

SERVICE DATE – APRIL 24, 2007

SURFACE TRANSPORTATION BOARD

DECISION

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

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY–
ABANDONMENT EXEMPTION–IN SCOTT COUNTY, TN

Decided: April 20, 2007

The Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP), a wholly owned subsidiary of Norfolk Southern Railway Company (NSR), filed a notice of exemption 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.¹ Notice of the exemption was served and published in the Federal Register on April 2, 2007 (72 FR 15755-56). The exemption is scheduled to become effective on May 2, 2007.

By letter filed on April 3, 2007, NSR filed a request to withdraw its subsidiary CNOTP's notice of exemption. NSR states that a real estate valuation issue that cannot be reconciled within the time period of this proceeding needs to be investigated further. NSR requests that the Board dismiss the proceeding without prejudice.

When a carrier is authorized to abandon a line, that authority is permissive, not mandatory. The carrier can choose to exercise that authority or not. Because carriers are not compelled to abandon lines, the Board normally grants a carrier's motion to withdraw its request for abandonment authority. See Almono LP–Abandonment Exemption–in Allegheny County, PA, STB Docket No. AB-842X (STB served Jan. 28, 2004). Until CNOTP exercises the abandonment authority it has received, which it has not under 49 CFR 1152.29(e)(2), the line is not abandoned and the Board's primary jurisdiction over the line continues. Accordingly, the request will be granted, and the notice of exemption will be dismissed. Because the request to withdraw the notice of exemption is being granted, the notice of intent to file an offer of financial assistance, which was filed on March 15, 2007, by Seaside Holdings, Inc., is now moot.

¹ CNOTP, in its verified notice of exemption filed on March 13, 2007, also had 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. In letters filed on March 20, 2007, and on March 21, 2007, CNOTP stated that it leases and does not own this line segment and requested that the Board amend the notice to limit the abandonment exemption only to the 12.44-mile line of railroad. Accordingly, the notice was amended and CNOTP was advised that a separate notice of exemption would be required if it wishes to discontinue service over the line segment between mileposts NR 215.30 and NR 218.60.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. NSR's request to withdraw the notice of exemption filed by its subsidiary CNOTP on March 13, 2007, is granted, and the notice of exemption is dismissed without prejudice.
2. The notice served and published in the Federal Register on April 2, 2007, is vacated.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary