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SERVICE DATE – APRIL 3, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 328X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
MARIETTA, LANCASTER COUNTY, PA.

Decided: April 2, 2013

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 2.0 miles of rail line extending from milepost MU 83.9 (near S. Bridge Street) to milepost MU 85.9 (south of the intersection of Railroad Ave. and Old River Road), in the Borough of Marietta, Lancaster County, Pa. Notice of the exemption was served and published in the Federal Register on December 30, 2011 (76 Fed. Reg. 82,348). The exemption became effective on February 1, 2012. In the December 30, 2011 notice, the Board stated that, if consummation had not been effected by NSR's filing of a notice of consummation by December 30, 2012, and there were no legal regulatory barriers to consummation, the authority to abandon would automatically expire.¹

Under 49 C.F.R. § 1152.29(e)(2), a railroad may, for good cause, file a request for an extension of time to file a notice of consummation in abandonment proceedings. In a letter filed on January 28, 2013, NSR requests a one-year extension, until February 1, 2014, to file its notice of consummation. NSR states that the Board's January 2012 decision stated that NSR's notice of consummation was due on February 1, 2013. In support, NSR states that salvage of the track and materials on the rail line has not been completed.

In a supplemental letter filed on January 31, 2013, NSR acknowledges that its January 28 extension request was mistakenly based upon the understanding that the request should be measured from the effective date of the notice (February 1, 2012), rather than from the notice publication date (December 30, 2011). NSR attributes what it characterizes as a ministerial error to a number of factors including a transition in personnel and a misunderstanding of the January 31, 2012 decision. NSR acknowledges its mistake and respectfully urges the Board to waive the 49 C.F.R. § 1152.29(e)(2) requirement and grant NSR's one-year extension request.

NSR has shown good cause to extend the time to consummate the abandonment and for filing a notice of consummation in this proceeding. The consummation request was filed only a

¹ In a decision served on January 31, 2012 (January 2012 decision), the exemption was made subject to three environmental consultation conditions regarding salvage that remain in effect. These conditions are not barriers to NSR's consummation of the abandonment.

few weeks late, and NSR has provided an adequate justification for its delay. Accordingly, the request will be granted.

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

It is ordered:

1. NSR's request for an extension of time to consummate the abandonment is granted.
2. The authority to abandon must be exercised and the notice of consummation must be filed on or before December 30, 2013.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.