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SERVICE DATE – JANUARY 27, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 407X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
BERGEN COUNTY, N.J.

Decided: January 27, 2022

On October 14, 2020, Norfolk Southern Railway Company (NSR), a Class I 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 abandon an approximately 1.2-mile rail line, extending from milepost UQ 9.0 to milepost UQ 10.2, in Bergen County, N.J. (the Line). Notice of the petition was served and published in the Federal Register on November 3, 2020 (85 Fed. Reg. 69,676).

By decision served on January 26, 2021, the Board granted the exemption, subject to an environmental condition requiring NSR to consult with the New Jersey Department of Environmental Protection, Coastal Management Program (NJDEP) and obtain state coastal management consistency certification under the Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451-1465, if necessary. The decision prohibits NSR from filing its consummation notice or initiating any salvage activities related to abandonment until NSR reports the results of the consultations in writing to OEA and the Board has removed the condition.

On December 21, 2021, NSR submitted a request to extend the deadline for filing its notice of consummation until January 26, 2023. NSR states that consultation with NJDEP has commenced but it does not appear that a resolution is likely before the standard one-year consummation deadline of January 26, 2022.

The Board's regulations provide that, if a rail carrier intends to consummate the abandonment authority received, it must file a consummation notice with the Board within one year of the service date of the decision authorizing the abandonment unless there is a legal or regulatory barrier to consummation at the end of that one-year period. 49 C.F.R. § 1152.29(e)(2). However, where a legal or regulatory barrier to consummation exists at the end of the one-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the barrier. Id.

The Coastal Zone Management Act condition is, by its terms, such a regulatory barrier, and it has not yet been removed by the Board. Because NSR will have until 60 days after the removal of the condition to file its notice of consummation, its extension request is premature at this time and will be denied for that reason.

It is ordered:

1. NSR's request for an extension of time to consummate the abandonment authorized in this proceeding is denied as premature.

2. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.