

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 271X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
WYOMING AND GENESEE COUNTIES, NY

Decided: December 21, 2007

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exemption Abandonments to abandon a 4.50-mile line of railroad extending between milepost UG 360.20 at Alexander and milepost UG 364.70 at Attica, in Wyoming and Genesee Counties, NY. Notice of the exemption was served and published in the Federal Register on December 18, 2007 (72 FR 71738). The notice stated that the exemption would become effective on January 17, 2008, unless stayed by the Board or unless 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 December 28, 2007.

On November 29, 2007, BP Rail Corporation D/B/A BP Rail (BPR) filed a formal expression of intent to file an OFA to purchase the line. This filing automatically stayed the effective date of the exemption for 10 days, until January 27, 2008.¹ BPR simultaneously requested that NSR provide BPR with the financial data and information prescribed in 49 CFR 1152.27(a), including the required minimum purchase price. BPR also requested, pursuant to 49 CFR 1152.27(c)(2)(ii)(C), that the 30-day period for filing an OFA be tolled for an additional 60 days to provide the offeror with an adequate opportunity to receive, review and analyze the material provided by NSR and submit its OFA.

By letter dated December 5, 2007, NSR acknowledges receipt of BPR's formal expression of intent to file an OFA to purchase the 4.50-mile line proposed for abandonment. NSR states that it will compile the information requested and forward it as soon as possible. NSR has not objected to the extension request.

Under 49 CFR 1152.27(c)(2)(ii)(B), the due date for OFAs in this proceeding is January 17, 2008. As noted, BPR has filed a request to toll the period for filing an OFA in this proceeding for 60 days. The Board will consider requests to toll the period for filing an OFA when a petitioner has failed to provide a potential offeror with the information necessary to the development of an OFA and that information is not contained in the notice of exemption. See 49 CFR 1152.27(c)(2)(ii)(C). In this case, because the information necessary to formulate an OFA has not been provided, BPR's request will be granted. Accordingly, the time for filing an OFA

¹ See 49 CFR 1152.27(c)(2)(i).

will be extended for 60 days until March 17, 2008, and the effective date of the exemption will be extended until 10 days after the due date for filing the OFA, or until March 27, 2008.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The time period for BPR to file an OFA is tolled until March 17, 2008.
2. The effective date of the exemption is postponed until March 27, 2008.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary