

28647
EB

SERVICE DATE - LATE RELEASE DECEMBER 29, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 190X)

NORFOLK SOUTHERN RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN FAYETTE COUNTY, AL

Decided: December 19, 1997

By petition filed on September 10, 1997, the Norfolk Southern Railway Company (NSR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad known as the Berry-Belk Line, extending from milepost 862.8 at Berry, AL, to milepost 884.9 at or near Belk (Covin), AL, a distance of 22.1 miles in Fayette County, AL.¹ The United Transportation Union (UTU) seeks the imposition of employee protective conditions. We will grant the exemption, subject to environmental conditions and standard labor protective conditions.

BACKGROUND

Petitioner states that, in 1996, the line's three shippers moved 52 carloads of gravel, lumber, timber and pulpwood over the line, yielding gross revenues of \$56,986. NSR states that two of the shippers are no longer in business on the line and that A. Brown, the only remaining shipper, tendered only 13 carloads of pulpwood in 1996. According to NSR, total 1996 avoidable costs for the line were \$292,154, resulting in an avoidable loss from operations of \$235,168. NSR states that its avoidable loss including return on value equals \$422,543. NSR adds that the line is in poor condition, resulting in maintenance costs of \$203,320 in 1996. Petitioner avers that the remaining shipper's traffic is about one carload of pulpwood per month, which can move by truck, and that there is little potential for an increase in traffic in this sparsely populated area of rural Alabama. As of June 1, 1996, all overhead traffic was rerouted from the line.

According to NSR, the line can no longer be operated profitably. NSR says that, since the line is now being operated at a large avoidable loss, revenue from diminished traffic levels is too low to justify continued operation, much less reinvestment in the line or equipment to serve it.

DISCUSSION AND CONCLUSIONS

¹ A notice instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b) was served and published in the Federal Register on September 30, 1997 (62 FR 51180).

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of an abandonment application, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving NSR from the costly repairs necessary to continue service and the costs of owning and maintaining the line as well as allowing its assets to be used more productively elsewhere on its system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power. Two of the former shippers are no longer in business on the line. The remaining shipper's traffic is only one carload a month which can be shipped by truck.² Nevertheless, to ensure that the shippers are informed of our action, we will require NSR to serve a copy of this decision on all three shippers within 5 days of the service date of this decision and certify to us that it has done so.

UTU requests the imposition of labor protective conditions. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

NSR has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on November 12, 1997, in which it noted that the U.S. Fish and Wildlife Service (FWS), the National Geodetic Survey (NGS), the U.S. Environmental Protection Agency (EPA), and the Alabama Historical Commission (AHC) raised a number of environmental concerns regarding the proposed abandonment. To meet those concerns, SEA has recommended in its EA that the following environmental conditions be imposed on any grant of abandonment authority:

² Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

1. The FWS field office at Daphne, AL, states that three endangered mussel species may be present in the Luxapallila Creek and the Sipsey River. Therefore, SEA recommends that a condition be placed on any decision granting abandonment authority prohibiting the railroad from performing any in-stream salvage activities in the Luxapallila Creek and the Sipsey River in order to assist SEA in the completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531.

In its EA, SEA also has recommended the following salvage mitigation measures:

- a. Best Management Practices will be implemented, as appropriate, to reduce potential erosion in the project area and to protect water quality in aquatic habitats.
 - b. Equipment staging and refueling areas will be limited to upland sites.
 - c. Stabilization efforts, such as disking and reseeding with native vegetation, will be conducted in disturbed areas immediately after activities.
 - d. Broad-cast herbicides or pesticides will be prohibited during right-of-way clearing within wetland areas.
 - e. Any construction activities during salvage operations will be restricted to existing roads or the right-of-way.
 - f. Removal of trees and riparian vegetation will be minimized.
 - g. To minimize siltation, in-stream salvage will be undertaken during low flow periods using silt curtains and hay bales, as appropriate.
 - h. Wherever possible, salvage operations will be conducted on the opposite side of the rail line from wetlands.
2. NGS has identified 24 geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that the railroad shall notify NGS at least 90 days prior to engaging in salvage activities that may disturb or destroy these markers.
3. Prior to any salvage activities, SEA recommends that NSR shall consult with EPA, Region 4, to determine whether any permits will be required pursuant to the National Pollutant Discharge Elimination System Permit Program.
4. AHC has not completed its assessment of the historical significance of the railroad properties involved. Accordingly, SEA recommends a condition requiring that NSR shall retain its interest in and take no steps to alter the historic integrity of the right-of-way and the bridge over the Sipsey River at milepost 877.3 until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

