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SERVICE DATE – LATE RELEASE AUGUST 18, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 243X)

NORFOLK SOUTHERN RAILWAY COMPANY–ABANDONMENT EXEMPTION–  
IN FORSYTH COUNTY, NC

Decided: August 18, 2005

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 2.4-mile rail line extending between milepost R-124.2 and milepost R-126.6 in Winston-Salem, Forsyth County, NC. Notice of the exemption was served and published in the Federal Register on July 20, 2005 (70 FR 41813), as corrected on August 3, 2005 (70 FR 44719). The exemption is scheduled to become effective on August 19, 2005.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 22, 2005. In the EA, SEA notes that the National Geodetic Survey (NGS) has identified two geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that NSR provide NGS with at least 90 days' notice prior to initiation of any salvage activities that may disturb or destroy the geodetic station markers so that plans can be made for their relocation (Condition 1).

SEA also states in the EA that the North Carolina Department of Environment and Natural Resources, Division of Land Resources (NCDENR), has requested permission to access the line in order to determine the location and coordinates of the rails prior to their removal. According to NCDENR, the legal description of some property boundaries is based on the distance and bearing from the rails and this information will be lost after the rails are removed. To prevent this, NCDENR has offered to conduct a Global Positioning System Real Time Kinematic (RTK) survey. Therefore, SEA recommends that, prior to commencement of any salvage activities, NSR be required to consult with NCDENR to discuss the implementation of a RTK survey and submit the results of those consultations in writing to SEA prior to the commencement of salvage activities (Condition 2).

SEA further notes in the EA that the U.S. Fish and Wildlife Service (USFWS) and/or the North Carolina Department of Natural Resources have indicated that generally 50 threatened and endangered species may exist in North Carolina and that specifically the federally endangered red-cockaded woodpecker and small-anthered bittercress occur in Forsyth County. Accordingly, SEA recommends that NSR consult with USFWS prior

to the commencement of salvage activities regarding possible impacts on federally endangered species that may occur in the vicinity of the proposed abandonment and report the results of those consultations in writing to SEA (Condition 3).

In addition, SEA states in the EA that, although NSR contends that there are no known hazardous waste sites or hazardous material spills on the right-of-way, NSR has determined that a nearby facility called the Camel City Cleaners (CCC) has been listed in the North Carolina Brownfield Inventory. While NSR contends that any impact from CCC on the right-of-way is improbable, SEA recommends, because of the proximity of the right-of-way to this Brownfield site, that prior to commencement of any salvage activities, NSR be required to consult with the appropriate office of the U.S. Environmental Protection Agency (USEPA) and the North Carolina Department of Natural Resources' Division of Waste Management (DWM) to determine if any safety precautions should be taken during salvage activities and submit the results of those consultations in writing to SEA (Condition 4).

Finally, because the North Carolina State Historic Preservation Office, Department of Cultural Resources (SHPO), has not completed its evaluation of the potential impact of this project on historic resources, SEA recommends that NSR be required to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (section 106). NSR shall report back to SEA regarding the results of any consultations with the SHPO (Condition 5).

Comments to the EA were due by August 8, 2005. Based on the comments received, SEA has modified its recommendations. In a letter dated August 3, 2005, the SHPO indicates that it has completed its review of the proposed abandonment and determined that no historic resources would be affected by the proposed project. SEA, after reviewing the report, concurs with the SHPO and has determined that the Board's responsibilities under section 106 are fulfilled. Accordingly, SEA no longer recommends that a section 106 condition (Condition 5) be imposed.

In a letter dated August 5, 2005, DWM states that the site of the former CCC is not likely to have contributed contaminants to the railroad bed. However, DWM states that the line is adjacent to the property at 501 East Third Street, where a manufactured gas plant (MGP) operated. Environmental impacts have been reported at this site, and DWM expresses concerns regarding the levels of poly-cyclic aromatic hydrocarbons in the upper 12 inches of soil of the eastern embankment of the rail line between Third and Fourth Streets. According to DWM, Duke Energy is responsible for addressing the MGP and dry-cleaners related contamination associated with the site, but remediation of the soil on the eastern side of the right-of-way (embankment soil) has not been conducted because of the proximity of the railroad line. DWM also states that there could be significant construction vehicle congestion if railroad abandonment activities and embankment remediation activities are undertaken at the same time.

Accordingly, SEA recommends that Condition 4 be modified to read as follows: prior to the commencement of any salvage activities between Third and Fourth Streets, NSR shall: (a) consult with Duke Energy (Ralph Roberts at 980-373-7888) regarding any salvage activities including scheduling and health and safety precautions (including specific safety precautions for NSR employees), and regarding a plan to moderate possible construction congestion; (b) consult with USEPA to determine if any additional safety precautions are necessary during salvage activities; and (c) submit in writing the results of those consultations to SEA prior to commencement of salvage activities.

The environmental conditions recommended by SEA in the EA, as supplemented and modified based on comments received, will be imposed. Based on SEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. On August 9, 2005, the North Carolina Department of Transportation (NCDOT) filed a request for the imposition of a 180-day public use condition regarding a 1.8-mile portion of the line between milepost R-124.2 and milepost R-126, precluding NSR from disposal of the corridor, except for public use on reasonable terms. NCDOT submits that this corridor would be used specifically for implementing a new rail commuter service in Winston-Salem and that the 180-day period is needed to complete an appraisal and to initiate negotiations.

NCDOT has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed on the 1.8-mile portion of the line between milepost R-124.2 and milepost R-126, commencing from the effective date of the exemption, to enable any State or local government or other interested person to negotiate the acquisition of the line for public use.

It is ordered:

1. This proceeding is reopened.

2. Upon reconsideration, the notice served and published in the Federal Register on July 20, 2005, as corrected on August 3, 2005, exempting the abandonment of the line described above is subject to the conditions that NSR shall: (1) provide NGS with at least 90 days' notice prior to initiation of any salvage activities that may disturb or destroy the geodetic station markers so that plans can be made for their relocation; (2) prior to commencement of any salvage activities, consult with NCDENR to discuss the implementation of a RTK survey and submit the results of those consultations in writing to SEA; (3) consult with the USFWS prior to commencement of any salvage activities regarding possible impacts on federally endangered species that may occur in the vicinity of the proposed abandonment and report the results of those consultations in writing to SEA; (4) prior to commencement of any salvage activities between Third and Fourth Streets (a) consult with Duke Energy (Ralph Roberts at 980-373-7888) regarding any salvage activities including scheduling and health and safety precautions (including specific safety precautions for NSR employees), and a plan to moderate possible construction congestion, (b) consult with USEPA to determine if any additional safety precautions are necessary during salvage activities, and (c) submit in writing the results of those consultations to SEA prior to commencement of salvage activities; and (5) leave intact all of the right-of-way on the 1.8-mile portion of the line between milepost R-124.2 and milepost R-126, for a period of 180 days from the August 19, 2005 effective date of the exemption (until February 15, 2006), to enable any State or local government agency or any other interested person to negotiate the acquisition of this portion of the line for public use.

3. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary