

that are outside of their primary appointment.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-PCX-2002-55 and should be submitted by January 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-279 (Sub-No. 4X)]

#### Canadian National Railway Company— Discontinuance of Trackage Rights Exemption—in Niagara County, NY

Canadian National Railway Company (CN) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue trackage rights over a 0.15-mile portion of trackage owned by Canada Southern Railway Company (CSR) from a point on the international railway bridge at Niagara Falls, milepost 0.15, to a point where the trackage joins the CSX Transportation, Inc. trackage, milepost 0.0, in Niagara County, NY.<sup>1</sup> The line traverses United States Postal Service Zip Code 14305.

CN has certified that: (1) No local traffic has moved over the line for at

least 2 years; (2) any potential overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—*

*Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 14, 2003, unless stayed pending reconsideration. Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> must be filed by December 23, 2002. Petitions to reopen<sup>3</sup> must be filed by January 2, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CN's representative: Michael J. Barron, Jr., Counsel for Canadian National Railway Company, Canadian National/Illinois Central, 455 North Cityfront Plaza Drive, Chicago, IL 60611-5317.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

<sup>2</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

<sup>3</sup> Because this is a discontinuance proceeding, trail use/rail banking and public use conditions are not appropriate. This proceeding is exempt from environmental and historic reporting requirements. CN only intends to discontinue service over the line. Because CN's discontinuance of trackage rights will merely result in the cessation of service over the line, and CN has not sought abandonment authority, this proceeding is exempt from the reporting requirements listed above and no environmental documentation will be prepared. See 49 CFR 1105.6(c)(6) and 1105.8(a) and (b). Because CSR is seeking abandonment authority with respect to this line in STB Docket No. AB-584 (Sub-No. 1X), see *supra* note 1, environmental issues related to abandonment will be addressed in that proceeding.

Decided: December 5, 2002.

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

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 02-31459 Filed 12-12-02; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34266]

#### Martin Marietta Materials, Inc.— Continuance in Control Exemption— Alamo North Texas Railroad Corporation

Martin Marietta Materials, Inc. (MMM), a noncarrier, has filed a verified notice of exemption to continue in control of Alamo North Texas Railroad Corporation (Alamo North) upon Alamo North's becoming a Class III railroad.<sup>1</sup>

The transaction was scheduled to be consummated on or after November 20, 2002, the effective date of the exemption (7 days after the notice was filed).

At the time this notice was filed, MMM indirectly controlled two railroads, Fredonia Valley Railroad, Inc., operating in Kentucky, and Alamo Gulf Coast Railroad Co., operating in Texas.

MMM states that: (i) The railroads do not connect with each other or any railroad in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval of requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for the labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

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

<sup>1</sup> See *Alamo North Texas Railroad Corporation—Construction and Operation Exemption—Wise County, TX*, STB Finance Docket No. 34002 (STB served Sept. 3, 2002 and Nov. 16, 2001).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> CN notes that the 0.15-mile trackage rights sought to be discontinued are overhead rights over trackage owned by CSR, for which CSR is seeking abandonment authority in *Canada Southern Railway Company—Abandonment Exemption—in Niagara County, NY*, STB Docket No. AB-584 (Sub-No. 1X) (STB served Oct. 22, 2002).