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SERVICE DATE – FEBRUARY 23, 2015

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: February 20, 2015

By decision served on October 30, 2014, the Board, under 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by Norfolk Southern Railway Company (NSR) of 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. The exemption became effective on November 29, 2014.

In addition to standard employee protective conditions, the exemption also was subject to one environmental condition and one historic preservation condition recommended by the Board's Office of Environmental Analysis (OEA). The environmental condition required NSR to consult with the Virginia Department of Environmental Quality's (DEQ) 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, and it prohibited NSR from filing its consummation notice until it reports the results of these consultations in writing to OEA and the Board has removed the condition. The historic preservation condition required NSR to (a) 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 right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places (National Register) until the Section 106 process of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108 (formerly 16 U.S.C. § 470f), has been completed; (b) report back to OEA regarding any consultations with the Virginia Department of Historic Resources (the State Historic Preservation Office or SHPO) and the public; and (c) not file its consummation notice until the Section 106 process has been completed and the Board has removed the condition.

In a Supplemental Final Environmental Assessment (Supplemental Final EA) dated December 19, 2014, OEA states it has received two new comments in response to the two imposed conditions.

Coastal Zone Management condition. OEA states that, in a letter dated December 1, 2014, DEQ commented that the proposed abandonment is consistent with the Virginia Coastal Zone Management Program (VCP), provided that NSR obtain all applicable approvals and

permits administered and enforced under the VCP and other Virginia environmental programs, including: sediment and erosion control, stormwater management, Chesapeake Bay protection, air pollution, wetlands, fisheries management, subaqueous lands, dune management, point and non-point source pollution, shoreline sanitation, hazardous and solid waste, and coastal land management. DEQ concluded that no further action would be needed if none of these programs would be impacted by the proposed abandonment.

The Supplemental Final EA indicates that because the proposed abandonment would involve the transfer of rail line from the interstate rail network to private use for continued operations and would not trigger the permit requirements of the above programs, OEA has determined that no further action regarding this issue is needed. Accordingly, OEA believes the Board has satisfied its responsibilities under the Coastal Zone Management Act and DEQ's VCP coastal management consistency certification process. OEA therefore recommends that the coastal zone consistency determination condition imposed in the Board's October 30, 2014 decision be removed.

Section 106 condition. The Supplemental Final EA indicates that on December 2, 2014, OEA met with the SHPO, the National Park Service (NPS), and NSR at the site to discuss the Section 106 resources that may be affected by the proposed abandonment. In a follow-up letter dated December 16, 2014, the SHPO commented that the section of rail line proposed for abandonment does not retain enough physical or historical integrity to warrant further action and concluded that the proposed abandonment would not adversely affect National Register historic properties located within the right-of-way of the proposed abandonment.

OEA states that, following consultation with the SHPO, NPS, and the public, pursuant to the Section 106 regulations of NHPA at 36 C.F.R. § 800.5(b), it believes that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. Accordingly, OEA concludes that the Board has satisfied its responsibilities under Section 106 of the NHPA and recommends that the Section 106 condition imposed in the Board's October 30, 2014 decision be removed.

Based on OEA's recommendation, this proceeding will be reopened and the previously imposed environmental condition and historic preservation condition will be removed.

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

It is ordered:

1. The proceeding is reopened.
2. Upon reconsideration, the environmental condition and the Section 106 historic preservation condition imposed in the Board's October 30, 2014 decision are removed.

3. This decision is effective on its service date.

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