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SERVICE DATE - NOVEMBER 15, 2001

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34108]

Flats Industrial Railroad Company and Norfolk Southern Railway Company—Joint Relocation Project Exemption—in Cleveland, OH

Flats Industrial Railroad Company (FIR) and Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1180.2(d)(5) for a joint project involving the relocation of lines of railroad in Cleveland, OH. The relocation pertains to and facilitates NSR's Cloggsville Connection, which is an overhead routing through Cleveland developed by NSR, relating to the acquisition of control over Consolidated Rail Corporation (Conrail) by NSR and CSX Transportation, Inc.<sup>1</sup> The transaction was expected to be consummated on or after October 24, 2001.

FIR, a Class III carrier, owns a 4-mile rail line acquired from Conrail in 1996 that extends north from Knob to the Flats area of Cleveland, OH.<sup>2</sup> NSR, a Class I carrier, along with its wholly owned subsidiaries, owns or operates approximately 21,800 miles of rail line in 22 states, the District of Columbia, and the Province of Ontario, Canada. Under Board authorization in CSX/NS-Conrail, NSR commenced operations over certain

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<sup>1</sup> See CSX Corp. et al.—Control—Conrail Inc. et al., 3 S.T.B. 196 (1998) (CSX/NS-Conrail).

<sup>2</sup> See Flats Industrial Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation, STB Finance Docket No. 33044 (STB served Oct. 11, 1996).

Conrail routes in the northeastern United States allocated to Pennsylvania Lines LLC (PRR), including the PRR line extending from the connection with FIR at Knob southward to a connection with a PRR east-west main line at Short. FIR's line between Knob and Cloggsville is immediately parallel to an NSR line, and at Cloggsville, NSR's east-west Nickel Plate main line passes overhead.

Under the Cloggsville Connection alternative, imposed by the Board as Environmental Condition No. 26(A) in CSX/NS-Conrail,<sup>3</sup> NSR agreed to upgrade its line between Cloggsville and Knob and the PRR line between Knob and Short into a high-density, double-track main line route that now handles a significant amount of NSR's traffic in the Cleveland area. The Cloggsville Connection improvements have involved the relocation of a portion of NSR's new double-track main line onto FIR's adjacent right-of-way, requiring the relocation of certain FIR rail operations.

With respect to the joint relocation project, FIR and NSR have reached an agreement to accommodate the FIR relocation and the transfer of the underlying right-of-way to NSR, as follows: (1) FIR's rail line extending between milepost 14.0 at Knob, and milepost 11.85 near West 41st Street, a distance of approximately 2.15 miles, will be transferred to NSR, rebuilt and permanently incorporated into the NSR double-track Cloggsville Connection main line; and (2) the existing FIR-NSR interchange will be relocated from Knob to the vicinity of Fulton Road, just north of the segment being

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<sup>3</sup> 3 S.T.B. at 355-56, 595.

transferred to NSR, where a new FIR interchange yard has been constructed at NSR's expense.

The proposed joint relocation project will not disrupt service to shippers.<sup>4</sup> Its stated purpose is to facilitate and finalize the Cloggsville Connection routing alternative which has significantly improved train operations through Cleveland and minimized adverse impacts on area residents.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. See 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). Under these standards, the incidental abandonment and construction components require no separate approval or exemption when the relocation project will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the joint relocation project will be protected by the conditions imposed in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

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<sup>4</sup> There are no shippers located on the FIR segment to be transferred to NSR, and FIR will continue to serve all of its existing shippers as it has done in the past. Interchange operations between FIR and NSR will also continue but at a relocated point approximately 2 miles north of the former interchange location.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34108, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on William C. Sippel, Fletcher & Sippel LLC, Two Prudential Plaza, Suite 3125, 180 North Stetson Avenue, Chicago IL 60601-6721, and John V. Edwards, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-9241.

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Decided: November 7, 2001.

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

Vernon A. Williams

Secretary