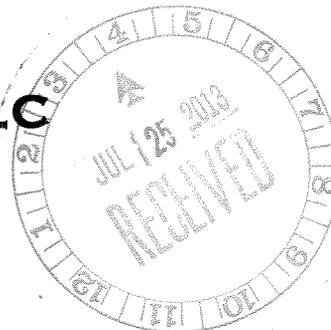


# BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS  
2401 PENNSYLVANIA AVENUE, NW  
SUITE 300  
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820  
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ROBERT A. WIMBISH

234577

(202) 663-7824 (Direct Dial)  
E-Mail: rwimbish@bakerandmiller.com

July 25, 2013

**FILED**

JUL 25 2013

**SURFACE  
TRANSPORTATION BOARD**

**BY HAND DELIVERY**

Cynthia T. Brown, Chief  
Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington DC 20423-0001

Re: *Norfolk Southern Railway Company – Discontinuance of Service Exemption – In Ontario, Seneca, and Wayne Counties, New York, STB Docket No. AB-290 (Sub-No. 356X)*

Dear Ms. Brown:

Pursuant to the Board's exemption procedures for the discontinuance of rail service over lines with no local business for at least two years (49 C.F.R. § 1152.50), enclosed on behalf of Norfolk Southern Railway Company are an original and 11 copies of a verified discontinuance of service notice of exemption.

A check in the amount of \$3,700.00 is enclosed as the filing fee.

Please acknowledge receipt and filing of this notice of exemption by date-stamping the enclosed eleventh copy and returning it to the courier to return to me.

Sincerely,

A handwritten signature in black ink that reads "R. A. Wimbish".

Robert A. Wimbish  
Counsel for Norfolk Southern Railway Company

**FILE RECEIVED**  
JUL 25 2013  
SURFACE  
TRANSPORTATION BOARD

Enclosures

cc: Marc Kirchner  
Maquiling Parkerson  
LaWada Poarch

ENTERED  
Office of Proceedings  
JUL 25 2013  
Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC

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234577

STB DOCKET NO. AB-290 (Sub-No. 356X)

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NORFOLK SOUTHERN RAILWAY COMPANY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN ONTARIO, SENECA AND WAYNE COUNTIES, NEW YORK

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EXEMPTION NOTICE

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FILE RECEIVED  
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SURFACE  
TRANSPORTATION BOARD

Robert A. Wimbish  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave., NW  
Suite 300  
Washington, DC 20037  
Tel: (202) 663-7824  
Fax: (202) 663-7849

Attorney for Norfolk Southern  
Railway Company

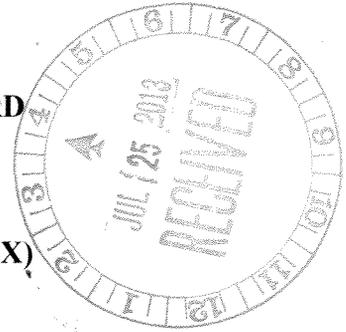
Dated: July 25, 2013

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-290 (Sub-No. 356X)**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN ONTARIO, SENECA AND WAYNE COUNTIES, NEW YORK**

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**EXEMPTION NOTICE**

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Norfolk Southern Railway Company (“NSR”) hereby submits a notice of exemption pursuant to 49 C.F.R. part 1152, subpart F (Exempt Abandonments and Discontinuances of Service and Trackage Rights), to discontinue service over an approximately 11.5-mile rail line in Ontario, Seneca, and Wayne Counties, New York (the “Line”). In accordance with the Board’s regulations at 49 C.F.R. §§ 1152.50(b) and (d), NSR provides the following information in support of its notice:

**Certification: 49 C.F.R. § 1152.50(b)**

The Line satisfies the criteria for discontinuance under the exemption at 49 C.F.R. part 1152, subpart F. See Verification of R.A. Bartle, General Manager Northern Region – Norfolk Southern Railway Company, attached hereto and made part hereof as Exhibit A.

**Proposed Consummation Date: 49 C.F.R. § 1152.50 (d)(2)**

The subject discontinuance will be consummated on or after September 13, 2013 (50 days after filing date of the notice of exemption).

**Additional Information Required: 49 C.F.R. §§ 1152.22(a)(1)-(4), (7)-(8) and (e)(4)**

**Exact name of applicant (49 C.F.R. § 1152.22(a)(1)):**

Norfolk Southern Railway Company.

**Whether applicant is a common carrier by railroad (49 C.F.R. § 1152.22(a)(2)):**

NSR is a Class I common carrier by railroad subject to the Board's jurisdiction under 49 U.S.C. Subtitle IV.

**Relief sought (49 C.F.R. § 1152.22(a)(3)):**

NSR is invoking the Board's two-year-out-of-service class exemption procedures to discontinue service over an approximately 11.5-mile line of railroad (the Line) located in Ontario, Seneca and Wayne Counties, New York, and extending from milepost GL 0.0 (near Lyons, New York), to milepost GL 11.5 (near Geneva, New York).

**Map (49 C.F.R. § 1152.22(a)(4)):**

A detailed map showing the location of the Line is attached hereto as Exhibit B.