Only one comment to the EA was received by the December 5, 1997 due date. FWS advised us that the three endangered mussel species will not likely be affected by salvage activities. Therefore, no survey for the mussels will be necessary and no further consultation with FWS will be required. SEA therefore recommends that the Board not impose the condition set forth above that would have prohibited the railroad from performing any in-stream salvage activities until completion of the section 7 process of the Endangered Species Act. We will not impose that condition, but will impose the other environmental conditions recommended by SEA. We conclude that 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 states that, following the abandonment, the right-of-way may be appropriate for other public use under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none will be imposed.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the above-described line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); (2) the condition that the following mitigation measures be imposed on any salvage activities: (a) Best Management Practices will be implemented, as appropriate, to reduce potential erosion in the project area and to protect water quality in aquatic habitats; (b) equipment staging and refueling areas will be limited to upland sites; (c) stabilization efforts, such as disking and reseeding with native vegetation, will be conducted in disturbed areas immediately after activities; (d) broad-cast herbicides or pesticides will be prohibited during right-of-way clearing within wetland areas; (e) any construction activities during salvage operations will be restricted to existing roads or the right-of-way; (f) removal of trees and riparian vegetation will be minimized; (g) to minimize siltation, in-stream salvage will be undertaken during low flow periods using silt curtains and hay bales, as appropriate; and (h) wherever possible, salvage operations will be conducted on the opposite side of the rail line from wetlands; (3) the condition that the railroad shall notify NGS at least 90 days prior to engaging in salvage activities that may disturb or destroy the 24 geodetic station markers identified by NGS; (4) the condition that NSR shall consult with EPA, Region 4, prior to any salvage activities to determine whether any permits will be required pursuant to the National Pollutant Discharge Elimination System Permit Program; and (5) the condition that NSR shall retain its interest in and take no steps to alter the historic integrity of the right-of-way and the bridge over the Sipsey River at milepost 877.3 until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

2. NSR must serve a copy of this decision on the three former and present shippers within 5 days after the service date of this decision and certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)³ to allow rail service to continue must be received by the railroad and the Board by January 8, 1998, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$900 filing fee. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective on January 28, 1998. Petitions to stay must be filed by January 13, 1998; petitions to reopen must be filed by January 23, 1998.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 29, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

³ See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

28647
EB

SERVICE DATE - LATE RELEASE DECEMBER 29, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 190X)

NORFOLK SOUTHERN RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN FAYETTE COUNTY, AL

Decided: December 19, 1997

By petition filed on September 10, 1997, the Norfolk Southern Railway Company (NSR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad known as the Berry-Belk Line, extending from milepost 862.8 at Berry, AL, to milepost 884.9 at or near Belk (Covin), AL, a distance of 22.1 miles in Fayette County, AL.¹ The United Transportation Union (UTU) seeks the imposition of employee protective conditions. We will grant the exemption, subject to environmental conditions and standard labor protective conditions.

BACKGROUND

Petitioner states that, in 1996, the line's three shippers moved 52 carloads of gravel, lumber, timber and pulpwood over the line, yielding gross revenues of \$56,986. NSR states that two of the shippers are no longer in business on the line and that A. Brown, the only remaining shipper, tendered only 13 carloads of pulpwood in 1996. According to NSR, total 1996 avoidable costs for the line were \$292,154, resulting in an avoidable loss from operations of \$235,168. NSR states that its avoidable loss including return on value equals \$422,543. NSR adds that the line is in poor condition, resulting in maintenance costs of \$203,320 in 1996. Petitioner avers that the remaining shipper's traffic is about one carload of pulpwood per month, which can move by truck, and that there is little potential for an increase in traffic in this sparsely populated area of rural Alabama. As of June 1, 1996, all overhead traffic was rerouted from the line.

According to NSR, the line can no longer be operated profitably. NSR says that, since the line is now being operated at a large avoidable loss, revenue from diminished traffic levels is too low to justify continued operation, much less reinvestment in the line or equipment to serve it.

DISCUSSION AND CONCLUSIONS

¹ A notice instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b) was served and published in the Federal Register on September 30, 1997 (62 FR 51180).

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of an abandonment application, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving NSR from the costly repairs necessary to continue service and the costs of owning and maintaining the line as well as allowing its assets to be used more productively elsewhere on its system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power. Two of the former shippers are no longer in business on the line. The remaining shipper's traffic is only one carload a month which can be shipped by truck.² Nevertheless, to ensure that the shippers are informed of our action, we will require NSR to serve a copy of this decision on all three shippers within 5 days of the service date of this decision and certify to us that it has done so.

UTU requests the imposition of labor protective conditions. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

NSR has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on November 12, 1997, in which it noted that the U.S. Fish and Wildlife Service (FWS), the National Geodetic Survey (NGS), the U.S. Environmental Protection Agency (EPA), and the Alabama Historical Commission (AHC) raised a number of environmental concerns regarding the proposed abandonment. To meet those concerns, SEA has recommended in its EA that the following environmental conditions be imposed on any grant of abandonment authority:

² Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

1. The FWS field office at Daphne, AL, states that three endangered mussel species may be present in the Luxapallila Creek and the Sipsey River. Therefore, SEA recommends that a condition be placed on any decision granting abandonment authority prohibiting the railroad from performing any in-stream salvage activities in the Luxapallila Creek and the Sipsey River in order to assist SEA in the completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531.

In its EA, SEA also has recommended the following salvage mitigation measures:

- a. Best Management Practices will be implemented, as appropriate, to reduce potential erosion in the project area and to protect water quality in aquatic habitats.
 - b. Equipment staging and refueling areas will be limited to upland sites.
 - c. Stabilization efforts, such as disking and reseeded with native vegetation, will be conducted in disturbed areas immediately after activities.
 - d. Broad-cast herbicides or pesticides will be prohibited during right-of-way clearing within wetland areas.
 - e. Any construction activities during salvage operations will be restricted to existing roads or the right-of-way.
 - f. Removal of trees and riparian vegetation will be minimized.
 - g. To minimize siltation, in-stream salvage will be undertaken during low flow periods using silt curtains and hay bales, as appropriate.
 - h. Wherever possible, salvage operations will be conducted on the opposite side of the rail line from wetlands.
2. NGS has identified 24 geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that the railroad shall notify NGS at least 90 days prior to engaging in salvage activities that may disturb or destroy these markers.
3. Prior to any salvage activities, SEA recommends that NSR shall consult with EPA, Region 4, to determine whether any permits will be required pursuant to the National Pollutant Discharge Elimination System Permit Program.
4. AHC has not completed its assessment of the historical significance of the railroad properties involved. Accordingly, SEA recommends a condition requiring that NSR shall retain its interest in and take no steps to alter the historic integrity of the right-of-way and the bridge over the Sipsey River at milepost 877.3 until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

