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May 29, 2026

VIA E-FILING

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Chief Counsel
May 29, 2026
Part of
Public Record

Re: Docket No. AB 290 (Sub-No. 424X), Norfolk Southern Railway
Company—Abandonment Exemption—in Polk County, Iowa;

Docket No. AB 414 (Sub-No. 9X), Iowa Interstate Railroad, LLC—
Discontinuance of Lease and Operation Authority—in Polk County, Iowa

Dear Chief of Case Administration:

On behalf of Norfolk Southern Railway Company (“NSR”), NSR respectfully opposes Ellis & Eastern Company’s (“E&E”) Motion for Leave to File a Late-Filed Expression of Intent to File an Offer of Financial Assistance (“OFA”) and requests that the Board reject the untimely filing. The relevant facts are undisputed. The Board’s notice served May 4, 2026 established May 14, 2026 as the deadline for any party seeking to pursue an OFA to file a formal expression of intent. E&E concedes that it failed to meet that deadline and instead filed on May 26, 2026—twelve days late—attributing its failure solely to “inadvertence.” That explanation is legally insufficient, and under the Board’s governing regulations and precedent, the late-filed notice must be rejected.

The OFA process is a structured regulatory framework that depends on strict adherence to mandatory deadlines. Under 49 C.F.R. § 1152.27, a party must timely file a formal expression of intent as the threshold act that preserves any right to invoke the OFA process, including the right to make the preliminary showing of financial responsibility and proceed toward a purchase or subsidy offer. This sequencing is deliberate. In *Abandonment & Discontinuance of Rail Lines & Rail Transportation Under 49 U.S.C. § 10903*, the Board revised its OFA regulations to implement the ICC Termination Act and to “streamline” abandonment and discontinuance procedures, emphasizing the need for orderly timing and procedural certainty. 1 S.T.B. 894, 908–10 (1996). The Board reaffirmed that framework on reconsideration, declining to alter the fundamental structure while underscoring the importance of predictable and enforceable procedures. *Abandonment & Discontinuance of Rail Lines & Rail Transportation Under 49*

U.S.C. § 10903, 2 S.T.B. 311, 314–15 (1997). The deadline therefore is not a mere informational milestone; it is the procedural step that preserves OFA rights. Once the deadline passes without a timely filing, there is no OFA process for the late filer to revive absent truly exceptional circumstances, which none exist here.

Consistent with that framework, the Board has repeatedly treated OFA deadlines as binding and has emphasized that the regulations in 49 C.F.R. § 1152.27 govern the preservation of service through purchase or subsidy. *Rail Serv. Continuation Subsidy Standards*, 3 S.T.B. 131, 135–36 (1998). The Board has likewise recognized that OFA filings are not informal or optional submissions but threshold procedural acts with significant legal consequences for both the carrier and the would-be offeror. *R.R. Ventures, Inc.—Aban. Exemption—Between Youngstown, Ohio & Darlington, Pa.*, 4 S.T.B. 467, 468–69 (2000), *aff’d on reconsideration*, 4 S.T.B. 583, 585–86 (2000). E&E’s motion confirms why those requirements matter. E&E asserts that it is a bona fide purchaser, financially responsible, and interested in continuing rail service. But none of those assertions excuses failure to satisfy the threshold procedural requirement. A party does not acquire OFA rights by professing interest in the line, by claiming financial capacity, or by invoking the public interest in continued service; it acquires those rights only by timely filing the expression of intent that the regulation requires. Otherwise, any late filer could convert a missed deadline into a discretionary extension simply by arguing that its proposed acquisition would be beneficial.

E&E’s motion identifies no circumstance that justifies such a departure. It does not contend that it lacked notice of the Board’s deadline, that the May 4 notice was unclear, that it was prevented by any external event from filing a timely notice, or that it was unable within the ten-day period to submit the simple threshold expression required by § 1152.27. To the contrary, E&E admits that it was aware of the proceeding, had already communicated its acquisition interest to NSR, and simply failed to file on time due to “inadvertence.” That is ordinary administrative error, not good cause. If inadvertence were enough, the deadline would be optional in practice, because any missed filing could be recast as oversight. The Board’s rulemakings say the opposite: abandonment and OFA procedures are to be streamlined, orderly, and predictable. 1 S.T.B. at 908–10; 2 S.T.B. at 314–15. Nor does E&E’s reliance on the allegedly “compressed” ten-day window help it. The Board set that deadline in its notice, E&E had actual notice, and the filing required at that stage was not a complete OFA but only the formal expression of intent needed to preserve OFA rights.

Allowing E&E’s late filing would also undermine the reliance interests and procedural certainty that the Board’s rules are intended to protect. E&E argues there is no prejudice because abandonment has not been consummated and the Board’s final decision is not due until July 31, 2026. But that argument proves too much. If the mere absence of consummation were enough, then any party could disregard the OFA deadline so long as it sought forgiveness before final consummation, and the deadline would cease to function as a meaningful cutoff. The prejudice is not limited to physical abandonment of the line; it lies in reopening an expired OFA track after the deadline has passed, forcing the carrier and other parties to confront renewed uncertainty about timing, process, and disposition of the line after they were entitled to rely on the expiration of OFA rights. As the Board has recognized, OFA proceedings materially affect the parties’ legal

and property interests and therefore must be conducted within a defined and orderly framework. *R.R. Ventures*, 4 S.T.B. at 468–69. Accepting E&E’s filing would unsettle that framework here and invite similar requests in future cases based on nothing more than missed deadlines and after-the-fact appeals to the public interest.

Nor does the Board’s general waiver provision, 49 C.F.R. § 1104.7, provide a basis for accepting E&E’s filing. While the Board retains limited discretion to grant waivers in appropriate circumstances, that discretion is not a license to excuse noncompliance whenever a party later regrets missing a deadline. Waiver is reserved for circumstances involving compelling equitable considerations or matters beyond a party’s control—not for situations where a represented party had actual notice, understood the governing requirements, and simply failed to act. E&E identifies no ambiguity in the Board’s notice, no obstacle created by another party, no impossibility, and no extraordinary circumstance. It relies only on inadvertence, its asserted financial responsibility, and its view that continued service would be in the public interest. But those points do not justify waiver of the procedural prerequisite that the Board’s regulations make mandatory. Granting relief on this record would not be a routine exercise of discretion; it would be a departure from the Board’s established regulatory scheme¹ and would effectively transform § 1104.7 into a mechanism for reviving expired OFA rights whenever a late filer offers a non-strategic explanation.

For all of these reasons, the governing regulations, the Board’s rulemakings, and its precedent compel a single result. E&E was required to preserve any OFA rights by timely filing the expression of intent required by 49 C.F.R. § 1152.27. It did not do so. Its motion offers no extraordinary circumstance, only inadvertence, and its substantive assertions about financial responsibility and continued service cannot cure that threshold procedural default. The Board should therefore deny E&E’s motion for leave, reject its untimely filing, and continue this proceeding in accordance with the schedule set forth in the May 4, 2026 notice.

Respectfully submitted,

/s/ William A. Mullins

William A. Mullins

Counsel for Norfolk Southern Railway Company

cc: Parties of Record

¹ The Board has routinely denied requests to accept late-filed notices of intent where the explanation for delay was inadequate and the carrier objected *Gen. Ry. Aban. Exemption in Osceola & Dickinson Cntys., Iowa*, AB 1067 (Sub-No. 2X), slip op. at 2, (STB served Oct. 24, 2008); *N. Coast R.R. Auth. -Aban. Exemption-in Mendocino, Trinity, & Humboldt Cntys.*, AB 1305X, slip op. at 3 (STB served June 10, 2022); *Ill. Cent. R.R.-Aban. Exemption-in Champaign Cnty.*, AB 43 (Sub-No. 189X), slip op. at 4 (STB served May 11, 2015); *Knoxville & Holston River R.R.-Aban. Exemption-in Knox Cnty., Tenn.*, AB 580 (Sub-No. 1X), slip op. at 3-4 (STB served Feb. 20, 2025).