

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: May 14, 2008

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 and a request for, among other things, an extension of the OFA filing deadline. This filing automatically stayed the effective date of the exemption for 10 days, until July 10, 2007, and, by decision served June 29, 2007, the time period for BPR to file an OFA was tolled until July 30, 2007.<sup>1</sup> On July 27, 2007, NSR filed a request to modify its request in this proceeding so that it would be authorized only to discontinue service over, but not abandon, the 1.40-mile line at issue in this proceeding. NSR also requested that the Board declare BPR's notice of intent to file an OFA and its request for valuation information moot. On July 30, 2007, BPR filed in opposition to NSR's motion to modify. On November 27, 2007, BPR filed a motion to compel NSR to provide the financial information requested by BPR for its OFA. On December 18, 2007, NSR filed a reply in opposition to the motion to compel. The time period for BPR to submit an OFA was tolled several times and the effective date of the exemption was further postponed by a series of decisions to allow the Board time to consider NSR's modification request and the subsequent pleadings.<sup>2</sup> The most recent decision tolled the time period to file an OFA until May 23, 2008, and postponed the effective date of the exemption until June 2, 2008.

By letter filed on April 8, 2008, NSR requests to withdraw its notice of exemption. NSR states that its abandonment sought to remove a long unused line with no shippers or reasonable

---

<sup>1</sup> See 49 CFR 1152.27(c)(2)(i).

<sup>2</sup> These decisions were served on July 30, 2007, September 28, 2007, November 27, 2007, January 25, 2008, and March 24, 2008.

prospects for future rail service from its system. NSR also states that it wished to have the Board's jurisdiction over the line removed so that NSR might complete an agreement with the Town of Rutherford or another local government entity for the conveyance of the property for public purposes. However, no formal agreement could be reached, and the prospects for such an agreement were complicated by BPR's notice of intent to file an OFA. Finally, NSR states that it wishes to remove the matter from the Board's docket and reevaluate its plans for the property. BPR has not filed a reply to NSR's motion to withdraw its notice of exemption.

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 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, BPR's notice of intent to file an OFA is now moot. NSR's motion to modify its authority from an abandonment to a discontinuance, and BPR's motion to compel, are also moot.

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 May 31, 2007, 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