



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Economics, Environmental Analysis and Administration

January 16, 2009

Mr. Donald G. Avery
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, DC 20036-3003

Re: Finance Docket No. 35131, Vaughan Railroad Company - Construction and
Operation – Monongalia County, West Virginia; Grant of EIS Waiver Request

Dear Mr. Avery:

Pursuant to 49 CFR 1105.6(d), the Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) is granting your request of November 24, 2008, for a waiver of 49 CFR 1105.6(a), which generally provides for the preparation of an Environmental Impact Statement (EIS) for a rail line construction and operation proposal. SEA is granting the requested waiver based on available information gathered to date, including materials filed by the applicant, SEA's consultation with Federal, state and local agencies, and a site visit on October 30, 2008, to the project area.

By petition filed on June 6, 2008, Vaughan Railroad Company (Vaughan) seeks an exemption from the Board under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authority to construct and operate a rail line in Monongalia County, West Virginia. The proposed line would extend approximately five miles, between a new coal mine currently under development in Monongalia County and a connection with the Norfolk Southern Railway Company (NS). The proposed rail line would serve to access new coal reserves. Vaughan's proposed operations on the line will be approximately twelve trains per day (six loaded and six empty) when the mine reaches maximum production.

Based on the information available to date, we believe that the proposed action would not result in significant environmental impacts and that any impacts could most likely be addressed through appropriate mitigation measures. Therefore, for the reasons listed below, SEA believes that the preparation of an Environmental Assessment (EA) is the appropriate level of environmental documentation.

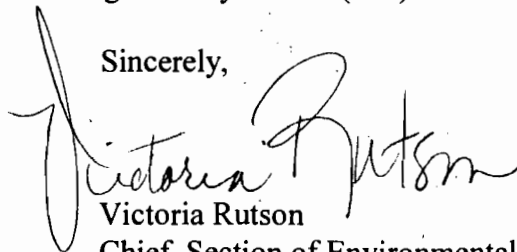
- Responses received to date to SEA's agency consultation letter dated August 22, 2008, have not identified any significant environmental issues related to the proposed action.

- The U.S. Fish and Wildlife Service (USFWS) has identified the possible presence of the Indiana bat. Vaughan indicates that it will agree to mitigation activities proposed by USFWS for Indiana bats if they are found to be present in the project area.
- Vaughan has initiated the process with the U.S. Army Corps of Engineers (Corps) to obtain a 404 permit and 401 certification, as applicable, pursuant to the Clean Water Act. Vaughan has undertaken and will continue to undertake to minimize any potential impact on wetlands, floodplains, and associated natural resources. Vaughan indicates that it will coordinate and abide by conditions determined by the Corps to be necessary.
- Vaughan has indicated that it is willing to participate and assist in the historic review process as required by Section 106 of the Nation Historic Preservation Act. A Phase I archaeological survey will be conducted to ensure that there are no prehistoric/historic archeological resources disturbed by the proposed project.
- Vaughan's preferred route for the proposed line is located within a limited and defined geographic region. The number of public road crossings potentially impacted has been minimized, and all public road crossings will have grade separations. Vaughan is working with state authorities with respect to the appropriate protection to be installed at any private road crossings.
- It is not anticipated that there will be high or disproportionate impacts on minority or low-income populations based upon Vaughan's review of existing demographic data for the region and site reconnaissance. Project information developed to date by Vaughan indicates that there are not likely to be significant impacts to transportation systems, land use, energy, air quality, or sensitive noise receptors.

After the EA is prepared, SEA will make the document available for public review and comment. Once the comment period concludes, SEA will prepare a Post EA discussing the comments received and including any additional analysis or appropriate modifications to its existing analysis. The Post EA will also set forth SEA's final recommended mitigation measures for the Board. The Board will then consider the EA, the public comments, and SEA's Post EA recommendations before making its final decision in this proceeding.

Please be aware that should the environmental process disclose unanticipated impacts that are significant, we will require the preparation of an EIS at that time. If you have any questions, please do not hesitate to contact me or Kenneth Blodgett of my staff at (202) 245-0305.

Sincerely,



Victoria Rutson
Chief, Section of Environmental Analysis