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SERVICE DATE – LATE RELEASE MAY 26, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1189X)

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

STB Docket No. AB-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN
HUDSON COUNTY, NJ

STB Docket No. AB-290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

Decided: May 26, 2009

This decision directs Consolidated Rail Corporation (Conrail) to provide the information necessary to formulate an offer of financial assistance (OFA), as specified in 49 CFR 1152.27(a), and grants the request of the City of Jersey City (City) and CNJ Rail Corporation (CNJ) to toll the due date to submit an OFA.

Conrail, CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NS) (collectively, applicants) jointly filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for Conrail to abandon, and for CSXT and NS to discontinue service over, an approximately 1.36-mile portion of a line of railroad known as the Harsimus Branch, between milepost 0.00, CP Waldo, and milepost 1.36, a point east of Washington Street, in Jersey City, Hudson County, NJ.¹ The notice of the exemption was served and published in the Federal Register on March 18, 2009 (74 FR 11631-32).

¹ In City of Jersey City, Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and New Jersey State Assemblyman Louis M. Manzo—Petition for Declaratory Order, STB Finance Docket No. 34818 (STB served Aug. 9, 2007), the Board described the line as follows: extending between milepost 1.3 near Luis Munoz Marin Boulevard (formerly Henderson Avenue) and milepost 2.54 near Waldo Avenue, in Jersey City, NJ.

The exemption was scheduled to become effective April 17, 2009, unless stayed by the Board. On March 27, 2009, City and CNJ each filed a formal expression of intent to file an OFA to purchase the line. City and CNJ requested Conrail to provide the information required by 49 CFR 1152.27(a) and certain additional information relating to Conrail's present, prior, or future use of the line, including all valuation maps for the line, and if not depicted on the valuation maps, a listing of all deed references showing Conrail's legal interests in the line. CNJ also requested that the time period for it to submit an OFA be tolled, until 10 days after it received the data requested from Conrail.² On April 1, 2009, Conrail filed a reply to the notices of intent to file an OFA, requesting that the Board reject City and CNJ's notices of intent. On April 22, 2009, City replied to Conrail's April 1 filing.

By decision served on April 6, 2009 (April 6 Decision), the Board granted a request of the Embankment Preservation Coalition and extended the deadline for filing petitions to reopen, requests for trail use and public use conditions, and responses to the Environmental Assessment until May 7, 2009. By decision served on April 16, 2009 (April 16 Decision), the effective date of the exemption was stayed until the environmental review process is complete.

The stay of this proceeding during the environmental phase should not delay the exchange of information requested by City and CNJ under the OFA procedures. Conrail is directed to provide City and CNJ with the information specified in 49 CFR 1152.27(a).³ The due date for City and CNJ to submit an OFA will be tolled until 10 days after Conrail provides the information specified in 49 CFR 1152.27(a) and notifies the Board that it has done so. Once the stay is lifted, the effective date of the exemption will be determined.⁴

The OFA process is designed for the purpose of providing continued rail service. The Board need not require the sale of a line under the OFA provisions if it determines that the offeror is not genuinely interested in providing rail service or that there is no likelihood of future traffic.⁵ Any person who intends to file an OFA in this proceeding should address one or more

² On April 7, 2009, City filed a motion joining in CNJ's request to toll the time for submitting an OFA.

³ City and CNJ are reminded that, under the Board's OFA procedures, a potential offeror is entitled only to the information specified in 49 CFR 1152.27(a).

⁴ If City and CNJ submit OFAs, Conrail's April 1 filing and City's related filings will be considered together when the stay is lifted.

⁵ See, e.g., Union Pacific Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Los Angeles County, CA, STB Docket No. AB-33 (Sub-No. 265X) (STB served May 7, 2008); Roaring Fork Railroad Holding Authority—Abandonment Exemption—in Garfield, Eagle, and Pitkin Counties, CO, STB Docket No. AB-547X (STB served May 21, 1999), aff'd sub nom. Kulmer v. STB, 236 F.3d 1255, 1256-58

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of the following: whether there is a demonstrable commercial need for rail service, as manifested by support from shippers or receivers on the line or as manifested by other evidence of immediate and significant commercial need; whether there is community support for rail service; and whether rail service is operationally feasible. See Los Angeles County Metropolitan Transportation Authority—Abandonment Exemption—in Los Angeles County, CA, STB Docket No. AB-409 (Sub-No. 5X), slip op. at 2-3 (STB served June 16, 2008) (requiring this showing where traffic had not moved over the line in 2 years and carrier sought exemption from OFA procedures).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The time period for City and CNJ to file an OFA is tolled until 10 days after Conrail provides City and CNJ with the information specified in 49 CFR 1152.27(a) and notifies the Board that it has done so.
2. The effective date of the exemption will be determined when the stay is lifted by the Board.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary

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(10th Cir. 2001); The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in King County, WA, STB Docket No. AB-6 (Sub-No. 380X) (STB served Aug. 5, 1998).