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SERVICE DATE - SEPTEMBER 30, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 194X)

NORFOLK AND WESTERN RAILWAY COMPANY
--ABANDONMENT EXEMPTION--
BETWEEN SOUTH BEND AND DILLON JUNCTION
IN ST. JOSEPH AND LAPORTE COUNTIES, IN

Decided: September 29, 1998

In a decision served on July 23, 1998,¹ the Board granted Norfolk and Western Railway Company (NW), a wholly owned subsidiary of Norfolk Southern Railway Company (NS), an exemption to abandon a 21.5-mile line of railroad, the South Bend to Dillon Junction branchline, extending from milepost SK-2.5, near South Bend, to milepost SK-24.0, near Dillon Junction, in St. Joseph and LaPorte Counties, IN, subject to public use, trail use, environmental, and standard employee protective conditions. The decision stated that the exemption will be effective on Day One,² unless stayed by the Board or unless a formal offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by August 21, 1998.

On August 21, 1998, American Electric Power Service Corporation (AEP) submitted an OFA to subsidize rail operations over the line operated by NW. In its OFA, AEP did not submit an actual dollar amount, but stated that NS is willing to negotiate with AEP over a mutually agreeable amount to permit it to continue rail operations over the line, and that negotiations would commence as soon as possible. By decision served September 2, 1998, the Board postponed the effective date of the decision authorizing abandonment of the line in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed. The Board ordered that if NS and AEP cannot agree on terms and conditions, either party may request the Board to establish the terms and conditions on or before September 21, 1998.

¹ See 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, Decision No. 89 (STB served July 23, 1998) (CSX/NS/CR No. 89).

² Day One (also known as the Closing Date) is the date on which CSX and NS will effect the division of the operation and use of Conrail's assets. See CSX/NS/CR No. 89, slip op. at 17 n.27.

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By letter received September 18, 1998, AEP requests that the Board grant it and NS an extension of time, through November 30, 1998, to attempt to agree on the amount of financial assistance that NS requires in order to continue rail service over the line in question. AEP states that it has had amicable discussions with NS about the amount of financial assistance required, but they have not yet been able to agree on an amount that would allow operations to continue. AEP adds that the process is complicated because its facility is located approximately midway along the line, and because of the fact that it requires rail service only on an occasional basis. Because of these reasons, AEP states, there is a need to develop additional information. In a letter to AEP's counsel dated September 17, 1998, NS advises that it is agreeable to and consents to AEP's request to extend the deadline to a date on or before November 30, 1998.

The AEP request is reasonable and will be granted. Accordingly, the time period for NS and AEP to arrive at a mutually agreeable amount of financial assistance will be tolled until November 30, 1998, and the effective date of the exemption authorizing abandonment of the line will be postponed, pending completion of the OFA process.

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

It is ordered:

1. The time period for AEP and NS to arrive at a mutually agreeable amount of financial assistance is tolled until November 30, 1998.
2. With respect to STB Docket No. AB-290 (Sub-No. 194X), the effective date of the decision authorizing abandonment of the line, see CSX/NS/CR No. 89, slip op. at 182 (ordering ¶75), is further postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
3. With respect to STB Docket No. AB-290 (Sub-No. 194X), the effectiveness of the condition providing an opportunity for public use negotiations, see CSX/NS/CR No. 89, slip op. at 182 (ordering ¶74), is further postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

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4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary