

235760

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

ENTERED
Office of Proceedings
April 2, 2014
Part of
Public Record
(202) 663-7823 (Direct Dial)
E-Mail: wullins@bakerandmiller.com

WILLIAM A. MULLINS

April 2, 2014

VIA E-FILING

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

Re: *Norfolk Southern Railway Company – Abandonment Exemption – In
Botetourt County, Virginia, STB Docket No. AB-290 (Sub-No. 351X)*

Dear Ms. Brown:

Attached please find a copy of Norfolk Southern Railway Company's Certificate of Service upon Roanoke Cement Company LLC, filed in accordance with Ordering Paragraph 2 of the Board's decision in the above-captioned proceeding served on April 2, 2014.

Sincerely,



William A. Mullins
Attorney for Norfolk Southern
Railway Company

Enclosure

cc: Maquiling Parkerson, Marc Kirchner, LaWada Poarch

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB Docket No. AB-290 (Sub-No. 351X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN BOTETOURT COUNTY, VIRGINIA**

PETITION FOR EXEMPTION

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with Ordering Paragraph 2 of the Board's decision served in this proceeding on April 2, 2014 (the April 2 Decision), I have today served the following past user of the subject rail line with a complete copy of the aforementioned April 2 Decision, a copy of which is attached hereto, by way of U.S. Postal Service delivery, first class postage prepaid, or via more expeditious means of delivery:

Roanoke Cement Company LLC
c/o Titan America LLC
1151 Azalea Garden Road
Norfolk, VA 23502

April 2, 2014



William A. Mullins
Attorney for Norfolk Southern
Railway Company

43558
EB

SERVICE DATE — APRIL 2, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 351X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN BOTETOURT COUNTY, VA.

Digest:¹ This decision allows Norfolk Southern Railway Company to end its common carrier obligation to provide freight rail service over approximately 0.71 miles of rail line in Botetourt County, Va.

Decided: April 1, 2014

By petition filed on December 16, 2013, Norfolk Southern Railway Company (NSR) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 0.71 miles of rail line, consisting of part of the Cloverdale Branch and extending from milepost C 8.19 to milepost C 8.90 in Troutville, Botetourt County, Va. Notice of the exemption was served and published in the Federal Register on January 3, 2014 (79 Fed. Reg. 423). The Board will grant the exemption subject to standard employee protective conditions and an environmental condition.

BACKGROUND

NSR states that there is one shipper on the line, Roanoke Cement Company LLC (Roanoke). According to NSR, Roanoke has requested abandonment to facilitate expansion of its industrial facility, and NSR will continue to serve Roanoke post-abandonment. Roanoke and its parent company, Titan America LLC, filed a letter on January 6, 2014, stating that the proposed abandonment would advance their efforts to expand Roanoke's facility and that rail service to Roanoke would not be interrupted by the abandonment.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the RTP here. Roanoke, the line's only shipper, supports the abandonment. According to NSR, it intends to relinquish its interest in the line to facilitate expanding Roanoke's facilities, and NSR will continue to serve the property. By minimizing the administrative expense of the application process, an exemption in this case would minimize the need for Federal regulatory control over the rail transportation system, expedite regulatory decisions, and reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). By abandoning the line, NSR would accommodate the sole shipper's need to expand its facility, which, according to NSR, should result in increased rail traffic for NSR in the future. Thus, an exemption would also help to ensure the development and continuation of a sound rail transportation system, foster sound economic conditions in transportation, and promote efficient railroad management, consistent with 49 U.S.C. §§ 10101(4), (5), and (9). Other aspects of the RTP would not be adversely affected by the use of the exemption process.

We also find that regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power.² As explained earlier, the only shipper on the line, Roanoke, supports the proposed abandonment. Nevertheless, to ensure that Roanoke is informed of our action, we will require NSR to serve a copy of this decision on Roanoke so that it is received by the shipper within five days of its service date and to contemporaneously certify to the Board that it has done so.

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose on NSR the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

Environmental Review. NSR has submitted environmental and historic reports with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. § 1105.11. The Board's Office of Environmental Analysis (OEA) has examined the reports, verified the data they contain, and analyzed the probable effects of the proposed action on the quality of the human environment.

² Because we find that regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed abandonment is limited in scope.

