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SERVICE DATE – LATE RELEASE JANUARY 7, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1190X)

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

STB Docket No. AB-55 (Sub-No. 690X)

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

STB Docket No. AB-290 (Sub-No. 313X)

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

Decided: January 7, 2009

Consolidated Rail Corporation (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, a 2.27-mile portion of a line of railroad known as the Lehigh Valley Main Line (the line), between railroad milepost 2.90± and railroad milepost 5.17±, in Jersey City, Hudson County, NJ. Notice of the exemption was served and published in the Federal Register on December 9, 2008 (73 FR 74801-02). The exemption was scheduled to become effective on January 8, 2009, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by December 19, 2008.

On December 19, 2008, CNJ Rail Corporation (CNJ) filed a formal expression of intent to file an OFA to purchase the line and a request to toll the time period for filing an OFA. This filing automatically stayed the effective date of the exemption for 10 days, until January 18, 2009.¹ In the filing, CNJ requested that Conrail provide it with the information set forth in 49 CFR 1152.27(a), as well as certain additional information relating to Conrail's present, prior, or future use of the line, including all valuation maps for the line.²

¹ See 49 CFR 1152.27(c)(2)(i).

² CNJ simultaneously served the notice of intent on Conrail.

The request for tolling of the OFA filing deadline will be granted and Conrail will be directed to provide CNJ with the information specified in 49 CFR 1152.27(a).³ The due date for CNJ to submit an OFA will be tolled until 10 days after Conrail provides CNJ with the information specified in 49 CFR 1152.27(a) and notifies the Board that it has done so. The effective date of the exemption will be extended until 20 days after Conrail provides CNJ with the information specified above and so notifies the Board.

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.⁴ Any person who intends to file an OFA should address one or more 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).

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 CNJ to file an OFA is tolled until 10 days after Conrail provides 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 is postponed until 20 days after Conrail provides CNJ with the information specified in 49 CFR 1152.27(a) and notifies the Board that it has done so.

³ CNJ is 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 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 (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).

3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary