

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 271X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
WYOMING AND GENESEE COUNTIES, NY

Decided: December 10, 2008

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 4.50-mile line of railroad extending between milepost UG 360.20 at Alexander and milepost UG 364.70 at Attica, in Wyoming and Genesee Counties, NY. Notice of the exemption was served and published in the Federal Register on December 18, 2007 (72 FR 71738). As relevant here, by decision served on February 6, 2008 (February 2008 decision), the Board imposed two environmental conditions as recommended by the Board's Section of Environmental Analysis (SEA).¹ In this decision, the Board is removing the historic preservation condition.

Specifically, the historic preservation condition requires BPR to: (a) 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) that are eligible for listing or are listed in the National Register of Historic Places (National Register) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470F (NHPA), (b) report back to SEA regarding any consultations with the New York State Historic Preservation Office (SHPO) and any other section 106 consulting parties that have been identified and the public, and (c) 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. But SEA has now advised that, in correspondence dated October 3, 2008, the SHPO has concluded that the proposed project would not affect cultural resources in or eligible for inclusion in the National Register.

Pursuant to the section 106 regulations of the NHPA at 36 CFR 800.5(b) and consultation with the SHPO and the public, SEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. Therefore, SEA recommends that the section 106 historic preservation condition imposed in the February 2008 decision be removed.

¹ In a decision and notice served in this proceeding on March 26, 2008, the Board also issued a notice of interim trail use (NITU), and the negotiating period under the NITU currently extends to March 22, 2009.

Accordingly, based on SEA's recommendation, the proceeding will be reopened and the previously imposed historic preservation condition will be removed.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proceeding is reopened.
2. Upon reconsideration, the section 106 historic preservation condition imposed in the February 2008 decision is removed.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary