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Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241

James R. Paschall
Senior General Attorney

Writer's Direct Dial Number

(757) 629-2759
fax (757) 533-4872

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Honorable Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S W
Washington, DC 20423-0001

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Public Review

Re STB Docket No AB-290 (Sub-No. 283X), Norfolk Southern Railway
Company - Abandonment Exemption - In Orange County, New York -
Request or Motion to Modify Petition and Exemption

Dear Mr. Williams

Norfolk Southern Railway Company ("NSR") requests or, as may be required, moves, that the Board modify the exemption granted to NSR by the Board in a decision served May 2, 2007 in the subject proceeding. The exemption permits NSR's abandonment of a 1.64-mile line of railroad, extending from milepost ZU 45 00 to milepost ZU 46 64 at Harnman, in Orange County, NY (the "Line"). NSR asks that the Board modify the exemption to permit only the discontinuance of service over the Line. NSR also asks, or as may be required, moves, that NSR be granted leave to amend its petition for exemption in this docket, filed with the Board on January 12, 2007, if such amendment is technically required for the Board to modify the exemption already granted. Discontinuance of service authority is a more limited part of abandonment authority. NSR would need to file a further notice or petition for exemption to obtain authority to abandon the Line if the Board modifies the exemption. This change also would moot James Riffin's notice of intent to file an OFA and request for information.

The subject Line is a dead-end spur or industrial lead track that was once part of a longer Consolidated Rail Corporation ("Conrail") branch line. NSR has operated the Line since June 1, 1999. NSR acquired the Line as part of the Conrail Transaction approved by the Board in *CSX Corp. et al - Control - Conrail Inc. et al*, 3 S.T.B. 196 (1998), as modified in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (Sub-No. 94) (STB served Nov. 7, 2003).

NSR's petition noted that the segment of the Line between milepost ZU 45 00, where it connects to the Port Jervis, NJ-Binghamton, NY main line, and milepost ZU 45 90 has been dormant since October, 2005 when the sole shipper located on the Line, Nepera Chemical Company, permanently closed its plant. NSR's petition also noted that the adjacent segment of the Line between mileposts ZU 45.90 and ZU 46 64, where the track dead ends, was taken out of service by Conrail several years before NSR acquired the Line and that the track materials had been removed from the segment. No shippers have been located on this end segment for many years, if any ever were. None are likely to locate along it because of surrounding development and uses. We surmise that Conrail did not include this segment in a prior filing for abandonment authority or exemption because it wished to keep the track for storage of cars or turning trains. In any event, this additional short segment of the Line has not been needed for railroad operations for many years. The information about the Line that NSR obtained from Conrail showed that Conrail had scheduled this 0.74-mile long-dormant end segment for abandonment. However, NSR found no record that Conrail ever received abandonment authority or exemption for this segment of the Line from the ICC or the Board. Thus, the segment has been "ghost mileage" since before NSR acquired it, but it is still technically a railroad line. In order to put the matter in order, NSR included it as part of the subject Line in the petition for exemption.

In the petition, NSR expressed its intention to retain and reclassify the more recently active segment of the Line between milepost ZU 45 00 and milepost ZU 45.90 as industrial lead or storage track. NSR stated its intention to retain access to the site of the closed Nepera Chemical Company facility because NSR believes that the site continues to have industrial development potential.

One purpose of NSR's petition was to remove less than one mile of "ghost mileage" that Conrail had transferred to NSR in 1999 from NSR's system because there is no prospect for future railroad service over or use of that part of the Line. Another purpose was to convert the remaining 0.9-mile of more recently active, but now out-of-service, track to spur or industrial lead track for future flexibility in serving the site, using the tracks for ancillary purposes, or ultimately disposing of the property, if necessary. Through prior Conrail abandonments, this 0.9-mile segment of recently active track had become a dead-end spur or industrial lead track that served only one shipper in all but official status before NSR acquired it. NSR appropriately combined the abandonment of the ghost mileage with the abandonment but reclassification of the now inactive track segment that served the Nepera Chemical facility. The remaining track on this Line is long enough only to serve this one large, now dormant, industrial site. Because track must pass through the abandonment/discontinuance process for it to be reclassified, NSR filed its petition for exemption to abandon this segment of the Line for that expressed purpose. NSR clearly never intended to give up ownership and possible use

of the track serving the industrial site or to remove it altogether from railroad service NSR did not wish to give up the right and ability to serve any customer that may locate at the old Nepara Chemical site in the reasonably near future, but wished to preserve the availability of the track at that site for possible service to any potential future railroad customer that might locate at the site. Reclassification of the track as industrial lead or storage track would properly reflect the track's length and recent and potential use after previous Conrail abandonments of the former branch line of which it was a part NSR would be able to treat the track as spur or industrial track as other similar track at such sites would be treated and to see whether a new railroad customer might locate at the site within a reasonable time Now, however, there is no customer to serve on the Line

