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SERVICE DATE – MARCH 26, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 271X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
WYOMING AND GENESEE COUNTIES, NY

Decided: March 25, 2008

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 4.50-mile line of railroad extending between milepost UG 360.20 at Alexander and milepost UG 364.70 at Attica, in Wyoming and Genesee Counties, NY. Notice of the exemption was served and published in the Federal Register on December 18, 2007 (72 FR 71738). The notice stated that the exemption would become effective on January 17, 2008, unless stayed by the Board or unless 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 December 28, 2007.

On November 29, 2007, BP Rail Corporation D/B/A BP Rail (BPR) filed a formal expression of intent to file an OFA to purchase the line. This filing automatically stayed the effective date of the exemption for 10 days, until January 27, 2008.¹ BPR simultaneously requested that NSR provide BPR with the financial data and information prescribed in 49 CFR 1152.27(a), including the required minimum purchase price. BPR also requested, pursuant to 49 CFR 1152.27(c)(2)(ii)(C), that the 30-day period for filing an OFA be tolled for an additional 60 days to provide the offeror with an adequate opportunity to receive, review and analyze the material provided by NSR and submit its OFA. By decision served on December 21, 2007, BPR's request was granted, and the time period for BPR to file an OFA was tolled until March 17, 2008, and the effective date of the exemption was postponed until March 27, 2008.

By decision served on February 6, 2008 (February 2008 decision), two environmental conditions were imposed, which had been recommended by the Board's Section of Environmental Analysis. Additionally, the February 2008 decision addressed a request by the New York State Office of Parks, Recreation and Historic Preservation (SRHP) for the issuance of a notice of interim trail use (NITU) and imposition of a public use condition on the 4.50-mile rail line. The Board found that SRHP had satisfied the requirements for issuance of a NITU and the imposition of a public use condition but stated that the issuance and effectiveness of the NITU and public use condition would be held in abeyance until completion of the OFA process, which took precedence.

¹ See 49 CFR 1152.27(c)(2)(i).

No OFA has been filed by the March 17, 2008 due date. Therefore, the OFA process has now terminated, and the NITU will be issued and the public use condition imposed and both will commence running on the March 27, 2008 effective date of the exemption.

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 abandonment exemption will become effective on March 27, 2008, subject to the two environmental conditions previously imposed in this proceeding, and to the conditions that: (1) NSR is prohibited from disposing of the corridor, including the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts and tunnels (but not tracks, ties and signal equipment), for a 180-day period from March 27, 2008, to September 23, 2008, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use; and (2) NSR must comply with the interim trail use/rail banking procedures set forth below.
 - (3) 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.
4. 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.
5. 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.
6. If an agreement for interim trail use/rail banking is reached by September 23, 2008, interim trail use may be implemented. If no agreement is reached by that time, NSR may fully abandon the line, provided the conditions imposed in this proceeding are met. If an interim trail use/rail banking agreement is executed before September 23, 2008, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

7. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary