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

ENTERED
Office of Proceedings
December 6, 2024
Part of
Public Record

Crystal Zorbaugh
czorbaugh@MULLINSLAWGROUP.NET

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

December 6, 2024

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

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

Dear Ms. Brown:

On October 31, 2024, pursuant to a request by the Maryland Transit Administration (“MTA”), Norfolk Southern Railway Company (“NSR”) submitted a Notice of Exemption to abandon its freight rail easement (“Notice”) over an approximately 1.00-mile-long rail line, extending from Milepost +/- UU0.00 to Milepost +/- 1.00 in the City of Baltimore, Maryland (the “Line”). Since filing its Notice, certain real estate and other issues have come to NSR’s attention that need time to resolve and cannot be resolved in the statutory period afforded to notices of exemption.¹ NSR hereby requests permission to withdraw the Notice served by the Board on November 20, 2024, and requests that the Board dismiss this proceeding without prejudice to NSR refiling for abandonment authority at a later date.²

¹ The Board has recently held in a number of cases that notice of exemptions are not intended for controversial proceedings where there are open questions of fact. The Board’s class exemption procedures provide an expedited means of obtaining Board authority for certain classes of transactions involving routine matters. A notice that raises unresolved issues or questions that require considerable scrutiny may be rejected. See Norfolk Southern Railway Company – Abandonment Exemption – In the City of Fort Wayne, IND, AB-290 (Sub-No. 403X) (STB served Oct. 23, 2019); see also Tri-City R.R.—Lease & Operation Exemption—N. Pac. Dev., LLC, FD 36170, slip op. at 1 (STB served Mar. 21, 2018); FPN—USA, Inc.—Operation Exemption—Tijuana-Tecate Shortline, FD 35155, slip op. at 3 (STB served Aug. 8, 2008).

² Any abandonment authority ultimately granted/exempted by the Board is permissive authority that the railroad may or may not decide to exercise. The agency retains jurisdiction over rail properties until abandonment authority has been consummated. See Hayfield N. R.R. Co. v. Chi. & N. W. Transp. Co., 467 U.S. 622, 633-34 (1984); see also Almono LP—Abandonment Exemption—in Allegheny County, PA, STB Docket No. AB-842X (STB served Jan. 28, 2004) (holding until a carrier exercises the abandonment authority it has received, which it has not under 49 C.F.R. § 1152.29(e)(2), the line is not abandoned and the Board’s primary jurisdiction over the line continues).

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Dismissal is consistent with other Board precedent including The Cincinnati, New Orleans, and Texas Pacific Railway Company – Abandonment Exemption – Inc Scott County, TN, AB-290 (Sub-No. 279X) (STB served April 24, 1997); Norfolk Southern Railway Company – Abandonment Exemption – In Lown County, OH, STB Docket No. AB-290 (Sub-No 268X) (STB served October 25, 2006), Maine Central Railroad Company – Abandonment Exemption – In Androscoggin County, ME, STB Docket No. AB-83 (Sub-No. 16X) (STB served Sept 15, 2000).³

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

cc: Parties of Record

³ Because NSR is seeking dismissal of this proceeding, NSR will refrain from responding to comments and requests filed in this matter, which by virtue of dismissal become moot. Should the Board decline to dismiss the proceeding, NSR requests that it be afforded an opportunity to respond at a later date.