

(Board) authorize the abandonment by New York Cross Harbor Railroad, Inc. (NYCH), of the Bush Terminal Yard (a/k/a "First Avenue Yard") and the Harborside Industrial Center (a/k/a "Brooklyn Army Terminal") (jointly the Tracks and Facilities), in New York, Kings County, NY. The line traverses United States Postal Service ZIP Codes 11232 and 11220. There is no indication that there are stations on the line.

NYCEDC maintains that NYCH has caused and will continue to cause significant environmental damage to the tracks and facilities by dumping chemicals and pesticides used in the operation and maintenance of a railroad. NYCEDC indicates that it filed the adverse abandonment application so that it could proceed with plans to bring suit in state court to evict NYCH from the tracks and facilities.² NYCEDC also claims that NYCH has incurred \$20,107.61 in late fees since July 1995.

In an application by a third party for a determination that the public convenience and necessity permits service over a line to be discontinued or abandoned, the issue before the Board is whether the public interest requires that the line in question be retained as part of the national rail system. By granting a third party application, the Board withdraws its primary jurisdiction over the line. Questions of the disposition of the line, including the adjudication of various claims of ownership or other rights and obligations, are then left to state or local authorities. See *Kansas City Pub. Ser. Frgt. Operations Exempt.—Aban.*, 7 I.C.C.2d 216, 224–26 (1990).

NYCEDC states that, to the best of its knowledge, the line does not contain any federally granted rights-of-way. Any documentation in NYCEDC's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment was filed with the application.³

² NYCH does not own the tracks and facilities or the underlying land; rather it leases the tracks and facilities from the City. NYCEDC contends that NYCH has breached its lease by violating local fire codes and state and Federal environmental law. In its Combined Environmental and Historic Report, NYCEDC indicates that the tracks and facilities will continue to be used for rail purposes because of the planned re-development and expansion of the adjacent maritime terminals in order to promote water to rail movement of cargo.

³ In a decision served in this proceeding on December 3, 2001, NYCEDC was granted a waiver from many of the filing requirements of the Board's abandonment regulations at 49 CFR 1152 that were found to be not relevant to NYCEDC's adverse abandonment application. On December 10, 2001, NYCEDC filed a supplement to its application to address the requirements not waived in the December 3 decision. The supplement is accepted for filing.

The interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed abandonment or protests (including protestant's entire opposition case) by January 18, 2002. Applicant's reply is due on February 4, 2002. Because the line is publicly owned and is expected to remain in rail service under some new arrangement, trail use/rail banking, and public use requests are not appropriate. In light of the proposed eviction and subsequent resumption of rail service, offers of financial assistance to acquire or subsidize service on the line are not required by the public interest and will not be entertained in this proceeding.

Persons opposing the abandonment who wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

All filings in response to this notice must refer to STB Docket No. AB–596 and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Charles A. Spitulnik and Alex Menendez, One Massachusetts Ave, NW, Suite 800, Washington, DC 20001. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment or discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 545–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact

SEA to obtain a copy of the EA (or EIS). EAs in abandonment or discontinuance proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided: December 14, 2001.

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

Vernon A. Williams,
Secretary.

[FR Doc. 01–31504 Filed 12–20–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 221X)]

Norfolk Southern Railway Company— Abandonment Exemption—in Wise County, VA

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.9-mile line of railroad between milepost RC–0.0, at Russell Creek, and milepost RC–0.9, at Caledonia, in Wise County, VA (line).¹ The line traverses United States Postal Service Zip Code 24293.

Applicant has certified that: (1) no local or overhead traffic has moved over the line for at least 2 years; (2) any overhead traffic, if there is any, can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government agency acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 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.

¹ NSR notes that authority to discontinue operations on the line was granted by the former Interstate Commerce Commission. See *Norfolk and Western Railway Company-Discontinuance Exemption-in Wise County, VA*, Docket No. AB 290 (Sub-No. 98X) (ICC served July 16, 1990).

As a condition to this exemption, any employee adversely affected by the abandonment 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. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 23, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 3, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 14, 2002, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, Esq., Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510. If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed a separate environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 28, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1552. 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 will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of

consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 21, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: December 10, 2001.

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

Vernon A. Williams,
Secretary.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-290 (Sub-No. 226X)]

Norfolk Southern Railway Company— Abandonment Exemption in Mingo County, WV, and Pike County, KY

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR 1152 Subpart—*Exempt Abandonments* to abandon a 2.28-mile line of railroad between milepost CR-0.0, at Cedar, Mingo County, WV, and milepost CR-2.28, at Majestic, Pike County, KY (line). The line traverses United States Postal Service Zip Codes 25676, in the State of West Virginia, and 41547, in the State of Kentucky.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) any overhead traffic, if there is any, can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government agency acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7

(environmental reports), 49 CFR 1105.8 (historic reports), 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 this exemption, any employee adversely affected by the abandonment 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. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 24, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 3, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 14, 2002, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, Esq., Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510. If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed a separate environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 28, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1552. 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 will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1002.2(f)(25).

² The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

³ Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,000. See 49 CFR 1002.2(f)(25).