

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 210X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN  
FULTON COUNTY, GA

Decided: January 21, 2009

On December 3, 2008, Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 4.30-mile line of railroad between mileposts DF 633.10 and DF 637.40, in Atlanta, Fulton County, Georgia. Notice of the filing was served and published in the Federal Register on December 23, 2008 (73 FR 78870-71). The exemption is scheduled to become effective on January 22, 2009, as no formal expression of intent to file an offer of financial assistance (OFA) was filed by the January 2, 2009 due date.

On January 2, 2009, the Georgia Department of Transportation (GDOT) filed a petition to stay the exemption.<sup>1</sup> NSR filed its reply to the petition on January 7, 2009. Also on that date, the Atlanta Development Authority (Authority) and Atlanta BeltLine, Inc. (ABI)<sup>2</sup> filed a motion for leave to intervene and a reply to the petition for stay.<sup>3</sup> On January 15, 2009, the National Railroad Passenger Corporation (Amtrak) filed a petition to intervene in support of GDOT's stay

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<sup>1</sup> NSR's petition for exemption from the OFA and public use provisions, also opposed by GDOT in its petition for stay, will be addressed in a separate decision.

<sup>2</sup> The Authority is the current owner of record of the property underlying the right-of-way that is the subject of the abandonment proceeding. The Authority is also the redevelopment agent for the BeltLine Tax Allocation District of the City of Atlanta, which is the primary local funding source for the BeltLine project. The BeltLine project is a proposed comprehensive economic development project that combines transit, green space, trails, and new commercial, residential, and public facility development along a 22-mile ring of former and current rail lines that encircle Atlanta's core. ABI was created by the Authority to be the implementation agent for the BeltLine project. See Authority Reply at 2.

<sup>3</sup> Because of their respective roles regarding the ownership of the underlying property, the Authority and ABI have filed a petition to intervene. Given this interest and that no party will be prejudiced by their intervention, the petition to intervene will be granted.

petition.<sup>4</sup> On January 16, 2009, NSR and the Authority and ABI filed replies to Amtrak's petition to intervene.<sup>5</sup>

Amtrak, and GDOT to a lesser extent, have raised a potentially significant issue with regard to the need to use the line for possible passenger rail service, including future high-speed rail service, to access a proposed multimodal terminal in downtown Atlanta. It is troubling that Amtrak filed its pleading at such a late date considering the claimed significance of this line to its proposed passenger service and high-speed rail service. The City of Atlanta appears to have other plans to redevelop the right-of-way. In addition, neither Amtrak nor GDOT has availed itself of the Board's procedures for pursuing an OFA to acquire the line. However, given the claims that the use of this line is necessary to future passenger rail service and high-speed rail service to downtown Atlanta, a stay will be entered to postpone the effectiveness of the abandonment to allow time for the parties to supplement the record as discussed below.

In the interest of developing a more complete record with regard to the issues Amtrak has raised, the Board directs Amtrak to file by January 28, 2009, an explanation of the following: (1) how the stay sought by Amtrak complies with the standards for issuance of a stay in Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); (2) how this line is necessary to passenger rail and future high-speed rail service through Atlanta, including why other alternatives are not feasible; (3) the details of any plans Amtrak has for use of this line for passenger rail and/or future high-speed rail service, including any plans it has for the line with regard to the Passenger Rail Investment and Improvement Act of 2008, Pub. L. No. 110-432; (4) an explanation of the length of time that may be necessary to implement those plans; (5) any steps Amtrak has taken up to this point to attempt to acquire this line; and (6) why competing land use objectives of federal, state, local and private stakeholders cannot be resolved through private negotiation if abandonment is authorized. GDOT may file a supplemental pleading on that date as well. Other parties may file responses to Amtrak's and GDOT's supplemental information by February 9, 2009.

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

It is ordered:

1. The motion to intervene by the Authority and ABI is granted.
2. The motion to intervene by Amtrak is granted.

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<sup>4</sup> Because of its interest in using the line for passenger service, Amtrak has filed a petition to intervene. Given this interest and that no party will be prejudiced by its intervention, the petition to intervene will be granted.

<sup>5</sup> Also on January 16, 2009, the Board received a letter from the Atlanta Regional Commission expressing its support for the abandonment.

3. The effective date of the abandonment exemption in this proceeding is stayed pending further order of the Board.

4. Amtrak and GDOT are directed to file supplemental information, as set forth above, by January 28, 2009. Responses are due by February 9, 2009.

5. This decision will be effective on its service date.

By the Board, Charles D. Nottingham, Chairman.

Anne K. Quinlan  
Acting Secretary