

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 210X)

NORFOLK SOUTHERN RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN
FULTON COUNTY, GA

Decided: January 21, 2009

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 4.30-mile line of railroad between milepost DF 633.10 and milepost DF 637.40, in Atlanta, Fulton County, GA. Notice of the filing was served and published in the Federal Register on December 23, 2008 (73 FR 78870).¹ The exemption had been scheduled to become effective on January 22, 2009, but the effectiveness has been delayed to allow for the filing of supplemental information and Board consideration of that information.²

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on December 24, 2008. In the EA, SEA noted that the National Geodetic Survey (NGS) has advised it that seven geodetic station markers have been identified that may be affected by the proposed abandonment. Therefore, SEA has recommended that NSR be required to consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any of the seven geodetic station markers.

¹ By petition for exemption filed on December 3, 2008, NSR sought an exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. Because no notice of intent to file an OFA was submitted by the January 2, 2009 due date and no request for a public use condition was submitted by the January 12, 2009 due date, the request for an exemption from the OFA and public use provisions is moot and requires no Board action.

² On January 2, 2009, the Georgia Department of Transportation filed a petition to stay the effectiveness of the notice of exemption and also opposed the request by NSR for exemption from the OFA and public use provisions. The petition for stay attracted both support and opposition and, in a separate decision served today in this docket, the effectiveness of the exemption was stayed pending further order of the Board.

SEA also noted that NSR has served its historic report on the Georgia Department of Natural Resources, Historic Preservation Division (SHPO), pursuant to 49 CFR 1105.8(c). According to SEA, in a reply dated September 3, 2008, the SHPO stated that it does not agree with NSR's conclusion that the line is not eligible for the National Register of Historic Places (National Register). SEA indicated that the SHPO had previously determined that the entire 22-mile line Atlanta Beltline rail corridor (which encompasses all or portions of the line), including associated historic bridges and structures, is eligible for the National Register. SEA also indicated that the SHPO had requested NSR to provide more information on the proposed abandonment, including any physical alterations that could occur. A spokesperson for NSR informed SEA on December 15, 2008, that the SHPO had not been provided any additional information. Accordingly, SEA recommended that NSR be required to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f) (NHPA). SEA also recommended that NSR be required to report back to SEA regarding any consultations with the SHPO and the public, and that NSR not be allowed to file its consummation notice or initiate salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed this condition.³

Comments to the EA were due by January 8, 2009. No comments were filed. Accordingly, the conditions recommended by SEA in the EA will be imposed.

Based on SEA's recommendations, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the rail line described above, and covered in the notice served and published in the Federal Register on December 23, 2008, is subject to the conditions that NSR shall: (1) consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any of the seven geodetic station markers; and (2) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way that are eligible for listing or are listed in the National Register until the section 106 process of the NHPA has been completed, report back to SEA regarding any consultations with the SHPO and the public, and not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed this condition.

³ SEA also indicated that it sent a copy of the EA for review and comment to the Eastern Band of Cherokee Indians of North Carolina, which may have ancestral connections to the project area.

3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary