before NSR sought authority to abandon the Line, and accordingly NSR will remain on the Line to provide service. Moreover, if Riffin’s shipper believes that NSR’s service is unsatisfactory, it may seek appropriate redress from the Board. See, e.g., 49 U.S.C. § 11101 (requiring that a carrier provide service on reasonable request); 49 U.S.C. § 10702 (prohibiting unreasonable practices). While Riffin suggests NSR would be irreparably harmed by remaining on the Line and subjecting itself to its common carrier obligation, (Pet. for Stay 7), NSR itself has chosen to retain its obligation for the time being, and the Board sees no reason to override that decision based on the facts in this proceeding.

It is ordered:

1. Riffin’s petition is denied.
2. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.