

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
May 1, 2023
Part of
Public Record

DOCKET NO. FD 36699 (SUB-NO. 1)

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY
COMPANY—INTRA-CORPORATE FAMILY OPERATION EXEMPTION—
LINE OF NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(D)(3)**

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**VERIFIED NOTICE OF EXEMPTION
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Norfolk Southern Railway Company (“NSR”), on behalf of itself and its wholly owned subsidiary, The Cincinnati, New Orleans and Texas Pacific Railway Company (“CNOTP”) (collectively, “Applicants”), files this verified notice of exemption (“Verified Notice”) pursuant to 49 C.F.R. § 1180.2(d)(3) for an intra-corporate family transaction involving operation by CNOTP of a line of railroad known as the Cincinnati Southern Railway (the “CSR Line”).

The CSR Line is an approximately 338.2-mile rail line extending from the City of Cincinnati, Hamilton County, Ohio, at the point of connection to NSR estimated to be at or near calculated milepost 0.0±, and proceeds south to the point of connection to The Alabama Great Southern Railroad Company (a subsidiary of NSR) in the City of Chattanooga, Hamilton County, Tennessee, at or near calculated milepost 338.2±,

together with all branch lines, sidings, and other appurtenant railroad facilities associated therewith.¹

The CSR Line was leased to CNOTP by the Trustees of the Cincinnati Southern Railway (“Trustees”) pursuant to a lease agreement dated October 11, 1881, and has been operated by CNOTP continuously since that time. The lease has been extended and modified several times over the years. The most recent lease modification was approved by the Interstate Commerce Commission in 1987.²

In the primary application to which this Verified Notice relates, Applicants seek authority for NSR to acquire and operate the CSR Line from the Trustees.³ Applicants intend for CNOTP to continue to operate the CSR Line for the foreseeable future after it is acquired by NSR.

Under § 1180.2(d)(3), transactions within a corporate family are exempted from Board approval so long as they will not result in adverse changes in service levels, significant operational changes, or any changes in the competitive balance

¹ As explained in the application filed in Docket No. FD 36699, given the long history of the CSR Line, the identification of specific mileposts at the Line’s termini has varied slightly over time.

² *Cincinnati, New Orleans & Tex. Pac. Ry.—Exemption of Modification of Lease—Cincinnati S. Ry.*, Docket No. FD 21666 (Sub-No. 1) (ICC decided Nov. 6, 1987).

³ *See Norfolk Southern Railway & The Cincinnati, New Orleans & Texas Pacific Railway—Acquisition—Trustees of the Cincinnati Southern Railway*, Docket No. FD 36699.

with carriers outside the corporate family. The Board has previously exempted rail line operations pursuant to this exemption.⁴

The information required by 49 C.F.R. § 1180.4(g) is set out below.

1180.6(a)(1)(i) ***A description of the proposed transaction, including . . . a brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.***

NSR is a Class I carrier that, together with its rail subsidiaries (including CNOTP), operates approximately 19,300 route miles in the United States. CNOTP operates the CSR Line, which consists of approximately 338.2 miles in Tennessee, Kentucky, and Ohio. CNOTP was formed to lease and operate the CSR Line in 1881, and was acquired by the Southern Railway Company (“SRC”) in 1899.⁵ NSR is controlled by Norfolk Southern Corporation, a non-carrier holding company that was formed in 1982 when the Interstate Commerce Commission authorized it to control Norfolk and Western Railway Company and SRC.⁶ As a result, CNOTP is a wholly owned subsidiary of NSR.

⁴ See *Columbia & Cowlitz Ry.—Corporate Family Transaction Exemption—Patriot Woods R.R.*, Docket No. FD 35473 (STB served Mar. 10, 2011); *Elgin, Joliet & E. Ry.—Intra-Corporate Family Lease Exemption—Ill. Cent. R.R.*, Docket No. FD 35224 (STB served Mar. 13, 2009); *Norfolk S. Ry.—Corporate Family Transaction Exemption—High Point, Randleman, Asheboro & S. R.R.*, Docket No. FD 33952 (STB served Dec. 12, 2000).

⁵ *Modification & Extension of Lease of Cincinnati S. Ry.*, 138 I.C.C. 745, 746 (1928).

⁶ *Norfolk S. Corp.—Control—Norfolk & W. Ry. & S. Ry.*, 366 I.C.C. 173 (1982). In 1990, SRC changed its name to NSR.

In Docket No. FD 36699, Applicants seek authority for NSR to acquire and operate the CSR Line. Should the Board approve that transaction, the lease between CNOTP and the Trustees will be terminated. However, Applicants intend for CNOTP to continue to operate the CSR Line for the foreseeable future, and therefore seek Board authority for this intra-corporate family transaction.

This is a transaction within a corporate family. The intra-corporate family transaction will allow CNOTP to continue operating the CSR Line following consummation of the line sale transaction in Docket No. FD 36699 and termination of CNOTP's existing lease with the Trustees. The transaction that is the subject of this Verified Notice will not adversely affect the level of existing rail service and will not result in significant operational changes or any change in the competitive balance with carriers outside of the NSR corporate family. Applicants will maintain the same pattern of service and train operations, and shippers will continue to be served as they are today. Applicants will also maintain the same interchanges with the same connecting carriers at the same locations where those railroads currently interchange traffic.

The Applicants involved in this intra-corporate family transaction are Norfolk Southern Railway Company and its wholly owned subsidiary, The Cincinnati, New Orleans and Texas Pacific Railway Company:

Norfolk Southern Railway Company
650 West Peachtree Street N.W.
Atlanta, GA 30308
(470) 463-6314

The Cincinnati, New Orleans and Texas Pacific Railway Company
650 West Peachtree Street N.W.
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Questions and correspondence regarding this Verified Notice may be addressed to:

Raymond A. Atkins
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1180.6(a)(1)(ii) The proposed time schedule for consummation of the proposed transaction.

Applicants intend to consummate the transaction that is the subject of this Verified Notice contemporaneously with consummation of the line sale transaction in Docket No. FD 36699.

1180.6(a)(1)(iii) The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

The transaction is intended to allow CNOTP to continue to operate the CSR Line following approval of the transaction in Docket No. FD 36699 and termination of CNOTP's existing lease with the Trustees.

1180.6(a)(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

NSR is a Class I carrier that operates approximately 19,300 route miles in the following states: Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky,

Louisiana, Maryland, Michigan, Mississippi, Missouri, New York, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.

CNOTP is a Class III carrier that operates the CSR Line, which is approximately 338.2 miles in the following states: Tennessee, Kentucky, and Ohio.

1180.6(a)(6) *Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed.*

Exhibit 1 to the application in Docket No. FD 36699 contains Map A showing NSR's system map and Map B showing the CSR Line currently operated by CNOTP.

1180.6(a)(7)(ii) *Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.*

Applicants expect to enter into a written agreement providing for CNOTP's operation on the CSR Line.

1180.4(g)(1)(i) *Level of Labor Protection to be Imposed*

As a condition to this exemption, Applicants do not object to imposition of the employee protective conditions set out in *Mendocino Coast Railway, Inc.—Lease & Operate*, 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

1180.4(g)(2) *Environmental Documentation and Historic Report*

This intra-corporate family transaction does not require environmental information under 49 C.F.R. § 1105.6(c)(1) because the transaction does not involve

a change in carrier operations. Under 49 C.F.R. § 1105.8(b)(2), the transaction is also exempt from historic preservation reporting requirements.

1180.4(g)(3)(i) Interchange Commitments

The written agreement into which NSR and CNOTP expect to enter will not include any provision that would limit the future interchange of traffic with any third-party connecting carrier.

* * *

Respectfully submitted,

/s/ Raymond A. Atkins

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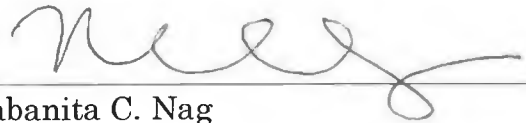
thynes@sidley.com

*Counsel for Norfolk Southern Railway Company and The Cincinnati, New Orleans
and Texas Pacific Railway Company*

Dated: May 1, 2023

VERIFICATION

I, Nabanita C. Nag, declare under penalty of perjury on behalf of Norfolk Southern Railway Company ("NSR") and The Cincinnati, New Orleans and Texas Pacific Railway Company ("CNOTP") that the foregoing Verified Notice of Exemption is true and correct to the best of my knowledge. Further, I certify that I am duly authorized to make such verification on behalf of NSR and CNOTP in connection with this proceeding in Docket No. FD 36699 (Sub-No. 1).



Nabanita C. Nag

Executive Vice President & Chief Legal
Officer

Executed on: April 26, 2023