

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration**

[Docket No. NHTSA-2004-17437; Notice 2]

**PACCAR, Inc., Grant of Petition for Decision of Inconsequential Noncompliance**

PACCAR, Inc. (PACCAR), has determined that the trailer antilock brake system (ABS) warning lights on certain vehicles that were produced by Peterbilt Motors Company (Peterbilt), a division of PACCAR, from April 3, 2003, to November 28, 2003, do not comply with S5.1.6.2(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 121, "Air brake systems." Pursuant to 49 U.S.C. 30118(d) and 30120(h), PACCAR has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of the petition was published with a 30 day comment period on April 20, 2004, in the **Federal Register** (69 FR 21189). NHTSA received no comments.

Approximately 4009 Peterbilt models 378, 379, 385, and 387 are affected. S5.1.6.2(b) of FMVSS No. 121 requires that "Each \* \* \* truck tractor \* \* \* shall \* \* \* be equipped with an indicator lamp \* \* \* which is activated whenever the [antilock brake system] malfunction signal circuit \* \* \* receives a signal indicating an ABS malfunction on one or more towed vehicles(s)."

The affected vehicles have two types of fluorescent lights installed in the cab sleeper. These lights create an electromagnetic interference (EMI) with the trailer ABS malfunction signal manufactured by Power Line Carrier (PLC). The fluorescent lights, when on, can interfere with the proper operation of the PLC signal, preventing the telltale from functioning. The PLC signal and the telltale operate correctly when the fluorescent light in the sleeper is off.

PACCAR believes that the noncompliance is inconsequential to motor vehicle safety, and that no corrective action is warranted. PACCAR states that the in-cab warning lamp will not function only if the fluorescent light in the sleeper is on. PACCAR asserts that this is not likely to occur while the vehicle is being driven and if so, it would be a small percentage of the time.

PACCAR explains that not all suspect vehicles will exhibit the behavior, because due to manufacturing variances, some fluorescent lights emit more EMI

than others. PACCAR states that the PLC signal strength from the trailer is also a factor. PACCAR explains that the telltale will operate normally in most cases with a strong trailer PLC signal and only marginal EMI; however the telltale will not operate with a normal to marginal trailer PLC signal and high EMI. In addition, the indicator on the exterior of the trailer is not affected by this defect and would continue to warn the driver in the event of a trailer ABS malfunction. PACCAR also states that the foundation brakes on the trailer are not impacted.

The agency agrees with PACCAR that this noncompliance will not have an adverse effect on vehicle safety. For the in-cab warning lamp malfunction to occur, first the fluorescent light in the sleeper must be on while the vehicle is being driven, which is not likely to occur often, and second, even when this occurs, there must be also be a high EMI from the cab-sleeper fluorescent lights combined with a normal to marginal trailer signal. Even in these cases, the ABS malfunction indicator lamp on the exterior of the trailer will continue to function and is visible from the driver side mirror. In addition, the foundation brakes on the trailer are not affected. Paccar has fixed the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, PACCAR's petition is granted and the petitioner is exempted from the obligation of providing notification of and a remedy for the noncompliance.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: June 28, 2004.

**Kenneth N. Weinstein,**

*Associate Administrator for Enforcement.*

[FR Doc. 04-15161 Filed 7-2-04; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board**

[STB Finance Docket No. 34464]

**Wisconsin & Southern Railroad Co.—Acquisition Exemption—Iowa, Chicago & Eastern Railroad Corporation**

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of exemption.

**SUMMARY:** Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval

requirements of 49 U.S.C. 10902 for Wisconsin & Southern Railroad Co. (WSOR), a Class II carrier, to acquire from Iowa, Chicago & Eastern Railroad Corporation (IC&E) 7.33 miles of railroad in Janesville, Rock County, WI, owned by IC&E.<sup>1</sup> The line being acquired consists, as described by petitioner, of the following track segments: (1) Between the division of ownership at milepost 94.49 on Buyer's line to Fox Lake, IL, and the division of ownership at milepost 11.02 on Buyer's line to Monroe, WI; (2) between milepost 98.27 and milepost 46.75 on Buyer's line to Milton Jct., WI; (3) between milepost 9.96 and milepost 46.08, consisting generally of the north leg of the wye track at Janesville; and (4) the connecting track between milepost 45.23 and the connection with the leased premises at milepost 46.08.

**DATES:** The exemption will be effective 60 days after WSOR certifies that it has complied with Board regulations at 49 CFR 1121.4(h). Petitions to stay must be filed by July 12, 2004. Petitions to reopen must be filed by July 20, 2004.

**ADDRESSES:** An original and 10 copies of all pleadings referring to STB Finance Docket No. 34464 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of all pleadings must be served on petitioner's representative, John D. Heffner, John D. Heffner, PLLC, 1920 N Street, NW., Suite 800, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:**

Joseph H. Dettmar (202) 565-1609. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Board's decision. Copies of the decision may be purchased from ASAP Document Solutions by calling (301) 577-2600 (assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339) or by visiting Suite 103, 9332 Annapolis Road, Lanham, MD 20706.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: June 29, 2004.

