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SERVICE DATE – OCTOBER 3, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 378X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
NOTTOWAY COUNTY, VA.

Decided: October 2, 2019

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon approximately 0.70 miles of railroad line between mileposts N 133.4 (near Atwood Street) and N 134.1 (near Highway 460 and Burkes Tavern Road) in Nottoway County, Va. Notice of the exemption was served and published in the Federal Register on September 17, 2015 (80 Fed. Reg. 55,904). By decision served on October 16, 2015 (October 2015 Decision), two environmental conditions were imposed requiring NSR to consult with the U.S. Fish and Wildlife Service and the National Geodetic Survey before beginning salvage operations, and the exemption became effective on October 17, 2015.

Under 49 C.F.R. § 1152.29(e)(2), if a notice of consummation of abandonment is not filed within (i) one year after the service date of the decision permitting abandonment (provided there are no legal or regulatory barriers to consummation), or (ii) 60 days of the satisfaction, expiration, or removal of the last legal or regulatory barrier to consummation, whichever is later, the abandonment authority automatically expires. However, a railroad may request an extension of the consummation deadline, provided good cause is shown and the request is filed sufficiently in advance of the deadline to allow for timely processing. Through subsequent decisions, the deadline to file the consummation notice in this proceeding was extended, most recently to September 17, 2019. On September 16, 2019, NSR submitted a request to further extend the period for consummating the abandonment until September 17, 2020. NSR states that, despite its efforts, salvage cannot be completed by the current deadline because NSR remains in the process of resolving the salvaging conditions imposed in the October 2015 Decision.

NSR submitted its request only one day before the consummation notice deadline expired, leaving inadequate time for the Board to act on its request before the expiration of the NSR's abandonment authority. However, the Board will grant NSR's request and waive the provision at 49 C.F.R. § 1152.29(e)(2), to the extent that it would have resulted in the expiration of NSR's abandonment authority.¹

¹ See 49 C.F.R. § 1011.7(a)(2)(xiv) (delegating to the Director of the Office of Proceedings "authority initially" to "wave the regulations at 49 CFR part 1152, subpart C," which includes 49 C.F.R. § 1152.29(e)(2), on "appropriate petition"); see generally GTE Serv.

The deadline for NSR's notice of consummation will be extended to September 17, 2020. NSR is reminded, however, that any future request to extend the consummation period should be filed sufficiently in advance of the expiration of the consummation notice deadline. See § 1152.29(e)(2).

It is ordered:

1. The provision at 49 C.F.R. § 1152.29(e)(2) is waived in this instance, to the extent discussed above.

2. NSR's request for an extension of time to consummate the abandonment of the line described above is granted; the authority to abandon must be exercised and the notice of consummation filed on or before September 17, 2020.

3. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Corp. v. FCC, 782 F.2d 263, 273-74 & n.12 (D.C. Cir. 1986) (affirming agencies' inherent power to control their own dockets).