

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 314X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN  
LATROBE, WESTMORELAND COUNTY, PA

Decided: October 6, 2009

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 2.04-mile line of railroad between milepost XN-0.00, and milepost XN-2.04, in Latrobe, Westmoreland County, PA. Notice of the exemption was served and published in the Federal Register on September 4, 2009 (74 FR 45890-91). The exemption is scheduled to become effective on October 7, 2009.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on September 11, 2009. In the EA, SEA states that the National Geodetic Survey (NGS) has identified one geodetic station marker that may be affected by the proposed abandonment. Therefore, SEA recommends a condition requiring NSR to notify NGS at least 90 days prior to beginning any salvage activities in order to plan for the possible relocation of the geodetic station marker.

SEA also states in the EA that the Pennsylvania Department of Environmental Protection (PADEP), Southwest Regional Office (SWRO), and the Pennsylvania Department of Transportation, Bureau of Rail Freight, Ports and Waterways (PennDOT), provided a list of environmental regulations that could apply to the proposed abandonment. The agencies are requesting that NSR contact applicable Federal and state governmental agencies to determine the need for obtaining approvals for possible impacts to cultural resources, and the following issues of concern: state endangered species, utilities, air quality, environmental cleanup, oil and gas wells, waste management, stormwater permitting, and water quality. While SEA believes that some of these issues have already been addressed by other agencies, SEA has included the agencies of concern in the service list for this proceeding so they will receive a copy of the EA and be prepared to send any comments to SEA. In addition, SEA recommends a condition requiring NSR to contact PADEP SWRO and PennDOT, prior to initiating salvage activities, to provide a status of its activities toward resolving the issues of concern listed above.

Comments to the EA were due by September 29, 2009. After the issuance of the EA, on October 3, 2009, SEA received a comment from the City of Latrobe (City). Although the City generally agrees with SEA's conclusions in the EA, it has two basic concerns. First, the City contends that, if the rails are removed post abandonment, approximately 7 street crossings would need to be restored/or repaired to permit safe passage by vehicles and pedestrians. Second, the

City is concerned that appropriate surface cover remain on the right-of-way post abandonment to prevent soil erosion and water runoff. Therefore, SEA recommends a condition requiring NSR to contact the City, prior to commencement regarding the restoration of the 7 road crossings, as well as the proper installation of best management practices within the 2.04 segment of rail line to be abandoned to protect drainage ways and streams. Also, NSR should comply with the reasonable requirements of the City.

On October 1, 2009, Latrobe-Unity Parks & Recreation and The Latrobe Foundation (Proponent) jointly filed a request for the issuance of a 180-day public use condition under 49 U.S.C. 10905 and a request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29. Proponent has submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of and for the payment of any and all taxes that may be levied or assessed against, the right-of-way as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. In a response submitted on October 6, 2009, NSR consents to the issuance of a NITU.

Because the Proponent's request complies with the requirements of 49 CFR 1152.29 and NSR is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, NSR may fully abandon the line subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because the Proponent has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the October 7, 2009 effective date of the exemption.

When the need for interim rail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, NSR must keep the remaining portion intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to

provide an opportunity for an interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, NSR is not required to deal exclusively with the Proponent, but may engage in negotiation with other interested persons.

As conditioned, this decision 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, the notice served and published in the Federal Register on September 4, 2009, exempting the abandonment of the rail line described above, is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below, for a period of 180 days commencing from the October 7, 2009 effective date of the exemption until (until April 5, 2010), and subject to the conditions that NSR shall: (1) notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the geodetic station marker; and (2) prior to commencement of any salvage activities: (a) contact PADEP SWRO and PennDOT to provide a status of its activities toward resolving the following issues of concern: state endangered species, utilities, air quality, environmental cleanup, oil and gas wells, waste management, stormwater permitting, and water quality; and (b) contact the City and comply with the reasonable requirements of the City, regarding the restoration of the 7 road crossings, as well as the proper installation of best management practices within the 2.04 mile segment of rail line to be abandoned to protect the drainage ways and streams.
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, NSR may discontinue service and salvage track, and related materials. NSR shall keep intact the right-of-way, including bridges, trestles, culverts and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before April 5, 2010, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by April 5, 2010, interim trail use may be implemented. If no agreement is reached by that time, NSR may fully abandon the line, provided that the other conditions in this proceeding are met. See 49 CFR 1152.29(d)(1).

8. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary