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July 13, 2009

Via Electronic Filing

Honorable Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: STB Docket No. AB-290 (Sub-No. 297X) Norfolk Southern Railway
Company - Discontinuance of Service - In Chester County, PA -
Request To Confirm End of Tolling Period and New Effective Date of
Exemption

Dear Ms. Quinlan:

In accordance with the Board's decision of December 7, 2007 in the subject proceeding, on June 24, 2009, Norfolk Southern Railway Company ("NSR") provided Valley Forge Railways Ltd., ("VFRL") with requested information necessary to the development of an OFA via fax and e-mail.¹ NSR reported this action to the Board, also in accordance with Board's December 7, 2007 decision, via fax on the same day. NSR's letter was posted on the Board's web site on the date of receipt, June 24, 2009.

NSR deferred its response to VFRL's request because NSR first tried to negotiate with VFRL and then with local interests concerning the possible disposition of

¹ NSR filed a notice of exemption for the discontinuance of service over its line of railroad lying between Milepost PX 3.10 and Milepost PX 10.80 in Phoenixville, Chester County, Pennsylvania (the "Line") in the subject proceeding. On November 19, 2007, VFRL filed a formal expression of intent to file an OFA to subsidize continued rail service over the line and a request for subsidy information. This information was not included in the notice of exemption because, as in all such notices, no traffic had moved over the line for over two years.

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the line that is the subject of this proceeding. Although NSR continues to negotiate with the local interests concerning the future of the line, these negotiations will not be impeded by the discontinuance exemption becoming effective.

The Board's December 7, 2007 decision provided that the time period for VFRL to file an OFA would be tolled by decision until 7 business days after NSR provided VFRL with requested information necessary to the development of an OFA. The effective date of the exemption was postponed by the same decision until 10 days after the due date for the filing of an OFA. The Board's December 7, 2007 order appears to be self-executing. By any calculation, the tolling period has expired because of the absence of response by VFRL to NSR's June 24, 2009 letter and attachments, which VFRL's attorney received by fax and e-mail on the date of transmission. NSR has a fax confirmation and an e-mail for which no message indicating non-transmission or non-receipt was returned to NSR, which are attached. Not only has NSR received no response from VFRL to its June 24, 2009 letter, but NSR has noted that as of the end of the day on Friday, July 10, 2009, the Board's web site shows neither an OFA filing by VFRL nor any other type of filing in this docket after June 24, 2009.

NSR requests that in order for the record in this long pending proceeding to be clear and for the exact effective date to be stated in the record, that the Board confirm that the due date for filing an OFA in this proceeding was July 6, 2009 and in the absence of a filing on that date, the tolling period for the effective date ended on that date. NSR further requests that the Board confirm that the effective date of the discontinuance of service exemption for the subject line of railroad will be July 16, 2009. In both instances, NSR has not only computed the due date in accordance with the language of the Board's decision but has computed the time periods in accordance with the Board's regulation on computation of time by not counting the first days of the periods (June 24 and July 6) but counting the last days as the final days of the two periods and therefore as the due date and effective date, respectively.²

² The Board's regulation on computation of time at 49 C.F.R. § 1104.7, Computation and Extension of Time, reads in pertinent part.

(a) Computation. In computing any period of time, the day of the act, event, or default upon which the designated period of time begins to run is not included. The last day of the period is included unless it is Saturday, Sunday, or a legal holiday in the District of Columbia, in which event the period runs until the end of the next day which is not a Saturday, Sunday or holiday. This rule applies to forward and backward measurement of time.

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The Board's December 7, 2007 decision specifically provided that an "OFA will be due 7 business days after NSR provides VFRL with the requested information." Not counting the first day of the period and the July 3 holiday, July 6 was the seventh business day after NSR provided the information. Four additional business days passed last week without VFRL filing an OFA with the Board or giving any response of any kind to NSR or the Board.

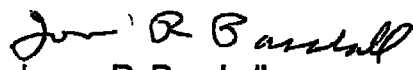
There can be no question that the tolling period for filing an OFA in this proceeding has expired and that the ten-day period until the effective date of the discontinuance exemption is running.