**Applicant's representative (49 C.F.R. § 1152.22(a)(7)):**

NSR's representative to whom correspondence regarding this discontinuance should be sent is as follows:

Robert A. Wimbish  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave., NW  
Suite 300  
Washington, DC 20037  
Tel: (202) 663-7824  
Fax: (202) 663-7849

**USPS ZIP codes (49 C.F.R. § 1152.22(a)(8)):**

The Line lies within the following U.S. Postal Service ZIP Codes territories: 14456, 14489, and 14532.

**Rural and Community Impact (49 C.F.R. § 1152.22(e)(4)):**

The Line has been dormant for at least two years due to a lack of demand for rail service, so NSR anticipates no rural or community impact from the discontinuance of its common carrier obligation. Because the Line has not been used for rail shipments for over twenty-four (24) months, there will be no effect on regional or local transportation systems and patterns, and no diversion of traffic to other transportation systems or modes would result from NSR's action.

The informational requirement of section 1152.22(e)(4) (alternative public uses of rail property) appears to be pertinent only where the railroad proposes to *abandon* rail property.<sup>1</sup> Here NSR seeks to *discontinue service* over the Line, not abandon it, and for this reason NSR has no opinion on whether or not the subject rail property might be appropriate for use for other public purposes. Although of questionable relevance here (because the proposed action does not entail abandonment of a rail line), NSR nevertheless states as follows: based upon the information in its possession, NSR is unaware of any condition that would affect the transfer of title to or the use of the railroad right-of-way for other than rail purposes.

**Labor Protection**

The interests of affected railroad employees, if any, will be protected by the conditions discussed in Oregon Short Line Railroad —Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

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<sup>1</sup> See, e.g., Columbus and Greenville Railway Company – Discontinuance of Service Exemption – in Greenwood, MS, STB Docket No. AB-297 (Sub-No. 103X), slip op. at 2 n.2 (STB served July 3, 2007) (“CAGY-Greenwood”) (“Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate”); Norfolk Southern Railway Company—Discontinuance Exemption—in Mahoning County, OH, STB Docket No. AB-290 (Sub-No. 292X), slip op. at 2 n.2 (“NS-Mahoning”) (STB served March 15, 2007) (same); Chillicothe-Brunswick Rail Maintenance Authority—Discontinuance Exemption—in Livingston, Linn, and Chariton Counties, MO, STB Docket No. AB-1001X, slip op at 2 n.3 (“CBRA-Livingston”) (STB served Feb 23, 2007) (same).

## **Certifications**

Attached hereto as Exhibit C are the Certificates of Service and Publication pursuant to the notice requirements of 49 C.F.R. §§ 1105.12 and 1152.50(d)(1). For reasons set forth in the “Environmental and Historic Report” section below, the certification of service requirement at 49 C.F.R. § 1105.11 (transmittal of Environmental and Historic Reports) is inapplicable here.

## **Environmental and Historic Report**

A notice of exemption to discontinue service over (rather than to abandon) a line of railroad that has been out of service for more than two years does not require the preparation or submission of an Environmental and/or Historic Report.<sup>2</sup>

Respectfully submitted,



Robert A. Wimbish  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave., NW  
Suite 300  
Washington, DC 20037  
Tel: (202) 663-7824  
Fax: (202) 663-7849

Attorney for Norfolk Southern Railway Company

July 25, 2013

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<sup>2</sup> See, e.g., Everett Railroad Company – Discontinuance of Service Exemption – In Blair County, PA, STB Docket No. AB-271X slip op. at 2 n.2 (STB served Nov. 16, 2007) (“Because this is a discontinuance proceeding and not an abandonment, . . . no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively”); CAGY-Greenwood at 2 n.2 (same); NS-Mahoning at 2 n.2 (same); CBRA-Livingston at 2 n.3 (same).

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-290 (Sub-No. 356X)**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN ONTARIO, SENECA AND WAYNE COUNTIES, NEW YORK**

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**EXEMPTION NOTICE**

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**EXHIBIT A**

**CERTIFICATION PURSUANT TO  
49 C.F.R. § 1152.50(b)**

**CERTIFICATION**

STATE OF GEORGIA:

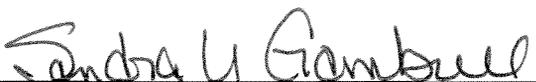
ss:

CITY OF ATLANTA:

R.A. Bartle makes oath and says that he is General Manager Northern Region for Norfolk Southern Railway Company; that the line between Milepost GL 0.0 and Milepost GL11.50 in Wayne, Seneca and Ontario Counties, New York, over which service is to be abandoned, is subject to his supervision and direction; that no local traffic has moved over the line for at least two years, that no overhead traffic has moved over the line for at least two years and that overhead traffic, if there were any, could be rerouted over other lines; and that no formal complaint filed by a user of rail service on the line or a state or local government entity acting on behalf of such user regarding cessation of service over the line either is pending before the Surface Transportation Board or any U. S. District Court or has been decided in favor of the complainant within the two-year period.

