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SERVICE DATE — OCTOBER 30, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 364X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN THE CITY OF HOPEWELL, VA.

Digest:¹ This decision allows Norfolk Southern Railway Company to end its common carrier obligation to provide freight rail service over approximately 0.46 miles of rail line in the City of Hopewell, Va., subject to conditions.

Decided: October 29, 2014

By petition filed on July 31, 2014, 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 approximately 0.46 miles of rail line (part of the City Point Branch) between milepost CP 9.40 and milepost CP 9.86 in the City of Hopewell, Va. Notice of the exemption was served and published in the Federal Register on August 20, 2014 (79 Fed. Reg. 49,375). The Board will grant the exemption subject to standard employee protective conditions, one environmental condition, and one historic preservation condition.

BACKGROUND

NSR states that there is one shipper on the line, Regional Enterprises (Regional). According to NSR, Regional fully supports the abandonment. NSR states that, if abandonment is authorized, it intends to sell the line to Regional as non-jurisdictional private track that Regional would continue to use within its transload facility. Included in NSR's petition is a May 15, 2014 letter from Regional stating that the proposed abandonment would permit Regional to expand its operations at the transload facility without losing rail access.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service when it finds that: (1) applying a statutory provision is not necessary to carry out the rail

¹ 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. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

transportation policy (RTP) 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.

Here, detailed scrutiny of the proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the RTP. Granting NSR's petition to abandon the line would permit NSR to sell the line to Regional and allow the track to be used to support Regional's transload operations. Granting the petition would enable NSR to dispose of an underutilized asset and transfer the line to Regional for use as non-jurisdictional private track. This would foster sound economic conditions in transportation, ensure effective coordination between rail carriers and other modes, and encourage efficient management of railroads in accordance with the RTP. See 49 U.S.C. §§ 10101(5) and (9). Additionally, granting NSR's petition would help to minimize the need for Federal regulatory control over the rail transportation system and reduce regulatory barriers to exit from the national rail system by permitting NSR to forgo the more burdensome abandonment application process. See 49 U.S.C. §§ 10101(2) and (7). Other aspects of the RTP will not be adversely affected by the use of the exemption process.

We also find that regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power.² As discussed earlier, the only shipper on the line, Regional, supports the abandonment. Nevertheless, to ensure that Regional is informed of our action, we will require NSR to serve a copy of this decision on Regional so that it is received by the shipper within five days of its service date and to contemporaneously certify to the Board that it has done so.

Employee Protection. 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 on NSR the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

Environmental and Historic Review. NSR submitted a combined environmental and historic report with its petition and notified the appropriate federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. §§ 1105.7, 1105.8, and 1105.11. The Board's Office of Environmental Analysis (OEA) examined the report, verified the data it contains, and, after analyzing the potential environmental effects of the proposed abandonment, determined that there would be no potential for significant impacts from the proposed abandonment with the conditions OEA recommends.

An Environmental Assessment (EA) was served on September 3, 2014, and a Final Environmental Assessment concluding the environmental review process was issued October 14,

² Because we find that regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed abandonment is limited in scope.

2014. OEA explains that if abandonment authority is granted, the track would continue to be operated in order to access Regional's transload facility. Accordingly, OEA concludes, there would be no impacts relating to the salvage process or diversion of traffic.

The Virginia Department of Environmental Quality (DEQ) commented that the City of Hopewell is in a designated Coastal Zone Management Area and is therefore subject to the consistency certification requirements of the Federal Coastal Zone Management Act and the Virginia Coastal Zone Management Program. In response to DEQ's comments, OEA recommends that a condition be imposed that would require NSR to continue consulting with DEQ until a consistency determination is obtained.

NSR served its historic report on the Virginia Department of Historic Resources (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c). The report indicates that the line contains no bridges or other structures. NSR believes that the line would not be eligible for listing in the National Register of Historic Places (National Register) and that no archaeological resources would be disturbed as a result of the proposed abandonment, as no salvage or other ground disturbance activities are contemplated. However, as the Final EA explains, the required Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has not yet been completed, and the SHPO has identified five potential historic resources in the general area of the proposed abandonment. Accordingly, OEA recommends a condition that would require NSR to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project's right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register until completion of the Section 106 process.

We adopt all of OEA's environmental analysis and will impose the two conditions recommended in the Final EA. Consistent with OEA's recommendations, 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.

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 by NSR of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line, and the following additional conditions:

(a) NSR shall consult with the Virginia Department of Environmental Quality's Coastal Zone Management Program and obtain state coastal management consistency certification, pursuant to the Coastal Zone Management Act, 16 U.S.C. § 1451 et seq., and the Board's environmental regulations, 49 C.F.R. § 1105.9. NSR may not file its consummation notice until it reports the results of these consultations in writing to OEA and the Board has removed this condition.

(b) NSR shall retain its interest in and take no steps to alter the historic integrity of all historic properties includes sites, buildings, structures, and objects within the project's right-of-

way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed. NSR shall report back to OEA regarding any consultations with the State Historic Preservation Office and the public. NSR may not file its consummation notice until the Section 106 process has been completed and the Board has removed this condition.

2. NSR is directed to serve a copy of this decision on Regional so that it is received within five days of its service date and to contemporaneously certify to the Board that it has done so.

3. An Offer of Financial Assistance (OFA) under 49 C.F.R. § 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by November 10, 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 of \$1,600. See 49 C.F.R. § 1002.2(f)(25).³

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in boldface 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 November 29, 2014.

6. Petitions to stay must be filed by November 14, 2014. Petitions to reopen must be filed by November 24, 2014.

7. Pursuant to 49 C.F.R. § 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 October 30, 2015, 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 one-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

³ Consistent with our precedent, and given the apparent lack of need for the line by any shipper other than Regional, any person seeking to file an OFA must provide evidence that there is some shipper other than Regional that would make use of common carrier service. See, e.g., CSX Transp.—Aban. Exemption—in Washington Cnty., Md., AB 33 (Sub-No. 727X) (STB served Oct. 24, 2013); Union Pac. R.R.—Aban. Exemption—in Pottawattamie Cnty., Iowa, AB 33 (Sub-No. 300X) (STB served Jan. 20, 2012); CSX Transp.—Aban. Exemption—in Chesterfield & Darlington Cntys., S.C., AB 55 (Sub-No. 703X) (STB served Jan. 19, 2011).