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SERVICE DATE – AUGUST 25, 2006

SEC

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34909]

CSX Transportation, Inc., Norfolk Southern Railway Company, and Consolidated Rail Corporation—Joint Use and Operation Exemption

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of Petition for Exemption.

SUMMARY: On August 8, 2006, CSX Transportation, Inc. (CSXT), Norfolk Southern Railway Company (NSR), and Consolidated Rail Corporation (Conrail) (collectively, petitioners), jointly filed a petition 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<sup>1</sup> in New York and New Jersey lying generally between the Conrail Chemical Coast Line and points on Staten Island, NY. 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

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<sup>1</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 the New York City Economic Development Corporation (NYCEDC) and the Port Authority of New York and New Jersey (Port Authority).

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 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>2</sup>

Petitioners have requested expedited action by the Board on this petition to permit rail operations to commence by October 1, 2006, and have included a proposed procedural schedule to accomplish that goal.<sup>3</sup> Petitioners have 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.<sup>4</sup>

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<sup>2</sup> On August 17, 2006, NYCEDC filed a response in which it supports the exemption petition and request for expedited consideration.

<sup>3</sup> The Board will handle this exemption petition as expeditiously as is practicable.

<sup>4</sup> Petitioners 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). Petitioners have concurrently filed a notice of intent to terminate service authorized in that proceeding, stating that they did not conclude an agreement with NYCEDC and the Port Authority in order to be able to commence operations.

DATES: Comments are due September 14, 2006. To assist any potential commenters, petitioners and NYCEDC have stated that they will provide unredacted versions of relevant agreements. Replies are due September 18, 2006. Subsequently, the Board will issue a decision as soon as practicable.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34909, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of all pleadings must be served on petitioners' representatives: Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, Peter J. Shudtz, 1331 Pennsylvania Avenue N.W., Suite 560, Washington, DC 20004, and John V. Edwards, Three Commercial Place, Norfolk, VA 23510.

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 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: Conrail is jointly controlled by CSX Corporation (CSX) and Norfolk Southern Corporation (NSC). CSX controls CSXT and NSC controls NSR. CSXT and NSR are Class I railroads; Conrail is a Class III railroad. The subject line is accessed through the North Jersey Shared Asset Area approved in CSX Corp. et al.—Control—Conrail, Inc. et al., 3 S.T.B. 196 (1998).

According to petitioners, no service has been provided over this line for more than 15 years. Petitioners have submitted this petition seeking: (1) an exemption permitting them to implement the operations described in the related modified certificate in a manner described in the operating agreement between petitioners and

NYCEDC; (2) a prior determination that the Board authority granted pursuant to this petition will automatically expire upon termination of the modified certificate; and (3) a determination that the grant of authority under 49 U.S.C. 11323 will not give Conrail any ratemaking, interchange, or other common carrier authority that it currently lacks.

According to petitioners, the joint use agreement will govern their joint use of the line and the coordination of their operations, and will set forth their rights and obligations thereunder. The agreement provides that the line will be operated, maintained, and dispatched by Conrail, and that it will be used by or for the equal, full, and exclusive benefit of CSXT and NSR. CSXT and NSR will have the option of providing service directly or through Conrail and will compete with each other to serve shippers on the line.

Board decisions and notices are available on our website at [www.stb.dot.gov](http://www.stb.dot.gov).

Decided: August 18, 2006.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams

Secretary