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SERVICE DATE NOVEMBER 18, 2003

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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34428]

Port Authority of New York and New Jersey–Petition for Declaratory Order

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: The Surface Transportation Board is instituting a declaratory order proceeding and requesting comments on the petition of the Port Authority of New York and New Jersey (Port Authority) for an order declaring that the construction by petitioner of a connector between the line of the former Staten Island Railroad (SIRR) and the rail lines owned and operated by Norfolk Southern Railway Company (NS), CSX Transportation, Inc. (CSX), and Consolidated Rail Corporation (Conrail), and any operation over this newly constructed connector, do not constitute the extension of a line of railroad and require no Board approval.

DATES: Any interested person may file with the Board written comments concerning the Port Authority's petition by December 18, 2003. Replies will be due on January 7, 2004.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Finance Docket No. 34428 to: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, send one copy of any comments to petitioner's representative: Paul

M. Donovan, LaRoe, Winn, Moerman & Donovan, 4135 Parkglenn Court, N.W., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600.

[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877-8339.]

SUPPLEMENTAL INFORMATION: By petition filed on October 22, 2003, the Port Authority asks the Board to issue an order declaring that the construction and operation of a connector between the SIRR line and the Chemical Coast Secondary Line¹ will not constitute an extension of a line of railroad nor the construction of an additional line of railroad that would require Board approval.

The Port Authority states that the SIRR was abandoned in 1990 and 1991, and that the Port Authority and the City of New York² have acquired the rail lines necessary to revitalize the

¹ Conrail owns the Chemical Coast Secondary Line and, as a result of that ownership, has the right to operate over it. Moreover, because this line is part of the North Jersey Shared Assets Area, CSX and NS also have the right to operate over it. See CSX Corp. et al.—Control—Conrail Inc. et al., 3 S.T.B. 196, 228 (1998).

² According to the Port Authority, this construction project, called the Staten Island Railroad Reactivation Project, is one part of a plan for reactivation of the operations of the former SIRR. Petitioner indicates that it will soon file a notice of a modified certificate of public convenience and necessity pursuant to 49 CFR 1150.21-.24, advising of the designation of CSX and NS as the modified certificate operators of certain lines of the SIRR that had been abandoned and then acquired by the City of New York and the State of New Jersey. Also, on October 29, 2003, the New York City Economic Development Corporation (NYCEDC), which manages the New York properties of the former SIRR on behalf of New York City, filed a petition for a declaratory order with respect to the proposed construction of switching,

(continued...)

SIRR. Petitioner further indicates that the revitalized SIRR will not extend west of the New Jersey Turnpike, but will connect to the Chemical Coast Secondary Line by way of the newly constructed, far more efficient connector.

The Port Authority states that the connector will consist of a new single-track rail alignment approximately 3,650 feet long.³ The Port Authority asserts that this connector will replace the various other connections that have existed between the SIRR and NS, CSX, and Conrail lines at Cranford, Linden, and Bayway, NJ, and the connections provided by car float between St. George and Port Ivory, NY, and Port Newark, NJ.⁴

Under 49 U.S.C. 10901(a), Board approval is required in situations where a person wishes to “(1) construct an extension to any of its railroad lines; [or] (2) construct an additional railroad line;” According to the Port Authority, “the final test in determining whether proposed trackage constitutes an extension is whether the effect of the new trackage is to

²(...continued)

industrial lead, and spur track on the Travis Branch of the former SIRR.

³ The project will also entail the construction of two new bridges and the rehabilitation of an existing steel viaduct.

⁴ Prior to its abandonment in 1991, the SIRR interchanged freight with several rail carriers via car float operations. These operations, also called lightering, employed various types of towed or self-propelled floating equipment. Car floats with railroad tracks were towed between waterfront terminals on the New York Harbor. A system of tracks served the piers at the terminals, allowing rail cars to be moved from the car floats, over float bridges, to the terminals. In 1934, the ICC held that the term “railroad” includes “all . . . lighters . . . used by or operated in connection with any railroad,” and that the term “transportation” includes “vessels and all instrumentalities and facilities of shipment or carriage.” Lighterage Cases, 203 I.C.C. 481, 511-12 (1934).

extend substantially the line of a carrier into new territory,” citing City of Detroit v. Canadian National Ry. Co., et al., 9 I.C.C.2d 1208 (1993), aff’d sub nom. Detroit/Wayne County Port Authority v. ICC, 59 F.3d 1314 (D.C. Cir. 1995).

The Port Authority argues that the proposed connector does not involve the construction of an “extension” of a line of railroad, nor does it constitute an “additional” line, the construction of which would require Board approval. Rather, petitioner argues that the connector merely permits a more efficient connection than those that have historically existed and which could be reactivated without Board approval. Specifically, the Port Authority maintains that it controls and could reactivate the Port Ivory and Port Newark Port Authority float bridges,⁵ to form a route that parallels the route provided by the proposed connector, without Board approval.⁶ According to the Port Authority, construction of the connector will neither open up new traffic routes nor expand service into new territory.

Finally, the Port Authority requests expedited consideration of its request so that the SIRR reactivation project may advance as quickly as possible. The Port Authority claims that the Howland Hook Container Terminal, Inc. (Howland Hook), located on Staten Island, NY, is at a severe competitive disadvantage compared to other major container terminals on the Atlantic Coast in that it does not have direct rail service. Petitioner maintains that, as a result,

⁵ Petitioner notes, however, that it would not be economically feasible to do so.

⁶ According to petitioner, these parallel routes have the same origins and destinations and serve the same shippers.

containers handled at Howland Hook must be drayed to intermodal rail facilities in New Jersey, producing a great deal of truck traffic in an already congested, non-attainment air quality area. This results in significant drayage costs for Howland Hook and negative environmental consequences.

By this notice, the Board is requesting comments on the Port Authority's petition.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 12, 2003.

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

Vernon A. Williams

Secretary