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SERVICE DATE - MAY 11, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 766N)

CONRAIL ABANDONMENT OF THE WEEHAWKEN  
BRANCH—IN HUDSON COUNTY, NJ

STB Docket No. AB-167 (Sub-No. 1067N)<sup>1</sup>

CONRAIL ABANDONMENT OF THE RIVER  
LINE—IN HUDSON COUNTY, NJ

Decided: May 10, 2001

Consolidated Rail Corporation (Conrail) filed two applications on November 14, 2000, under section 308 of the Regional Rail Reorganization Act of 1973, 45 U.S.C. 748,<sup>2</sup> to abandon approximately 3.84 miles of the Weehawken Branch,<sup>3</sup> 6.95 miles of the River Line,<sup>4</sup> and

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<sup>1</sup> These proceedings are not consolidated. They are being considered together because the two lines at issue are operated as a single line.

<sup>2</sup> Section 308 was added by the Northeast Rail Service Act of 1981 (NERSA), enacted as Subtitle E of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35. NERSA established separate, expedited procedures for abandonments filed by Conrail.

<sup>3</sup> The 3.84-mile segment of the Weehawken Branch extends from the “point of switch in Jersey City[, NJ]” (approximately MP 0.00) “to the southerly R.O.W. line of Baldwin Avenue in Weehawken[, NJ]” (approximately MP 2.84), and includes “the former DL&W Railroad Lead to the Hoboken Freight Yard in Jersey City.” Conrail Application in STB Docket No. AB-167 (Sub-No. 1067N) at 2.

<sup>4</sup> The 6.95-mile segment is composed of part of Conrail’s River Line: (1) from the connection to the Passaic and Harismus Branch at Controller Point (CP) “Waldo” in Jersey City (approximately MP 0.00) to the south side of Clifton Road in Weehawken (approximately MP 4.7), including the River Yard; and (2) from the south side of Clifton Road in Weehawken (approximately MP 0.00) to the northwest side of Tonnelle Avenue (excluding the portion of line, associated track, and underlying right-of-way necessary to retain access and continue service to Durkee Foods) in North Bergen, NJ (approximately MP 1.53); plus the National Docks Secondary in Jersey City from where it connects with the River Line at CP “Nave,” to the east side of Newark Avenue (approximately 1,350 feet); and the Weehawken Branch (Chicken Yard)  
(continued...)

associated trackage in Hudson County, NJ. On February 12, 2001, the date the abandonments were to become effective, Cognis Corporation (Cognis), one of the lines' two active shippers, filed a timely offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27 to subsidize and purchase the two lines (referred to as the River Line).<sup>5</sup>

In a decision served on February 16, 2001, Cognis was found financially responsible and its offer was found sufficiently reasonable to begin negotiations.<sup>6</sup> The issuance of decisions authorizing the abandonments was postponed, and March 14, 2001, was set as the deadline to request Board-established terms and conditions for the subsidy and purchase of the River Line. On March 13, 2001, we issued a decision denying Cognis' motions to dismiss Conrail's abandonment applications<sup>7</sup> and another decision exempting Cognis under 49 U.S.C. 10502 from the 30-day filing deadline of 49 U.S.C. 10904(e) and setting April 13, 2001, as the new deadline for filing requests to set terms and conditions for subsidizing and purchasing the River Line. Cognis timely filed a Request for Establishment of Conditions and Compensation (Request) on April 13, 2001. Conrail filed a reply on April 23, 2001.<sup>8</sup> New Jersey Transit Corporation (NJT), an instrumentality of the State of New Jersey and the owner of the River Line, filed a petition for leave to intervene and a reply on May 3, 2001, and Cognis filed a reply opposing NJT's petition for leave to intervene on May 8, 2001.<sup>9</sup>

#### DISCUSSION AND CONCLUSIONS

Cognis did not use its Request merely to justify the conditions and compensation it seeks for subsidizing and purchasing the River Line. Rather, Cognis devoted most of the pleading to an

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<sup>4</sup>(...continued)

in Weehawken, from where it connects with the River Line on the east side of Willow Avenue to the end of the track (approximately 2,450 feet).

<sup>5</sup> Cognis states that Dykes Lumber Company, Inc., the other active River Line shipper, agreed to share in the costs of preparing, negotiating, and executing the OFA.

<sup>6</sup> Cognis offered \$7,960 to subsidize the continued operation of the River Line for 1 year and the nominal sum of \$1 to purchase Conrail's interest in the line at any time prior to the expiration of the subsidy period, with the purchase decision to be left to Cognis' sole discretion.

<sup>7</sup> We found no merit to Cognis' contentions that NERSA does not apply to easements, and, in any event, no longer applies to Conrail abandonment applications.

<sup>8</sup> In a decision served on April 18, 2001, Conrail was granted a 5-day extension, from April 18 to April 23, 2001, to file a reply to Cognis' Request.

<sup>9</sup> NJT's petition for leave to intervene will be considered in a separate decision ruling on the merits of Cognis' Request.

argument that we should dismiss the abandonments on the grounds that Conrail transferred all of its interest in the line to NJT under an agreement entered into more than a decade ago. Conrail and NJT filed detailed replies addressing Cognis' argument that the abandonments should be dismissed. Because Cognis supplemented its Request with an extensive motion to dismiss, we must, in order to consider both, extend the 30-day deadline for issuing a decision in 49 U.S.C. 10904(f)(1)(A). Under 49 U.S.C. 10502, we must exempt a transaction or service from a provision of law when we find that: (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Exemptions from the 30-day deadline in 49 U.S.C. 10904(f)(1)(A) are necessary for adequate consideration of the complex issues in contention. The parties will not be prejudiced by the extension. Conrail previously noted that neither it nor Cognis would be harmed by an extension for as long as decisions are pending in the two related petitions for exemption to discontinue operations on the River Line that Norfolk Southern Railway Company (NS) and CSX Transportation, Inc. (CSXT), filed on November 14 and 20, 2000, respectively.<sup>10</sup> (Conrail Request for Extension to Reply to Request to Establish Conditions and Compensation). The River Line cannot be abandoned until these discontinuance exemptions are granted, and the supplemental submissions NS and CSXT were required to file by another decision, also served on March 13, 2001, were only filed on May 4, 2001.

As such, exemptions here will further the RTP by minimizing the need for Federal regulatory control over the rail transportation system, promoting a safe and efficient rail transportation system, and fostering sound economic conditions in transportation. 49 U.S.C. 10101(2)(3), and (5). Other aspects of the rail transportation policy will not be adversely affected.

Regulation is not needed to protect shippers from the abuse of market power. On the other hand, an extension of the statutory deadline will result in more careful consideration of the arguments relating to the motion to dismiss the abandonments made by Cognis in its Request. Because there is no need to protect shippers from the abuse of market power, there is no need to make a limited scope finding. The statutory deadlines for issuing a decision setting terms and conditions for the subsidy and purchase of the River Line will therefore be extended.

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

It is ordered:

1. The statutory deadlines for issuing a decision setting terms and conditions for the

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<sup>10</sup> See Norfolk Southern Railway Company–Discontinuance Exemption–in Hudson County, NJ, STB Docket No. AB-290 (Sub-No. 212X), and CSX Transportation, Inc.–Discontinuance Exemption–in Hudson County, NJ, STB Docket No. AB-55 (Sub-No. 584X).

subsidy and purchase of the River Line is extended to give the Board time to consider and resolve the issues raised by the parties.

2. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary