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SERVICE DATE – LATE RELEASE SEPTEMBER 3, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 289X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
HAMILTON COUNTY, OH

Decided: September 3, 2008

On July 16, 2008, Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.10-mile line of railroad between milepost CT 2.50 (Cincinnati) and milepost CT 3.60 (Norwood), in Hamilton County, OH.¹ Notice of the exemption was served and published in the Federal Register on August 5, 2008 (73 FR 45526-27). The exemption is scheduled to become effective on September 4, 2008.

By decision served on August 8, 2008, the Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding, recommending that a condition be imposed that would require NSR to consult with the National Geodetic Survey (NGS) and to provide NGS with 90 days' notice before beginning any salvage activities that could disturb or destroy any geodetic station markers identified by NGS.

On August 22, 2008, the City of Cincinnati, OH (City), filed a request for a public use condition pursuant to 49 CFR 1152.28 and 49 U.S.C. 10905 and expressed its interest in keeping the rail corridor involved in this proceeding intact for possible use for future rail passenger service.

By letter filed on August 25, 2008, NSR filed a motion to withdraw its notice of exemption. In its motion, NSR states that competing proposals for disposition and use of the right-of-way could delay the conclusion of this proceeding and that it believes that it would be better in this case to withdraw the notice and try to deal with post-abandonment issues in advance without the constraint of a pending proceeding. NSR requests that the Board dismiss the proceeding without prejudice.

When a carrier is authorized to abandon a line, that authority is permissive, not mandatory. The carrier can choose to exercise that authority or not. Because carriers are not compelled to abandon lines, the Board normally grants a carrier's motion to withdraw its request

¹ On July 25, 2008, NSR filed a corrected site map to reflect more clearly the layout and curvature of the track.

for abandonment authority. See Almono LP–Abandonment Exemption–in Allegheny County, PA, STB Docket No. AB-842X (STB served Jan. 28, 2004). Until NSR exercises its abandonment authority, which it has not (and indeed cannot, because the authority is not yet effective), the line is not abandoned and the Board’s primary jurisdiction over the line continues. Accordingly, the request will be granted, and the notice of exemption will be dismissed. Because the request to withdraw the notice of exemption is being granted, the City’s request for a public use condition is moot. The condition recommended by SEA in the EA is also moot and, therefore, will not be imposed.

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

It is ordered:

1. NSR’s request to withdraw the notice of exemption is granted, and the notice of exemption is dismissed without prejudice.
2. The notice served and published in the Federal Register on August 5, 2008, is vacated.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary