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SERVICE DATE – SEPTEMBER 15, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 283X)

NORFOLK SOUTHERN RAILWAY COMPANY–
ABANDONMENT EXEMPTION–IN ORANGE COUNTY, NY

Decided: September 12, 2008

By petition filed on January 12, 2007, NSR sought an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 1.64-mile line of railroad, extending from milepost ZU 45.00 to milepost ZU 46.64 at Harriman, Orange County, NY. NSR also sought an exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and 49 CFR 1152.27, and the public use requirements of 49 U.S.C. 10905 and 49 CFR 1152.28. In a decision served on May 2, 2007 (May 2007 decision), the Board granted the exemptions from 49 U.S.C. 10903 and 49 U.S.C. 10905, subject to environmental and standard employee protective conditions, but denied the request for an exemption from 49 U.S.C. 10904. The May 2007 decision stated that an OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the Board by May 11, 2007.

On May 11, 2007, Mr. James Riffin (Riffin) filed a petition requesting that the Board toll the time period for submitting an OFA until 30 days after Mr. Riffin's receipt of certain financial data previously requested from NSR.¹ In a decision served on June 22, 2007 (June 22 decision), the Board granted Riffin's petition.

On July 10, 2007, NSR filed a motion to modify the exemption granted in the Board's May 2007 decision. NSR advised the Board that it sought only to discontinue service over the line, and not to exercise the full abandonment authority granted in the May 2007 decision. Also, by letter received on April 30, 2008, NSR requested an extension of the deadline for filing its notice of consummation for the line until May 2, 2009. NSR stated that it wished to protect its right to consummate the abandonment of the line pending Board review of its motion to modify the exemption granted in the May 2007 decision. By decision served on May 2, 2008, the Board granted an extension of time to consummate the abandonment. The motion to modify the exemption remained pending.

On July 31, 2008, NSR filed a motion to withdraw and dismiss the petition for exemption. NSR states that it wishes to reconsider its options for the disposition of the line.

¹ On February 20, 2007, Riffin had filed with the Board a notice of intent to file an OFA and requested that NSR provide him with the financial data and information necessary to determine the line's net liquidation value.

NSR states that it is considering separate actions to dispose of two distinct segments of the line, and that it has not decided upon the method for any such future action (i.e., abandonment, discontinuance, reclassification, or no action at all).

When a carrier is authorized to abandon a line, that authority is permissive, not mandatory. The carrier can choose to exercise that authority or not. Because carriers are not compelled to abandon lines, the Board normally grants a carrier's motion to withdraw its request for abandonment authority. See Almono LP–Abandonment Exemption–In Allegheny County, PA, STB Docket No. AB-842X (STB served Jan. 28, 2004). Until NSR exercises its abandonment authority, which it has not (and indeed cannot, because the authority is not yet effective), the line is not abandoned and the Board's primary jurisdiction over the line continues. Accordingly, the request will be granted, and the petition for exemption will be dismissed. Because the request to withdraw the petition for exemption is being granted, NSR's motion to modify the exemption is now moot. The Board's June 22 decision tolling the due date for submitting an OFA is also moot.

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 motion to withdraw the petition for exemption is granted, and the petition for exemption is dismissed without prejudice.
2. The Board's decision granting the exemptions from 49 U.S.C. 10903 and 49 U.S.C. 10905, subject to environmental and standard employee protective conditions, served on May 2, 2007, is vacated.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary