

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29<sup>3</sup> must be filed by April 17, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 25, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 10, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions<sup>4</sup> will be imposed, where appropriate, in a subsequent decision.

Decided: March 29, 1995.

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

**Vernon A. Williams,**

*Secretary.*

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[Docket No. AB-443X]

**Danbury Terminal Railroad Company—Discontinuance Exemption—Westchester, Putnam, and Dutchess Counties, NY**

Danbury Terminal Railroad Company (DTRR) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue trackage rights over two segments of the rail line known as the Harlem Line. The first line segment is located between milepost 55.2, in Dykemans, and milepost 81.6, in Wassaic, a distance of approximately 26.4 miles in Dutchess and Putnam Counties, NY. The second line segment is located between milepost 22.0, in White Plains, and milepost 43.4, in Golden's Bridge, a distance of approximately 21.4 miles in Westchester County, NY.

The Harlem Line, except between mileposts 77.0 and 81.1, is owned by American Premier Underwriters, Inc., a noncarrier, and leased by the Metropolitan Transportation Authority (MTA). MTA's subsidiary, Metro North Commuter Railroad Company (MNCR) provides commuter passenger rail service over the entire Harlem Line, except between milepost 77.0 and milepost 81.1. That portion is owned by the New York and Harlem Railroad Company and is the subject of acquisition negotiations with MNCR, which, when completed, will enable MNCR to extend its commuter passenger service to Wassaic. In addition, Consolidated Rail Corporation (Conrail) provides freight service over the line under an unspecified operating arrangement with the owners and lessee. DTRR acquired the rights at issue here from Conrail.<sup>1</sup> Thus, freight and passenger service will still be provided after the discontinuance.

DTRR has certified that: (1) No local traffic has moved pursuant to the trackage rights operation over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the

<sup>1</sup>In *Danbury Terminal Railroad Company and Maybrook Properties, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation*, Finance Docket No. 32180 (Sub-No. 1) (ICC served Dec. 29, 1992), DTRR obtained operating and freight rights over the Harlem Line, between milepost 22.0, in White Plains and milepost 81.6, in Wassaic. Following the proposed discontinuance, DTRR will continue to operate between mileposts 43.4 and 55.2.

Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued operations has been received, this exemption will be effective on May 5, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues<sup>2</sup> and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)<sup>3</sup> must be filed by April 17, 1995. Petitions to reopen must be filed by April 25, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert A. Wimbish, Suite 420, 1920 N Street, N.W., Washington, D.C. 20036.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Decided: March 31, 1995.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

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Commission to review and act on the request before the effective date of this exemption.

<sup>2</sup>See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

<sup>3</sup>The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

<sup>4</sup>The Gateway Trailnet, Inc. seeks issuance of a notice of interim trail use/railbanking (NITU) under 16 U.S.C. 1247(d) and a 180-day public use condition under 49 U.S.C. 10906. A copy of the request does not appear to have been served on NW as required at 49 CFR 1104.12(a). Gateway is directed to serve a copy of the request on NW. Accordingly, the requests will be handled in a subsequent decision.

<sup>2</sup>The Commission's Section of Environmental Analysis will not conduct an independent investigation because no environmental effects are expected in cases where service on the line will continue. A stay will be issued routinely by the Commission if an informed decision on environmental issues raised by a party cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

<sup>3</sup>See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).