

40754
DO

SERVICE DATE – MAY 4, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 310X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
FLOYD AND POLK COUNTIES, GA.

Decided: April 30, 2010

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 C.F.R. § 1152 Subpart F—Exempt Abandonments to abandon a 12.31-mile line of railroad between milepost 3.69-N and milepost 16.00-N, in Floyd and Polk Counties, Ga. Notice of the exemption was served and published in the Federal Register on May 5, 2009 (74 Fed. Reg. 20,776) (May 2009 notice). The exemption became effective on June 4, 2009.

By decision served on June 3, 2009 (June 2009 decision), the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA) and the exemption was made subject to 2 conditions requiring NSR: (1) to consult with the National Geodetic Survey (NGS) and to notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers; and (2) prior to commencement of any salvage activities, to consult with the U.S. Army Corps of Engineers – Mobile District (Corps) regarding potential impacts to waters of the United States, including wetlands, and to comply with the reasonable requirements of any Corps permit.

By decision and notice of interim trail use or abandonment (NITU) served on August 12, 2009 (August 2009 decision), the proceeding was again reopened and a 180-day period was authorized for the City of Rome, on behalf of itself, Floyd County, and the City of Cave Spring, Ga. (collectively, the City of Rome), to negotiate an interim trail use/rail banking agreement with NSR for the line pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29.¹ The NITU negotiating period expired on February 8, 2010.²

¹ The August 2009 decision also imposed a 180-day public use condition, which expired on December 1, 2009.

² In a letter filed on January 25, 2010 (January 2010 letter), NSR advised the Board that it would not consent to further NITU extensions. In the January 2010 letter, NSR also reiterated that portions of the right-of-way may not be eligible for or suitable for interim trail use or may be the subject of other disposition by NSR. NSR states that the Georgia Department of Transportation wishes to acquire a segment of the right-of-way that will sever the line from the national rail system and has brought a condemnation action regarding the property, which NSR has agreed to settle upon consummation of the abandonment.

In the May 2009 notice, the Board stated that, if consummation had not been effected by NSR's filing of a notice of consummation by May 5, 2010, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. Under 49 C.F.R. § 1152.29(e)(2) a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings. On April 12, 2010, NSR filed a request to extend, for 1 year, the time to file its notice of consummation. In support, NSR states that it has complied with all conditions imposed by the Board in the June 2009 decision; however, compliance with these conditions has resulted in insufficient time prior to the consummation date to conduct the salvage operations on the line that NSR had previously indicated that it would undertake. NSR has shown good cause to extend the time to consummate the abandonment and for filing a notice of consummation in this proceeding. Accordingly, the request will be granted.

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 for an extension of time to consummate the abandonment is granted.
2. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before May 5, 2011.
3. This decision is effective on its service date.

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