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SERVICE DATE - NOVEMBER 20, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-584 (Sub-No. 1X)

CANADA SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN NIAGARA COUNTY, NY

Decided: November 15, 2002

Canada Southern Railway Company (CSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 0.15-mile line of railroad between milepost 0.0 and milepost 0.15, in the city of Niagara Falls, in Niagara County, NY. Notice of the exemption was served and published in the Federal Register on October 22, 2002 (67 FR 64963). The exemption is scheduled to become effective on November 21, 2002.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 25, 2002. In the EA, SEA indicated that the National Geodetic Survey (NGS) has identified five geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring CSR to notify NGS 90 days prior to salvage activities in order to plan for the relocation of the station markers.

SEA also states that the New York Department of State, Division of Coastal Resources (DCR), has indicated that, because the proposed abandonment is located within a Coastal Zone Management Area, review pursuant to Coastal Zone Management Act (CZMA) consistency provisions is required. SEA also states that CSR has been engaged in ongoing consultation with DCR and that a Coastal Zone Consistency Determination is being sought to ensure that the project is consistent with the Coastal Zone Policies of the State of New York. A Federal Consistency Assessment Form, which constitutes a consistency certification when completed, has apparently been submitted by CSR to DCR and DCR is currently in the process of reviewing the proposed activity and the consistency certification. Therefore, to address the concerns raised by DCR, the CZMA process must be completed and a Coastal Zone Consistency Determination must be made by the DCR prior to any salvage activities.

SEA further states that the New York State Office of Parks, Recreation and Historic Preservation - Historic Preservation Field Services Bureau (NY SHPO), has indicated that the Michigan Central Bridge (International Bridge) was previously determined to be eligible for listing in the National Register of Historic Places. In addition, the project site is substantially contiguous to several other historic properties, including the Whirlpool Rapids Bridge (National Register-eligible), the Niagara Falls Custom House at 2245 Whirlpool Street (National Register-listed), and the Niagara

Reservation (National Register-listed and designated a National Historic Landmark). SEA goes on to say that much of the area is archeologically sensitive, and a survey would be warranted if any part of the larger undertaking includes any ground-disturbing activities. Given the concentration of historic resources, the NY SHPO is concerned about potential impacts resulting from the abandonment and sale of the property.¹ Therefore, pending resolution of these issues, SEA recommends that CSR be required to retain its interest in and take no steps to alter the historic integrity of the property until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

The recommended conditions will be imposed. As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the rail line described above is subject to the conditions that CSR: (1) notify NGS 90 days prior to salvage activities in order to plan the relocation of the geodetic station markers; (2) consult with DCR prior to salvage operations (the CZMA process must be completed and a Coastal Zone Consistency Determination must be made by the DCR prior to any salvage activities); and (3) retain its interest in and take no steps to alter the historic integrity of the property until completion of the section 106 process of the NHPA.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

¹ SEA states that it will notify the Advisory Council on Historic Preservation and determine its participation pursuant to 36 CFR part 800.6 and that SEA will begin consultation with the NY SHPO to determine ways of resolving any adverse effect.