Only one comment to the EA was received by the December 5, 1997 due date. FWS advised us that the three endangered mussel species will not likely be affected by salvage activities. Therefore, no survey for the mussels will be necessary and no further consultation with FWS will be required. SEA therefore recommends that the Board not impose the condition set forth above that would have prohibited the railroad from performing any in-stream salvage activities until completion of the section 7 process of the Endangered Species Act. We will not impose that condition, but will impose the other environmental conditions recommended by SEA. We conclude that 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 states that, following the abandonment, the right-of-way may be appropriate for other public use under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none will be imposed.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the above-described line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); (2) the condition that the following mitigation measures be imposed on any salvage activities: (a) Best Management Practices will be implemented, as appropriate, to reduce potential erosion in the project area and to protect water quality in aquatic habitats; (b) equipment staging and refueling areas will be limited to upland sites; (c) stabilization efforts, such as disking and reseeding with native vegetation, will be conducted in disturbed areas immediately after activities; (d) broad-cast herbicides or pesticides will be prohibited during right-of-way clearing within wetland areas; (e) any construction activities during salvage operations will be restricted to existing roads or the right-of-way; (f) removal of trees and riparian vegetation will be minimized; (g) to minimize siltation, in-stream salvage will be undertaken during low flow periods using silt curtains and hay bales, as appropriate; and (h) wherever possible, salvage operations will be conducted on the opposite side of the rail line from wetlands; (3) the condition that the railroad shall notify NGS at least 90 days prior to engaging in salvage activities that may disturb or destroy the 24 geodetic station markers identified by NGS; (4) the condition that NSR shall consult with EPA, Region 4, prior to any salvage activities to determine whether any permits will be required pursuant to the National Pollutant Discharge Elimination System Permit Program; and (5) the condition that NSR shall retain its interest in and take no steps to alter the historic integrity of the right-of-way and the bridge over the Sipsey River at milepost 877.3 until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

2. NSR must serve a copy of this decision on the three former and present shippers within 5 days after the service date of this decision and certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)³ to allow rail service to continue must be received by the railroad and the Board by January 8, 1998, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$900 filing fee. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective on January 28, 1998. Petitions to stay must be filed by January 13, 1998; petitions to reopen must be filed by January 23, 1998.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 29, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

³ See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

28647
EB

SERVICE DATE - LATE RELEASE DECEMBER 29, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 190X)

NORFOLK SOUTHERN RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN FAYETTE COUNTY, AL

Decided: December 19, 1997

By petition filed on September 10, 1997, the Norfolk Southern Railway Company (NSR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad known as the Berry-Belk Line, extending from milepost 862.8 at Berry, AL, to milepost 884.9 at or near Belk (Covin), AL, a distance of 22.1 miles in Fayette County, AL.¹ The United Transportation Union (UTU) seeks the imposition of employee protective conditions. We will grant the exemption, subject to environmental conditions and standard labor protective conditions.

BACKGROUND

Petitioner states that, in 1996, the line's three shippers moved 52 carloads of gravel, lumber, timber and pulpwood over the line, yielding gross revenues of \$56,986. NSR states that two of the shippers are no longer in business on the line and that A. Brown, the only remaining shipper, tendered only 13 carloads of pulpwood in 1996. According to NSR, total 1996 avoidable costs for the line were \$292,154, resulting in an avoidable loss from operations of \$235,168. NSR states that its avoidable loss including return on value equals \$422,543. NSR adds that the line is in poor condition, resulting in maintenance costs of \$203,320 in 1996. Petitioner avers that the remaining shipper's traffic is about one carload of pulpwood per month, which can move by truck, and that there is little potential for an increase in traffic in this sparsely populated area of rural Alabama. As of June 1, 1996, all overhead traffic was rerouted from the line.

According to NSR, the line can no longer be operated profitably. NSR says that, since the line is now being operated at a large avoidable loss, revenue from diminished traffic levels is too low to justify continued operation, much less reinvestment in the line or equipment to serve it.

DISCUSSION AND CONCLUSIONS

¹ A notice instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b) was served and published in the Federal Register on September 30, 1997 (62 FR 51180).

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of an abandonment application, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving NSR from the costly repairs necessary to continue service and the costs of owning and maintaining the line as well as allowing its assets to be used more productively elsewhere on its system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power. Two of the former shippers are no longer in business on the line. The remaining shipper's traffic is only one carload a month which can be shipped by truck.² Nevertheless, to ensure that the shippers are informed of our action, we will require NSR to serve a copy of this decision on all three shippers within 5 days of the service date of this decision and certify to us that it has done so.

UTU requests the imposition of labor protective conditions. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

NSR has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on November 12, 1997, in which it noted that the U.S. Fish and Wildlife Service (FWS), the National Geodetic Survey (NGS), the U.S. Environmental Protection Agency (EPA), and the Alabama Historical Commission (AHC) raised a number of environmental concerns regarding the proposed abandonment. To meet those concerns, SEA has recommended in its EA that the following environmental conditions be imposed on any grant of abandonment authority:

² Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

1. The FWS field office at Daphne, AL, states that three endangered mussel species may be present in the Luxapallila Creek and the Sipsey River. Therefore, SEA recommends that a condition be placed on any decision granting abandonment authority prohibiting the railroad from performing any in-stream salvage activities in the Luxapallila Creek and the Sipsey River in order to assist SEA in the completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531.

