

MULLINS LAW GROUP PLLC

Transportation Solutions for the 21st Century

2001 L Street N.W.
Suite 720
Washington, D.C. 20036

Crystal Zorbaugh
czorbaugh@MULLINSLAWGROUP.NET

Telephone: (202) 663-7850
Direct: (202) 663-7831

November 15, 2024

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VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
November 15, 2024
Part of
Public Record

Re: Norfolk Southern Railway Company – Abandonment Exemption – In The City of Baltimore, Maryland AB-290 (Sub-No. 412X)

Dear Ms. Brown:

Enclosed for filing in the above-referenced matter is an errata containing a page, that corrects a discrepancy wherein it is incorrectly stated that Norfolk Southern Railway Company (“NSR”) sold the approximately 1.00-mile-long rail line, extending from Milepost +/- UU 0.00 to Milepost +/- UU 1.00 in the City of Baltimore, Maryland (the “Line”) to the Maryland Transit Administration identified in the Verified Notice of Exemption filed on behalf of the NSR on October 31, 2024. If there are any questions about this matter, please contact me directly, either by telephone: at 202-663-7831 or by e-mail: at czorbaugh@mullinslawgroup.net. If I am unavailable, you may contact William A. Mullins, who can be reached at (202) 663-7823 or by e-mail at wmullins@mullinslawgroup.net.

Sincerely,

Crystal M. Zorbaugh

Counsel for Norfolk Southern Railway Company

Enclosures

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 412X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF BALTIMORE, MARYLAND**

**ERRATA TO OCTOBER 31, 2024
VERIFIED NOTICE OF EXEMPT ABANDONMENT**

**Hanna M. Chouest
NORFOLK SOUTHERN CORPORATION
650 W Peachtree St N.W.
Atlanta, GA 30308
Tel: (470) 571-5208**

**William A. Mullins
Crystal M. Zorbaugh
Spencer M. Naake
MULLINS LAW GROUP PLLC
2001 L Street, NW
Suite 720
Washington, DC 20037
Tel: (202) 663-7850
Fax: (202) 464-9123**

**Attorneys for Norfolk Southern Railway
Company**

November 15, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 412X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF BALTIMORE, MARYLAND**

**ERRATA TO OCTOBER 31, 2024
VERIFIED NOTICE OF EXEMPT ABANDONMENT**

Since submitting Norfolk Southern Railway Company’s (“NSR”) verified notice of exemption (“Notice”) on October 31, 2024, counsel for NSR has discovered a mistake that resulted in a discrepancy wherein it is incorrectly stated that Norfolk Southern Railway Company (“NSR”) sold the Line¹ to the Maryland Transit Administration identified in the Verified Notice of Exemption filed on behalf of the Norfolk Southern Railway Company on October 31, 2024. NSR’s errata addresses the following incorrect statements on pages 2, 25, and 34 as well as minor edits on pages 2 and 3:

- Pages 2 and 25: “The sale of this corridor by NSR to MTA included a provision whereby NSR agreed to abandon its freight rights if NSR did not exercise those freight rights over a period of sixty (60) consecutive months”;
- Page 34: “NSR sold the right-of-way to the MTA in 1990 and only retained freight rights on the Line”;
- Page 2: “As noted in FN 3, NSR retained the “freight operating easement, rights and operations” for the Line, the remaining portion of the CIT, and the rail line subject to NS’s proposed abandonment”; and

¹ NSR filed its Notice to abandon rail service over an approximately 1.00-mile-long rail line,¹ extending from Milepost +/- UU 0.00 to Milepost +/- UU 1.00 in the City of Baltimore, Maryland (the “Line”).

- Page 3: “past Oriole Part at Camden Yards”.

NSR is submitting this errata to correct the incorrect references to NSR selling the Line to MTA. NSR respectfully requests that the Board substitute the following pages in the Notice: pages 2, 3, 25, and 36.² Please feel free to contact me should you have any questions.

