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SEC

SERVICE DATE - NOVEMBER 25, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 552X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--IN
RALEIGH COUNTY, WV

STB Docket No. AB-290 (Sub-No. 201X)

NORFOLK AND WESTERN RAILWAY COMPANY--DISCONTINUANCE OF
TRACKAGE RIGHTS EXEMPTION--IN RALEIGH COUNTY, WV

Decided: November 20, 1998

By decision served on March 23, 1998 (March 23 decision), the Board granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 for CSX Transportation, Inc. (CSXT), to abandon, and Norfolk and Western Railway Company (N&W) to discontinue trackage rights over, a 6.24-mile line of railroad extending from milepost 0.58 at Beckley Junction and milepost 6.82 at the end of the track at Cranberry, in Raleigh County, WV. In the March 23 decision, the Board also imposed a 180-day public use condition under 49 U.S.C. 10905.¹ The exemption became effective on April 22, 1998. On May 28, 1998, CSXT filed a letter stating that the line of railroad had been abandoned effective on April 25, 1998, and that the track would not be removed until N&W has discontinued its trackage rights in the related proceeding in STB Docket No. AB-290 (Sub-No. 201X).

The Board's regulations adopted in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997), include a provision at 49 CFR 1152.29(e)(2), that is designed to provide clear evidence of when an authorized abandonment has been consummated and thus is designed to avoid litigation over whether or not a line has been abandoned. Section 1152.29(e)(2) requires that:

A railroad that receives authority from the Board to abandon a line (in a regulated abandonment proceeding under 49 U.S.C. 10903, or by individual or class exemption issued under 49 U.S.C. 10502) shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line (e.g., discontinued operations, salvaged the track, canceled tariffs, and intends that the property be removed from the interstate rail network). The notice shall provide the name of the STB proceeding and its docket number, a brief description of the line, and a statement that the railroad has consummated, or fully exercised, the abandonment authority on a certain date. The notice shall be filed within 1 year of the service date of the decision permitting the abandonment (assuming that the railroad intends to consummate the abandonment). Notices will be

¹ The 180 days expired on October 19, 1998.

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deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation (such as outstanding conditions . . .).

The existence of N&W's trackage rights over the line, which are the subject of the related proceeding in STB Docket No. AB-290 (Sub-No. 201X), is a regulatory barrier to consummation and, accordingly, CSXT's letter cannot, alone, provide valid notice that this line of railroad has been fully abandoned.² Accordingly, the letter filed on May 28, 1998, will be rejected.

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

It is ordered:

1. The letter filed on May 28, 1998, in STB Docket No. AB-55 (Sub-No. 552X), is rejected.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

² A public use condition was in effect at the time the letter was filed, which was also a regulatory barrier to consummation. The public use condition has since expired (see supra note 1).