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BEFORE THE

SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
May 22, 2017
Part of
Public Record

Docket No. 290 (Sub-No. 389X)

NORFOLK SOUTHERN RAILWAY COMPANY

ABANDONMENT EXEMPTION

MP 4.0 – MP 4.5 ROANOKE, VA BELT LINE

REQUEST TO TOLL THE TIME PERIOD
TO FILE AN
OFFER OF FINANCIAL ASSISTANCE

May 22, 2017

David L. Foster
Transportation Consultant
342 High Street
Salem, VA 24153
(540) 389-0407
dfoster342@aol.com

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Pursuant to 49 U.S.C. § 10904 and 49 C.F.R. § 1152.271(2)(i), Thoroughbred Energy & Environmental Corporation (“TEEC”), a Virginia Corporation owned by David L. Foster, and a non-carrier (“Offeror”), submitted to the Surface Transportation Board (“STB”) on April 13, 2017 a Notice of Intent to File an Offer of Financial Assistance (“OFA”), and in its Decision with release date of May 5, 2017, the STB accepted Offeror’s filing, setting a deadline of May 24 for the OFA.

This proceeding involves an Abandonment Exception (“AE”) application covering one-half mile of a branch line known as the Roanoke Belt Line, located entirely within the city limits of Roanoke, VA, between Mileposts 4.0 and 4.5. The railroad beyond MP 4.5 to the end was previously deeded by Norfolk Southern

("NS") to a newly-created shortline Roanoke Southern LLC. Because future reactivation and operation of the Roanoke Belt Line would be impossible and forever foreclosed with a half-mile gap in the middle, Offeror's Notice of Intent filing and related comments were motivated by seeking to retain trackage on the portion now proposed for abandonment.

Upon acceptance of Offeror's Notice of Intent by STB, Counsel for NS provided Offeror with considerable new information in an e-mail dated May 11, 2017, and in clarifying e-mails, responding to Offeror's questions, on May 16 & 17. Offeror needs additional time to digest these materials and finds it impossible to craft a cogent OFA by the May 24 deadline set forth by STB. The difficulties stem from two issues in particular.

First, much of the analysis and material previously submitted by Offeror in this Docket was based on a map furnished by NS as an exhibit in the Environment and Historic Resources portion of its AE application. That map is attached here for convenient reference. Of the multiple map renditions and sketches of the line segment proposed for abandonment, this one in particular was the clearest and best. Now NS has furnished new maps of the end points defining the half-mile to be abandoned (second attachment), and says the map relied on by Offeror "was not accurate." Offeror previously filed comments in this proceeding stating that the map seemed wrong because it included track actively used by Associated Asphalt, but NS, in ¶ 4 of its April 26 response to STB, stated that NS was not

wrong, Offeror was. Nothing is more basic to analysis of a line abandonment than accurate determination of the endpoints. The new maps now provided by NS move both MP 4.0 and MP 4.5 substantially to the east of earlier locations, as a comparison of the two versions clearly shows.

Added to this confusion are the conflicting ownership claims submitted concerning the right of way. NS has provided Offeror with copies of numerous deeds to support the railroad's claim that it owns this real estate in fee simple. Yet Walker Machine & Foundry Corporation ("Walker") has filed on April 17, 2017 a letter disagreeing with the NS ownership claim and providing deed references asserting that Walker owns the right of way with the railroad holding only an easement for railroad purposes.

In response of April 24 to Walker's filing, NS argues that all three property issues raised by Walker are matters of state property or contract law and not properly a consideration by STB in an abandonment case. Yet in its Decision of May 5, STB observes (p. 4, end of ¶2) that "the type of ownership impacts the calculation of a line's net liquidation value." This disagreement may indeed need to be resolved by a title search or court adjudication. Offeror needs extra time to cope with this unresolved but pivotal issue in crafting its OFA.

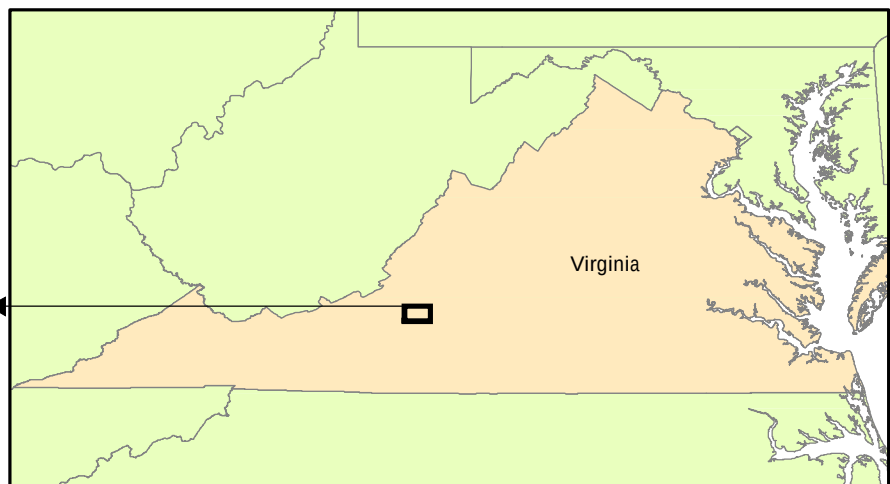
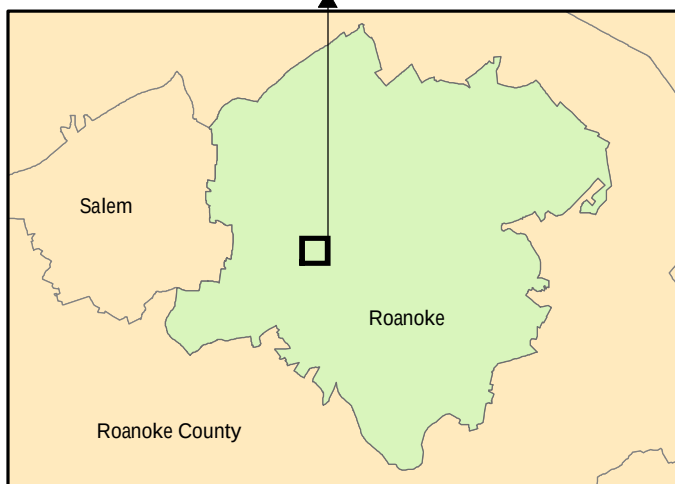
Accordingly Offeror seeks STB's indulgence and cooperation in granting an extension of the deadline to file its OFA by fourteen (14) business days to June 14, 2017.

CERTIFICATE OF SERVICE

I do hereby certify that on this 22nd day of May, 2017, I have served a copy of the foregoing Request to Toll the Time Period for Filing an Offer of Financial Assistance by email to all parties of record in AB-290-389-X.



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342 High Street
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Docket No. AB 290 (Sub-No. 389X)

Norfolk Southern Railway Company
Abandonment Exemption
Roanoke, Virginia

Note: Maps produced by the Surface Transportation Board, Office of Environmental Analysis are based on information provided by the railroad applicant and are for reference purposes only.

Legend

- The Line
- Right-of-way (approximate)



