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Proceedings

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DECIDED DATE: 3/6/15

SERVICE DATE: 3/9/15

APPROVED: Rachael D. Campbell

Director



STB DOCKET NO. AB-290 (Sub-No. 354X)

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN SCOTT COUNTY, TN**

NOTICE OF EXEMPTION

REQUEST TO HOLD THE PROCEEDING IN ABEYANCE

On January 15, 2015, The Cincinnati, New Orleans and Texas Pacific Railway Company ("CNOTP"), a wholly owned subsidiary of Norfolk Southern Railway Company, filed a two year out-of-service notice of exemption seeking authority to discontinue rail service over an approximately 3.09-mile rail line extending from milepost NR 215.61 (near Helenwood) to milepost NR 218.7 (at New River) (the "Line") in Scott County, TN. Due to developments that have arisen since the time CNOTP filed its notice of exemption, CNOTP now requests that the Board hold this proceeding in abeyance and stay all further proceedings or other actions in this matter until such time as CNOTP files an Environmental and Historic Report ("E&HR") consistent with 49 CFR Part 1105.

On January 29, 2015 ("Jan. 29th Letter"), CNOTP filed a clarification letter to correct an incorrect statement erroneously included in CNOTP's notice of exemption. Specifically, the incorrect statement included in CNOTP's Notice stated that "[f]urther Board authority is required

for CNOTP to abandon service on the Line.”¹ In fact, the underlying track that comprises the Line is actually owned by the City of Cincinnati through an instrumentality known as Cincinnati Southern Railway (“CSR”), which is not a corporation and is not, and has never been, a common carrier. Because CNOTP does not own the underlying track and structures, it properly filed for discontinuance authority rather than abandonment authority. CNOTP’s Jan. 29th Letter further informed the Board that CNOTP understands that once discontinuance authority is obtained, CSR, as the owner of the track, has agreed to sell the track to KT Group, L.L.C., who CNOTP further understands intends to salvage the track, but not the ties. Because CSR is not a carrier subject to the Board’s jurisdiction, CSR (the owner of the track) will not be seeking further authority from the Board “to abandon service on the Line.”²

CNOTP has recently been in discussions with the Office of Environmental Analysis (“OEA”) concerning this discontinuance. Normally, an entity seeking discontinuance authority is not required to file an E&HR because further Board authority, including the preparation of an E&HR, is required for the underlying track owner to abandon service and salvage track. However, in this unique case, because the discontinuance is over track that is owned by an unregulated entity that is not subject to the Board’s jurisdiction, CNOTP’s discontinuance will allow CSR to salvage the track without seeking further abandonment authority or the preparation of an E&HR, although any salvage done by CSR would be subject to any state or federal environmental laws regarding salvage activities taking place on private property.

¹ The Cincinnati, New Orleans and Texas Pacific Railway Company – Discontinuance of Service Exemption, STB Docket No. AB-290 (Sub-No. 354X), at 5-6 (Filed January 15, 2015)

² This proceeding is related to The Cincinnati, New Orleans and Texas Pacific Railway Company – Abandonment Exemption – In Scott County, Tennessee, STB Docket No. AB-290 (Sub-No. 355X) whereby CNOTP seeks abandonment authority for a segment of track that it owns and that connects with the track owned by CSR.

In these unique circumstances, CNOTP understands from OEA that it would prefer the preparation of an E&HR for CNOTP's discontinuance. In light of this request, CNOTP has begun preparation of an E&HR to govern its discontinuance and hereby requests the Board to hold this proceeding in abeyance and stay all further proceedings or other actions in the matter until such time as the E&HR has been completed, served, and filed with the Board.

Respectfully submitted,

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