<sup>1</sup> WSOR states that it already leases and operates over approximately 6.48 miles of railroad and that it would acquire .85 miles of connecting track in addition to the lines over which it currently operates.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

**Vernon A. Williams,**

*Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-400 (Sub-No. 4)]

#### **Seminole Gulf Railway, L.P.—Adverse Abandonment—in Lee County, FL**

On June 16, 2004, Lee County, FL (Lee County or applicant) filed an adverse application under 49 U.S.C. 10903 requesting that the Surface Transportation Board authorize the abandonment by Seminole Gulf Railway, L.P. (SGLR) of a portion of the Baker Spur, which consists of a rail line beginning at engineering station 36+35+, which is approximately 100 feet southwest of where the line crosses Alico Road, directly west of Alico Center Road, approximately 1 mile east of U.S. Hwy. 41, and parallel to Alico Road station 79+00, continuing across Alico Road and then running parallel to and north of Alico Road for approximately 4,260 feet to the eastern terminus of the line at engineering station 79+95.<sup>1</sup> The line traverses United States Postal Service ZIP Codes 33912 and 33913 and includes no stations.

Lee County states that it is in the process of widening Alico Road, a heavily traveled thoroughfare between Interstate Hwy. 75 and U.S. Hwy. 41. This expansion project will require a new grade crossing where the Baker Spur crosses Alico Road. Applicant indicates that the cost of installing the required grade crossing would exceed \$1 million, and that the cost of removing the grade crossing if the line were later abandoned would be approximately \$300,000. Applicant seeks to avoid the expenditure of public funds to construct and remove this crossing. According to Lee County, the sole shipper on the line, J.J. Taylor Distributors Ft. Myers/Naples, Inc. (J.J. Taylor), is in the process of relocating its operations, at which point there will be no shippers requiring rail service on this line. Lee County requests that the

abandonment authority become effective one day after J.J. Taylor has either departed its Alico Road facility or converted its operations so as not to require rail service. Applicant asserts that the abandonment will not adversely impact SGLR as it will be able to realize the net salvage value of the line and save on any maintenance costs. Lee County adds that FP&L, which uses an adjacent portion of the Baker Spur, will also not be harmed as SGLR will be able to transload shipper's equipment to a paved section of the service road to the south of the Baker Spur.<sup>2</sup> In support of the proposal, applicant attaches to its application statements from shipper J.J. Taylor, nearby shippers FP&L and Airport Industrial Holdings, LLC, and applicant's landlord, Alico Industries, Inc.

In decisions served in this proceeding on June 9, 2004, and June 15, 2004, Lee County was granted exemptions and waivers from various statutory provisions governing rail line abandonments and several of the Board's related regulations that were not relevant to its adverse abandonment application or that sought from applicant information not available to it. Specifically, Lee County was granted waivers from the notice of intent requirements at 49 CFR 1152.20(a)(2)(xii), (a)(3), and (b)(1), and 1152.21, and was granted exemptions and waivers from the application requirements at 49 U.S.C. 10903(a)(3)(B) and (c), and 49 CFR 1152.22(a)(4), (b)-(d) and (i) and 1105.7(b).<sup>3</sup>

Lee County states that, based on the information it possesses, the line does not contain federally granted rights-of-way. Any documentation in Lee County's possession will be made available promptly to those requesting it. Applicant's entire case-in-chief for abandonment was filed with the application.

The interests of affected 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 August 2, 2004.

Persons opposing the proposed adverse 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. Parties seeking information concerning the filing of protests should refer to § 1152.25.

All filings in response to this notice must refer to STB Docket No. AB-400 (Sub-No. 4) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001; and (2) Robert P. vom Eigen, Foley & Lardner, 3000 K Street, NW., Suite 500, Washington, DC 20008. Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's <http://www.stb.dot.gov> Web site, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in section 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The waiver decision noted that Lee County had sought a waiver from the environmental requirements at 49 CFR 1152.22(f), arguing that the proposed adverse abandonment would not cause a departure from the volume of railroad traffic when it becomes effective. However, the Board denied this request. It noted that, because Lee County had already submitted the required environmental documentation to the Board's Section of Environmental Analysis (SEA), a waiver was not needed.

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. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in abandonment or discontinuance proceedings normally will be made available within 33 days of the filing of the application. The

<sup>1</sup> Originally the proposed abandonment began approximately 300 feet to the west of Alico Road station 79+00 at Alico Road Station 76+00, but to accommodate nearby shipper Florida Power and Light's (FP&L) use of the Baker Spur, Lee County has moved the western terminus of the abandonment to Alico Road Station 79+00.

<sup>2</sup> In its application, Lee County again requests that the Board grant an exemption from the public use provisions at 49 U.S.C. 10905 and a waiver from the public use and trail use provisions at 49 CFR 1152.28-29. However, as stated in the June 9, 2004, decision in this proceeding, such requests need not be addressed at this time and can be addressed, if necessary, in the final decision on the merits of this application. Also applicant apparently believes that the Board granted it an exemption/waiver from the offer of financial assistance (OFA) requirements at 49 U.S.C. 10904 and 49 CFR 1152.27. *Application*, p.5, n.5. Applicant is incorrect. As with the public use and trail use requests, the Board also reserved judgment on the OFA request at that time and will continue to do so.

<sup>3</sup> Because Lee County had already satisfied a number of provisions for which it had requested a waiver, some of its waiver requests were denied as unnecessary. A fee waiver request had been granted earlier by the Board's Secretary.