The Board's December 7, 2007 decision provided that the effective date of the exemption would be ten (10) days after the due date for the filing of an OFA by VFRL if no OFA was timely filed. The Board's decision states that the effective date will be "10 days after the due date of filing the OFA." The language does not admit of an interpretation that the effective date would be "after" ten (10) days, or on July 17, 2009, but is in line with the general Board regulation on the computation of time. Again, not counting the first day of the 10-day period (the due date, July 6, 2009) but counting the last day as the tenth and final day (10 days after the due date) and therefore, as the effective date, the discontinuance exemption in this proceeding will become effective on July 16, 2009.

We ask that the Board treat this filing as a motion if a motion is required under the circumstances.

While the Board's regulations do not require railroads to provide the Board with letters of consummation of discontinuances of service, NSR hereby notifies the Board that NSR will consider the discontinuance exemption for the subject line to be formally effective on July 16, 2009 and will put the formal discontinuance of service over the line into effect from that date.³

Yours very truly,


James R. Paschall

³ If for some reason NSR has miscalculated the effective date of the subject discontinuance exemption by a day or two, NSR will consider the exemption in effect from such corrected date as the Board may specify.

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Attachments – 3 pages

cc: Via Facsimile: (312) 252-2400 and
E-mail: mbarron@fletcher-sippel.com
Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606-2832

Attorneys for Valley Forge Railways, Ltd.

NORFOLK SOUTHERN LAW

	DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	CMDH	STATUS
24	06/24	14:23	713122522400	G3--S	02'38"	007	104	OK



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June 24, 2009

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Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606-2832

Re: STB Docket No. AB-290 (Sub. No. 297X), Norfolk Southern Railway
Company - Discontinuance of Service Exemption - in Chester County, PA
- Offer of Financial Assistance Information

Dear Mr. Barron:

Norfolk Southern Railway Company (NSR) filed a notice of exemption to discontinue service over a 7.70-mile line of railroad between milepost PX 3.10 and milepost PX 10.80 in Phoenixville, Chester County, PA with the Surface Transportation Board (STB) in the subject docket. The exemption was scheduled to become effective on December 7, 2007. Valley Forge Railways, Ltd. (VFRL), filed a formal expression of intent to file an Offer of Financial Assistance (OFA) to subsidize continued rail service over the line. The Board tolled the time period for VFRL to file an OFA until 7 business days after NSR provided it with the information prescribed in 49 CFR 1152.27(a) that is required for the filing of a subsidy offer.

VFRL's interest is not in subsidizing freight service over the line, because there is none. Rather, VFRL apparently filed its notice of intent to file an OFA to preserve at least for one year its option to run weekend passenger excursion trains over a portion of the line under a license agreement with Consolidated Rail Corporation, NSR's predecessor as owner of the line. The ultimate purpose may have been to provide time to negotiate a revised arrangement or to allow local interests to negotiate for purchase of the line.

Whatever the purpose of the notice of intent and without determining the validity and status of the license agreement (which, among other things) appears to have expired), NSR believed and still intends to proceed under the assumption that this

Paschall, James R.

From: Paschall, James R.
Sent: Wednesday, June 24, 2009 1:06 PM
To: 'mbarron@fletcher-sippel.com'
Cc: Summy, Greg E.
Subject: RE: STB Docket No. AB-290, Sub-No. 297X - NSR Information re VFRL Notice of Intent to File OFA

Attachments: PA_Phoenixville IT_STB AB290_Sub297X_Letter to VFRL atty re OFA_062409.pdf

I send this again, this time with the attachment. I also send my apology for the oversight. Jim Paschall



PA_Phoenixville
IT_STB AB290_S...

From: Paschall, James R.
Sent: Wednesday, June 24, 2009 12:59 PM
To: 'mbarron@fletcher-sippel.com'
Cc: Summy, Greg E.
Subject: STB Docket No. AB-290, Sub-No. 297X - NSR Information re VFRL Notice of Intent to File OFA

Mr. Barron:

I sent to you a few minutes ago via facsimile a copy of the attached letter and information concerning the above matter. I am sending you a duplicate via e-mail in an effort to be sure you receive this promptly.

James R. Paschall
Norfolk Southern Railway Company