Sincerely,

/s/ Crystal M. Zorbaugh

Crystal M. Zorbaugh
Attorney for Norfolk Southern Railway
Company

² Corrections are in red on the replacement pages.

As noted in FN 3, NSR retained the “freight operating easement, rights and operations” for the Line, the remaining portion of the CIT, and the rail line subject to NSR’s proposed abandonment. The sale of this corridor by **Conrail** to MTA included a provision whereby NSR, **as successor to Conrail**, agreed to abandon its freight rights if NSR did not exercise those freight rights over a period of sixty (60) consecutive months.³ As NSR has not exercised its freight rights pursuant to the terms of the sale agreement, NSR is fulfilling its contractual obligation. The alternative to abandonment of freight rights on the Line is to not abandon the freight rights on the Line. This alternative is not satisfactory as NSR is contractually obligated to abandon its freight rights under its agreement with the MTA.

MTA Ownership of Line, Materials; MTA’s Non-Common Carrier Status As To Freight Service. The MTA owns the entire Line over which NSR will abandon its freight rail easement. As described in FN 3, MTA, which is part of the Maryland Department of Transportation (“MDOT”), acquired the CIT from Conrail in 1990. In MTA I and Maryland Transit Administration - Petition for Declaratory Order, F.D. 34975, slip opinion at 3 (STB served September 19, 2008) (“MTA II”), the Board found that MTA’s 1990 acquisition of the CIT did not require agency (ICC) authorization under 49 U.S.C. § 10901, and that MTA did not acquire a common carrier obligation by virtue of its acquisition of the CIT in 1990 or transactions it has taken since that time.

MTA Passenger Rail Transit. MTA currently operates passenger rail transit service over the Line. MTA’s light rail transit system now carries over 24,000 passengers per day over the Line. The

0.0 and 15.4, because milepost 0.00 was moved 1.18 miles up the line when Calvert Station (the location of the original milepost 0.0) was demolished in 1947. Effectively, the 14.22-mile line in 2010 was located between milepost UU 1.18 (located just north of Wyman Park Drive and the end of the CIT line south of the bridge at railroad milepost UU 15.44. *Id.* In NSR’s petition for its 2010 abandonment, it was noted that “NSR [was] retaining the freight operating easement, rights and operations for the first mile of the CIT between current Mileposts UU-0.0 and UU-1.00 where NSR operates its Baltimore, MD Thoroughbred Bulk Transfer Terminal.” *See* NSR Petition at 7, n. 6.

³ *See MTA I*, slip. op. at 7 (“The Operating Agreement requires the freight railroad to seek abandonment if it ceases using the CIT track for rail service for 60 consecutive months,” and “[w]hile the Operating Agreement...requires the freight railroad actually to file for abandonment (if the condition for seeking abandonment is met), the Board would still have to authorize the abandonment.”)

Line is part of MTA's 30-mile light rail system which runs from Hunt Valley in Baltimore County, through the heart of Baltimore City, past Oriole Park at Camden Yards, to Cromwell Station/Glen Burnie in Anne Arundel County, MD and links to buses and subways along its route. As such, the Line will remain intact and in operation for passenger rail transit purposes.

Nature of Relief Requested. Consistent with precedent in similar STB proceedings,⁴ NSR submits a verified notice of exemption to abandon rather than to discontinue service over the Line with respect to relinquishment of its freight operating rights and freight service operations over the Line, which have not been exercised in over five years. Because MTA has no residual common carrier obligation to provide rail freight service over the Line, the entire common carrier obligation of any rail carrier or party to provide freight service over the Line will be extinguished with the abandonment of the freight operating rights. The freight operating rights over the Line will be relinquished, and all rail freight service over the Line will be discontinued permanently upon grant of the exemption, NSR's satisfaction of any conditions imposed by the Board and NSR's formal consummation of the abandonment of the freight operating rights and operations over the Line, after which NSR will relinquish its freight operating easement for the Line.

