

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 267X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
KANAWHA COUNTY, W. VA.

Decided: June 24, 2010

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 C.F.R. § 1152 Subpart F—Exempt Abandonments to abandon a 12.22-mile line of railroad between milepost TP 14.69, at Blue Creek, and milepost TP 26.91, at Acup (Sanderson), in Kanawha County, W. Va. Notice of the exemption was served and published in the Federal Register on August 15, 2006 (71 FR 46,976).¹ The exemption was scheduled to become effective on September 14, 2006, 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 C.F.R. § 1152.27(c)(2) was filed by August 25, 2006. By decision and notice of interim trail use or abandonment (NITU) served on November 14, 2006, the proceeding was reopened and a 180-day period was authorized for the Elk River Rails-to-Trails Foundation, Inc. to negotiate an interim trail use/rail banking agreement with NSR for the right-of-way involved in this proceeding.² By decisions served on March 30, 2007 (March 2007 decision), and October 18, 2007, the negotiating period under the NITU was extended until March 13, 2008, and the deadline for filing a notice of consummation was extended until May 12, 2008.

By letter filed on April 15, 2010, NSR requests to withdraw its notice of exemption. NSR states that the environmental and historic preservation conditions imposed remain outstanding, and that it has not consummated the abandonment. NSR also states that has entered into an agreement to lease the line, as well as an adjacent section of rail line not involved in the abandonment, to the Charleston, Blue Creek, and Sanderson Railway Co. for continued operation as a line of railroad.³

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

¹ By decision served on September 13, 2006, the exemption was made subject to two environmental conditions and a historic preservation condition.

² This decision also made the exemption subject to a public use condition, which expired on March 13, 2007, and cannot be extended.

³ The lease was authorized by the Board in Charleston, Blue Creek & Sanderson Ry.—Lease and Operation Exemption—Norfolk S. Ry., FD 35313 (STB served Nov. 13, 2009).

compelled to abandon lines, the Board normally grants a carrier's motion to withdraw its request for abandonment authority. See Me. Cent. R.R.—Aban. Exemption—in Androscoggin County, Me., slip op. at 5 (STB served Sept. 15, 2000). Until NSR exercises its abandonment authority, which it has not (and indeed cannot, because the authority is not yet effective due to an outstanding historic preservation condition), 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.

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 August 15, 2006, is vacated.
3. This decision is effective on its service date.

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