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SERVICE DATE – JUNE 29, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 288X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
BERGEN COUNTY, NJ

Decided: June 28, 2007

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.40-mile line of railroad between milepost UQ 8.80 and milepost UQ 10.20, in Rutherford, Bergen County, NJ. Notice of the exemption was served and published in the Federal Register on May 31, 2007 (72 FR 30432-33). The exemption was scheduled to become effective on June 30, 2007, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by June 11, 2007.

On June 11, 2007, BP Rail Corporation (BPR) filed a formal expression of intent to file an OFA to purchase NSR's line proposed for abandonment. This filing automatically stayed the effective date of the exemption for 10 days, until July 10, 2007.¹ In the filing, BPR requested that NSR provide it with the information set forth in 49 CFR 1152.27(a), including the minimum purchase price required to acquire the line. BPR also requested that NSR provide the most recent report on the physical condition of the line and traffic, revenue and other data necessary to determine NSR's estimate on the net liquidation value (NLV) of the line, with supporting data reflecting available real estate appraisal, assessments of quality and the quantity of track material in the line, and removal cost estimates used to obtain the NLV.²

BPR also requested that the Board toll the time period for submitting its OFA for an additional 30 days (presumably pursuant to 49 CFR 1152.27(c)(2)(ii)(C)) in order to provide BPR with an adequate opportunity to review and analyze the material to be provided by NSR. The request for an extension of the OFA filing deadline is warranted and will be granted. Accordingly, the due date for BPR to submit an OFA will be extended to July 30, 2007, and the effective date of the exemption will be extended until August 9, 2007.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on June 5, 2007. In the EA, SEA states that NSR served its historic report on the New Jersey State Historic Preservation Officer (SHPO), pursuant to

¹ See 49 CFR 1152.27(c)(2)(i).

² BPR simultaneously served the notice of intent on NSR.

49 CFR 1105.8(c), but that SEA has not heard from the SHPO and, therefore, has not been able to consider the SHPO's opinion before determining if the rail line may be potentially eligible for listing on the National Register of Historic Places (National Register). Accordingly, SEA recommends that NSR: (1) be required to retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or listed in the National Register (generally, 50 years old or older) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA); (2) report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties; and (3) not be allowed to 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 this condition.

Comments to the EA were due by June 18, 2007. No comments were filed. Accordingly, the historic preservation condition recommended by SEA in the EA will be imposed.

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. The time period for BPR to file an OFA is tolled for 30 days until July 30, 2007.
3. The effective date of the exemption is postponed until August 9, 2007.
4. Upon reconsideration, the exemption of the abandonment of the line described above is subject to the condition that NSR shall retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or listed in the National Register (generally, 50 years old or older) until the section 106 process of the NHPA, has been completed. NSR shall report back to the SEA regarding any consultations with the SHPO and any other section 106 consulting parties, and shall 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 this condition.
5. This decision is effective on its service date.

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

Vernon A. Williams
Secretary