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SERVICE DATE – FEBRUARY 10, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON
COUNTY, N.J.

Docket No. AB 55 (Sub-No. 686X)

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

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, N.J.

Decided: February 10, 2025

These proceedings involve Consolidated Rail Corporation's (Conrail's) request for authority to abandon an approximately 1.36-mile portion of a line of railroad, known as the Harsimus Branch, located in the City of Jersey City, N.J. The Harsimus Branch, most of which is in an area of commercial development, has not been used for rail service in decades.¹ As discussed below, the Board will set deadlines for filing offers of financial assistance (OFA).

On February 26, 2009, Conrail, CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR) jointly filed a verified notice of exemption under 49 C.F.R. part 1152, Subpart F—Exempt Abandonments and Discontinuances of Service for Conrail to abandon, and for CSXT and NSR to discontinue service over, the Harsimus Branch. Notice of the exemption was served and published in the Federal Register on March 18, 2009 (74 Fed. Reg. 11,631). The exemption was scheduled to become effective April 17, 2009.

Pursuant to the notice of exemption, the deadline for submitting formal notices of intent to file an OFA under 49 C.F.R. § 1152.27(c)(2) was March 30, 2009. On March 27, 2009, the Board received notices of intent from the City of Jersey City (the City) and CNJ Rail

¹ Collectively, the dockets are referred to as the Harsimus Abandonment Proceeding. A previous Board decision provides a full history of the Harsimus Branch. Harsimus Aban. Proc., AB 167 (Sub-No. 1189X) et al., slip op. at 2-6 (STB served Aug. 11, 2014).

Corporation (CNJ).² On April 16, 2009, the Board stayed the effectiveness of the exemption while the environmental and historic review process proceeded. On May 26, 2009, the Board directed Conrail to provide the information necessary to formulate an OFA and tolled the time period for the City and CNJ to file an OFA until 10 days after Conrail provided the City and CNJ with the information specified in 49 C.F.R. § 1152.27(a) and notified the Board that it had done so. The Board also explained that the OFA process is designed for the purpose of providing continued rail service and that, therefore, any person who intends to file an OFA in this proceeding 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.

By a decision served April 20, 2010, the Board held all aspects of the proceeding in abeyance while the United States District Court for the District of Columbia, acting as the Special Court, addressed the underlying question of the nature of the trackage sought to be abandoned. The Board vacated the abeyance order and reinstituted the Harsimus Abandonment Proceeding in an August 11, 2014 decision, after the courts had found that the Harsimus Branch is a line of railroad subject to the Board's abandonment authority.³ The Board indicated that it would proceed with the historic and environmental review process and would set a due date for OFAs in a future decision. On September 23, 2021, the Board's Office of Environmental Analysis issued a Final Environmental Assessment, which completed the environmental review process. By decision served on August 22, 2022, the Board found that Conrail had not violated Section 110(k) of the National Historic Preservation Act. And, on October 31, 2024, the Board, the Advisory Council on Historic Preservation, and Conrail executed a Memorandum of Agreement, which completed the historic review process.

In light of the passage of time since Conrail provided valuation information for the Harsimus Branch,⁴ Conrail will be directed, by February 18, 2025, to certify the accuracy of the valuation information it submitted in its June 1, 2015 letter to the Board or to inform the Board that it will update the valuation. The Board will also direct the City and CNJ to inform the Board

² Although the Board also accepted a notice of intent filed by James Riffin after the deadline, that notice was subsequently stricken from the record, and Riffin was dismissed and prohibited from further participation in the Harsimus Abandonment Proceeding.

³ See City of Jersey City v. Consol. Rail Corp., 968 F. Supp. 2d 302 (D.D.C. 2013), *aff'd*, No. 13-7175 (D.C. Cir. 2014).

⁴ As relevant here, the City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, City Parties) filed a motion on December 23, 2014, seeking a Board order compelling Conrail to produce valuation information for the Harsimus Branch. The City Parties' motion was granted as part of a Board decision served on May 22, 2015. Conrail provided valuation information in a letter filed with the Board on June 1, 2015. Conrail stated that it no longer held a fee interest in the Harsimus Branch, that its constructive easement over those properties has no value, and that it believed there was no basis upon which the City could demonstrate any reasonable likelihood of providing and maintaining freight rail service on the Harsimus Branch.

no later than February 20, 2025, whether they still intend to submit an OFA.⁵ In the event that either the City or CNJ inform the Board that they intend to submit an OFA, the Board will establish a schedule for the OFA process. The City, CNJ, and Conrail should comply with the Board's OFA regulations in effect when this proceeding began in 2009.⁶

It is ordered:

1. By February 18, 2025, Conrail shall certify the continued accuracy of its June 1, 2015 valuation information or inform the Board that it will provide updated valuation information for the Harsimus Branch.

2. By February 20, 2025, the City and CNJ shall inform the Board and Conrail whether they intend to make an offer of financial assistance.

3. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

⁵ As the City and CNJ were the only entities that are still parties to this proceeding to file notices of intent by the March 2009 deadline, the Board will not accept additional notices from any other entities.

⁶ The Board promulgated revised OFA regulations in July 2017. Offers of Financial Assistance, EP 729 (STB served July 5, 2017). In that decision, the Board stated that the preliminary financial responsibility calculation requirement would not be imposed retroactively on notices of intent filed before the effective date of the new rule. Id., slip op. at 9. Consistent with this statement, the OFA procedures applicable when notices of intent were first submitted will continue to govern the OFA process in this proceeding.