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SERVICE DATE – DECEMBER 14, 2004

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-281 (Sub-No. 1X)]

Texas North Western Railway Company–Abandonment Exemption–in Moore, Hutchinson and Hansford Counties, TX

Texas North Western Railway Company (TXNW)<sup>1</sup> has filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon approximately 21.9 miles of its line of railroad known as the Capps Spur located in Moore, Hutchinson, and Hansford Counties, TX. The line extends from milepost 20.0 at Capps, TX, through milepost 29.9 at Morse, Junction, TX, to the end of the track at milepost 34.0 in Morse, TX (14.0 miles), and from milepost 29.9 at Morse Junction to the end of the track at milepost 37.8 in Pringle, TX (7.9 miles). The line traverses United States Postal Service Zip Codes 79086, 79083, and 79062.<sup>2</sup>

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<sup>1</sup> TXNW is a wholly owned subsidiary of TNW Corporation. See TNW Corporation–Continuance in Control Exemption–Texas Rock Crusher Railway Company, STB Finance Docket No. 33564 (STB served Mar. 20, 1998).

<sup>2</sup> TXNW states that the Capps Spur forms the eastern end of TXNW’s current rail line, the active portion of which extends west from Capps to a connection with The Burlington Northern and Santa Fe Railway Company at Etter Junction, TX. Additional TXNW lines extending north from the Capps Spur at Morse and South from the Capps Spur at Pringle were abandoned in 1987. See Texas North Western Railway Company–Abandonment and

(continued...)

TXNW has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic formerly handled on the line can be rerouted over other lines;<sup>3</sup> (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 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 January 13, 2005, unless stayed pending

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<sup>2</sup>(...continued)

Discontinuance of Service Exemption–Hansford and Hutchinson Counties, TX; Texas County, OK; and Seward County, KS, Docket No. AB-281X (ICC served Aug. 19, 1987).

<sup>3</sup> TXNW notes that, at one time, The Atchison, Topeka and Santa Fe Railway Company held overhead trackage rights on TXNW's Etter Junction-Morse line, but those rights were discontinued in 1990. See The Atchison, Topeka and Santa Fe Railway Company–Discontinuance of Trackage Rights Exemption–In Moore, Hutchinson and Hansford Counties, TX, Docket No. AB-52 (Sub-No. 63X) (ICC served July 16, 1990).

reconsideration. Petitions to stay that do not involve environmental issues,<sup>4</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>5</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 23, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 3, 2005, 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 the TXNW's representative: Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832.

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

TXNW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 17, 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

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<sup>4</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>5</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).

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), TXNW 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 TXNW's filing of a notice of consummation by December 14, 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: December 8, 2004.

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

Vernon A. Williams

Secretary