acquire and operate approximately 369.7 route miles of railroad lines, referred to as the ''Core Lines,'' that are owned by the State of South Dakota (the State). These lines, which are described in a July 10, 1986 Operating Agreement between a BNSF predecessor (Burlington Northern Railroad Company) and the State, extend principally: between milepost (MP) 777.0 near Aberdeen, SD, and MP 650.6 near Mitchell, SD; between MP 518.9 near Sioux City, IA, and MP 649.7 near Mitchell, SD; between MP 293.1 near Canton, SD, and MP 650.6 near Mitchell, SD; [1] between MPs 74.1 and 68.8 in Sioux Falls, SD; between MP 68.8 near Sioux Falls, SD, and MP 49.4 near Canton, SD; and between MPs 511.9 and 518.9 in Sioux City, IA.

The Core Lines were once part of the rail system operated by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (the Milwaukee Road). The Milwaukee Road entered bankruptcy in 1977, and, in 1980, it received, both from the Interstate Commerce Commission (ICC) and from the bankruptcy court, approval to abandon the Core Lines. In 1981, the abandoned Core Lines were acquired by the State, and, since on or about July 6, 1981, BNSF has provided common carrier rail service over the Core Lines pursuant to various agreements (the most recent of which is the 1986 Operating Agreement) with the State, and pursuant to a Modified Certificate of Public Convenience and Necessity (the modified certificate) issued by the ICC. *See* 49 CFR part 1150, subpart C (§ 1150.21 *et seq.*) (these are the ''modified certificate'' regulations that apply to operations over abandoned rail lines that have been acquired, through purchase or lease, by a State). BNSF contends that it has, under the terms of the 1986 Operating Agreement, a right to acquire the Core Lines from the State.

Because the Core Lines were abandoned by the Milwaukee Road, BNSF has invoked the notice of exemption procedures at 49 CFR part 1150, subpart D (§ 1150.31 *et seq.*) (these are the regulations that apply to acquisitions and operations under § 10901). *See The Burlington Northern and Santa Fe Railway Company—Acquisition and Operation Exemption—Lac Qui Parle Regional Railroad Authority,* STB Finance Docket No. 33364 (STB served Apr. 15, 1997); *Burlington Northern Railroad Company—Acquisition and Operation Exemption—South Dakota Railroad Authority, Finance* Docket No. 32017 (ICC served Apr. 2, 1992).

Under the modified certificate regulations at § 1150.21 *et seq.,* a modified certificate operator may not terminate modified certificate service unless it first provides—to the State, to the Board, and to all persons that have used the line within the preceding six months—60 days' notice. *See* 49 CFR 1150.24. BNSF has not yet provided such notice, but it has stated that, once it has acquired the Core Lines, it will notify the appropriate parties that it will cease to provide service under its § 1150.21 modified certificate but will continue to provide service pursuant to its § 1150.31 exemption notice.

BNSF's § 1150.31 exemption notice was filed to be effective on December 30, 2004. However, by decision served December 29, 2004, the effective date of the exemption was stayed until 11:59 p.m., January 14, 2005. The question of whether the exemption will be stayed beyond that date will be addressed by the Board in a separate decision.

As noted in the decision served December 29, 2004, in this docket, BNSF's asserted right to acquire the Core Lines is disputed by the State, and is now the subject of litigation in *The Burlington Northern and Santa Fe Railway Company* v. *State of South Dakota,* Civ. No. 04–470 (S.D. 6th Circuit). As is also noted in the prior decision, BNSF has acknowledged that, before it can actually acquire title to the Core Lines, it will need to prevail in acquiring the Core Lines from the State whether through voluntary conveyance by the State or involuntary conveyance as may be ordered by the state court. In view of the ongoing litigation concerning BNSF's right, under the terms of the 1986 Operating Agreement, to acquire the Core Lines from the State, it is appropriate to note that the Board has made no determination, one way or the other, concerning BNSF's asserted right to acquire the Core Lines from the State. 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.

If the verified 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. 34645, 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 BNSF's representative: Adrian L. Steel, Jr., Mayer, Brown, Rowe & Maw LLP, 1909 K Street, NW., Washington, DC 20006–1101.

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. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–1011 Filed 1–18–05; 8:45 am]

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[1] The distance between MP 293.1 near Canton and MP 650.6 near Mitchell is approximately 81.50 miles. *See* BNSF's § 1150.31 notice, Exhibit 2, Appendix 1, page 6. BNSF has not explained the discrepancy with respect to the milepost designations.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34646 (Sub-No. 1)]

D&I Railroad Company—Trackage Rights Exemption—State of South Dakota and Sioux Valley Regional Railroad Authority

The State of South Dakota (the State) and Sioux Valley Regional Railroad Authority (SVRRA) have agreed to grant overhead trackage rights to D&I Railroad Company (D&I) over a State-owned line of railroad extending between milepost (MP) 533.4 near Elk Point, SD (also known as MP 0.0 at East Wye Jct.) and MP 511.90 in Sioux City, IA, including such yard tracks, sidetracks, and connecting tracks (existing or to be constructed) as are reasonable to interchange railcars with The Burlington Northern and Santa Fe Railway Company (BNSF), Union Pacific Railroad Company, and Canadian National Railway Company at Sioux City. The total distance of the trackage rights to be granted to D&I is approximately 21.5 miles. The D&I–SVRRA transaction contemplated by the parties was scheduled to be consummated on or after January 5, 2005.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

The notice of exemption filed in this docket was filed under 49 CFR

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–SVRRA 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 SVRRA's acquisition from the State of the trackage rights that SVRRA intends to grant to D&I.

SVRRA 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. SVRRA 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 SVRRA for operations by SVRRA'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). SVRRA 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. SVRRA 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 SVRRA and D&I, which (BNSF adds) would violate the 1986 Operating Agreement. BNSF has further advised that, in its view, the filings by SVRRA 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. Konschnik, 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 [1] under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon an 8.60-mile line of railroad between milepost RK–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,[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 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.

[1] 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.

[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] 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).