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FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36252]

North Carolina & Virginia Railroad Company, L.L.C., Chesapeake & Albemarle
Railroad Division—Lease Amendment and Operation Exemption Including Interchange
Commitment—Norfolk Southern Railway Company

Chesapeake & Albemarle Railroad (CA), a Class III railroad and division of North Carolina & Virginia Railroad Company, L.L.C. (NCVA), has filed a verified notice of exemption under 49 U.S.C. § 10902 to enter into a superseding and replacement lease with Norfolk Southern Railway Company (NSR) and operate lines of railroad between (1) milepost NS 4.00 at Providence Junction, Va., and milepost NS 8.00 at Butts, Va., (2) milepost NS 8.00 at Butts, Va., and milepost NS 73.59 at Edenton, N.C., and (3) milepost WK 0.00 at Elizabeth City, N.C., and milepost WK 7.48 at Weeksville, N.C. (collectively, the Line). The Line totals approximately 77.07 miles.

CA and NSR entered into a lease in 1990, which covered lines between (1) milepost NS 8.00, and milepost NS 74.00, and (2) milepost WK 0.00, and milepost WK 7.48 (Original Lease).¹ A 2003 amendment added a line between milepost NS 4.00, and milepost NS 8.00.² In 2004 and 2007, the Board issued abandonment and

¹ Chesapeake & Albemarle R.R.—Lease, Acquis. & Operation Exemption—S. Ry., FD 31617 (ICC served Apr. 17, 1990).

² N.C. & Va. R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 34272 (STB served Jan. 22, 2003).

discontinuance of service exemptions for line included in the Original Lease between (1) milepost NS 73.67 and milepost NS 74.00 at Edenton, N.C.,³ and (2) milepost NS 73.59 and milepost NS 73.67 at Edenton, N.C.⁴ In 2011, CA and NSR added an amendment to extend the term of the Original Lease and strike all provisions relating to the option to purchase.⁵ Now, CA explains that the Original Lease has expired, and CA and NSR have reached a new Lease Agreement (New Lease). CA and NSR intend the New Lease to supersede and replace the Original Lease and extend the term for an additional 10 years. CA declares that it currently operates the Line pursuant to the Original Lease and will continue to operate the Line under the New Lease.⁶

According to CA, the New Lease includes an interchange commitment that is similar in structure to the interchange commitment included in the Original Lease. As

³ Norfolk S. Ry.—Aban. Exemption—in Chowan Cty., N.C., AB 290 (Sub-No. 251X) et al. (STB served July 16, 2004). NSR consummated the abandonment between milepost NS 73.67 and milepost NS 74.00.

⁴ The verified notices filed by NSR and CA describe the line to be abandoned and discontinued as between milepost NS 73.59 and milepost NS 73.67. Likewise, NSR consummated the abandonment between milepost NS 73.59 and milepost NS 73.67. Therefore, it appears this milepost was erroneously stated as 73.50 in the published notice. See Norfolk S. Ry.—Aban. Exemption—in Chowan Cty., N.C., AB 290 (Sub-No. 295X) et al. (STB served Aug. 9, 2007).

⁵ N.C. & Va. R.R., Chesapeake & Albemarle R.R. Div.—Lease Amendment Exemption—Norfolk S. Ry., FD 35564 (Sub-No. 1) (STB served Dec. 16, 2011).

⁶ The Original Lease, as amended in 2011, appears to have included line from mileposts NS 73.59 to NS 74.00, which had been abandoned prior to the 2011 lease amendment. CA does not state whether it continued to operate over that abandoned line after the 2011 renewal.

required under 49 C.F.R. § 1150.43(h)(1), CA provided additional information regarding the interchange commitment.

CA does not project that this transaction will result in annual revenues significant enough to establish a Class I or Class II rail carrier. Additionally, CA confirms that its total revenues will not exceed \$5 million after the transaction; however, CA states that NCVA, of which CA is a division, will have revenues over \$5 million following the transaction. Accordingly, CA is required by Board regulations to send notice of the transaction to the national offices of the labor unions with employees on the affected lines at least 60 days before this exemption is to become effective, to post a copy of the notice at the workplace of the employees on the affected lines, and to certify to the Board that it has done so. 49 C.F.R. § 1150.42(e).

CA requests a waiver of the 60-day advance labor notice requirement under 49 C.F.R. § 1150.42(e). In that request, CA argues that: (1) no employees of the transferring carrier, NSR, will be affected by the lease and no employees of NSR have worked on any part of the Line since 2003 and therefore, posting notices would be futile because no NSR employees work on the Line and (2) there will be no operational changes and no CA employees will be affected by the lease. CA's waiver request will be addressed in a separate decision.

CA states that it expects to consummate the transaction on the effective date of this exemption. The Board will establish the effective date in its separate decision on the waiver request.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed at least seven days before the exemption becomes effective.

An original and 10 copies of all pleadings, referring to Docket No. FD 36252, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

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Decided: December 3, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.