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SERVICE DATE – FEBRUARY 14, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1185X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—
IN MERCER COUNTY, NJ

STB Docket No. AB-290 (Sub-No. 294X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE EXEMPTION—IN
MERCER COUNTY, NJ

STB Docket No. AB-55 (Sub-No. 676X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE EXEMPTION—IN MERCER
COUNTY, NJ

Decided: February 12, 2007

Consolidated Rail Corporation (Conrail) filed a notice of exemption in STB Docket No. AB-167 (Sub-No. 1185X) under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a portion of a line of railroad known as the Robbinsville Industrial Track, between milepost 32.20± and milepost 37.90± in the cities of Hamilton Township and Washington Township, Mercer County, NJ, a distance of approximately 5.7 miles. Notice of the exemption was served and published in the Federal Register on July 3, 2006 (71 FR 37976-77). The exemption was scheduled to become effective on August 2, 2006. On July 13, 2006, a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by James Riffin to purchase the entire line. This filing automatically stayed the effective date of the exemption until August 12, 2006. Mr. Riffin simultaneously requested that Conrail provide him with the financial data and information prescribed in 49 CFR 1152.27(a). Under 49 CFR 1152.27(c)(2)(ii)(B), OFAs in this proceeding were due by August 2, 2006 (30 days after publication of notice of the exemption in the Federal Register). However, as of that date, the Board had no record of receiving either an OFA or a request to toll the time period for filing an OFA from either Mr. Riffin or Conrail.

In a decision served on August 10, 2006, the Board imposed a 180-day public use condition, pursuant to a request filed by C&A Trail Conservancy, and environmental conditions. The public use condition began to run on the effective date of the exemption, August 12, 2006.

On August 18, 2006, Mr. Riffin filed a motion for reconsideration of that decision, and a copy of a timely petition, pursuant to 49 CFR 1152.27(c)(2)(ii)(C), requesting that the time

period for filing an OFA be tolled until 90 days after Conrail provides him with the information required under 49 CFR 1152.27(a).

In his motion, Mr. Riffin stated that, on August 9, 2006, Conrail had submitted some, but not all, of the information requested. On August 18, 2006, Mr. Riffin requested that Conrail provide him with additional information. Mr. Riffin further maintained that Norfolk Southern Railway Company (NSR) and CSX Transportation, Inc. (CSXT) must obtain discontinuance authority from the Board before Conrail's abandonment can be authorized.

In a response filed on September 13, 2006, Conrail opposed Mr. Riffin's claim that CSXT and NSR needed to obtain discontinuance authority before Conrail would be able to abandon the line. Also, Conrail indicated that it took no position on whether the Board should reopen the August 10, 2006 decision, but urged that, if the proceeding is reopened, the Board limit the time period for Mr. Riffin to file his OFA to 10 days after Conrail notifies the Board that it has provided the additional information to Mr. Riffin. On September 19, 2006, Conrail notified the Board that it was providing the available, additional information to Mr. Riffin.

In a decision served on October 20, 2006, the Board's Director of the Office of Proceedings denied Mr. Riffin's request for a finding that NSR and CSXT require discontinuance authority. Because Mr. Riffin had presented evidence of his timely filing of a petition to toll the due date for filing an OFA and because Conrail did not object to reopening to permit Mr. Riffin to file an OFA, the Director reopened the proceeding, made OFAs due on October 30, 2006, and postponed the effective date of the exemption until November 9, 2006. In light of the reinstatement of the OFA process, the remainder of the 180-day public use condition period was tolled until completion of the OFA process.

On October 30, 2006, Mr. Riffin filed a petition for reconsideration of the October 20 decision. He claimed that it was an error not to require CSXT and NSR to file for discontinuance authority over the line. Mr. Riffin also asked that the Board in essence extend the time for filing an OFA until 15 days after the Board rules on his petition for reconsideration. Conrail filed a reply in opposition to Mr. Riffin's filing on November 7, 2006. In a decision served November 8, 2006, the Director extended the filing date for OFAs so that the Board could consider the matters presented by Mr. Riffin, and tolled the effective date of the abandonment exemption pending further order of the Board.

In a decision served on January 26, 2007, the Board granted Mr. Riffin's petition for reconsideration of the October 20 decision. The Board also granted, on its own motion, authority for NSR and CSXT to discontinue service over the line in question in STB Docket No. AB-290 (Sub-No. 294X) and STB Docket No. AB-55 (Sub-No. 676X), respectively. Additionally, the agency made OFAs due on February 5, 2007, and noted that, absent the filing of one, the abandonment and discontinuance exemptions would become effective on February 15, 2007.

In a letter filed on January 31, 2007, Mr. Riffin states that he will not file an OFA to purchase the Robbinsville Industrial Track. Also, the Board has not received any OFAs to subsidize continued service based on the grant of discontinuance authority to CSXT and NSR. Accordingly, the exemptions will become effective as described above, the OFA process will be

terminated, and the 180-day public use negotiating period resumed. Because the Board had suspended the public use condition after 69 days, 111 days remain. This period will begin to run again upon the effective date of this decision.

It is ordered:

1. This proceeding is reopened.
2. The remaining 111 days of the public use condition will begin to run on the effective date of this decision.
3. The abandonment and discontinuance exemptions, as conditioned, are effective on February 15, 2007.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary