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SERVICE DATE – AUGUST 25, 2006

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34908]

CSX Transportation, Inc., Norfolk Southern Railway Company, and Consolidated Rail Corporation—Modified Rail Certificate<sup>1</sup>

On August 8, 2006, CSX Transportation, Inc. (CSXT), Norfolk Southern Railway Company (NSR), and Consolidated Rail Corporation (Conrail) (collectively, the parties) filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, subpart C, Modified Certificate of Public Convenience and Necessity, to provide rail freight operations jointly and severally over 7.69 miles of abandoned rail line of the former Staten Island Railway Corporation (SIRR) in New York and New Jersey lying generally between the Conrail Chemical Coast Line and points on Staten Island, NY.<sup>2</sup> The line consists of two segments as follows:

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<sup>1</sup> The parties were previously granted similar authority in CSX Transportation, Inc., Norfolk Southern Railway Company, and Consolidated Rail Corporation—Modified Rail Certificate, STB Finance Docket No. 34473 (STB served Mar. 19, 2004). They have concurrently filed a notice of intent to terminate service authorized in that proceeding, stating that they did not conclude an agreement with the New York City Economic Development Corporation (NYCEDC) and the Port Authority of New York and New Jersey (Port Authority) in order to be able to commence operations.

<sup>2</sup> See Staten Island Railway Corporation—Abandonment Exemption—in Richmond County, NY, Docket No. AB-263 (Sub-No. 2X) (ICC served July 3, 1990), and Staten Island Railway Corporation—Abandonment, Docket No. AB-263 (Sub-No. 3) (ICC served Dec. 5, 1991). The lines were subsequently acquired by NYCEDC and the Port Authority.

(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;<sup>3</sup> 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 within 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.<sup>4</sup>

The parties have concurrently filed a petition for exemption in STB Finance Docket No. 34909, CSX Transportation, Inc., Norfolk Southern Railway Company, and Consolidated Rail Corporation—Joint Use and Operation Exemption, wherein they are seeking approval to provide for the joint use of, and joint rail freight operations over, this line.

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<sup>3</sup> On January 21, 2004, the Board served a decision in Port Authority of New York and New Jersey—Petition for Declaratory Order, STB Finance Docket No. 34428, finding that the construction by the Port Authority and NYCEDC of the connector between the SIRR trackage and the Chemical Coast Secondary Line, and operations thereover, did not require Board approval. The parties will reach this segment via the connector.

<sup>4</sup> On October 29, 2003, NYCEDC filed a petition for a declaratory order seeking certain determinations as to the Travis Branch. See The New York City Economic Development Corporation—Petition for Declaratory Order, STB Finance Docket No. 34429 (STB served July 15, 2004), in which the Board granted the request, finding that the proposed construction project did not require agency authorization and that federal preemption applied.

No rail service has been provided over the line in more than 15 years. The provision of freight rail service in this proceeding is a component of the Staten Island Railroad Revitalization Project, a joint effort between the Port Authority and NYCEDC. The parties will provide rail freight operations over the line pursuant to an operating agreement as part of the project.<sup>5</sup> That operating agreement, between the parties and NYCEDC, as administrator, provides for the parties to manage and maintain the line. The parties indicate that operations over the line are scheduled to commence on October 1, 2006<sup>6</sup> and continue for a 10-year term, which is renewable for an additional 10 years. According to the parties, they will not be obligated to commence operations and assume responsibility until the operating agreement has been signed and is fully in effect, which, among other actions, requires that:

(1) reconstruction of the line by NYCEDC is completed, Conrail has inspected the line and is satisfied with the physical condition of the line, including, but not limited to, all signals and appurtenances, and the appropriate and necessary crews of the parties have been qualified to operate the line; and (2) the U.S. Coast Guard regulations and requirements with respect to the maintenance and operation of the Arthur Kill Lift Bridge are acceptable to Conrail.

The parties state that there are three primary traffic flows anticipated over the line: (1) intermodal traffic moving in blocks assembled by the Howland Hook Marine Terminal/Port Ivory carrier moving to and from Arlington Yard (Howland

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<sup>5</sup> That agreement is attached as an exhibit to the notice.

<sup>6</sup> The parties seek expedited action by the Board in STB Finance Docket No. 34909 to permit rail operations to commence by that date, and have included a proposed procedural schedule to accomplish that goal.

Hook Traffic); (2) containerized municipal solid waste trains assembled by the Fresh Kills facility carrier to and from the Fresh Kills facility (Fresh Kills Traffic); and (3) mixed merchandise (including aggregates and paper products) moving to and from two potential customers located on the Travis Branch (Travis Branch Traffic) that may, in the future, construct rail connections from their facilities to the Travis Branch in order to receive direct rail service.

The parties indicate that, as currently planned, Conrail will move the Howland Hook Traffic and the Travis Branch Traffic between Staten Island and the North Jersey Shared Asset Area<sup>7</sup> for line haul movement via NSR and CSXT. Conrail will switch the Travis Branch Traffic directly from the relevant customer's facilities, if and when it develops, between Staten Island and the North Jersey Shared Asset Area for line haul movement via NSR and CSXT. NSR and/or CSXT at a future time will likely provide service to the Fresh Kills Traffic and the Howland Hook Traffic directly, as that traffic is expected to move in unit train volumes. Conrail will dispatch the line.

The rail lines qualify for a modified certificate of public convenience and necessity. See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions, Finance Docket No. 28990F (ICC served July 16, 1981).

The parties indicate that the only precondition to any shipper's receipt of service is the execution of an agreement with CSXT or NSR that specifies the rates and other terms and conditions of service that such railroad will provide. Conrail will

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<sup>7</sup> This area was established in CSX Corp. et al.—Control—Conrail, Inc. et al., 3 S.T.B. 196, 228 (1998).

not be authorized to quote rates and other terms and conditions of service, just as it is not authorized to do so in the North Jersey Shared Asset Area.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street N.W., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 50 F Street N.W., Suite 7020, Washington, DC 20001.

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Decided: August 18, 2006.

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

Vernon A. Williams

Secretary