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SERVICE DATE – MARCH 18, 2009

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[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

Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NS) (collectively, applicants) have jointly filed a verified notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuances of Service<sup>1</sup> 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

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<sup>1</sup> On January 6, 2009, applicants previously filed a notice of exemption to abandon the same line of railroad. However, in a decision served on January 26, 2009, the notice was rejected without prejudice to refiling. The decision stated that applicants did not meet the prefiling notice requirements at 49 CFR 1105.7(b) and 1105.8(c).

Washington Street, in Jersey City, Hudson County, NJ.<sup>2</sup> The line traverses United States Postal Service Zip Codes 07302, 07306, and 07310.

Applicants have certified that: (1) no local or overhead traffic has moved over the property for at least 2 years; (2) any overhead traffic that has moved or could move over the property can be rerouted; (3) no formal complaint filed by a user of rail service on the property (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the property either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuances shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on April 17, 2009, unless

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<sup>2</sup> 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 August 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.

stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>3</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>4</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 30, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 7, 2009, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to applicants' representatives: John K. Enright, 1717 Arch Street, 32nd Floor, Philadelphia, PA 19103, and Robert M. Jenkins III, Mayer Brown LLP, 1909 K Street, NW, Washington, DC 20006.

If the verified notice contains false or misleading information, the exemptions are void ab initio.

Applicants have filed a joint combined environmental and historic report, which addresses the effects, if any, of the abandonment and discontinuances on the environment and historic resources.<sup>5</sup> SEA will issue an environmental assessment (EA) by March 23, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100,

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<sup>3</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the abandonment exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>4</sup> Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. See 49 CFR 1002.2(f)(25).

<sup>5</sup> On March 12, 2008, Conrail originally filed an Environmental and Historic Report with the Board. In response to the comments generated by that report, applicants have filed a Supplemental Environmental and Historic Report.

Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Conrail shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Conrail's filing of a notice of consummation by March 18, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at  
“WWW.STB.DOT.GOV.”

Decided: March 11, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary