

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 288X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
BERGEN COUNTY, NJ

Decided: March 24, 2008

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.40-mile line of railroad between milepost UQ 8.80 and milepost UQ 10.20, in Rutherford, Bergen County, NJ. Notice of the exemption was served and published in the Federal Register on May 31, 2007 (72 FR 30432-33). The exemption was scheduled to become effective on June 30, 2007, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by June 11, 2007.

On June 11, 2007, BP Rail Corporation (BPR) filed a formal expression of intent to file an OFA to purchase NSR's line proposed for abandonment. This filing automatically stayed the effective date of the exemption for 10 days, until July 10, 2007.¹ In the filing, BPR requested that NSR provide it with the information set forth in 49 CFR 1152.27(a), including the minimum purchase price required to acquire the line. BPR also requested that NSR provide the most recent report on the physical condition of the line and traffic, revenue and other data necessary to determine NSR's estimate on the net liquidation value (NLV) of the line, with supporting data reflecting available real estate appraisal, assessments of quality and the quantity of track material in the line, and removal cost estimates used to obtain the NLV. By decision served on June 29, 2007, the time period for filing an OFA was tolled for an additional 30 days, until July 30, 2007, and the effective date of the exemption was extended until August 9, 2007.

By pleading filed on July 23, 2007, BPR requested a further extension until September 30, 2007, for NSR to provide the requested information to BPR, and that the time period for BPR to file its OFA be extended until 30 days from the date that NSR provides the requested information and informs the Board that NSR has done so. On July 27, 2007, NSR filed a request to modify its request in this proceeding so that it would be authorized only to discontinue service over, but not abandon, the 1.40-mile line at issue in this proceeding. NSR also requested that the Board declare BPR's notice of intent to file an OFA and its request for valuation information moot. On July 30, 2007, BPR filed in opposition to NSR's motion to modify. On November 27, 2007, BPR filed a motion to compel NSR to provide the financial

¹ See 49 CFR 1152.27(c)(2)(i).

information requested by BPR for its OFA. On December 18, 2007, NSR filed a reply in opposition to the motion to compel. By decisions served on July 30, 2007, September 28, 2007, November 27, 2007, and January 25, 2008, the Board extended due date for BPR to submit an OFA until March 24, 2008, to allow the Board time to consider NSR's modification request and the subsequent pleadings that have been filed. The decisions extended the effective date of the exemption until April 2, 2008.

BPR's motion to compel indicates that it is still interested in filing an OFA in this proceeding. Therefore, in order to allow the Board additional time to review NSR's modification request, the Board, on its own motion, will further extend the time period for BPR to file an OFA until May 23, 2008. Also, the Board will extend the effective date of the exemption until June 2, 2008.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The time period for BPR to file an OFA is tolled until May 23, 2008.
2. The effective date of the exemption is postponed until June 2, 2008.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary