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SERVICE DATE - OCTOBER 14, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 194X)

NORFOLK AND WESTERN RAILWAY COMPANY
--ABANDONMENT EXEMPTION--
BETWEEN SOUTH BEND AND DILLON JUNCTION
IN ST. JOSEPH AND LAPORTE COUNTIES, IN

Decided: October 8, 1999

By decision served July 23, 1998,¹ the Board granted Norfolk and Western Railway Company, a wholly owned subsidiary of Norfolk Southern Railway Company, an exemption to abandon a 21.5-mile line of railroad, the South Bend to Dillon Junction branchline, extending from milepost SK-2.5, near South Bend, to milepost SK-24.0, near Dillon Junction, in St. Joseph and LaPorte Counties, IN, subject to public use, environmental, and standard employee protective conditions. The exemption was to be effective on Day One,² unless stayed by the Board or unless a formal offer of financial assistance (OFA) was filed by August 21, 1998.

By decision served September 2, 1998, the effective date of the exemption authorizing abandonment of the line was postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed. The decision provided that, if NS and the offeror could not agree on terms and conditions, either party could request the Board to set terms and conditions on or before September 21, 1998. That decision also anticipated that, if no agreement was reached and no request to establish terms and conditions was submitted by the date, the Board would serve a decision vacating the postponement and reinstating the effective dates for the decision authorizing abandonment and the condition as to public use negotiations. By decision served September 30, 1998, the time period for NS and the offeror to arrive at a mutually agreeable amount of financial assistance was tolled until November 30, 1998, and the effectiveness of the public use condition and

¹ See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998) (CSX/NS/CR No. 89). CSX Corporation and CSX Transportation, Inc., and their wholly owned subsidiaries, are referred to collectively as CSX. Norfolk Southern Corporation and Norfolk Southern Railway Company, and their wholly owned subsidiaries, are referred to collectively as NS. Conrail Inc. and Consolidated Rail Corporation, and their wholly owned subsidiaries, are referred to collectively as CR.

² Day One (June 1, 1999), also known as the Closing Date, is the date on which CSX and NS effected the division of the operation and use of Conrail's assets. See CSX/NS/CR No. 89, slip op. at 17 n.27.

exemption authorizing abandonment of the line was further postponed pending completion of the OFA process.

By November 30, 1998, neither NS nor the offeror indicated that they had reached an agreement and neither requested the Board to establish terms and conditions. While the Board did not issue a decision officially announcing the end of the OFA process, the failure of both NS and the offeror to request the Board to establish terms and conditions by the November 30, 1998 due date, in effect terminated the OFA process and initiated the 180-day period for negotiations for public use. The public use negotiation period thus ran until May 29, 1999. Thereafter, on August 13, 1999, NS filed its notice that it had consummated the abandonment of the line. Accordingly, this proceeding is terminated.

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

It is ordered:

1. The STB Docket No. AB-290 (Sub-No. 194X) proceeding is terminated.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary