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SERVICE DATE – APRIL 2, 2007

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-290 (Sub-No. 279X)]

The Cincinnati, New Orleans and Texas Pacific Railway Company—Abandonment
Exemption—in Scott County, TN

The Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP), a wholly owned subsidiary of Norfolk Southern Railway Company, has filed a notice of exemption¹ under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 12.44-mile line of railroad between milepost NR 0.00 at New River and milepost NR 12.44 at Sterling, in Scott County, TN.² The line traverses United States Postal Service Zip Code

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. CNOTP initially indicated in its notice of exemption a proposed consummation date of May 1, 2007, but because the verified notice was filed on March 13, 2007, consummation may not take place prior to May 2, 2007. CNOTP has been informed by a Board staff member that consummation may not take place until May 2, 2007.

² In its verified notice of exemption filed on March 13, 2007, CNOTP also requested abandonment of a second line segment located between milepost NR 215.30 at Helenwood and milepost NR 218.60 at New River, in Scott County, a distance of 3.30 miles. By letters filed on March 20, 2007, and on March 21, 2007, CNOTP requests that the Board amend its notice. CNOTP indicates that, in its notice of exemption and environmental report, CNOTP stated that it did not have fee title to the entire right-of-way of the line. CNOTP states that the line segment between mileposts NR 215.30 and NR 218.60 is leased from the Trustees of the Cincinnati Southern Railway (CSR). According to CNOTP, the Trustees hold the CSR property on behalf of its owner, the City of Cincinnati, OH. CNOTP states that the Trustees are not required to file with the Board for authority to abandon this line segment or any other part of their line because

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37841, and includes the former stations of Highway Jct., Pemberton, Hunter, Slick Rock, Brimstone, and Sterling.³

CNOTP 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 (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.

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the City, the Trustees, and CSR have never held themselves out as a common carrier to provide rail service nor have they operated any part of their line, but have always leased it to CNOTP. Accordingly, CNOTP's request to amend its March 13, 2007 notice of exemption will be granted. However, CNOTP has been notified that the request to discontinue the line segment between mileposts NR 215.30 and NR 218.60 requires a separate notice of exemption to be filed, accompanied by the appropriate filing fee. Therefore, a decision on the discontinuance will be handled in a separate decision.

³ In another letter also filed on March 21, 2007 (March 21 letter), CNOTP clarified the Zip Codes and stations for the line segment that is being abandoned.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 2, 2007, unless stayed pending reconsideration.⁴ Petitions to stay that do not involve environmental issues,⁵ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),⁶ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 12, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 23, 2007,⁷ with: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

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

⁴ On March 15, 2007, Seaside Holdings, Inc. (Seaside), filed a notice of intent to file an OFA to purchase both line segments. However, because CNOTP has now amended its March 13, 2007 notice, only one line segment between mileposts NR 0.00 and NR 12.44 is being abandoned. The Board will address Seaside's request for this line segment, and any other requests that may be timely filed, in a separate decision.

⁵ 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.

⁶ Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).

⁷ CNOTP, in its March 21 letter, states that at least one parcel of the right-of-way is held by CNOTP by easement. Therefore, CNOTP contends that it does not have a continuous right-of-way that can be conveyed for public use.

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

CNOTP 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 April 6, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 245-0305. [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), CNOTP 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 CNOTP's filing of a notice of consummation by April 2, 2008, 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: March 27, 2007.

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

Vernon A. Williams

Secretary