

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

(S.B. Docket No. AB-290 (Sub-No. 18OX)]

Norfolk and Western Railway Company--Abandonment Exemption-in McDowell County, WV

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 2.5-mile line of its railroad from milepost T-16.0 at Pageton and milepost T-18.5 at Anawalt, in McDowell County, WV.¹

NW has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (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 (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 December 7, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues² 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 1152.29⁴ must be filed by November 18, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 27, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, NW, Washington, DC 20423.

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

¹ Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The applicant in its verified notice, indicated a proposed consummation date of December 6, 1996. However, because the verified notice was filed on October 18, 1996, consummation should have not been proposed to take place prior to December 7, 1996. Applicant's representative has been contacted and has confirmed that the correct consummation date is on or after December 7, 1996.

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 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 See Exempt of Rail Abandonment--Offers of Final. Assist., 4 I.C.C.2d 164 (1987).

⁴ The Board will accept late-filed trail use request as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

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

NW 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 November 12, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, 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 will be imposed, where appropriate, in a subsequent decision.

Decided: November 1, 1996.

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

Vernon A. Williams
Secretary