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April 24, 2017

VIA E-FILINGCynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001Re: Norfolk Southern Railway Company – Abandonment Exemption – In Roanoke,
Virginia, AB-290 (Sub-No. 389X)

Dear Ms. Brown:

Norfolk Southern Railway Company ("NSR") hereby replies to a letter submitted by Walker Machine and Foundry Corporation ("Walker") that was entered into the public record on April 21, 2017 ("April 21st Filing"). The April 21st Filing seeks to delay the Board's handling of this two-year out of service abandonment notice of exemption proceeding, but Walker provides no legal justifications relevant to the Board's evidentiary considerations to warrant further delaying NSR's notice of exemption from taking effect.¹ As explained herein, and consistent with NSR's April 19th filings requesting rejection of the OFA NOI, the Board should immediately lift the housekeeping stay and allow the abandonment to take effect.

The Walker April 21st Filing raises three points, all of which deal with state property or contract law and are not relevant to the Board's statutory criteria for approving abandonments. First, without offering any evidence, Walker claims that NSR's approximation of the width of NSR's right-of-way ("ROW") is incorrect for a portion of the line. This assertion is not a

¹ NSR's Notice of Exemption was filed on March 3, 2017 ("Notice") and was scheduled to take effect April 22, 2017. Presumably due to NSR's pending request to reject a late-filed notice intent to file an offer of financial assistance ("OFA NOI") and the April 21st Filing, the Board imposed a housekeeping stay to "provide sufficient time for the Board to consider fully the issues raised here."

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sufficient justification to reject or further delay the Notice from taking effect. Nothing in the Board's regulations require a railroad to provide an exact description of the width of the ROW. The regulations do require the railroad to describe the line, attach a map, and include mileposts (i.e., the end-points) in its newspaper notice. NSR complied with all of those requirements and no party argues otherwise.²

NSR did provide a general and approximate description of the width of the ROW in the Environmental and Historic Report, but those statements were not descriptions of NSR's exact property boundaries, nor should they be taken as such. The exact width of the property to be abandoned is a matter of state property law. NSR can only abandon and convey what it owns. Nothing more and nothing less. A mere assertion that NSR's ROW width description may not be the exact width at a given location does not support delaying or denying the abandonment.

Walker raises two more state law issues: (1) Walker alleges that Walker, not NSR, owns the property underlying the line and NSR only has an easement limited to railroad purposes; and, (2) Walker claims that NSR's conveyance of the property to Roanoke City would affect an April 16, 1940 Crossing Agreement between Walker and NSR's predecessor, the Norfolk and Western Railway Company. Again, neither of these issues are relevant to the Board's statutory obligations – which focuses on the public need for continued rail service. Instead, these are state law issues. To the extent Walker believes these concerns are valid, Walker should pursue resolution of such issues with the Commonwealth of Virginia courts consistent with precedent. See Abandonment of Railroad Lines and Discontinuance of Service, 365 I.C.C. 249; 1981 ICC LEXIS 36, at *30 (STB served Aug. 26, 1981)(noting that “Questions of title to, and disposition of, the property are the matters subject to State law.”)³ Walker's efforts to get the Board involved in these issues serves no useful purpose. They are contrary to the Board's obligation to

² No party has opposed the abandonment in and of itself. Indeed, the City of Roanoke supports the abandonment because doing so will allow public development of green space. There are no shippers on the line and there have not been any shipments for over two years. As such, no party has raised any concerns relevant to the merits of the abandonment itself.

³ The Board has time and again confirmed that questions concerning title and/or property law should be handled by state courts applying state law. See Hayfield N. R.R. v. Chicago & N.W. Transp., 467 U.S. 622, 634 (U.S. 1984); Preseault v. ICC, 494 U.S. 1, 8 (U.S. 1990) (state law governs disposition of reversionary interests subject to the Board's jurisdiction to regulate abandonments); Kansas City Pub. Ser. Frgt. Operation - Exemption - Aban. In Jackson County, MO, 7 I.C.C.2d 216, 225-26 (1990) (real property rights fall within exclusive jurisdiction of the State). See also Central Kansas Railway, LLC – Abandonment Exemption – In Marion and McPherson Counties, KS, AB-406 (Sub-No. 6x), slip op. at 2 (STB served May 8, 2001)(“It is well settled that the interpretation of deeds and the determination of who owns good title to property are issues of state law that are outside of the expertise of the Board.”).

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expeditiously process abandonments.⁴ Consistent with established precedent, should Walker wish to litigate its property interests concerns, the correct forum would be the Commonwealth of Virginia courts, not the Board.

As explained herein, Walker has raised no concerns that warrant rejecting or further delaying NSR's notice of exemption from taking effect. As such, consistent with the reasoning set forth herein and NSR's April 19th letter requesting rejection of the late filed notice of intent to file an offer of financial assistance, the Board should lift the housekeeping stay it imposed on April 21, 2017 and allow the abandonment to take effect immediately.

Sincerely,



William A. Mullins
Norfolk Southern Railway Company

cc: Parties of Record
Greg Summy,
Laura Hoag

⁴ Board precedent has made clear that the statute requires that abandonments be processed expeditiously including adherence to established procedural timeframes. See General Railway Corporation d/b/a Iowa Northwestern Railroad-Abandonment Exemption - In Osceola and Dickinson Counties, IA, AB-1067 (Sub-No. 2X), slip op. at 2 (STB served October 24, 2008) See also R.R. Ventures, Inc. v. Surface Transp. Bd., 299 F.3d 523, 531 (6th Cir. 2002); see also Mid-Michigan Railroad, Inc. - Abandonment Exemption - In Kent, Ionia, and Montcalm Counties, MI, AB-364 (Sub-No. 14X), slip op. at 5 (STB served Sept. 26, 2008).