

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-167 (Sub-No. 1185X)

CONSOLIDATED RAIL CORPORATION- ABANDONMENT EXEMPTION-IN
MERCER COUNTY, NJ

REPLY TO PETITION TO REOPEN/RECONSIDER AND TO STAY

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November 6, 2006

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Consolidated Rail Corporation (“Conrail”) replies to the Petition to Reopen/Reconsider and to Stay filed by Mr. James Riffin with the Surface Transportation Board (the “Board”) on October 30, 2006.

On June 13, 2006, Conrail filed a Notice of Exemption to abandon the Robbinsville Industrial Track, between milepost 32.20± and milepost 37.90± in the cities of Hamilton Township and Washington Township, Mercer County, NJ, a distance of 5.7 miles± (the “Line”).

On July 13, 2006, Mr. Riffin filed a Notice of Intent to File an Offer of Financial Assistance and requested information from Conrail concerning the net liquidation value (the “NLV”) of the Line. Conrail responded to Mr. Riffin on August 8, 2006, and supplied information necessary for Mr. Riffin to file an offer of financial assistance (“OFA”). On August 18, 2006, Mr. Riffin sought additional information relating to the NLV of the Line from Conrail. Conrail responded to Mr. Riffin on September 18, 2006.

By decision served August 10, 2006, the Board imposed a public use condition, a notification condition concerning geodetic markers, a consultation condition concerning salvage, and a historic condition on the abandonment. The Board also noted that “Mr.

Riffin has not filed an OFA, and the Board has not received a request to toll the time period for filing an OFA from either Mr. Riffin or Conrail.” Mr. Riffin filed a Motion on August 18, 2006 requesting the Board to reopen the August 10, 2006 decision and toll the time for the filing of an OFA. Mr. Riffin also requested additional information relating to the NLV of the Line (paragraph 7), and a ruling as to whether CSX Transportation, Inc. (“CSXT”) and Norfolk Southern Railway Company (“NS”) must receive authority from the Board to discontinue service over the Line before Conrail can abandon the Line.

By Decision dated October 20, 2006, the Board granted Mr. Riffin ten days by which to file an Offer for Financial Assistance (“OFA”) and denied Mr. Riffin’s request for a finding that Norfolk Southern Railway Company (“NSR”) and CSX Transportation, Inc. (“CSXT”) must file notices of discontinuance contemporaneously with Conrail’s Abandonment Exemption. Mr. Riffin now asks the Board to reconsider that decision and stay the date an OFA must be filed by until 15 days after it resolves the issue of whether NSR and CSXT must file notices of discontinuances.

Mr. Riffin’s request for a stay is predicated on his expressed concern that “NSR or CSXT could at some later date reassert their right to operate over the Line, arguing that they had never consented to the abandonment of their operating rights over the Line,” Riffin Petition at Para. 7. Mr. Riffin’s concern is unwarranted. Under the facts of the subject proceeding, once Conrail abandons the Line pursuant to Board authority, NSR and CSXT will not be able to claim a right to provide service on the Line. Mr. Riffin’s argument to the contrary misconstrues the basis upon which NSR and CSXT have operating rights over Conrail owned tracks located in the Shared Assets Area. An understanding of the basis for those rights supports the Board’s earlier decision that no

separate filing by NSR and CSXT is required. Furthermore, Mr. Riffin's reliance on Docket No. AB 290 (Sub-No 212X), Norfolk Southern Railway Company – Discontinuance Exemption – in Hudson County, NJ, Decided January 28, 2002 (“River Line”) is misplaced since it is clearly distinguishable and does not support the proposition for which it is being offered, namely that NSR and CSXT must each file notices of discontinuance even where the line in question has never been served directly by them or used for overhead traffic. Accordingly, the requested relief should be denied.

A. No Legitimate Regulatory Purpose Would be Served by the Filing of Notices of Discontinuance by NSR and CSXT

The Line is located within the South Jersey Shared Assets Area (“SJSA”), which was created as a result of the acquisition of Conrail, Inc. by Norfolk Southern Corporation and CSX Corporation, Finance Docket No. 33388, CSX Corporation, et al. – Control and Operating Leases/Agreements – Conrail, Inc., et al. Pursuant to an operating agreement among the operating railroad subsidiaries of the parties to that proceeding, NSR and CSXT, as of June 1, 1999 (“Split Date”), obtained certain operating rights with respect to the rail lines located in the three Shared Assets Areas (“SAA”)¹, independent of Conrail's operation as a switch carrier on their behalf. Those rights include both local and overhead operating rights. With respect to local rights, NSR and CSXT may serve customers located on lines located within SAA directly, subject to certain operating requirements or, more typically, serve customers through the use of Conrail crews and equipment. In providing service on behalf of its owners, Conrail operates solely on their behalf and, therefore, its service obligations to customers located within SAA are

¹ As noted above, the Line is located in the South Jersey Shared Assets Area.

derivative of those of its owners. With respect to overhead rights, NSR and CSXT may use a Conrail line as an overhead route for their trains moving between locations within or outside the SAA as the case may be. Since the Line is connected at its northern end to a previously abandoned rail line, it is not a through line of railroad so overhead rights are not a factor in the Board's determination of the subject petition.

Given the foregoing, it is clear that an abandonment filing by Conrail subsumes the rights of NSR and CSXT with respect to the line sought to be abandoned. However, since Conrail has the ownership or principal operating authority over lines located within the SAA, it is Conrail, not its owners, who seeks abandonment authority from the Board with respect to those lines. Whether NSR or CSXT have a responsibility to independently file notices of discontinuance of service depends upon the facts of the abandonment filing.

There are three possible abandonment scenarios regarding the SAA. The first is where the line in question has been directly served by NSR and/or CSXT either locally or as an overhead route. The second is where neither NSR nor CSXT has operated over the line but Conrail has. The third scenario, which is the one presented by the subject petition, is the same as the second scenario except that the line has been out of service since before Split Date. It is respectfully submitted that no regulatory purpose would be served by requiring NSR and/or CSXT to file notices of discontinuance of service with respect to a line where there has been no service either by Conrail or directly by its owners. The very wording of the notice implies that there is rail service that is being discontinued. Here, neither NSR nor CSXT have used the Line to provide local service and, as noted above, overhead rights are inapplicable. Furthermore, there have never been any

customers on the Line to whom NSR or CSXT could have provided service.

Accordingly, there are no customers affected by the notice and it would be illogical to require it.

It is also important to draw the distinction between discontinuance notices and abandonment filings. An abandonment filing is always required since there is always the potential for customers to locate on the Line. However, once abandonment is consummated, that potential no longer exists. Accordingly, requiring discontinuance notices would merely create an administrative burden on both the railroads and the Board without serving any legitimate purpose.

While the other abandonment scenarios identified above are not before the Board, Conrail submits that a notice of discontinuance is also not warranted where there has been no direct local or overhead service by NSR or CSXT although service has been provided by Conrail since Split Date. The same arguments made above equally apply to this scenario, although the subject filing makes a slightly more compelling case since, as noted, there are no customers affected by the notice.

B. The River Line Case is Inapposite to the Subject Petition

Mr. Riffin primarily relies on River Line (which involved the abandonment of a portion of the River Line and the Weehawken Branch) where both NSR and CSXT filed notices of discontinuance with respect to a Conrail abandonment filing. Mr. Riffin argues that because neither NSR nor CSXT operated over the River Line, it is controlling on the issue of whether discontinuance notices should be filed in this case. The facts of River Line are clearly distinguishable. First, unlike the subject abandonment, there were active customers on the River Line served by Conrail on behalf of its owners. Secondly, the

River Line was a through line which could be used for overhead rights. In respect to this point, the decision of the Board suggests that NSR or CSXT utilized the River Line for exactly that purpose. In their exemption petitions, NSR and CSXT both stated that they would “not discontinue overhead operations until the Northern Branch has been reconstructed and that they will implement the exemptions to the same extent and at the same time that Conrail exercises abandonment authority,” River Line at p. 4. While the decision also states that “NS and CSXT have never operated over the River Line...,” River Line at p. 5, it is possible that the Board was referring there to local operations. Even if the River Line was never used for overhead routing, the reference to the Northern Branch suggests that it was available for that purpose and held out to customers as a possible routing option, which would support NSR and CSXT filing discontinuance notices out of an abundance of caution.² There is no need for such caution in the subject proceeding since there are no customers that are relying on the continued availability of the Line for either local service or overhead traffic.

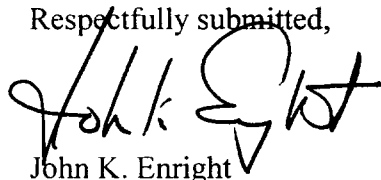
CONCLUSION

The Line has not been operated since before Split Date. Accordingly, Conrail has not acted as agent for CSXT or NS in providing common carrier service over the Line. Since there has not been a demand for service over the Line or any service provided over the Line since before Split Date, the case is distinguishable from River Line. See, also *Wisconsin Cent. Ltd. v. Surface Transp. Bd.*, 122 F.3d 881 (7th Cir. 1997); *Wisconsin & Michigan Railway Company—Discontinuance of Service Exemption—in Ashland and Iron*

² As suggested above, NSR and CSXT should not have to file discontinuance notices where they have not provided service on the line to be abandoned or used it for overhead traffic.

Counties, WI and Gogebic County, MI, STB Docket No. AB-440X (STB served October 22, 1997). Conrail requests the Board to conclude that CSXT and NS do not require discontinuance authority before Conrail can consummate the abandonment of the Line (after compliance with the conditions imposed by the Board) and that a stay of the subject proceeding until such notices are filed is unwarranted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John K. Enright", written over the typed name.

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Dated: November 6, 2006

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2006, I have caused this Reply to be served on the Petitioner and the Board by overnight mail delivery and by first class mail, postage pre-paid on the other parties of record to this proceeding.


John K. Enright
November 6, 2006