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SERVICE DATE - FEBRUARY 12, 1998

SURFACE TRANSPORTATION BOARD

DECISION

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

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

EXEMPTION PURSUANT TO 49 U.S.C. 10502
FROM THE PROVISIONS OF 49 U.S.C. 10904(e)

Decided: February 11, 1998

By decision served December 29, 1997, the Board granted the Norfolk Southern Railway Company (NSR) 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. The exemption was scheduled to become effective on January 28, 1998, unless an offer of financial assistance (OFA) was filed with NSR and the Board by January 8, 1998. On January 8, 1998, the City of Fayette, AL (City), filed an OFA to purchase a 7.2-mile segment of the line, from milepost 884.9 to milepost 877.7. By decision served January 13, 1998, the City was found financially responsible, and the effective date of the exemption authorizing abandonment of the segment from milepost 884.9 to milepost 877.7 was postponed to permit the OFA process to proceed.¹ Also, as set out in that decision, the parties were given until February 9, 1998, either to reach an agreement on the purchase price for the line or for either party to file a request that the Board establish the terms and conditions of the purchase. Finally, the decision provided that, if no agreement was reached by the parties, and no request to set terms and conditions was made by February 9, a decision would be served vacating the January 13 decision and allowing the abandonment authorization for the entire line to become effective.

On February 9, 1998, the City filed a request for an extension of the OFA negotiating period for 30 days, until March 11, 1998, to allow NSR to compile all necessary information, to allow the City to thoroughly review that information, and to allow the parties to negotiate voluntarily the terms of a possible purchase. NSR's statement of support for the extension request was included with the City's request.

DISCUSSION

¹ The exemption authorizing abandonment of the remainder of the line became effective on January 28, 1998, as scheduled.

The Board cannot grant an extension to the 30-day OFA negotiating period, as it is subject to a statutory deadline. On our own motion, however, we will treat the City's request as one for exemption under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10904(e) and for relief from the related regulatory requirements at 49 CFR 1152.27(g).² Under section 10502, we must exempt a transaction or service from a provision of law when we find that: (1) 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 needed to protect shippers from the abuse of market power.

Granting the sought exemption will enable the parties to continue to negotiate the terms of financial assistance here in an attempt to avoid abandonment of a 7.2-mile segment of line. As such, exemption here would further the rail transportation policy by minimizing the need for Federal regulatory control over the rail transportation system, promoting a safe and efficient rail transportation system, and fostering sound economic conditions in transportation. 49 U.S.C. 10101(2), (3), and (5). Other aspects of the rail transportation policy would not be adversely affected.

Regulation is not needed to protect shippers from the abuse of market power in this instance. Indeed, permitting additional time for negotiations here can only be beneficial to shippers generally. Because there is no need to protect shippers from the abuse of market power, there is no need to make a limited scope finding.

This action 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 this proceeding from the requirements of 49 U.S.C. 10904(e) and grant relief from the related regulatory requirements at 49 CFR 1152.27(g), and extend the deadline to March 11, 1998, for the parties to reach an agreement or for a party to request the Board to establish the conditions and amount of compensation.

2. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

² See, e.g., SWKR Operating Co.--Abandonment Exemption--in Cochise County, AZ, STB Docket No. AB-441 (Sub-No. 2X) (STB served Apr. 29, 1997).

Although we are treating the City's request as one for exemption pursuant to 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10904(e), because the City is a governmental entity, it is entitled, under 49 CFR 1002.2(e)(1), to a waiver of the otherwise applicable filing fee for petitions for exemption.

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Vernon A. Williams
Secretary