SURFACE TRANSPORTATION BOARD

[Docket No. FD 36666]

New Jersey Department of Environmental Protection—Acquisition

Exemption—Norfolk Southern Railway Company

The New Jersey Departme nt of Environmental Protection (NJDEP), a non-carrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire the right to reactivate rail service from Norfolk Southern Railway Company (NSR) on approximately 8.6 miles of rail-banked railroad line extending between milepost WD 2.9 in Jersey City, Hudson County, N.J., and milepost WD 11.5 in the Township of Montclair, Essex County, N.J. (the Line).

In Norfolk Southern Railway—Abandonment Exemption—in Hudson & Essex Counties, N.J., AB 290 (Sub-No. 408X) (STB served Sept. 29, 2020), the Board authorized abandonment of the Line.[1] NJDEP states that the Line is currently subject to interim trail use under a trail use agreement between NJDEP and NSR under the Trails Act. (Notice of Trail Use Agreement, Aug. 19, 2022, AB 290 (Sub-No. 408X).)

NJDEP states that NSR agreed to convey to NJDEP the property comprising the Line, including the rails, track materials, and bridges, as well as NSR's residual rights to terminate trail use and reactivate rail service. According to NJDEP, NSR does not wish to retain any residual rights related to the Line, and NJDEP is willing to acquire such

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[1] In the same decision, the Board issued a notice of interim trail use or abandonment (NITU) to allow the Open Space Institute Land Trust, Inc. (OSI), as the proposed trail sponsor, to negotiate with NSR for interim trail use/rail banking of the Line's right-of-way under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The NITU later was extended until September 29, 2022. Norfolk S. Ry.—Aban. Exemption—in Hudson & Essex Cntys., N.J., AB 290 (Sub-No. 408X) (STB served Sept. 3, 2021). Thereafter, pursuant to a request from OSI, the Board issued a replacement NITU substituting NJDEP as the proposed trail sponsor. Norfolk S. Ry.—Aban. Exemption—in Hudson & Essex Cntys., N.J., AB 290 (Sub-No. 408X) (STB served June 30, 2022).

residual rights. NJDEP states that it would obtain a contract operator to operate the Line if rail service were to be reactivated and acknowledges that any such operator would require operating authority from the Board.

NJDEP certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million. NJDEP further certifies that the proposed transaction does not involve a provision or agreement that would limit future interchange with a third-party connecting carrier.

The transaction may be consummated on or after March 8, 2023, the effective date of the exemption (30 days after the verified notice was filed).

If the verified 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 to stay must be filed no later than March 1, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36666, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on NJDEP's representative, Paul Stofa, State of New Jersey Department of Environmental Protection, 401 East State Street, Trenton, NJ 08625-0420.

According to NJDEP, this action is categorically excluded from environmental reporting requirements under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: February 15, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2023-03634 Filed: 2/21/2023 8:45 am; Publication Date: 2/22/2023]