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SERVICE DATE – MARCH 13, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 359X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE  
EXEMPTION—IN ISLE OF WIGHT, SOUTHAMPTON, GREENSVILLE, AND  
BRUNSWICK COUNTIES, VA.

Digest:<sup>1</sup> This decision allows Norfolk Southern Railway Company to discontinue its freight rail service over approximately 53.2 miles of rail line in Isle of Wight, Southampton, Greenville, and Brunswick Counties, Va., subject to standard employee protective conditions.

Decided: March 12, 2014

By petition filed on November 26, 2013, Norfolk Southern Railway Company (NSR) seeks an exemption under 49 U.S.C. § 10502 from the provisions of 49 U.S.C. § 10903 to discontinue service over an approximately 53.2-mile stub-ended rail line, extending from milepost FD 37.0 near Franklin to the end of the line at milepost FD 90.2 at Edgerton, in Isle of Wight, Southampton (including the independent City of Franklin), Greenville (including the independent City of Emporia), and Brunswick Counties, Va. (the Line). Notice of the exemption was served and published in the Federal Register on December 16, 2013 (78 Fed. Reg. 76,192).

No comments in opposition to the proposed discontinuance were filed. We are granting the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

BACKGROUND

According to NSR, the Line was built by the Atlantic & Danville Railway in the 1800s as a through route from the Virginia Tidewater area to Danville, Va. It was leased by the Southern Railway Company, a NSR predecessor, from 1899 to 1949, at which time it returned to independent operation. The Norfolk & Western Railway Company, another NSR predecessor, acquired the Line in the 1960s and formed the Norfolk, Franklin & Danville Railway Company (NFDR) to operate it. Before being absorbed into NSR in 1983, NFDR had gradually abandoned the portion of the Line west of Edgerton, which had become the westernmost extension of NSR's

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Franklin District and had devolved from a secondary trunk line to a branch line relying on local traffic.

NSR argues that the Line is a burden on it and interstate commerce, asserting that the potential annual revenue that the Line's four remaining shippers could generate would be heavily outweighed by the costs of maintaining and operating it. Further, NSR contends that the substantial loss it would incur from continuing to operate the Line would be exacerbated by the fact that the Line is no longer operable, having been embargoed on October 1, 2013, as a result of deteriorating track and bridge conditions, and is in need of substantial rehabilitation. NSR further stated that such rehabilitation costs cannot be recouped because the Line cannot be operated profitably.

Because of a curtailment of rail shipments from a stone quarry at the end of the Line near Edgerton, NSR states that rail traffic declined by 89%, from 3,730 carloads in 2010 to 414 carloads in the 12 month base year (July 2012-June 2013). Moreover, NSR claims that the Line's remaining traffic is disadvantaged by significant circuitry, subjecting NSR and its customers to additional transportation and equipment costs, because the Line's traffic must move eastward to the Tidewater area and then westward on a roughly parallel east-west route to the north before it can connect with the remainder of NSR's system. NSR adds that there is no overhead traffic because the Line is stub-ended.

NSR argues that, to end the embargo and resume operations at Federal Railroad Administration (FRA) Class I track safety standards, it would have to spend \$5,894,900 to timber and surface 32.2 miles of track and to replace two of the Line's 14 timber trestles. Moreover, to maintain the Line at FRA Class I standards, NSR claims a base year normalized maintenance cost of \$755,257 (\$14,197 per track mile) and projects a forecast year normalized maintenance cost of \$766,929 (\$14,416 per track mile). NSR contends that the Line experienced a base year avoidable loss from rail operations of \$921,596, and it projects a forecast year avoidable loss from rail operations of \$935,839.<sup>2</sup>

NSR states that the Line is structurally limited to freight cars with a gross maximum weight of 263,000 pounds, and that low on-Line traffic levels make it unattractive to potential short line operators. According to NSR, even a scaled down switching operation at Emporia, which would account for 375 of the Line's 414 base year/forecast year shipments, was found to be economically impracticable, based on the low volume of traffic and the cost of installing connecting track from the Line to a nearby north-south line of CSX Transportation, Inc. Moreover, NSR contends that 392 of the 414 base year/forecast year shipments consisted of exempt commodities already subject to effective intermodal competition, and that the small volumes of non-exempt agricultural commodities that moved over the Line during this time make them suitable for highway transportation. Further, NSR contends that each of the Line's

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<sup>2</sup> NSR's base year and forecast year avoidable losses from rail operations include the costs of normalized maintenance and the other on-branch and off-branch costs claimed by NSR. Even disallowing the high normalized maintenance costs claimed here, NSR still would incur a substantial avoidable loss from rail operations.

four remaining shippers that received service prior to the embargo—Lawrenceville Brick, Inc., Georgia Pacific, LLC, Carolina Eastern Company, and Toll Integrated Systems—would have extensive truck service options via the existing highway system, and it believes that most, if not all of them, already make use of trucks regularly.<sup>3</sup>

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. 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 (RTP) in this case. The Line's shippers have neither opposed the proposed discontinuance nor indicated that they would be adversely affected by it. By minimizing the administrative expense of the application process, an exemption would expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. §§ 10101(2) and (7). An exemption would also foster sound economic conditions and encourage efficient management by more quickly permitting NSR to discontinue operations on a line that has been embargoed and can only be operated at a substantial loss. 49 U.S.C. §§ 10101(5) and (9). Other aspects of the RTP would not be adversely affected by the use of the exemption process.

We also find that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power.<sup>4</sup> As noted, no shippers have opposed the proposed discontinuance, and the record indicates that viable transportation alternatives are readily available. Nevertheless, to ensure that the four remaining shippers are informed of this proceeding and of our action here, we will direct NSR to serve a copy of this decision on Lawrenceville Brick, Inc., Georgia Pacific, LLC, Carolina Eastern Company, and Toll Integrated Systems so that they receive it within five days of the service date of this decision, and to certify to the Board contemporaneously that it has done so.

Under 49 U.S.C. § 10502(g), the Board may not use its 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 upon NSR the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

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<sup>3</sup> NSR certifies that it has served a copy of its discontinuance petition for exemption on these four shippers.

<sup>4</sup> Given our market power finding, we need not determine whether the proposed discontinuance is limited in scope.

Because this is a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to acquire the Line for continued rail service, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. However, the OFA provisions under 49 U.S.C. § 10904 for a subsidy to provide continued rail service do apply to discontinuances. Furthermore, environmental reporting requirements under 49 C.F.R. § 1105.7 and historic reporting requirements under 49 C.F.R. § 1105.8 do not apply. See 49 C.F.R. §§ 1105.6(c) and 1105.8(b).

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 discontinuance of service by NSR of its operations over the above described line, subject to the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).
2. NSR is directed to serve a copy of this decision on the Line's existing shippers so that they receive it within five days after the service date of this decision and to certify contemporaneously to the Board that it has done so.
3. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by NSR and the Board by March 24, 2014, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,600. See 49 C.F.R. § 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. Petitions to stay must be filed by March 28, 2014. Petitions to reopen must be filed by April 7, 2014.
6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on April 12, 2014.

By the Board, Chairman Elliott and Vice Chairman Begeman.