

1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34646 (Sub-No. 1), must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on D&I's President: Jack Parliament, D&I Railroad Company, P.O. Box 5829, Sioux Falls, SD 57117.

The notice of exemption filed with respect to the D&I-SVRRRA transaction in this docket is related to a notice of exemption concurrently filed in a related docket: STB Finance Docket No. 34646, *Sioux Valley Regional Railroad Authority—Trackage Rights Exemption—Lines of the State of South Dakota*. The notice of exemption filed in the related docket contemplates SVRRRA's acquisition from the State of the trackage rights that SVRRRA intends to grant to D&I.

SVRRRA and D&I have advised that the Elk Point-Sioux City line, which is owned by the State, is now operated on behalf of the State by BNSF, pursuant to a 1986 Operating Agreement. SVRRRA and D&I have also advised: That, under the Operating Agreement, the State has the right to grant trackage rights on the Elk Point-Sioux City line subject to certain BNSF consent; that, although the State has the right to grant trackage rights to SVRRRA for operations by SVRRRA's third-party operator (D&I), BNSF has not consented to the grant of those rights; and that the failure to provide this consent is now the subject of litigation between the State and BNSF in *The Burlington Northern and Santa Fe Railway Company v. State of South Dakota*, Case No. 04-470 (S.D. 6th Circuit). SVRRRA and D&I have further advised that they recognize that BNSF consent may have to be obtained, either voluntarily or through litigation, before D&I can commence trackage rights operations on the Elk Point-Sioux City line. SVRRRA and D&I have suggested, however, that, inasmuch as the Board's authority respecting the notices filed in this docket and in the related docket is "permissive" in nature, the filing of the notices in the two dockets is appropriate as a "prelude" to obtaining any necessary consent.

By letter filed December 30, 2004, BNSF has advised that it has not given its consent to the third-party trackage rights operation contemplated by SVRRRA and D&I, which (BNSF adds)

would violate the 1986 Operating Agreement. BNSF has further advised that, in its view, the filings by SVRRRA and D&I in this docket and in the related docket are intended to improperly influence the pending state court litigation. BNSF has asked that the Board stress that issuance by the Board of the notices filed in this docket and in the related docket does not represent a determination, by the Board, concerning either the right of the State to grant the Elk Point-Sioux City trackage rights without BNSF's consent or the right of D&I to operate over the Elk Point-Sioux City line without BNSF's consent.

In view of the ongoing litigation concerning the right of the State to grant the trackage rights contemplated in this docket and in the related docket, it seems best to note that the Board has made no determination, one way or the other, concerning either the right of the State to grant the Elk Point-Sioux City trackage rights without BNSF's consent or the right of D&I to operate over the Elk Point-Sioux City line without BNSF's consent. The contractual dispute respecting the scope of the rights retained by or granted to the State and/or BNSF under the 1986 Operating Agreement must be resolved in a court of competent jurisdiction.

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

Decided: January 12, 2005.

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

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. 05-1010 Filed 1-18-05; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-290 (Sub-No. 257X)]

#### Norfolk Southern Railway Company— Abandonment Exemption—in Blackford County, IN

Norfolk Southern Railway Company (NSR) has filed a notice of exemption<sup>1</sup> under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon an 8.60-mile line of railroad between milepost RK-

<sup>1</sup>The notice of exemption was received by the Board on December 29, 2004. In a letter accompanying NSR's notice of exemption, NSR indicates that it intended to file the notice of exemption on December 30, 2004, and, if the Board received the filing before that date, NSR requests that the filing date be postponed to December 30, 2004. Accordingly, December 30, 2004 is used as the filed date and the date for computation of due dates in this proceeding.

130.00 at Converse, and milepost RK-138.60 at Hartford City, in Blackford County, IN. The line traverses United States Postal Service Zip Codes 46919 and 47348.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could 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 entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with 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 February 18, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>2</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>3</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 31, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 8, 2005, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001.

<sup>2</sup>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.

<sup>3</sup>Effective October 31, 2004, the filing fee for an OFA increased to \$1,200. See *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2004 Update*, STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004).

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510-2191.

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

NSR has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 24, 2005. 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) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] 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 January 19, 2006, 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 Web site at <http://www.stb.dot.gov>.

Decided: January 12, 2005.

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. 259X)]

#### Tennessee Railway Company— Abandonment Exemption—in Anderson and Campbell Counties, TN

Tennessee Railway Company (TNR)<sup>1</sup> has filed a notice of exemption under 49

CFR 1152 Subpart F-*Exempt Abandonments* to abandon a 14.04-mile line of railroad between milepost TE-27.96 at Nick's Creek and milepost TE-42.00 at Devonia, in Anderson and Campbell Counties, TN. The line traverses United States Postal Service Zip Code 37710.

TNR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could 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 entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with 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 government agencies) have been met.

As a condition to this exemption, any employee adversely affected by this 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 February 18, 2005,<sup>2</sup> unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>3</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>4</sup> and trail use/rail banking requests under 49

<sup>2</sup> TNR has requested that the Board treat the notice of exemption as being filed on December 30, 2004, rather than the actual date the applicant filed it, December 29, 2004. The Board will set December 30, 2004 as the filing date and use this date to compute the due dates in this proceeding.

<sup>3</sup> 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.

<sup>4</sup> Effective October 31, 2004, the filing fee for an OFA increased to \$1,200. See *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2004 Update*, STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004).

CFR 1152.29 must be filed by January 31, 2005.

Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 8, 2005, with: the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.

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

TNR has filed an environmental report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 24, 2005. 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) 565-1539.

[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] 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), TNR 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 TNR's filing of a notice of consummation by January 19, 2006, 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 Web site at "[www.stb.dot.gov](http://www.stb.dot.gov)."

Decided: January 11, 2005.

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

**Vernon A. Williams,**  
Secretary.

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<sup>1</sup> TNR is a wholly owned subsidiary of Norfolk Southern Railway Company (NSR).