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SERVICE DATE – LATE RELEASE MARCH 2, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 167 (Sub-No. 1191X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN
PHILADELPHIA, PA.

Docket No. AB 55 (Sub-No. 710X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN
PHILADELPHIA, PA.

Docket No. AB 290 (Sub-No. 552X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN PHILADELPHIA, PA.

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: March 2, 2012

Consolidated Rail Corporation (Conrail), CSX Transportation, Inc., and Norfolk Southern Railway Company (collectively, Applicants) jointly filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments for Conrail to abandon, and for CSXT and NSR to discontinue service over, a 2.98-mile line of railroad known as the Berks Street Industrial Track, extending from milepost 0.00± to milepost 2.98± in Philadelphia, Pa.¹ Notice of the exemption was served and published in the Federal Register on January 25, 2012 (77 Fed. Reg. 3,893-94). The exemption was scheduled to become effective on February 24, 2012, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed by February 6, 2012.

On January 30, 2012, Eric S. Strohmeier and CNJ Rail Corporation (collectively, Strohmeier Parties) jointly filed a formal notice of intent to file an OFA to purchase from Conrail a segment of the line they describe as between milepost 0.00 (at the connection with the

¹ Applicants state that Conrail has ownership of the line extending from milepost 2.70 to milepost 2.98 but only has operating rights from milepost 0.00 to milepost 2.70. According to the Applicants, the portion over which Conrail retains only operating rights was sold to the City of Philadelphia (City) in 1978.

Philadelphia Belt Line Railroad at Delaware Ave.) and milepost 2.80 (terminating at the north end of the bridge over Conrail's Port Richmond secondary track) ("OFA Segment"). The Strohmeier Parties concurrently filed a request to toll the OFA due date until 10 days after Conrail provided them with the information specified at 49 C.F.R. § 1152.27(a) along with certain other information. Conrail provided responses to the Strohmeier Parties' information requests on February 7, 2012.²

On February 24, 2012, the Strohmeier Parties filed a second request to toll the OFA due date and specifically limited their tolling request to the OFA Segment for which they plan to file an OFA. They explain that they have reviewed the data submitted by Conrail and have additional questions and information requests for the railroad. According to the Strohmeier Parties, they and Conrail are working together to exchange information. To facilitate this process, the Strohmeier Parties ask that the Board toll the due date for an OFA for the OFA Segment until March 9, 2012. The Applicants filed a reply on February 27, 2012, wherein they respond to the Strohmeier Parties' information requests. The Applicants do not object to the tolling request as long as it is limited to the OFA Segment.

The tolling request is reasonable and will be granted. An OFA to purchase the 2.80-mile OFA Segment will be due on March 9, 2012, and the effective date of the exemption authority for the OFA Segment is postponed until March 19, 2012, to accommodate the tolling of the due date for an OFA. Exemption authority for the remaining portion of the line, which runs between milepost 2.80 and 2.98, is effective immediately. Exemption authority for the entire line is subject to the environmental conditions discussed below and the labor protective condition previously imposed in the notice of exemption served and published in this proceeding on January 25, 2012.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on January 30, 2012. In the EA, OEA states that the City supports the proposed abandonment provided that the following conditions are satisfied: (1) deed(s) for the parcel(s) are recorded with the City's Records Department; (2) where the line crosses under a City Street, the abutting land including slope easement shall be dedicated to the City easement so that it can maintain the bridge structures; (3) where the line crosses over City Streets, the superstructures and appurtenances shall be removed; and (4) all railroad ties and ballast shall be removed and the area cleaned of debris, trash and overgrowth. Therefore, OEA recommends that, prior to initiating salvage activities, Conrail be required to consult with the City regarding the City's concerns and report back to OEA the results of its discussions.

OEA also states in the EA that the Pennsylvania Department of Environmental Protection, Stormwater Section (PADEP-SW), responded stating that, because the proposed abandonment would include the removal of the bridge at milepost 2.92, a National Pollutant

² Because the Applicants responded on February 7, a 10-day tolling request would have placed the requested OFA due date earlier than the due date of February 24, 2012, as otherwise provided at 49 C.F.R. § 1152.27(b)(2)(ii). The first tolling request therefore has been rendered moot and will be dismissed.

Discharge Elimination Systems Permit would be required for earth disturbance activities of 5,000 square feet or more. To address the concerns raised by PADEP-SW, OEA recommends that, prior to initiating any salvage activities, Conrail be required to consult with the PADEP-SW, comply with all reasonable requirements prescribed, and report back to OEA the results of its discussions.

Comments to the EA were due on February 14, 2012, and only Conrail made a submission. The EA states that a bridge crosses Allegheny Avenue at milepost 2.80, but Conrail notes that the bridge, which is to be removed, actually crosses at milepost 2.92. The other bridge on the line crosses Conrail's Richmond Industrial Track at milepost 2.80.

Furthermore, based on the information filed in the Strohmeier Parties' notice of intent to file an OFA and Conrail's February 7 reply, OEA notes in its Final EA that less of the line may have been salvaged than originally indicated. OEA states that, because the EA assessed the potential environmental effects of salvaging the entire line, the fact that less of the line may have been salvaged does not change the analysis or the conclusions in the EA. Therefore, OEA in its Final EA continues to recommend the imposition of the two environmental conditions as set forth in the EA.

Accordingly, the conditions recommended by OEA in the Final EA will be imposed. Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on January 25, 2012, exempting the abandonment of the line described above, is subject to the conditions that Conrail shall: (1) prior to initiating any salvage activities, consult with the City regarding the City's concerns and report back to OEA the results of its discussions; and (2) prior to initiating any salvage activities, consult with the PADEP-SW, comply with all reasonable requirements prescribed, and report back to OEA the results of its discussions.
3. The Strohmeier Parties' first tolling request is denied as moot.
4. The Strohmeier Parties' second tolling request is granted.
5. An OFA for the OFA Segment, between milepost 0.0 and milepost 2.80, is due on or before March 9, 2012. The effective date of the exemption authority for this segment of the line is postponed until March 19, 2012, to accommodate the tolling of the OFA due date.
6. The exemption authority for the segment between milepost 2.80 and milepost 2.98 is effective as of the service date of this decision, subject to the above environmental conditions

imposed here and the labor protective condition previously imposed in the notice of exemption in this proceeding served and published on January 25, 2012.

7. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.