

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 283X)

NORFOLK SOUTHERN RAILWAY COMPANY—
ABANDONMENT EXEMPTION—IN ORANGE COUNTY, NY

Decided: May 2, 2008

By petition filed on January 12, 2007, Norfolk Southern Railway Company (NSR) sought an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 1.64-mile line of railroad, extending from milepost ZU 45.00 to milepost ZU 46.64 at Harriman, Orange County, NY. NSR also sought an exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and 49 CFR 1152.27, and the public use requirements of 49 U.S.C. 10905 and 49 CFR 1152.28. Notice of the exemption was served and published in the Federal Register on February 1, 2007 (72 FR 4767).

On February 20, 2007, Mr. James Riffin filed a motion for leave to intervene in this proceeding for the purpose of opposing the proposed exemption from the OFA provisions of section 10904. Also on February 20, 2007, Mr. Riffin filed with the Board a notice of his intent to file an OFA to purchase the line. Mr. Riffin also requested that NSR provide him with the financial data and information necessary to determine the line's net liquidation value (NLV). In a decision served on May 2, 2007 (May 2007 decision), the Board granted the exemptions from 49 U.S.C. 10903 and 49 U.S.C. 10905, subject to environmental and standard employee protective conditions, but denied the request for an exemption from 49 U.S.C. 10904. The May 2007 decision stated that an OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the Board by May 11, 2007. The May 2007 decision also stated that, if consummation had not been effected by NSR's filing of a notice of consummation by May 2, 2008, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

On May 11, 2007, Mr. Riffin filed a petition requesting that the Board toll the time period for submitting an OFA until 30 days after Mr. Riffin's receipt of the financial data requested from NSR. Mr. Riffin stated that he had not received any of the information he requested from NSR, and that he could not prepare an informed OFA without first reviewing this information. In a decision served on June 22, 2007, the Board granted Mr. Riffin's petition.

On July 10, 2007, NSR filed a motion to modify the exemption granted in the Board's May 2007 decision. NSR advised the Board that it now seeks only to discontinue service over the line, and not exercise the full abandonment authority granted in the May 2007 decision. That motion remains pending before the Board.

By letter received on April 30, 2008, NSR requests an extension of the deadline for filing its notice of consummation for the line until May 2, 2009. NSR states that it wishes to protect its right to consummate the abandonment of the line pending Board review of its motion to modify the exemption granted in the May 2007 decision.

NSR has shown good cause to extend the time to consummate the abandonment and for filing a notice of consummation in this proceeding. Accordingly, the extension request will be granted.

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 for an extension of time to consummate the abandonment is granted.
2. The authority to abandon the 1.64-mile line as described above must be exercised, and the notice of consummation must be filed, on or before May 2, 2009.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary