

Voting Conference, July 27, 2005

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New York & Greenwood Lake Railway—Feeder Line Acquisition—
A Line of Norfolk Southern Railway Company
STB Finance Docket No. 34649

Good morning, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

The draft decision submitted for your consideration involves an appeal of a decision rejecting the feeder line application of New York & Greenwood Lake Railway.

On January 6, 2005, Greenwood filed an application under the Feeder Railroad Development Program to acquire from Norfolk Southern Railway Company two contiguous segments of rail line in Essex and Hudson Counties, NJ. Prior to that filing, Norfolk Southern had filed a notice of exemption to discontinue service over the line. In a decision served February 4, 2005, the Board, through the Director of the Office of Proceedings, rejected Greenwood's application for failing to meet the feeder line criteria. Specifically, Greenwood failed to show that the rail line it sought to acquire appeared in category 1 or 2 of the owning railroad's system diagram map. Even though a legal notice published in The Star Ledger of Newark, NJ, appeared to indicate Norfolk Southern's intent to discontinue service over the line through the application process, the Director found that this did not represent Norfolk Southern's actual system diagram map.

On appeal, Greenwood argues that the Director's decision must be reversed, asserting that the newspaper publication constitutes an amended system diagram map. In reply, Norfolk

Southern argued that the newspaper publication was erroneous, and that its legally effective system diagram map is the one on file with the Board.

The draft decision before you denies Greenwood's appeal. The statute at 49 U.S.C. 10907 establishes two avenues for a party to obtain the forced sale of a rail line. The first provides that the Board may order the rail carrier owning the line to sell it to an applicant when the Board finds that the public convenience and necessity require or permit the sale. The second provides for such a sale when the line in question "...is on a system diagram map as required under section 10903...but the rail carrier has not filed an application to abandon such line...." Greenwood relies exclusively on the system diagram map avenue, but merely reiterates the assertion in its application that the legal notice from The Star Ledger constitutes Norfolk Southern's actual system diagram map. The draft finds that the newspaper notice did not represent the railroad's system diagram map, and that Greenwood has not shown that the line it seeks to acquire was ever included in a system diagram map filed with the Board.

The record shows that when Norfolk Southern filed amendments to its system diagram map with the Board in March 2004, neither of the segments at issue here was included in category 1 or 2. The draft therefore concludes that the appellant has presented no evidence that would justify reversing the Director's determination and denies the appeal.

We would be happy to answer any questions you might have. Thank you.