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SERVICE DATE – OCTOBER 20, 2006

SURFACE TRANSPORTATION BOARD

SUPPLEMENTAL DECISION

STB Finance Docket No. 34909

CSX TRANSPORTATION, INC., NORFOLK SOUTHERN RAILWAY COMPANY,
AND CONSOLIDATED RAIL CORPORATION—JOINT USE AND OPERATION
EXEMPTION

Decided: October 19, 2006

By decision served on October 5, 2006, the Board granted a petition¹ jointly filed by CSX Transportation, Inc. (CSXT), Norfolk Southern Railway Company (NSR), and Consolidated Rail Corporation (Conrail) for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 for petitioners to provide for the joint use and joint rail freight operations over 7.69 miles of abandoned rail line of the former Staten Island Railway Corporation in New York and New Jersey, lying generally between the Conrail Chemical Coast Line and points on Staten Island, NY.² The line consists of two segments as follows: (a) the North Shore Line between the end of track at milepost 4.6 at Union Avenue east of Arlington Yard, Richmond County, NY, and milepost 7.4, via the Chemical Coast Connector, at the proposed point of switch at the connection between the Chemical Coast Connector and Conrail's Chemical Coast Line in Union County, NJ, a distance of 2.8 miles; and (b) the Travis Branch between milepost 0.00 Arlington Yard Station and milepost 4.41 in Richmond County, a distance of 4.41 miles. Included with the North Shore Line segment are all tracks in Arlington Yard together with lead tracks on both the east and west ends of the yard, the so-called Wye Connector, that provides a direct connection to the Travis Branch from the North Shore Line and a track designated as the Travis Lead that provides a connection to and from the Travis Branch to the east end of Arlington Yard.

¹ Notice of the Board's action was published in the Federal Register on October 11, 2006 (71 FR 59856-57).

² The exemption became effective on October 8, 2006.

The purpose of this decision is to address and resolve two requests made by petitioners in their joint petition.³ Petitioners sought: (1) a prior determination that the Board authority granted pursuant to this petition for exemption will automatically expire upon termination of the modified certificate;⁴ and (2) a determination that the grant of authority through exemption from the requirements of 49 U.S.C. 11323 will not give Conrail any ratemaking, interchange, or other common carrier authority that it currently lacks.

DISCUSSION AND CONCLUSIONS

As indicated, petitioners ask us to determine that the Board authority granted pursuant to this petition will automatically expire upon termination of a related modified certificate. Under 49 CFR 1150.24, 60 days after the operators (petitioners, here) provide notice of their intent to terminate service, their modified certificate authority will automatically terminate as will their common carrier obligation thereunder. Because petitioners have also obtained related authority in the form of a joint use and operation exemption, they ask us to limit the duration of that authority to the duration of the modified certificate authority. We believe that termination of the modified certificate authority, which underlies petitioners' joint use and operation authority, should and will also effectively result in termination of petitioners' obligations under the latter authority. However, because petitioners have asked us specifically to limit the exemption authority in the manner discussed, and because there is no reason that we should not do so, we will grant petitioners' request. We therefore find that the authority granted in this proceeding will automatically expire upon termination of petitioners' modified certificate authority without need for further Board approval.

As to the extent of Conrail's authority, we clarify that our grant of exemption authority here merely permits the three participating railroads to act jointly in their use and operation of the issue line, as specifically proposed. Consequently, such approval does not expand the ratemaking, interchange, or other common carrier authority of Conrail beyond that which it held prior to our grant of authority in this proceeding.

³ Petitioners' third request, seeking an exemption permitting them to implement the operations described in a related modified certificate in a manner described in petitioners' operating agreement with the New York City Economic Development Corporation, was addressed by the grant of exemption authority itself.

⁴ Petitioners concurrently filed a Notice of Modified Certificate of Public Convenience and Necessity to operate the subject line in STB Finance Docket No. 34908, CSX Transportation, Inc., Norfolk Southern Railway Company, and Consolidated Rail Corporation—Modified Rail Certificate. That request was granted by decision served and published in the Federal Register on August 25, 2006 (71 FR 50499-50500).

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

It is ordered:

1. This decision determines that the Board authority granted in this proceeding:
(1) will automatically expire upon termination of petitioners' modified certificate; and
(2) will not give Conrail any ratemaking, interchange, or other common carrier authority that it currently lacks.
2. This decision is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, Commissioner Buttrey

Vernon A. Williams
Secretary