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SERVICE DATE – MARCH 5, 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: March 5, 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 This decision will set deadlines for Conrail to provide updated valuation information for the Harsimus Branch and for the City of Jersey City (the City) and CNJ Rail Corporation (CNJ) to file 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 exemptions was served and published in the Federal Register on March 18, 2009 (74 Fed. Reg. 11,631). The exemptions were 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. As relevant here, the Board received notices of intent from the City and CNJ on March 27, 2009. On April 16, 2009,

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).

the Board stayed the effectiveness of the exemptions 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.

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. After the courts found that the Harsimus Branch is a line of railroad subject to the Board's abandonment authority, the Board vacated the abeyance order and reinstituted the Harsimus Abandonment Proceeding in an August 11, 2014 decision. The Board stated that it would proceed with the historic and environmental review process.

Subsequently, several parties (including the City) filed a December 23, 2014 motion seeking a Board order compelling Conrail to produce valuation information for the Harsimus Branch. The motion was granted in a May 22, 2015 Board decision, which also indicated that the Board would set a due date for OFAs in a future decision. Conrail provided the valuation information in a June 1, 2015 letter.

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.

By a decision served February 10, 2025, the Board directed Conrail either to certify the accuracy of the valuation information it submitted in 2015 or to inform the Board that it will update the valuation. In that same decision, the Board also directed the City and CNJ to inform the Board whether they still intend to submit an OFA.²

On February 18, 2025, Conrail informed the Board that it would provide updated valuation information. On February 20, 2025, the City and CNJ each informed the Board of their intent to submit an OFA. CNJ asks the Board to rule on the request in its 2009 notice of intent for Conrail to provide information specified in 49 C.F.R. § 1152.27(a) and certain additional information. (CNJ Resp. 2.) The City requests that Conrail be directed to provide, pursuant to 49 C.F.R. § 1152.27, "all such information and documents, including but not necessarily limited to copies of all title reports, records of sales or offers, appraisals, other valuations, reports relating to soil toxicity, and track and tie (and any other material) valuations." (City Resp. 2-3.) Additionally, the City requests that its OFA be due no less than 45 days after Conrail submits the updated valuation and information disclosure. (Id. at 3.)

² The Board explained that it will not accept additional notices from any other entities.

In light of Conrail's February 18 response, the Board will direct Conrail to submit updated valuation information by March 17, 2025. Conrail must provide the information specified in 49 C.F.R. § 1152.27(a), (d) (2009).³ To the extent the City and CNJ are asking the Board to direct Conrail to provide information that is not required by the Board's OFA regulations, those requests will be denied. The parties previously were provided with an opportunity to conduct discovery in this case and additional information exceeding the scope of 49 C.F.R. § 1152.27 is unnecessary.⁴

The City seeks 45 days to file an OFA following Conrail's submission of updated valuation information. Due to the complexity of this proceeding and the amount of time that has passed, the Board will partially grant the City's request. The City and CNJ may submit an OFA within 30 days of Conrail's submission of the updated valuation information. See 49 C.F.R. § 1152.27(b)(2)(ii) (providing that any OFA must be filed by 30 days after the Federal Register publication giving notice of the exemption). The City and CNJ are reminded that the OFA process is designed for the purpose of providing continued rail service and the Board need not require the sale of a line under the OFA provisions if it finds that an offeror has no genuine interest in providing rail service or that there is no likelihood of future traffic. See Union Pac. R.R.—Aban. & Discontinuance of Trackage Rts. Exemption—in L.A. Cnty., Cal., AB 33 (Sub-No. 265X), slip op. at 2 (STB served May 7, 2008). Therefore, any 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. See L.A. Cnty. Metro. Transp. Auth.—Aban. Exemption—in L.A. Cnty., Cal., AB 409 (Sub-No. 5X), slip op. at 2-3 (STB served June 16, 2008). The OFA should not contain any argument or discussion that is unrelated to the contents of the offer, as set forth in 49 C.F.R. § 1152.27(c)(1)(ii).

It is ordered:

1. Conrail shall file with the Board updated valuation information for the Harsimus Branch by March 17, 2025.
2. The City's request for an extension of time to submit an OFA is granted in part. The City and CNJ will be permitted to submit an OFA within 30 days of Conrail's filing of updated valuation information.
3. CNJ's and the City's requests for additional information are denied, as described in this decision.

³ As noted in the Board's February 10, 2025 decision, the OFA process will be governed by the OFA regulations in effect when this proceeding began in 2009. The 2009 regulations are available at www.govinfo.gov/app/collection/cfr/2009/.

⁴ As noted in the Board's May 22, 2015 decision in this docket, discovery in abandonment proceedings normally is limited, and the Board previously permitted reasonable discovery in this proceeding due to the complex and controversial issues that have been presented. Discovery in this proceeding closed on January 4, 2017.

4. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.