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SERVICE DATE - JANUARY 25, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 192X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—  
IN ANDERSON AND WOODFORD COUNTIES, KY

Decided: January 21, 2000

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon its line of railroad between milepost 0.7-LL, at Lawrenceburg, and milepost 3.5-LL, at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles (line). The notice was served and published in the Federal Register on December 27, 1999 (64 FR 72376). The exemption is scheduled to become effective on January 26, 2000.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on December 30, 1999. In the EA, SEA states that the National Geodetic Survey (NGS) has identified two geodetic station markers that may be affected by the proposed abandonment and that the Kentucky State Historic Preservation Office (SHPO) has not yet completed its review of the proposed abandonment. Since the issuance of the EA, SHPO has notified SEA that the entire rail line, including all bridges and trestles are eligible for the National Register of Historic Places. Therefore, SEA recommends that NSR (1) notify NGS at least 90 days prior to any salvage activity so that plans may be made for relocation of the geodetic station markers, and (2) retain its interest in and take no steps to alter the historic integrity of the entire rail line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

In the EA, SEA indicates that the right-of-way may be suitable for other public use following abandonment. On January 6, 2000, Anderson County Fiscal Court, which is the governing body for Anderson County (Fiscal Court), filed a request for issuance of a notice of interim trail use/rail banking (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and a public use condition, so that it could negotiate with NSR for use of the line as a trail. The Fiscal Court requests that NSR be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that NSR be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period.

By letter filed January 19, 2000, NSR states that it is not willing to negotiate with the Fiscal Court for interim trail use. NSR indicates that it has contracted to convey the interest in the line to

the Tyrone Rail & Bridge Society, Inc. Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. See Rail Abandonment--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails).

NSR also maintains a public use condition is unnecessary. As an alternative to interim trail use under the National Trails System Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. 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). The Fiscal Court has met these requirements. A 180-day public use condition will, therefore, be imposed. NSR may remove the tracks, ties, and signal equipment on the right-of-way, but is required to leave bridges, culverts, and tunnels intact during that period. 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 appropriate for public purposes.<sup>1</sup>

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

It is ordered:

1. This proceeding is reopened.
2. The request for issuance of a notice of interim trail use is denied.
3. The request for a public use condition is granted. The abandonment of the line described above is subject to the conditions that NSR shall: (a) notify NGS at least 90 days prior to any salvage activity so that plans may be made for relocation of the geodetic station markers; (b) retain its interest in and take no steps to alter the historic integrity of the entire rail line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f ; (c) keep intact the right-of-way underlying the track, including bridges, culverts, and tunnels (but not track or track

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<sup>1</sup> Under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

STB Docket No. AB-290 (Sub-No. 192X)

material or signal equipment) for a period of 180 days from the January 26, 2000 effective date (until July 24, 2000), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use.

4. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary