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SERVICE DATE – JANUARY 9, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 251X)¹

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN CHOWAN COUNTY, NC

Decided: January 5, 2007

Norfolk Southern Railway Company (NSR) and North Carolina & Virginia Railway Company, Inc., The Chesapeake and Albemarle Division (NCVA) (referred to jointly as applicants), filed a joint notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service, for NSR to abandon, and for NCVA to discontinue service under a lease from NSR over, a 0.33-mile line of railroad between approximately milepost NS-73.67 and milepost NS-74.00 in Edenton, Chowan County, NC. Notice of the exemption was served and published in the Federal Register on July 16, 2004 (69 FR 42804-05).

By decision served on August 20, 2004, the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA) and the exemption was made subject to five environmental conditions, requiring NSR to: (1) consult with the U.S. Fish and Wildlife Service (FWS), regarding Federally listed threatened and endangered species, which may occur in the vicinity of the line proposed for abandonment, regarding the environmental effects of salvage activities on those species, and regarding what mitigation, if any, could be appropriate for any such effects; (2) consult with the North Carolina Department of Environment and Natural Resources regarding state-listed threatened and endangered species which may occur in the vicinity of the line proposed for abandonment, the environmental effects of salvage activities on those species and what mitigation, if any, could be appropriate for any such effects; (3) consult with the U.S. Army Corps of Engineers (Corps), regarding the details of the salvage activities that have occurred and what mitigation, if any, could be appropriate; (4) notify SEA of the results of these consultations; and (5) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act.

¹ The notice served and published on July 16, 2004, embraced STB Docket No. AB-866X, North Carolina & Virginia Railroad Company, Inc., The Chesapeake and Albemarle Division—Discontinuance of Service Exemption—in Chowan County, NC.

In a decision served on May 9, 2005, the proceeding was reopened and the section 106 historic preservation condition was removed.

By decision served on July 14, 2005 (July 14 decision), the proceeding was reopened and the Board removed the FWS consultation condition. Moreover, the consultation condition regarding state-listed species was modified (condition (1)); the consultation condition with the Corps was modified (condition (2)); notification to SEA of the results of the consultations remained in effect (condition (3)); and a new Division of Coastal Management (DCM) condition was added regarding salvage of the Queen Anne Creek bridge (condition (4)). Also, in that same decision, NSR's request for an extension of time until October 17, 2005, to exercise the abandonment authority was granted.

On October 13, 2005, NSR filed requests for: (1) a Board determination that the time to consummate the abandonment and file its notice of consummation extends until 60 days after the removal of the final legal or regulatory barrier to consummation in accordance with 49 CFR 1152.29(e)(2); and (2) an extension of time to consummate the abandonment and for filing a notice of consummation.

By decision served on October 20, 2005, NSR's requests for clarification as to the deadline for exercise of its abandonment authority and for an extension of time until January 20, 2006, to exercise the abandonment authority were granted. Also, in that decision, it was ordered that the authority to abandon must be exercised, and the notice of consummation must be filed by January 20, 2006, or not later than 60 days after satisfaction of all remaining environmental conditions.

SEA states that NSR has submitted a letter dated December 11, 2006, stating that it has completed consultation with the Corps and has obtained a permit for the Queen Anne Creek bridge removal activities from DCM. NSR requests: (1) that its December 11 letter be accepted as notification to SEA of the results of its consultations; and (2) that the Board state that the outstanding conditions have been satisfied to the extent required to no longer be an impediment to consummation of the abandonment or that a decision be issued removing the imposed conditions.

SEA states that, based on information in NSR's letter, it believes that NSR has complied with conditions (2) through (4) in the July 14 decision and recommends that these conditions be removed. SEA further states that although condition (1) imposed in that decision remains, this condition does not constitute a barrier to NSR's consummation of the abandonment.

Accordingly, the proceeding will be reopened and previously imposed conditions (2) through (4) in the July 14 decision will be removed. Condition (1) will remain in effect, but does not constitute a barrier to NSR's consummation of the abandonment.

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, conditions (2) through (4) imposed in the July 14, 2005 decision are removed. As a result, the consummation deadline for the abandonment authorized in this proceeding will be 60 days after service of this decision (March 10, 2007).
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary