



November 27, 2007

Via Electronic Filing
Hon. Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20024

Re: STB Docket No. AB-290 (Sub. No. 288X), Norfolk Southern Railway Company
Abandonment - In Bergen County, New Jersey - Notice of Exemption (Filed May 11, 2007)

Dear Secretary Williams;

Attached please find Bergen Passaic Rail Corporation's Motion to Compel in the above referenced proceeding.

Respectfully,

Vincent Caruso, Jr.
Authorized Representative
Bergen Passaic Rail Corp.
(973) 798-6233

**Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.**

**Docket No. AB-290 (Sub No. 288X)
Norfolk Southern Railway Company
- Abandonment -
- In Bergen County, NJ -
Notice of Exemption (Filed May 11, 2007)**

MOTION TO COMPEL

Vincent Caruso, Jr.
22 Somerset Place
Clifton, NJ 07012
Tel: (973) 798-6233
Fax: (973) 798-6234
v.caruso@bprail.com
Authorized Representative
Bergen Passaic Rail Corporation
D/B/A BP Rail

Dated: November 27, 2007

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SURFACE TRANSPORTATION BOARD
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Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonment 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 Bergen Passaic Rail Corporation D/B/A BP Rail (“BPR”) simultaneously filed with the Board and served Norfolk Southern Railway Company (“NSR”) with our formal expression of intent to file an Offer of Financial Assistance (“OFA”) under 49 CFR 1152.27

On June 28, 2007 by Board Decision (38103 DO) the proceedings were re-opened and the time period for BPR to file an OF was tolled for 30 days until July 30, 2007

As part of BPR's intent to file an OFA BPR request that NSR provide BPR with information as per 49 CFR 1152.27(a) including the minimum purchase price required to acquire the Carlton Hill Branch. Furthermore BPR request that NSR provide BPR with its most recent report on the physical condition of the involved line and traffic, revenue and other data necessary to determine NSR's estimate on net liquidation value of the line together 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 net liquidation value.

Since BPR's June 11, 2007 formal expression of intent to file an OFA, the total period for BPR to file its OFA has been tolled a total of 180 days (Board Decisions 318103 DO 6/28/07, 38261 DO 7/30/07, 38441 DO 9/27/07 and 38575 DO 11/27/07). Yet to Date NSR's only communication regarding this filing has been a "Request or Motion to Modify Exemption" dated July 25, 2007 (to which BPR immediately filed a response dated July 30, 2007 filing 220034). There is no provision for such a filing to excuse NSR from providing the requested information to BPR, unless excused by the Board, after an appropriate proceeding, none of which have occurred. The Board should not tolerate NSR simply ignoring its responsibilities and assuming that the Board will rule in its favor.

The public interest and due process can only be served by allowing a potential offeror a fair opportunity to assess the Line not by allowing an abandoning carrier the leeway to decide whether there is any basis for an OFA or to whom they will provide the information requested outside the Boards jurisdiction.

Therefore BPR respectfully requests that the Board enter an order compelling NSR to provide the requested information so that the OFA process may be continued in a timely fashion once the Board has completed its review of NSR's modification request and BPR's objection accordingly.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'V. Caruso, Jr.', with a stylized flourish at the end.

Vincent Caruso, Jr.
Authorized Representative for
Bergen Passaic Rail Corporation
D/B/A BP Rail

I, Vincent Caruso, Jr., certify that copies of BPR's Motion To Compel dated November 27, 2007,

RE: STB Docket No. AB-290 (Sub No. 288X), Norfolk Southern Railway Company Abandonment - In Bergen County, New Jersey - Notice of Exemption (Filed May 11, 2007)

Were served November 28, 2007, on the following By First Class United States mail to:

Norfolk Southern Railway Company (Party of Record)
James R. Paschall
Three Commerce Place
Norfolk, VA 23510-2191

A handwritten signature in black ink, appearing to read 'V. Caruso, Jr.', with a horizontal line underneath.

Vincent Caruso, Jr.
Authorized Representative
BP Rail Corporation

Dated: November 28, 2007