

David L. Foster
Transportation Consultant
342 High Street
Salem, VA 24153

April 24, 2017

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Electronic Filing
Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

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Office of Proceedings
April 24, 2017
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Public Record

**Re: Norfolk Southern Railway Company - Abandonment Exemption
Roanoke, Virginia, AB-290 (Sub-No. 389X)**

Dear Ms. Brown:

This letter comments on responses filed both by Norfolk Southern (:NS") and by City of Roanoke, Virginia ("City"), both dated April 19, 2017, to the Notice of Intent to File an Offer of Financial Assistance ("OFA") filed by David L. Foster and Thoroughbred Energy & Environmental Corp (collectively, "Offeror"), dated and filed April 13, 2017.

NS and City both urge the Surface Transportation Board ("STB") to reject Offeror's filings of an OFA and a Transmittal Letter, both dated April 13, 2017, because of failure of Offeror to file timely.

Offeror is not a regular STB practitioner and relied on STB's Rail Customer and Public Assistance Program ("RCPA") is to provide key guidance on STB practice and procedures. Pasted below is an e-mail exchange with Mr. Fred Forstal of RCPA in which he has interlined his replies to Offeror's quires in red:

In a message dated 3/30/2017 9:54:27 A.M. Eastern Daylight Time, Alfred.Forstall@stb.gov writes:

Comments below In red. Fred

From: Dfoster342@aol.com [mailto:Dfoster342@aol.com]
Sent: Thursday, March 30, 2017 8:38 AM
To: Forstall, Alfred <Alfred.Forstall@stb.gov>
Subject: Re: Documents from AB-290-389 and FD-35976

Fred--

A few quick questions here:

- 1) If I read things correctly, the deadline for filing a Notice of Intent to file an OFA is April 3. Is that correct? **For a notice of intent to file an OFA, I think the deadline is actually 4/22.**
- 2) Does sending an electronic copy by or on that date constitute timely filing, even though the 10 copies follow by U.S. Mail? **Yes, you are correct. Efiling on the deadline date would constitute timely filing.**
- 3) Can the filing fee come with the copies in the U.S. Mail? Is that correct amount \$1,700? **The filing fee could be paid with either check or credit card. Typically, the attorney making the filing will have a credit card on file with the Office of Proceedings. The fee \$1,700 is correct, but keep in mind that it is due when you file the actual OFA, not when you file your notice of intent to file an OFA (which is free).**

Offeror recognizes that RCPA cannot give legal advice, but on matters of STB procedure, Offeror was not unreasonable to rely on RCPA's guidance, especially in view of the fact that Offeror specifically asked whether April 3 was the deadline and would have filed by that date if such deadline had been confirmed by RCPA.

Accordingly Offeror seeks STB's indulgence and asks that its OFA filing and Letter of Transmittal both dated April 13, 2017 be accepted into the record and considered as part of Docket AB-290 (Sub-No. 389X) notwithstanding their having been filed ten days after the normal filing deadline.

STB can perform a significant public service in this case by reviewing all facts and submissions. This is not a routine abandonment of a half-mile of unused track such as normally would be assumed under an Abandonment Exemption ("AE"). Here are some of the matters that bear scrutiny:

1. The proposed abandonment would unnecessarily create a half-mile gap in a seven-mile intact rail line, forever foreclosing its future return to active service.
2. The aerial photo map exhibit of proposed abandonment limits submitted by NS includes an active rail shipper, Associated Asphalt. Offeror has provided direct photographic evidence of current rail service, yet NS states no rail customers are served on the line. Either that claim or the map is clearly wrong.
3. Both NS in its AE and STB in its Environmental Review find no concerns. Offeror has provided direct photographic evidence of large quantities of foundry waste piled on the NS right of way proposed for abandonment.

No environmental amelioration has been suggested. Ever since Love Canal it has become well-established law that owners of contaminated property cannot shirk responsibility for cleanup through sale to others, in this case taxpayers of the City, or Offeror, should its future bid be successful. Proximity to the banks of the Roanoke River, where the record shows an endangered species, the Roanoke Logperch, to exist, make the environmental element far from trivial.

4. Even though neither NS nor City has admitted such intent in their STB filings, a Greenway Trail element is driving this AE application. Offeror has provided news media accounts of arrangements between NS and City whereby the abandoned rail right of way would facilitate Greenway Trail expansion, yet there has been no compliance with STB's own standards and procedures for trails. Under the National Trails System Act [U.S.C 12471(d)]. STB has an administrative role in preserving rail corridors in such rail abandonment proceedings. NS and City should be required to adhere to this process by submission of a Public Use Condition and Trail Use Request per STB's rules in 49 CFR 1152.29.

By my signature below, I Certify that copies of this letter have been sent, by e-mail and U.S. mail, on April 24, 2017, to the following parties of record:

Counsel for Norfolk Southern

William A. Mullins
Baker & Miller, PLLC
2401 Pennsylvania Avenue, SW, Suite 300
Washington, DC 20037
wmullins@bakerandmiller.com

Virginia Museum of Transportation

Roanoke Southern LLC
Beverly T. Fitzpatrick, Jr.
303 Norfolk Avenue, SW
Roanoke, VA 24016
bfitzpatrick@vmt.org

Counsel for City of Roanoke

Daniel J. Callaghan
Roanoke City Attorney
464 Municipal Building
215 Church Avenue, SW
Roanoke, VA 24011-1595
daniel.callaghan@roanokeva.gov

Walker Machine & Foundry Corp.

Glenn D. Muzzy
P.O. Box 4587
Roanoke, VA 24015
gmuzzy@walkerfoundry.com



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