

SERVICE DATE – JANUARY 26, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 407X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
BERGEN COUNTY, N.J.

Digest:¹ This decision permits the abandonment of an approximately 1.2-mile rail line in Bergen County, N.J., subject to environmental and standard employee protective conditions.

Decided: January 22, 2021

On October 14, 2020, Norfolk Southern Railway Company (NSR), a Class I rail carrier, filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon an approximately 1.2-mile rail line, extending from milepost UQ 9.0 to milepost UQ 10.2, in Bergen County, N.J. (the Line). In its petition, NSR also seeks exemption from the offer of financial assistance (OFA) process at 49 U.S.C. § 10904. Notice of the petition was served and published in the Federal Register on November 3, 2020 (85 Fed. Reg. 69,676). As discussed below, the Board will grant the exemption from § 10903 for the Line, subject to environmental and standard employee protective conditions, and deny as moot NSR's petition for exemption from § 10904.

BACKGROUND

NSR states that the Line has been dormant for more than two decades, and that NSR has served no customers on the Line since it acquired the property from the Consolidated Rail Corporation in 1999.² (Pet. 3 & n.2, 12.) According to NSR, it plans to convey the Line's right-of-way to Open Space Institute Land Trust, Inc. (OSI), with the Line's rail and track materials intact. (Id. at 2.) NSR states that OSI, in partnership with Bergen County, plans to redevelop the Line, create greenways, and provide for alternative modal access to various sites located along the Line. (Id. at 2, 4, 10.) According to NSR, the redevelopment plans will develop the surrounding area to improve safety and mobility for the nearly one million people living in the immediate region. (Id. at 10.)

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² CSX Corp.—Control & Operating Leases/Agreements—Conrail, Inc., FD 33388 (STB served July 23, 1998).

In light of those plans, in addition to seeking an exemption to abandon the Line, NSR seeks an exemption from the OFA procedures at 49 U.S.C. § 10904. In support, NSR states that the Line is needed for a valid public purpose, i.e., the redevelopment project, and that there is no overriding public need for continued freight rail service along the Line. (Pet. 16.)

DISCUSSION AND CONCLUSIONS

Exemption from 49 U.S.C. § 10903. Pursuant to 49 U.S.C. § 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. The record indicates that the Line has been dormant for more than two decades, and NSR has served no customers on the Line since NSR's acquisition of the Line in 1999. (Pet. 3, 12.) Under these circumstances, granting an exemption would expedite regulatory decisions, foster sound economic conditions in transportation, reduce regulatory barriers to exit, and provide for the expeditious handling of this proceeding. See 49 U.S.C. § 10101(2), (5), (7), (15). Other aspects of the RTP would not be adversely affected by use of the exemption process.

Regulation of the proposed abandonment is also not needed to protect shippers from the abuse of market power. As discussed above, there are no shippers on the Line, which has been dormant for more than two decades. (See Pet. 2-3, 12.)³

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the Board will impose upon NSR the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Environmental and Historic Review. NSR submitted a combined environmental and historic report with its petition and has notified the appropriate federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. §§ 1105.7, 1105.8, 1105.11. The Board's Office of Environmental Analysis (OEA) has examined the report, verified the data it contains, and analyzed the potential effects of the proposed action on the quality of the human environment.

³ Because regulation of the proposed abandonment is not needed to protect shippers from the abuse of market power, the Board need not determine whether the proposed abandonment is limited in scope. See 49 U.S.C. § 10502(a)(2).

In a Draft Environmental Assessment (Draft EA), served on December 11, 2020, OEA recommended that the Board impose one condition on any decision granting abandonment authority. Specifically, OEA determined that the Line is in the New Jersey coastal zone management area and therefore recommended that NSR be required to consult with the New Jersey Department of Environmental Protection, Coastal Management Program and obtain state coastal management consistency certification under the Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451-1465, if necessary. (Draft EA 4-6.) The proposed condition would also prohibit NSR from filing its consummation notice or initiating salvage activities related to abandonment (including removal of tracks and ties) until it reports the results of these consultations in writing to OEA and the Board has removed the condition. (Id. at 6.)

Comments on the Draft EA were due by January 10, 2021. OEA issued its Final EA on January 15, 2021, noting that no comments to the Draft EA were received and reiterating its recommendation that the one previously recommended condition be imposed. Accordingly, the condition recommended by OEA will be imposed.

Offers of Financial Assistance. NSR also petitions the Board to exempt it from the OFA requirements at 49 U.S.C. § 10904. Because no formal expressions of intent to file an OFA to acquire the Line or subsidize continued rail service were filed by the November 13, 2020 deadline, the Board will not consider OFAs in this case, and NSR's petition for exemption from § 10904 will be denied as moot.

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 NSR's abandonment of the Line, subject to the employee protective conditions set forth in Oregon Short Line and the condition set forth in the Final EA.⁴
2. NSR's request for exemption from the OFA procedures is denied as moot.
3. The exemption will be effective on February 25, 2021.
4. Petitions to reopen and petitions to stay must be filed by February 10, 2021.
5. Pursuant to 49 C.F.R. § 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by January 26, 2022, and there are no legal or regulatory barriers to consummation, the authority to abandon

⁴ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with the condition set forth in the Final EA is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the one-year period, the notice of consummation must be filed no later than 60 days after the satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.