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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33660]

Wheeling & Lake Erie Railway Company, Consolidated Rail Corporation, and CSX

Transportation, Inc.--Joint Relocation Project Exemption--in New London and Greenwich,

OH

Wheeling & Lake Erie Railway Company (W&LE), Consolidated Rail Corporation (Conrail), and CSX Transportation, Inc. (CSXT), have jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to enter into a project involving the relocation of W&LE's line of railroad between New London and Greenwich, OH. The relocation will facilitate more efficient train operations and allow for the removal of unnecessary and duplicative trackage. The proposed transaction was scheduled to take place no sooner than October 2, 1998.

W&LE is a Class II rail carrier operating approximately 850 miles of rail line in 4 states. Conrail is a Class I rail carrier operating approximately 10,500 miles of rail line in 13 states and the District of Columbia. CSXT is a Class I rail carrier operating approximately 18,504 miles of rail line in 20 states, the District of Columbia, and Ontario, Canada.¹

¹ See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Lease/Agreements--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388 [Decision No. 88] (served June 19, 1998).

W&LE proposes to: (1) acquire overhead trackage rights over a Conrail line between New London and Greenwich; (2) acquire overhead trackage rights over a short segment of CSXT's line which connects with Conrail's line and W&LE's line at Greenwich; (3) construct a short connecting track between its line and Conrail's line at New London to permit operation of the trackage rights; and (4) abandon its own line between New London and Greenwich.² There are no active shippers located on the line to be abandoned.

Under the joint agreement, W&LE will have the right to operate its trains over Conrail's line between Conrail milepost 47.0 at New London and CSXT's milepost BG 193.23 at Greenwich, a distance of approximately 7.85 miles.³ W&LE and Conrail will install turnouts and connecting track totaling approximately 1,100 feet in the southeast quadrant of the intersection of Conrail's line and W&LE's line at New London. W&LE will maintain its existing interchange with CSXT at Greenwich.

The proposed relocation project will permit the consolidation of parallel rail operations onto Conrail's and CSXT's existing lines, which have adequate capacity to handle the traffic of both parties. W&LE will benefit by saving the cost of maintaining and rehabilitating its line, including the cost of maintaining and rehabilitating the existing

² The trackage rights to be acquired by W&LE include use of the connection to be constructed in the northwest quadrant of the intersection of Conrail's line and CSXT's line at Greenwich. The construction of that connection was authorized by the Board in STB Finance Docket No. 33388 (Sub-No. 3), decision served November 25, 1997.

³ Under the plan for allocating certain assets of Conrail between CSXT and Norfolk Southern as approved by the Board, Conrail's line between New London and Greenwich will be allocated to New York Central LLC and will be operated by CSXT.

diamond at New London that will be eliminated as a result of this project. W&LE will also benefit by reusing the rail and obtaining the net proceeds from salvage of its own line. The relocation of W&LE's operations will facilitate construction of the connection between CSXT's line and Conrail's line at Greenwich.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into a new territory. See City of Detroit v. Canadian National Ry. Co., et al., 9 I.C.C.2d 1208 (1993), aff'd sub nom., Detroit/Wayne County Port Authority v. ICC, 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. See D.T.&I.R.--Trackage Rights, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653 (1980).

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If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33660, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on: William C. Sippel, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601-6710; Charles M. Rosenberger, 500 Water Street, J150, Jacksonville, FL 32202; and John J. Paylor, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101-1416.

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Decided: October 16, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary