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SERVICE DATE – NOVEMBER 18, 2004

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-290 (Sub-No. 256X)]

Norfolk Southern Railway Company–Abandonment Exemption–in Chester County, PA

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 0.8-mile line of railroad between milepost 18.92 and milepost 19.72 at Downingtown, in Chester County, PA.<sup>1</sup> The line traverses United States Postal Service Zip Codes 19335 and 19372.

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

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<sup>1</sup> NSR states that the subject line overlaps 0.28 miles of a line that was authorized for abandonment in Consolidated Rail Corporation–Abandonment Exemption–Chester County, PA, Docket No. AB-167 (Sub-No. 1136X) (ICC served Sept. 19, 1994), because NSR has not been able to verify that Consolidated Rail Corporation exercised the abandonment authority with respect to that segment.

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)<sup>2</sup> 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 18, 2004, 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

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<sup>2</sup> Pursuant to 49 CFR 1152.50(d)(1), at least 10 days prior to filing a notice of exemption with the Board, the railroad seeking the exemption must notify in writing certain governmental agencies. The notice of exemption in this proceeding was filed on October 28, 2004. In its verified notice, applicant attached, as Exhibit 4, a copy of its transmittal letter dated October 19, 2004, indicating notice of filing a notice of exemption on or about October 29, 2004 with the Board and its compliance with the service and notice requirements of 49 CFR 1152.50(d)(1). According to applicant's representative, when applicant sent its transmittal letter, it had anticipated that the Board would receive the filing on October 29, 2004, rather than October 28, 2004. Upon consultation with applicant, October 29, 2004 is used for the computation of 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 (continued...)

49 CFR 1152.29 must be filed by November 26, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 8, 2004, with: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, 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 November 23, 2004. 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.

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<sup>4</sup>(...continued)

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).

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 November 18, 2005, 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: November 12, 2004.

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

Vernon A. Williams

Secretary