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SERVICE DATE — SEPTEMBER 8, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36542

NCSR, LLC D/B/A NEW CASTLE SOUTHERN RAILROAD—LEASE AND OPERATION
EXEMPTION WITH INTERCHANGE COMMITMENT—NORFOLK SOUTHERN
RAILWAY COMPANY

Docket No. AB 1093 (Sub-No. 2X)¹

C&NC RAILROAD, LLC—DISCONTINUANCE EXEMPTION—
IN WAYNE AND HENRY COUNTIES, IND.

Digest:² This decision permits NCSR, LLC d/b/a New Castle Southern Railroad to commence operations on an expedited basis over approximately 21 miles of rail line in Indiana and adjusts the effective date of the discontinuance of service over the same rail line by C&NC Railroad, LLC.

Decided: September 8, 2021

C&NC Railroad, LLC (C&NC), operates approximately 21 miles of rail line owned by Norfolk Southern Railway (NSR), extending from milepost CB 5.4 at Beesons, Ind., to milepost CB 25.30 at New Castle, Ind., and from milepost R 0.1 to milepost R 1.16 at New Castle (the Line). See C&NC R.R.—Discontinuance Exemption in Wayne & Henry Cntys., Ind. (C&NC R.R.), AB 1093 (Sub-No. 2X) (STB served Aug. 20, 2021). The Board recently granted C&NC's petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to discontinue its service over the Line, effective September 20, 2021. *Id.* at 3 (explaining that, in a request for expedited consideration of the petition, NSR requested the September 20, 2021, effective date and stated that it had begun preparations for a smooth transition). Given, however, the pending complaint in A.F. Gelhar Co. v. C&NC R.R., Docket No. NOR 42172, concerning C&NC's service over the Line, the Board instructed NSR to advise the Board of the earliest date that NSR would be prepared to begin service over the Line. C&NC R.R., AB 1093 (Sub-No. 2X), slip op. at 3 (noting that the Board may adjust the effective date of the discontinuance exemption).

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

On August 23, 2021, NSR filed a letter in these dockets advising the Board that it had contracted with NCSR, LLC d/b/a New Castle Southern Railroad (NCSR), to operate over the Line, (NSR Letter 2), and, in Docket No. FD 36542, NCSR filed a verified notice of exemption under 49 C.F.R. § 1150.31 to operate the Line³ and a petition to partially waive the 30-day effectiveness period under 49 C.F.R. § 1150.32(b) to allow the exemption to become effective on September 13, 2021.

Notice of the exemption in Docket No. FD 36542 was served and published in the Federal Register on September 8, 2021 (86 Fed. Reg. 50,420). The published notice stated that the Board would establish the effective date and deadline for petitions for stay in the decision addressing NCSR's petition.

In the petition, NCSR explains that an expedited effective date will allow it to begin servicing customers affected by recent service irregularities on the Line sooner. (Pet. 1.) NCSR states that it has negotiated with NSR to commence operations over the Line on September 13, 2021, and that it "is undertaking all of the preparations necessary for replacement operations to begin as soon as practicable." (Pet. 3.) NSR's letter confirms that NCSR has contracted to operate over the Line. (NSR Letter 2.) NSR also states that allowing NCSR to begin operating over the Line on September 13, 2021, will "benefit NSR, shippers, and the public interest, and ensure a smooth transition of common carrier service." (Id.)

For good cause shown, the Board will grant the petition and waive the 30-day requirement under § 1150.32(b) to the extent necessary to permit NCSR's operation exemption to take effect on September 13, 2021. The circumstances of this case indicate that a partial waiver is appropriate. Accelerating the effective date of the exemption will help avoid the potential for further disruption of rail service for shippers on the Line, and NSR supports the waiver request.⁴

Because the record here shows that NCSR is preparing to commence service on September 13 and this decision permits its operation exemption to become effective on that date, the effective date of C&NC's exemption to discontinue its service over the Line will be adjusted correspondingly to September 13, 2021.

It is ordered:

1. In Docket No. FD 36542, NCSR's petition for waiver is granted, and the 30-day provision under 49 C.F.R. § 1150.32(b) is waived in part, as discussed above.

2. NCSR's lease and operation exemption in Docket No. FD 36542 will become effective on September 13, 2021. Petitions for stay are due by September 9, 2021.

³ NCSR identifies the Line as extending from milepost CB 5.4 at Beesons to milepost 25.30 at New Castle, and from milepost R 0.09 to milepost R 1.16 at New Castle.

⁴ Petitions for stay of the effective date of the exemption in Docket No. FD 36542 will be due by September 9, 2021.

3. In Docket No. AB 1093 (Sub-No. 2X), C&NC's exemption to discontinue service on the Line will become effective on September 13, 2021.

4. This decision is effective on its date of service.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.