An Environmental Assessment (EA) was served in this proceeding on February 14, 2014. In the EA, OEA stated that the National Geodetic Survey (NGS) had not submitted comments regarding the potential impact of the proposed abandonment to any geodetic survey markers that may be present in the project area. Therefore, OEA recommended that a condition be imposed requiring NSR to consult with NGS prior to beginning salvage activities.

OEA also noted that the proposed abandonment constitutes a new federal undertaking under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f. In consultation with the Virginia Department of Historic Resources (SHPO), OEA determined that the historical research undertaken during the permitting process for the expansion of Roanoke's industrial facility was not sufficient to make a determination regarding the potential impacts of the proposed abandonment on historic resources. OEA advised NSR to provide the additional information requested by the SHPO in order to permit the SHPO to issue its opinion.

Because the SHPO had not yet provided an opinion on the undertaking in this proceeding, OEA recommended that a condition be imposed requiring NSR to retain its interest in, and take no steps to alter the historic integrity of, all historic properties including sites, buildings, structures and objects within the project area eligible for listing or listed in the National Register of Historic Places (National Register) until the Section 106 process has been completed. OEA further recommended that NSR be required to report to OEA regarding any consultations with the SHPO and the public and that NSR be prohibited from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition.

Comments to the EA were due March 17, 2014.³ OEA states in its Final EA that NSR submitted comments provided by NGS stating that no geodetic survey markers are located in the vicinity of the proposed abandonment. Therefore, OEA recommends that the previously recommended condition requiring NSR to consult with NGS prior to beginning salvage activities not be imposed.

OEA also states that the SHPO has asked for, and received, additional information from NSR but has not yet provided comments regarding the presence of any historic properties listed in or eligible for listing in the National Register in the project area or the potential impact of the proposed abandonment on any such properties. Pursuant to the Section 106 regulations of the National Historic Preservation Act, 36 C.F.R. § 800.4(d)(1), OEA has reviewed the record and determined that no historic properties listed in or eligible for listing in the National Register would be affected by the proposed abandonment. This conclusion is based on a review of the railroad's Historic Report, all relevant correspondence, the EA, and the Final EA. But to allow adequate time for the SHPO to provide comments, OEA recommends that the previously

³ Because the Federal government was closed for inclement weather on March 17, 2014, the deadline automatically moved to the next business day, March 18, 2014.

recommended Section 106 historic preservation condition be imposed. Further, if the SHPO does not object within 30 days of the issuance of a decision granting abandonment authority, OEA intends to prepare a Supplemental EA to recommend that the Section 106 condition be removed. We will impose the historic preservation condition recommended by OEA.

Consistent with OEA's recommendations, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by NSR of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line, and the condition that NSR shall retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way that are eligible for listing or listed in the National Register until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed. NSR shall report to OEA regarding any consultations with the SHPO and the public. NSR may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition.

2. NSR is directed to serve a copy of this decision on Roanoke so that it is received within five days of its service date and to contemporaneously certify to the Board that it has done so.

3. An Offer of Financial Assistance (OFA) under 49 C.F.R. § 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by April 11, 2014, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee of \$1,600. See 49 C.F.R. § 1002.2(f)(25).⁴

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Office of Proceedings, AB-OFA."

⁴ Consistent with our precedent, and given the apparent lack of need for the line by any shipper other than Roanoke, any person seeking to file an OFA must provide evidence that there is some shipper other than Roanoke that would make use of common carrier service. See, e.g., CSX Transp.—Aban. Exemption—in Washington Cnty., Md., AB 33 (Sub-No.727X) (STB served Oct. 24, 2013); Union Pac. R.R.—Aban. Exemption—in Pottawattamie Cnty., Iowa, AB 33 (Sub-No. 300X) (STB served Jan. 20, 2012); CSX Transp.—Aban. Exemption—in Chesterfield & Darlington Cntys, S.C., AB 55 (Sub-No. 703X) (STB served Jan. 19, 2011).

5. Provided no OFA has been received, this exemption will be effective on May 2, 2014.

6. Petitions to stay must be filed by April 17, 2014. Petitions to reopen must be filed by April 28, 2014.

7. Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by April 2, 2015, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the one-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Elliott and Vice Chairman Begeman.