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SERVICE DATE – OCTOBER 11, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 244X)

NORFOLK SOUTHERN RAILWAY COMPANY—
ABANDONMENT EXEMPTION—IN PIKE COUNTY, KY.

Decided: October 11, 2024

In 2004, Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an 8.74-mile rail line between milepost WP-2.20 at Toler and milepost WP-10.94 at Peg, in Pike County, Ky. (the Line). Notice of the exemption was served and published in the Federal Register on January 27, 2004 (69 Fed. Reg. 3994). On January 11, 2005, NSR advised the Board that it had consummated abandonment of the Line as of that date.

On September 16, 2024, Energy Capital, LLC (Energy Capital), a private entity, filed a request for imposition of a public use condition under 49 U.S.C. § 10905 and issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. § 1247(d), in order to negotiate with NSR for use of the Line’s right-of-way as a recreational trail. Energy Capital indicates that it served a copy of its request upon NSR.

When authority to abandon a rail line is consummated, the line is removed from the national rail system and the Board’s jurisdiction over the line terminates. See Hayfield N. R.R. v. Chi. & N.W. Transp. Co., 467 U.S. 622, 633-34 (1984). NSR consummated its abandonment of the Line in 2005. Therefore, the Board no longer has jurisdiction to impose a public use condition or issue a NITU. See CSX Transp., Inc.—Aban. Exemption—in Preston Cnty., W. Va., AB 55 (Sub-No. 625X) (STB served Oct. 30, 2018); Red River Valley & W. R.R.—Aban. Exemption—in Lamoure & Barnes Cntys., N.D., AB 391 (Sub-No. 9X) (STB served Aug. 1, 2002). Accordingly, Energy Capital’s requests will be denied.

It is ordered:

1. Energy Capital’s requests for issuance of a public use condition and a notice of interim trail use/rail banking are denied.
2. This decision is effective on its service date.

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