In its EA, SEA also has recommended the following salvage mitigation measures:

- a. Best Management Practices will be implemented, as appropriate, to reduce potential erosion in the project area and to protect water quality in aquatic habitats.
- b. Equipment staging and refueling areas will be limited to upland sites.
- c. Stabilization efforts, such as disking and reseeded with native vegetation, will be conducted in disturbed areas immediately after activities.
- d. Broad-cast herbicides or pesticides will be prohibited during right-of-way clearing within wetland areas.
- e. Any construction activities during salvage operations will be restricted to existing roads or the right-of-way.
- f. Removal of trees and riparian vegetation will be minimized.
- g. To minimize siltation, in-stream salvage will be undertaken during low flow periods using silt curtains and hay bales, as appropriate.
- h. Wherever possible, salvage operations will be conducted on the opposite side of the rail line from wetlands.

2. NGS has identified 24 geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that the railroad shall notify NGS at least 90 days prior to engaging in salvage activities that may disturb or destroy these markers.

3. Prior to any salvage activities, SEA recommends that NSR shall consult with EPA, Region 4, to determine whether any permits will be required pursuant to the National Pollutant Discharge Elimination System Permit Program.

4. AHC has not completed its assessment of the historical significance of the railroad properties involved. Accordingly, SEA recommends a condition requiring that NSR shall retain its interest in and take no steps to alter the historic integrity of the right-of-way and the bridge over the Sipsey River at milepost 877.3 until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

Only one comment to the EA was received by the December 5, 1997 due date. FWS advised us that the three endangered mussel species will not likely be affected by salvage activities. Therefore, no survey for the mussels will be necessary and no further consultation with FWS will be required. SEA therefore recommends that the Board not impose the condition set forth above that would have prohibited the railroad from performing any in-stream salvage activities until completion of the section 7 process of the Endangered Species Act. We will not impose that condition, but will impose the other environmental conditions recommended by SEA. We conclude that 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 states that, following the abandonment, the right-of-way may be appropriate for other public use under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none will be imposed.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the above-described line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); (2) the condition that the following mitigation measures be imposed on any salvage activities: (a) Best Management Practices will be implemented, as appropriate, to reduce potential erosion in the project area and to protect water quality in aquatic habitats; (b) equipment staging and refueling areas will be limited to upland sites; (c) stabilization efforts, such as disking and reseeding with native vegetation, will be conducted in disturbed areas immediately after activities; (d) broad-cast herbicides or pesticides will be prohibited during right-of-way clearing within wetland areas; (e) any construction activities during salvage operations will be restricted to existing roads or the right-of-way; (f) removal of trees and riparian vegetation will be minimized; (g) to minimize siltation, in-stream salvage will be undertaken during low flow periods using silt curtains and hay bales, as appropriate; and (h) wherever possible, salvage operations will be conducted on the opposite side of the rail line from wetlands; (3) the condition that the railroad shall notify NGS at least 90 days prior to engaging in salvage activities that may disturb or destroy the 24 geodetic station markers identified by NGS; (4) the condition that NSR shall consult with EPA, Region 4, prior to any salvage activities to determine whether any permits will be required pursuant to the National Pollutant Discharge Elimination System Permit Program; and (5) the condition that NSR shall retain its interest in and take no steps to alter the historic integrity of the right-of-way and the bridge over the Sipsey River at milepost 877.3 until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

2. NSR must serve a copy of this decision on the three former and present shippers within 5 days after the service date of this decision and certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)³ to allow rail service to continue must be received by the railroad and the Board by January 8, 1998, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$900 filing fee. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective on January 28, 1998. Petitions to stay must be filed by January 13, 1998; petitions to reopen must be filed by January 23, 1998.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 29, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

³ See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).