⁴ See BNSF Railway Company – Abandonment Exemption – In Los Angeles County, California, AB 6 (Sub-No. 499X) (STB served July 15, 2019) (“BNSF Abandonment Exemption”) (the Board approved BNSF Railway Company's abandonment of its freight rail easement when the physical assets of the rail line were owned by the Los Angeles County Metropolitan Transportation Authority); see also Portland & Western Railroad, Inc.—Abandonment Exemption—In Washington County, OR., AB 541 (Sub-No. 3X), slip op. at 1, n. 1 (STB served February 23, 2023); citing Ga. Cent. Ry.—Aban. Exemption—in Chatham Cnty., Ga., AB 367 (Sub-No. 2X), slip op. at 2, n. 3 (STB served Sept. 17, 1997) (noting that an abandonment exemption is appropriate for relinquishment of a freight rail easement, even when the State of Oregon owned the underlying property, as the Board has “never held that passive ownership of underlying real estate confers a common carrier obligation.”)

ENVIRONMENTAL REPORT

49 CFR 1105.7(e)(1)

Proposed Action and Alternatives

Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

NSR proposes to abandon freight rights on an approximately 1.0-mile-long-rail line extending from Milepost +/- UU 0.00 to Milepost +/- UU 1.00 in the City of Baltimore, Maryland.

There are no NSR owned or maintained structures (bridges or tunnels) on the Line.

No customers have been served on the Line for more than 5 years. As NSR is abandoning its freight rights over a corridor owned by another entity, the Maryland Transit Administration (MTA), neither NSR nor MTA will be conducting salvage operations. Accordingly, NSR believes that no storm water mitigation measures including, but not limited to, a National Pollutant Discharge Elimination System permit will be required.

The sale of this corridor by **Conrail** to MTA included a provision whereby NSR, as **successor to Conrail**, agreed to abandon its freight rights if NSR did not exercise those freight rights over a period of sixty (60) consecutive months. As NSR has not exercised its freight rights pursuant to the terms of the sale agreement, NSR is fulfilling its contractual obligation. The alternative to abandonment of freight rights on the Line is to not abandon the freight rights on the Line. This alternative is not satisfactory as NSR is contractually obligated to abandon its freight rights under its agreement with the MTA.

A map depicting the Line is attached as **Appendix A**. An example of NSR's letter to federal, state and local government agencies along with a list of the consulting agencies that NSR

(2) **Written Description of Right of Way** – Conrail sold the right-of-way to the MTA in 1990 and only retained freight rights on the Line. NSR has no knowledge regarding changes made to the right-of-way by MTA.

(3) **Photographs** – Not applicable as there are no NSR owned or maintained structures (bridges or tunnels) on the Line.

(4) **Date of Construction of Structures** – Not applicable.

(5) **History of Operations and Changes Contemplated** - Milepost +/- UU-0.00 to Milepost +/- UU 1.00 (the “Line”) in the City of Baltimore, Maryland. According to NSR’s research, the Line was originally part of the Baltimore & Susquehanna Railroad Company’s (“B&S”) rail line, chartered by an act of the General Assembly of Maryland in 1928. In 1854, the B&S merged with the York & Maryland Line, the York & Cumberland, and the Susquehanna Railroads to form the Northern Central Railway Company (“Northern Central”). Subsequently, in 1861, the Northern Central came under the control of the Pennsylvania Railroad (PRR), when the PRR acquired controlling interest in the Northern Central’s stock. Until 1968, the Northern Central operated as a subsidiary of the PRR but when the PRR merged with the New York Central railroad, it became a subsidiary of the newly formed Penn Central. In 1970, Penn Central filed for bankruptcy protection.

Subsequently, much of its Maryland Trackage was washed out by Hurricane Agnes, after which the Penn Central declined to repair destroyed sections. Penn Central continued to operate under court supervision until 1976, when its lines were transferred to Conrail under the Railroad Revitalization and Regulatory Reform Act. In 1984, the Maryland Department of Natural Resources converted the corridor north of Cockeysville, which was washed out by Hurricane Agnes, into the Torrey C. Brown Rail Trail (a.k.a. the Northern Central Rail Trail). As discussed