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SERVICE DATE – SEPTEMBER 12, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32299 (Sub-No. 1)

NORFOLK SOUTHERN RAILWAY COMPANY – CONSOLIDATION OF OPERATIONS –
CSX TRANSPORTATION, INC. (PETITION FOR SUPPLEMENTAL ORDER)

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 2 in STB Finance Docket No. 32299 (Sub-No. 1); Notice of Filing of Petition for Supplemental Order; Issuance of Procedural Schedule.

SUMMARY: On August 17, 2005, CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NSR) filed with the Surface Transportation Board (Board) a petition (the Joint Petition) for a supplemental order authorizing the modification of one aspect of a series of transactions that the Board's predecessor, the Interstate Commerce Commission (ICC), approved in 1993. The contemplated modification is to have CSXT, rather than NSR, perform switching services for both carriers in the Newberry, SC area.

DATES: The effective date of this decision is **September 16, 2005**. Any person who wishes to file comments respecting the petition must do so by **October 6, 2005**. Petitioners will have until **October 21, 2005**, to reply to those comments.

ADDRESSES: Any filing submitted in this proceeding must be submitted **either** via the Board's e-filing format **or** in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's website at "www.stb.dot.gov" at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. Comments should also be served (one copy each) on: (1) John W. Humes, Jr., 4135 Lakeside Drive, Jacksonville, FL 32210 (CSXT's representative); and (2) Richard A. Allen, ZUCKERT, SCOUTT & RASENBERGER, LLP, 888 Seventeenth Street, NW, Suite 700, Washington, DC 20006 (NSR's representative). Any reply should also be served (one copy each) on each commenting party. Comments and replies may be served by e-mail, but only if service by e-mail is acceptable to the recipient.

FOR FURTHER INFORMATION CONTACT: Melissa A. Ziembicki, 202-565-1604.
[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: On July 7, 1993, CSXT and NSR filed an application pursuant to 49 U.S.C. 11343 (now 49 U.S.C. 11323) *et seq.* and 49 CFR Part 1180 seeking ICC approval for a series of transactions that involved the consolidation of certain operations in South Carolina. The proposed consolidation consisted of a series of trackage rights agreements, joint use agreements, and operating agreements. Two of those agreements – a 1993 Newberry Operating Rights Agreement and a 1993 Newberry Switching Agreement – concerned operations in the Newberry area, where both railroads have lines and serve customers. Those two agreements provided that NSR would perform switching services for both railroads in the Newberry area, switching cars between interchange tracks in Newberry owned by CSXT and customers located on the lines of both railroads in Newberry and nearby Prosperity. The 1993 Newberry Switching Agreement detailed the terms of NSR’s switching services, and the 1993 Newberry Operating Rights Agreement provided for a grant by CSXT to NSR of operating rights over certain CSXT lines in the Newberry area necessary to permit NSR to switch cars to/from CSXT customers in the area.

In Norfolk Southern Railway Company – Consolidation of Operations – CSX Transportation, Inc., Finance Docket No. 32299 (ICC served Nov. 26, 1993) (Coordination Decision), the ICC approved the application. The ICC found the proposed consolidation to be a “minor transaction,” *see* 49 CFR 1180.2(c), and it found that the proposed consolidation would not result in a change in the competitive balance between CSXT and NSR in South Carolina.

Based on their experience under the agreements approved in 1993, petitioners have concluded that a minor modification to one aspect of the 1993 consolidation – the switching at Newberry – would improve the efficiency of operations and enhance rail service to their customers. Petitioners explain that, at Newberry, NSR now performs the local switching for both carriers with its own crews, even though the vast majority of the linehaul shipments are for the account of CSXT, and even though CSXT provides the locomotives and maintains most of the tracks used in the switching operations. Petitioners now believe that this arrangement is inefficient and that service to all customers at Newberry would be improved if CSXT, rather than NSR, were to provide all switching services to CSXT and NSR customers at Newberry and nearby Prosperity.

Petitioners indicate that they have now entered into two new agreements – a 2005 Newberry Operating Rights Agreement and a 2005 Newberry Switching Agreement – under which CSXT would provide the switching for both railroads in the Newberry area, NSR would grant CSXT the operating rights over NSR lines necessary to perform such switching to/from NSR customers, and NSR would cease using the operating rights over CSXT lines that it acquired in 1993 to perform the switching. Specifically: (1) NSR would cease operations over CSXT trackage between Milepost (MP) 33.1 and MP 47.5 in Newberry County, SC, which NSR now uses to perform switching services in the Newberry, SC, area for both itself and CSXT; and (2) CSXT would acquire rights over NSR tracks to operate (i) between NSR MP V 47.1 and NSR MP V 49.0 in Newberry County, SC, and (ii) between NSR MP V 42.0 and NSR MP V 36.0 in Prosperity, SC, for the sole purpose of performing switching operations for the customers of both carriers.

Because the proposed changes would constitute a modification of arrangements approved by the ICC in 1993, petitioners seek Board authorization via a supplemental order under 49 U.S.C. 11327.

EFFECTS ON SHIPPERS. Petitioners contend that the contemplated changes would improve service to customers in the Newberry area and would have no adverse effect on competition between CSXT and NSR. Petitioners explain that CSXT and NSR would continue to have the same commercial access to existing customers in the Newberry area and to new facilities that may locate on their lines in the future. Petitioners add that NSR cars switched by CSXT to customers on NSR lines would continue to be in the account of NSR; that CSXT cars switched to customers on CSXT lines would continue to be in the account of CSXT; and that CSXT switching service would simply replace NSR switching service.

EFFECTS ON EMPLOYEES. The ICC's approval of the 1993 consolidation was subject to the employee protective conditions described in Mendocino Coast Ry., Inc. – Lease and Operate, 354 I.C.C. 732 (1978), as modified in Mendocino Coast Ry., Inc. – Lease and Operate, 360 I.C.C. 653 (1980) (Mendocino Coast), as clarified in Wilmington Term. RR, Inc. – Pur. & Lease – CSX Transp., Inc., 6 I.C.C.2d 799 (1990). See Coordination Decision, slip op. at 4.¹ Petitioners advise that the employee protective conditions imposed in 1993 would apply to any employees that may be adversely affected by the transaction approved in 1993 or by the modification proposed here. Petitioners contend that the modification proposed here should not have a significant adverse effect on employees of the carriers because, although the proposed modification would result in the abolishment of a three-man NSR switching assignment currently performing switching services in Newberry, it is anticipated that the employees currently assigned to that job would exercise seniority to other positions in their seniority district. Petitioners assert that the modification proposed here would have no adverse effect on CSXT employees.

PROPOSED SCHEDULE. Petitioners have asked that the Board publish notice of the Joint Petition in the Federal Register within 30 days of the filing date (i.e., by September 16, 2005). Petitioners have also asked that comments be due 20 days after publication (i.e., on October 6, 2005), that replies to comments be due 35 days after publication (i.e., on October 21, 2005), and that the Board serve a decision within 45 days of the filing of replies (i.e., by December 5, 2005).

PROCEDURAL SCHEDULE ADOPTED BY THE BOARD. The Board has arranged to publish this decision in the Federal Register on **September 16, 2005**, to provide notice to interested persons that petitioners seek the relief contemplated in the Joint Petition.

¹ Petitioners claim that the ICC imposed the employee protective conditions described in Norfolk and Western Ry. Co. – Trackage Rights – BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. – Lease and Operate, 360 I.C.C. 653 (1980). See Joint Petition at 7; compare Coordination Decision, slip op. at 3 n.3, 4.

Petition Available To Interested Persons. Interested persons may view the Joint Petition on the Board's website at www.stb.dot.gov, at the "E-LIBRARY/Filings" link. The petition was filed on August 17, 2005, and may be viewed with the filings for that date.

Any person wishing to secure a paper copy of the petition may request a copy in writing or by phone from petitioners' representatives (1) John W. Humes, Jr., 4135 Lakeside Drive, Jacksonville, FL 32210, telephone number 904-388-4883, and (2) Richard A. Allen, ZUCKERT, SCOUTT & RASENBERGER, LLP, 888 Seventeenth Street, NW, Suite 700, Washington, DC 20006, telephone number 202-298-8660.

Comments and Replies. Any person who wishes to file comments respecting the Joint Petition must file such comments by **October 6, 2005**. Petitioners will have until **October 21, 2005**, to reply to any comments filed by interested persons.

Decision By The Board. The Board will endeavor to issue its decision on the merits of the Joint Petition by **December 5, 2005**.

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

It is ordered:

1. Comments of interested persons are due by **October 6, 2005**.
2. Petitioners' reply is due by **October 21, 2005**.
3. This decision is effective on **September 16, 2005**.

Decided: September 8, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary