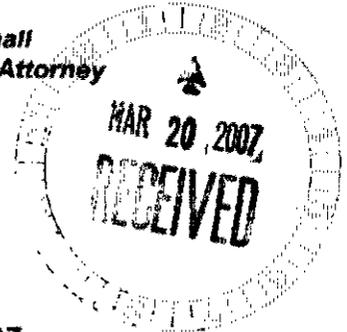


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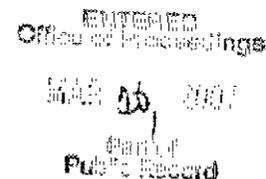
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March 20, 2007

via fax 202 245-0454 cc: Office of Proceedings 202 245-0464
and original and 10 copies via DHL Express

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024



Re: STB Docket No. AB-290 (Sub-No. 279X), Cincinnati, New Orleans and Texas Pacific Railway Company - Abandonment Exemption - In Scott County, TN - Request to Re-Style Proceeding and Exemption as a Discontinuance of Service and an Abandonment Exemption

Dear Mr. Williams:

Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP), a wholly-owned subsidiary of Norfolk Southern Railway Company, filed the above-styled notice of exemption on March 13, 2007. CNOTP now believes it would be most appropriate to style the above proceeding and exemption as a discontinuance of service and an abandonment exemption. CNOTP asks that the Board amend the caption and exemption notice accordingly and provides the following explanation.

The subject 15.74-mile branch line consists of two contiguous segments between mileposts NR 215.30 (Helenwood, TN) and NR 218.60 (New River, TN), and between mileposts NR 0.00 (New River, TN) and NR 12.44 (Sterling, TN). The exemption notice should be a notice of exemption for discontinuance of service under a lease for the Helenwood-New River, TN segment, even though it will result in complete abandonment, and for abandonment of the New River-Sterling, TN segment.

The history of this line is explained in the historic report in the notice of exemption and is repeated here as pertinent. The Helenwood-New River, TN segment is leased from the Trustees of the Cincinnati Southern Railway (CSR).

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CNOTP stated in the notice and the environmental report that it did not have fee title to the entire right-of-way of the line. The Trustees hold the CSR property on behalf of its owner, the City of Cincinnati, Ohio. CSR is not a corporation nor is it a common carrier railroad. Contrary to my understanding at an earlier time, the Trustees are not required to file with the Board for authority to abandon the Helenwood-New River, TN line segment or any other part of their line, because the City, the Trustees, and the CSR have never operated any part of their line, but have always leased it to CNOTP, nor have they ever held themselves out as a common carrier to provide rail service.

The Helenwood-New River, TN line segment was once part of the main line, but due to a relocation of the main line, the segment became the initial segment of the New River-Sterling, TN branch line. The rest of the subject branch line between New River and Sterling was once the Brimstone Railroad Company line. Brimstone abandoned the line pursuant to ICC authority in ICC Finance Docket No. 23017, December 16, 1964. New River Railway Company, a former CNOTP subsidiary, acquired the property and began operations over it, pursuant to ICC Finance Docket Nos. 23494, 23495 and 23496, May 10, 1965. CNOTP received discontinuance authority for the Helenwood-New River, TN segment in ICC Finance Docket No. 24944, served July 19, 1968. Due to the main line relocation, which cut off access to this branch, CNOTP left the Helenwood-New River, TN line segment in place to provide access to the old Brimstone line from the new main line. New River Railway Company subleased the Helenwood-New River, TN line segment pursuant ICC Finance Docket No. 24943, the companion ICC decision to ICC Finance Docket No. 24944. CNOTP's New River Railway subsidiary subsequently was merged into CNOTP on March 31, 1970 pursuant to ICC authority in ICC Finance Docket Nos. 25901, 25902 and 25903.

Because the Helenwood-New River, TN line segment is leased from the Trustees, CNOTP's notice of exemption is more appropriately styled a discontinuance with respect to that segment. In *Wisconsin Central Ltd. v. STB*, 112 F.3d 881 (7th Cir. 1997), the Court of Appeals stated that the lessor of an abandoned line (e.g. a line not within the jurisdiction of the agency, just as a private line would not be within the agency's jurisdiction) takes on no obligation beyond the lease and remains outside the agency's jurisdiction. Although the filing by the lessee in that case ultimately would result in the complete abandonment of the line, the case was ultimately styled as a discontinuance. As the *Wisconsin Central* decision noted, Judge Friendly stated in *City of New York v. United States*, 337 F.Supp. 150, 153 (E.D.N.Y. 1972), the lessor of a rail line owes no independent obligation to provide service that would revive when its lessee discontinues operations "unless the lessor was a 'carrier by railroad' when the lease was made." See also *Meyers v. Famous Realty, Inc.*, 271 F.2d 811 (2d Cir. 1959), cert

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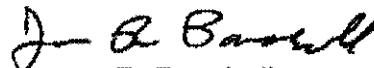
denied 362 U.S. 910 (1960). The CSR, the Trustees and the City clearly were not rail carriers when the subject lease was executed. Moreover, CSR, the Trustees and the City have never provided rail service over the leased line nor held themselves out as common carriers to offer rail service over the line. See also *City of Venice – Abandonment Exemption – In Venice, IL and St. Louis, MO*, STB Docket No. AB-863X (STB served June 22, 2004) and *Hanson Natural Resources Company – Non-Common Carrier Status – Petition For A Declaratory Order*, ICC Finance Docket No. 32248 (ICC served December 5, 1994). These precedents provide the basis for the request to restyle the docket and change the exemption to a discontinuance of service under a lease for the Helenwood-New River, TN segment.

Thus, CNOTP thinks the above proceeding should be styled as a discontinuance of service under a lease for the Helenwood, TN-New River, TN segment and as an abandonment for the New River, TN-Sterling, TN segment and the exemption should be for those actions. However, CNOTP asserts that the Trustees, the CSR and the City have no obligation to file for abandonment authority or exemption with respect to the Helenwood-New River, TN segment, even though it will be effectively abandoned.

No one will be prejudiced or misled by the change in styles or the clarification. The line has been out of service for many years. Therefore, there are no shippers on the line. The newspaper notice and environmental reports refer to abandonment of the line. That is effectively the action that will occur as a result of the filing. Moreover, discontinuance is usually considered lesser relief than abandonment. The notice was filed just one week ago. The change should not hinder or delay the Board's processing of the matter. The attorney for the party that filed a notice of intent to file an Offer of Assistance is being informed of the requested change via fax.

We appreciate the Board's consideration of this matter.

Very truly yours,


James R. Paschall

via fax 202 331-8330

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