

37702  
DO

SERVICE DATE – FEBRUARY 15, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 284X)

NORFOLK SOUTHERN RAILWAY COMPANY–ABANDONMENT EXEMPTION–  
IN KALAMAZOO COUNTY, MI

Decided: February 12, 2007

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 1.4-mile rail line extending between milepost CQ 41.3 and milepost CQ 42.7 in Parchment, Kalamazoo County, MI. Notice of the exemption was served and published in the Federal Register on November 9, 2006 (71 FR 65880-81). The exemption became effective on December 12, 2006.

By decision served on December 11, 2006 (December 2006 decision), the proceeding was reopened at the request of the Board’s Section of Environmental Analysis (SEA) and the exemption was made subject to the conditions that NSR: (1) prior to commencement of any salvage activities, consult with Mr. Kameron Jordon at the Michigan Department of Environmental Quality’s Great Lakes Shoreland Unit, Land and Water Management Division (Michigan DEQ), and comply with the reasonable requirements of Michigan DEQ; (2) (a) retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register of Historic Places until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 407f, has been completed; (b) report to SEA regarding any consultations with the Michigan Historical Center (the State Historic Preservation Office or SHPO) and any other section 106 consulting parties; and (c) not file its consummation notice or initiate salvage activities (including removal of the tracks and ties) until the section 106 process has been completed and the Board has removed this condition; and (3) prior to the commencement of any salvage activities, consult with the U.S. Environmental Protection Agency and Michigan DEQ to identify any safety precautions that should be taken during salvage activities, and submit in writing the results of those consultations to SEA prior to the onset of salvage operations.

Based on comments that SEA received after the close of the comment period, SEA recommends removing an existing condition and imposing a new condition. In a letter filed on December 11, 2006, and dated December 1, 2006, the SHPO states that no historic properties will be affected by the abandonment. Based on this information, SEA now recommends that the section 106 historic preservation condition be removed. Accordingly, the section 106 historic preservation condition imposed in the December 2006 decision will be removed.

On December 18, 2006, the National Park Service (NPS) filed a letter dated December 4, 2006, stating that the segment of the Kalamazoo River that the railroad bridge crosses is listed on the Nationwide Rivers Inventory, which is a register of rivers that may be eligible for inclusion in the National Wild and Scenic River System. See Wild and Scenic Rivers Act, 16 U.S.C. 1271. NPS does not believe that the bridge removal will adversely affect the free-flowing or natural condition of the Kalamazoo River; however, it requests additional information on how the bridge would be removed in order to address potential impacts to the riverbed. Therefore, SEA recommends that NSR shall, prior to the commencement of any salvage activities, consult with Ms. Sue Jennings at the Midwest Region of NPS to identify appropriate mitigation measures regarding the removal of the bridge over the Kalamazoo River, comply with the reasonable requirements of NPS, and report the results of these consultations to SEA. The new condition recommended by SEA will be imposed.

In its November 17, 2006 environmental assessment, SEA indicated that the right-of-way may be suitable for other public use following abandonment. By a late-filed petition (filed on December 26, 2006), Kalamazoo County Parks requests the issuance of a 180-day public use condition under 49 U.S.C. 10905.<sup>1</sup> Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because Kalamazoo County Parks has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the December 12, 2006 effective date of the exemption.

It should be noted that a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for an interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, NSR is not required to deal exclusively with Kalamazoo County Parks, but may engage in negotiations with other interested persons.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

---

<sup>1</sup> The November 9, 2006 notice provided that requests for public use conditions were to be filed by November 29, 2006. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that Kalamazoo County Parks' late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the section 106 historic preservation condition imposed in the December 11, 2006 decision is removed. All other provisions and environmental conditions imposed in this proceeding will remain in effect.
3. Upon reconsideration, the exemption of the abandonment of the line described above is also subject to the condition that NSR shall, prior to the commencement of any salvage activities, consult with Ms. Sue Jennings at the Midwest Region of the NPR to identify appropriate mitigation measures regarding the removal of the bridge over the Kalamazoo River, comply with the reasonable requirements of NPS, and report the results of these consultations to SEA.
4. The late-filed request for a public use condition under 49 U.S.C. 10905 is accepted.
5. Upon reconsideration, the notice of exemption served and published in the Federal Register on November 9, 2006, exempting the abandonment of the line described above, and the December 11, 2006 decision, reopening the proceeding and making the exemption subject to several environmental conditions, are modified to the extent necessary to permit public use negotiations as set forth below.
6. Consistent with the public use condition imposed in this decision, NSR may discontinue service and salvage track and related materials. NSR shall keep intact the right-of-way, including bridges, trestles, culverts and tunnels, for a period of 180 days from the effective date of the abandonment exemption (until June 10, 2007), to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use.
7. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary