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SERVICE DATE - MAY 7, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33733 (Sub-No. 1)

CSX TRANSPORTATION, INC.--TRACKAGE RIGHTS EXEMPTION--
CONSOLIDATED RAIL CORPORATION

Decided: May 3, 1999

By petition filed March 25, 1999, CSX Transportation, Inc. (CSXT or petitioner) requests that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 33733¹ to extend only until June 30, 1999, or the Conrail Split Date, whichever occurs first.

According to petitioner, the trackage rights arrangement exempted in STB Finance Docket No. 33733 is necessary because it will allow CSXT to qualify its crew and engine personnel on the trackage that CSXT will operate following the Split Date of Conrail's properties. The Conrail trackage that is the subject of the trackage rights is to be allocated to Conrail's subsidiary, New York Central Lines LLC, and operated by CSXT, after what is referred to as the "Split Date," or the date of the division of Conrail's assets, as authorized by the Board in CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc., and Consolidated Rail Corporation, STB Finance Docket No. 33388 (STB served July 23, 1998). CSXT states that it expects the Split Date to occur on June 1, 1999. The parties intend for the trackage rights to terminate on the Split Date, but if the Split Date does not occur before June 30, 1999, the parties' agreement provides for termination of the trackage rights on June 30, 1999.

Although the parties have expressly agreed on the terms of the proposed trackage rights arrangement, trackage rights approved under the class exemption normally remain effective

¹ On March 25, 1999, CSXT filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Consolidated Rail Corporation (Conrail) to grant temporary overhead trackage rights to CSXT, to operate its trains, locomotives, cars and equipment with CSXT's own crews, over Conrail's Porter Branch between milepost 246.7± at Willow Creek, IN, and milepost 259.5± at Gibson, IN (CP Ivanhoe), a total distance of approximately 12.8 miles. See CSX Transportation, Inc.--Trackage Rights Exemption--Consolidated Rail Corporation, STB Finance Docket No. 33733 (STB served Apr. 13, 1999). The trackage rights agreement is scheduled to expire on the Split Date (as described in this decision) or June 30, 1999, whichever occurs first. The trackage rights operations under the exemption became effective on April 1, 1999, and are subject to labor protective conditions.

indefinitely regardless of any durational contract provisions. Occasionally, trackage rights exemptions have been granted for a limited term rather than in perpetuity. See CSX Transportation, Inc.--Trackage Rights Exemption--Consolidated Rail Corporation, STB Finance Docket No. 33725 (Sub-No. 1) (STB served May 5, 1999); The Burlington Northern and Santa Fe Railway Company--Trackage Rights Exemption--Union Pacific Railroad Company, STB Finance Docket No. 33699 (Sub-No. 1) (STB served Feb. 5, 1999); Union Pacific Railroad Company--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33631 (Sub-No. 1) (STB served July 30, 1998); and The Burlington Northern and Santa Fe Railway Company--Trackage Rights Exemption--Union Pacific Railroad Company, STB Finance Docket No. 33612 (Sub-No. 1) (STB served July 1, 1998).

Under 49 U.S.C. 10502, we may exempt a person, class of persons, or a transaction or service, in whole or in part, when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

CSXT's trackage rights have already been authorized under the class exemption at 49 CFR 1180.2(d)(7). See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985). Limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted and will have no adverse impact on shippers on the line as the trackage rights that are the subject of the exemption are for overhead traffic only. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 33733 to expire on the Split Date or June 30, 1999, whichever occurs first.

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt the trackage rights described in STB Finance Docket No. 33733, as discussed above, to permit the trackage rights to expire on the Split Date or June 30, 1999, whichever occurs first.
2. Notice will be published in the Federal Register on May 7, 1999.
3. This decision is effective on June 1, 1999.

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4. Petitions to reopen must be filed by May 25, 1999.

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

Vernon A. Williams
Secretary