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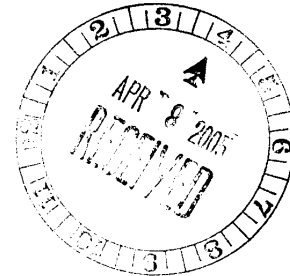
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April 8, 2005



BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

ENTERED
Office of Proceedings

APR - 8 2005

Part of
Public Record

Re: Docket No. AB-883 (Sub-No. 1X), Rocky Mount and Western Railroad Co., Inc.
- Abandonment - In Nash County, North Carolina

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and 10 copies of the Reply to Petition for Tolling of Date for Submitting Offer of Financial Assistance pursuant to 49 C.F.R. § 1152.27(c)(2)(ii)(C).

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,

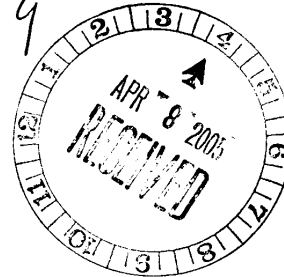
Mark H. Sidman

Enclosures

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-883 (Sub-No. 1X)



**ROCKY MOUNT AND WESTERN RAILROAD CO., INC.
-- ABANDONMENT EXEMPTION --
NASH COUNTY, NORTH CAROLINA**

**REPLY TO PETITION FOR TOLLING OF DATE
FOR SUBMITTING OFFER OF FINANCIAL ASSISTANCE
PURSUANT TO 49 C.F.R. § 1152.27(c)(2)(ii)(C)**

**ENTERED
Office of Proceedings**

APR - 8 2005

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Public Record**

**ROCKY MOUNT AND WESTERN
RAILROAD CO., INC.**

By it attorneys:

**Mark H. Sidman
Rose-Michele Weinryb
Weiner Brodsky Sidman Kider PC
1300 19th Street, NW
Washington, D.C. 20036-1609
(202) 628-2000**

Dated: April 8, 2005

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-883 (Sub-No. 1X)

**ROCKY MOUNT AND WESTERN RAILROAD CO., INC.
-- ABANDONMENT EXEMPTION --
NASH COUNTY, NORTH CAROLINA**

**REPLY TO PETITION FOR TOLLING OF DATE
FOR SUBMITTING OFFER OF FINANCIAL ASSISTANCE
PURSUANT TO 49 C.F.R. § 1152.27(c)(2)(ii)(C)**

On March 9, 2005, the Surface Transportation Board ("Board") served a Notice of Exemption ("Notice") in STB Docket No. AB-883 (Sub-No 1X). 70 Fed. Reg. 11731 (March 9, 2005). In the Notice, the Board stated that formal expressions of intent to file an offer of financial assistance ("OFA") under 49 C.F.R. § 1152.27(c)(2) must be filed by March 21, 2005. Under 49 C.F.R. § 1152.27(c)(2)(ii)(B), OFA's were due on April 8, 2005 (30 days after publication of the Notice in the Federal Register).

On March 18, 2005 North Carolina Department of Transportation (NCDOT) timely filed an expression of intent to submit an OFA. NCDOT requested information concerning the subject line in accordance with 49 C.F.R. 1152.27(a). Rocky Mount and Western Railroad Co., Inc. ("RM&W" or "Petitioner"), the petitioner in this proceeding, has not yet compiled and delivered the requested information.

The Board's regulations provide:

If, after a *bona fide* request, applicant has failed to provide a potential offeror promptly with the information required under paragraph (a) of this section and if that information is not contained in the notice of exemption, the Board will entertain petitions to toll the 30-day period for submitting offers of financial assistance under paragraph (c)(2) of this section. Petitions must be filed with the Board within 25 days after publication in the Federal Register. . . .

49 C.F.R. § 1152.27(c)(ii)(2)(C)

Under this provision, the request for tolling of the April 8, 2005, due date for the filing of the OFA ("Request for Tolling") was due on Sunday, April 3, 2005. Although the Board regulations generally provide for a due date that falls on a weekend or legal holiday in the District of Columbia to roll forward to the next business day, 49 C.F.R. § 1152.25(d)(3), the Board's OFA procedures specifically provide that requests for tolling "must be filed on or before their actual due date under 49 C.F.R. 1152.25(d)(4)." 49 C.F.R. § 1152.27(c)(2)(ii)(C). Accordingly, the Request for Tolling was due on Friday, April 1, 2005.

On Monday, April 4, 2005, three days after the due date, NCDOT filed its Request for Tolling. NCDOT did not request leave to file late or provide an explanation for its failure to comply with the Board's regulations. On Tuesday, April 5, 2005, four days after the due date, NCDOT filed a letter in which counsel stated, "I am informed that Rocky Mount and Western Railroad Co., Inc. (RM&W) has no objection to the requested extension, and am writing apprising you of that fact." Petitioner's understanding is that counsel's assertion is based on an exchange of voice mail messages between Pamela R. Davis of NCDOT, and Ronnie McKenzie, President of RM&W, which occurred on April 4, 2005. Mr. McKenzie was out of the office attending a

conference on that date. Ms. Davis left a voice mail message with Mr. McKenzie requesting an extension; Mr. McKenzie left a return voice mail message in which he indicated that he did not object to the extension. *See McKenzie Verified Statement* attached hereto as Exhibit A.

NCDOT's request for an extension was made three days after the due date for the Request for Tolling and its request for consent to an extension was made four days after that deadline. Under these circumstances, Petitioner urges that the Board find that NCDOT failed timely to file its Request for Tolling.

Respectfully submitted,

ROCKY MOUNT AND WESTERN
RAILROAD CO., INC.

By its counsel:


Mark H. Sidman, Esq.

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1300 Nineteenth Street, NW
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(202) 628-2000

Dated: April 8, 2005

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EXHIBIT A**VERIFIED STATEMENT****OF****RONNIE MCKENZIE**

1. I am Ronnie McKenzie, President of Rocky Mount and Western Railroad Co., Inc. ("RM&W").

2. On April 4, 2005, I was attending a railroad conference in Anaheim, CA.

3. I received a voice mail on April 4, 2005, from Pam Davis of North Carolina Department of Transportation (NCDOT), in which Ms. Davis asked if RM&W would object to a 30-day extension to file an offer of financial assistance in STB Docket No. AB-883 (Sub-No. 1X).

4. I returned Ms. Davis' call late in the day on April 4, 2005, and indicated in a voice mail that I did not object to the requested extension.

The foregoing is true and correct to the best of my knowledge and belief.


Ronnie McKenzie