

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1349 (Sub-No. 1X)

BUCKINGHAM BRANCH RAILROAD COMPANY—DISCONTINUANCE EXEMPTION—  
IN THE CITY OF VIRGINIA BEACH AND THE CITY OF NORFOLK, VA.

Digest:<sup>1</sup> This decision denies a request filed by Norfolk Southern Railway Company to hold this proceeding in abeyance.

Decided: June 12, 2026

On March 9, 2026, Buckingham Branch Railroad Company (Buckingham Branch), a Class III 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 discontinue service over approximately 4.2 miles of rail line in the City of Virginia Beach and the City of Norfolk, Va. (the Line). The Line extends between milepost SN 6.7 at Diamond Springs (Virginia Beach), Va., and milepost SN 2.5 at Coleman Place (Norfolk), Va. According to the petition, the Line is owned by Norfolk Southern Railway Company (NSR) and Buckingham Branch has operated it under a lease with NSR since 2018.<sup>2</sup> (Pet. 1-2.) Notice of the petition was served and published in the Federal Register on March 27, 2026 (91 Fed. Reg. 14,903).

On April 6, 2026, NSR filed an objection to the Board's processing of Buckingham Branch's petition. (NSR Reply 1, Apr. 6, 2026.) NSR states that Buckingham Branch is in breach of its contractual obligations under its lease with NSR and requests that the Board hold this proceeding in abeyance until NSR and Buckingham Branch resolve that dispute. (Id.) Specifically, according to NSR, Buckingham Branch has not obtained NSR's prior written approval or received NSR's consent to seek discontinuance authority, in violation of Section 33(b) of the lease.<sup>3</sup> (Id. at 1-2.) As such, NSR asserts that Buckingham Branch lacks the

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<sup>1</sup> 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 Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> See Buckingham Branch R.R.—Change in Operators Exemption—Cassatt Mgmt., LLC, FD 36202 (STB served July 31, 2018).

<sup>3</sup> NSR stated that the lease was attached as Exhibit A to its reply; however, no exhibit was included with the filing. On May 1, 2026, NSR filed a copy of the lease, along with a motion for protective order to protect as “confidential” the unredacted version of the lease. Because there is already a protective order in place in this proceeding, served on March 27, 2026, and NSR does not explain why that protective order is insufficient to protect any

contractually required authority to initiate or participate in this proceeding and that proceeding without the required contractual authorization would undermine NSR's property and contractual rights, create legal uncertainty regarding carrier obligations, and risk the Board acting on a petition that Buckingham Branch had no right to file. (Id. at 2.)

Buckingham Branch responded to NSR's abeyance request on April 22, 2026. Buckingham Branch disputes that it is substantively in default under the lease. (Buckingham Branch Reply 2, Apr. 22, 2026.) In addition, Buckingham Branch argues that the alleged breach of the lease is entirely a matter of state contract law outside of the Board's purview. (Id.) Buckingham Branch notes that if NSR can demonstrate a substantive breach of the lease, based on NSR's objection to Buckingham Branch's discontinuance effort, NSR would be entitled to relief set forth in the lease, and NSR may seek to terminate the lease outright. (Id. at 2-3.)

The Board finds that abeyance is not warranted here. The case NSR cites in support of its request, Ballard Terminal Railroad—Petition for Declaratory Order, FD 36261 (STB served June 27, 2019), is inapposite. Ballard involved a petition seeking a declaratory order that certain actions by a municipality were preempted under 49 U.S.C. § 10501(b). There, the Board determined that abeyance was appropriate in a declaratory order proceeding because the preemption controversy at issue turned on an interpretation of a contract between the parties, and the state court's resolution of the contract dispute could inform or moot the preemption analysis. Ballard, FD 36261, slip op. at 4-5. In contrast, in this case, the Board's responsibility is to determine whether Buckingham Branch has satisfied the statutory criteria for an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to discontinue service over the Line. Prior resolution of the lease dispute between NSR and Buckingham Branch will not control that determination. See Norfolk S. Ry.—Discontinuance of Serv. Exemption—in Stanly Cnty., N.C., AB 290 (Sub-No. 254X) et al., slip op. at 5 (STB served Aug. 11, 2006) (finding that an interpretation of lease agreements was not necessary to determine whether statutory standards for discontinuance were met). Therefore, the Board will deny NSR's request for abeyance.

It is ordered:

1. NSR's request to hold the proceeding in abeyance is denied.
2. NSR's motion for protective order is denied.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.

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confidential information in the lease, the Board will deny NSR's motion for protective order as unnecessary.