When a carrier is authorized to abandon a line, that authority is permissive, not mandatory. The carrier can choose to exercise that authority or not. Because carriers are not compelled to abandon lines, the Board normally grants a carrier's motion to withdraw its request for abandonment authority. See *The Cincinnati, New Orleans and Texas Pacific Railway Company - Abandonment Exemption - in Scott County, TN*, STB Docket No AB-290 (Sub-No. 279X) (STB served April 24, 2007); *Norfolk Southern Railway Company - Abandonment Exemption - in Lorain County, OH*, STB Docket No. AB-290 (Sub-No 268X) (STB served October 25, 2006), *Almona LP – Abandonment Exemption – in Allegheny County, PA*, STB Docket No AB-842X (STB served January 28, 2004) While NSR requests modification of the exemption, not its complete withdrawal, the modification will result in NSR taking a less permanent action than abandonment of the line It also will require NSR to make a future filing to obtain full abandonment authority for the Line, just as it would if the exemption were withdrawn

There are no active or potential railroad customers currently located on the Line Mr James Riffin has filed a notice of intent to file an Offer of Financial Assistance to acquire the Line and has requested valuation information Since (1) the purpose of an OFA is to provide continued rail service on a line that would otherwise be abandoned, (2) there is no rail service on the subject Line to continue, (3) there is no potential railroad customer currently located along the Line, (4) NSR intends to resume service over the track if a railroad customer locates along it, and (5) under NSR's request, the exemption will be reduced to an exemption for discontinuance of service, the OFA will become moot as well as unnecessary with the Board's grant of NSR's request ¹

¹Mr Riffin's main purpose in this case, according to his own filing, appears to be to preserve a supposed argument for his potential OFA filing for acquisition of NSR's freight operating rights over the Cockeysville Industrial Track near Baltimore, MD, if NSR again files a petition for exemption to discontinue service over that track The Maryland Transportation Authority acquired the Cockeysville line from Conrail in 1990, about a year before the ICC's "Maine DOT" decision MTA apparently decided that

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While it might appear to have been preferable for NSR to request modification of the exemption only for the Line segment serving the industrial site and to proceed with the abandonment of the "ghost mileage" segment, discontinuance of service for the "ghost" segment will meet NSR's current objective and this proceeding will have advised the Board of the status of that short long-dormant segment of the Line. The pending notice of intent to file an OFA obviously could not have been filed for the purpose of continuing (non-existent) rail service to non-existent customers so it may be that removal of the Line segment serving the industrial site from the abandonment exemption might not end the OFA matter. Whether Mr Riffin would pursue the OFA process for the ghost mileage alone, if he were allowed to pursue it, there is no need to provide for that unproductive use of NSR's and the Board's time when a reasonably satisfactory alternative exists with respect to that mileage in this case.

Therefore, NSR requests that the Board modify the exemption to permit only discontinuance of service over the subject Line and declare the notice of intent to submit an OFA and accompanying request for line valuation information moot.

Very truly yours



James R Paschall

cc James Riffin
1941 Greenspring Drive
Timonium, MD 21093

since the sale transaction left Conrail with an easement and an operating agreement for continued freight service, no filing with the ICC was required. MTA later started light rail commuter passenger service on the line, but Conrail and NSR provided freight service on the line for 15 years. The Board dismissed NSR's petition for exemption to discontinue freight service over the line last year mainly so MTA could file a petition requesting the Board to find that the line sale transaction met the "Maine DOT" criteria, the ICC lacked jurisdiction over the transaction and MTA did not acquire a freight common carrier obligation. MTA's petition is pending before the Board. Whether preserving an argument for a potential Cockeysville line OFA is Mr Riffin's only real purpose in this case or whether he believes he could acquire access to a prime industrial site cheaply or whether he has other motives is not obvious. It is obvious, however, that his OFA was not intended to continue rail service over a Line on which there is no rail service and along which no potential rail customer is currently located.