  
\_\_\_\_\_  
R.A. Bartle

Subscribed and sworn to before me  
this 5<sup>th</sup> day of June, 2013.

  
\_\_\_\_\_  
Notary Public

My commission expires:

4/20/15

SANDRA Y. GAMBRELL  
NOTARY PUBLIC  
COBB COUNTY, GEORGIA  
MY COMMISSION EXPIRES APRIL 20, 2015

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-290 (Sub-No. 356X)**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN ONTARIO, SENECA AND WAYNE COUNTIES, NEW YORK**

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**EXEMPTION NOTICE**

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**EXHIBIT B**

**MAP**



**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-290 (Sub-No. 356X)**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN ONTARIO, SENECA AND WAYNE COUNTIES, NEW YORK**

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**EXEMPTION NOTICE**

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**EXHIBIT C**

**CERTIFICATIONS OF  
SERVICE/PUBLICATION**

**Certificate of Service**

**49 C.F.R. § 1152.50(d)(1) – Notice**

I hereby certify that Norfolk Southern Railway Company supplied written notice of its intent to use the Surface Transportation Board's notice of exemption procedures to discontinue service over approximately 11.5 miles of rail line located in Ontario, Seneca and Wayne Counties, New York. Written notice (a representative copy of which is attached), was served on July 8, 2013, upon the following:

Hon. Jeffrey Cohen  
Acting Secretary to the Commission  
New York State Public Service Commission  
Empire State Plaza, Agency Building 3  
Albany, NY 12223-1350

David Dorfman  
SDDC TEA-Railroads for National Defense  
709 Ward Dr., Bldg. 1990  
Scott AFB, IL 62225

Charlie Stockman  
National Park Service  
Rivers & Trails Conservation Program  
1201 Eye Street, NW, 9th Floor  
(Org. Code 2220)  
Washington, D.C. 20005

Thomas L. Tidwell, Chief  
Forest Service  
U.S. Department of Agriculture  
Sidney R. Yates Federal Building  
201 14th Street SW  
Washington, DC 20024

July 25, 2013

  
\_\_\_\_\_  
Robert A. Wimbish  
Attorney for Norfolk Southern Railway Company

**Certificate of Publication**

**49 C.F.R. § 1105.12 – Newspaper Notice**

I certify that a “Notice of Intent to Discontinue Rail Service” was published in the form prescribed by the Surface Transportation Board for a notice of exemption strictly to discontinue rail service. The notice was published one time each in the *Finger Lakes Times* (July 11, 2013) and *Daily Messenger* (July 12, 2013), newspapers of general circulation in Ontario and Wayne Counties, New York, and Seneca County, New York, respectively, where the subject Line is located.

July 25, 2013



Robert A. Wimbish

Attorney for Norfolk Southern Railway Company

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-290 (Sub-No. 356X)**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN ONTARIO, SENECA AND WAYNE COUNTIES, NEW YORK**

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**EXEMPTION NOTICE**

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**DRAFT FEDERAL REGISTER  
NOTICE OF EXEMPTION**

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB-290 (Sub-No. 356X)]

Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Ontario,  
Seneca and Wayne Counties, New York

Norfolk Southern Railway Company (NSR) filed on July 25, 2013, a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights to discontinue service over approximately 11.5 miles of railroad in Ontario, Seneca and Wayne Counties, New York. The subject rail line extends from milepost GL 0.0 (near Lyons, New York) to milepost GL 11.5 (near Geneva, New York). The line traverses United States Postal Service Zip Codes 14456, 14489, and 14532.

NSR has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line that has been, or would need to 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 applicable requirements at 49 C.F.R. § 1105.12 (newspaper publication), and 49 C.F.R. § 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under Oregon Short Line Railroad – Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 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 September 13, 2013, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 C.F.R. § 1152.27(c)(2) must be filed by August \_\_, 2013.<sup>1</sup> Petitions to reopen must be filed by \_\_\_\_\_, 2013, with the 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 NSR's representative:  
Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300,  
Washington, DC 20037.

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

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: \_\_\_\_\_.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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<sup>1</sup> Each OFA must be accompanied by the filing fee, which is currently set at \$1,600. See 49 C.F.R. § 1002.2(f)(25). Because this proceeding involves the proposed discontinuance of rail service and not abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-290 (Sub-No. 356X)**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN ONTARIO, SENECA AND WAYNE COUNTIES, NEW YORK**

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**EXEMPTION NOTICE**

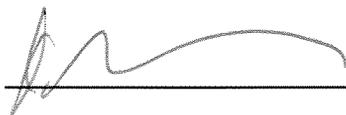
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**VERIFICATION**

Verification

I, John Friedmann, Vice President for Norfolk Southern Railway Company ("NSR"), hereby verify under penalty of perjury that to the best of my knowledge the foregoing discontinuance of service notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of NSR in connection with this proceeding before the Surface Transportation Board.

Executed this 23<sup>rd</sup> day of May 2013

A handwritten signature in black ink, appearing to read 'John H. Friedmann', is written over a solid horizontal line.

John H. Friedmann  
Vice President