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March 27, 2006

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BY HAND

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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ENTERED
Office of Proceedings
MAR 27 2006
Part of
Public Record



Re: Norfolk Southern Railway Company – Control and Consolidation
Exemption – Algers, Winslow and Western Railway Company,
STB Finance Docket No. 34839.

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and ten copies of a Motion Of Norfolk Southern Corporation And Norfolk Southern Railway Company For Leave To Amend Petition For Exemption And To File A Reply To Replies.

Please date stamp and return with our messenger the additional copy of the enclosed motion.

Sincerely,

Richard A. Allen

Encl.

cc: (w/encl.) All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34839



ENTERED
Office of Proceedings
MAR 27 2006

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Public Record

**NORFOLK SOUTHERN RAILWAY COMPANY
– CONTROL AND CONSOLIDATION EXEMPTION –
ALGERS, WINSLOW AND WESTERN RAILWAY COMPANY**

**MOTION OF NORFOLK SOUTHERN CORPORATION AND NORFOLK
SOUTHERN RAILWAY COMPANY FOR LEAVE TO AMEND PETITION
FOR EXEMPTION AND TO FILE A REPLY TO REPLIES**

Norfolk Southern Railway Corporation (“NSC”) and Norfolk Southern Railway Company (“NSR”) respectfully move the Board pursuant to 49 C.F.R. § 1117.1 for leave to amend the petition for exemption filed by NSR on February 14, 2006 to add NSC, NSR’s parent corporation, to the petition for an exemption from 49 U.S.C. § 11323 to permit NSC as well as NSR to control the Algiers, Winslow and Western Railway Company (“AWW”).

In addition, NSC and NSR provide notice of their intent (and if required, request leave) to file a reply on or before April 11, 2006 to the filings made by the Indiana Southern Railroad, Inc. (“ISRR”), Indianapolis Power and Light Co. (“IPL”), PSI Energy, Inc. (“PSI”), and Solar Sources Underground LLP (“Solar”). NSC and NSR could not have anticipated these filings because they are based on factual inaccuracies and offer no legally cognizable objections to the AWW transaction. The swift approval of this petition for exemption – which advances the public interest in certainty in the coal transportation market at a time of great national energy needs – should not be delayed because of these meritless filings. But NSC and NSR believe they need to clarify the record and rebut the baseless objections so the Board has a complete and accurate record.

Finally, NSC and NSR also comment briefly on the request for oral argument filed by ISRR on March 24, 2006.

Motion To Amend Petition

NSC is a non-carrier holding company that owns 100 percent of the stock of NSR pursuant to authority granted by the Board's predecessor, the Interstate Commerce Commission ("ICC") in Norfolk Southern Corporation—Control—Norfolk & W. Ry Co., 366 I.C.C. 173 (1982).¹ See also, e.g., CSX Corp., et al.—Control—Conrail Inc., et al., 3 S.T.B. 196 (1998).

By decision served March 11, 1974, the ICC approved and authorized "the acquisition by Southern Railway Co. of control jointly with Old Ben Coal, Inc. of Algiers, Winslow and Western Railway Co., through the purchase of 50 percent of the outstanding capital stock"

On February 14, 2006, NSR, as the successor to Southern Railway Co., petitioned for an exemption to authorize NSR to acquire the remaining 50 percent of AWW's stock. Inadvertently, the petition neglected to seek an exemption on behalf of NSC from 49 U.S.C. § 11323 also to control AWW, which authorization by the Board would be required by 49 U.S.C. § 11323(a)(5) absent an exemption.

NSC and NSR move to amend NSR's exemption petition to add NSC and to seek exemption from 49 U.S.C. § 11323 for NSC also to control AWW. Granting this motion will in no way expand the issues or alter the relevant competitive and other public interest

¹ Pursuant to this decision, on June 1, 1982, Southern Railway Company (SR) and Norfolk and Western Railway Company (N&W) consummated a consolidation under the control of NSC. Effective Dec. 31, 1990, SR's name was changed to "Norfolk Southern Railway Company," and NSC contributed all of the common stock of N&W to NSR. See Southern Railway Co. -- Control Exemption -- Norfolk & Western Railway Co., et al., Finance Docket No. 31791, served January 14, 1991. Effective Sept. 1, 1998, N&W was merged with and into NSR. All of the common stock of NSR is owned by NSC. See Norfolk Southern Railway Co. -- Merger Exemption -- Norfolk & Western Railway Co., Finance Docket No. 33648, served August 31, 1998.

considerations presented by the exemption petition. All of NSC's interests in the railroad business are contained in NSR, an integrated rail system. In similar circumstances, the Board and the ICC have readily permitted parties to amend exemption petitions or notices. In Burlington Northern, Inc. and Burlington Northern Motor Carriers, Inc.—Control Exemption—Stoops Express, Inc. et al. ICC No. MC-F-17030, served July 18, 1986, for example, the ICC granted a motion to amend an exemption petition in a control case to include the merger of two of the companies to be acquired and stated: "The amendment will be accepted as it does not expand the overall scope or significance of the exemption petition. Nor does it alter the competitive scope of the transaction." See also, e.g., Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—In Hamilton and Merrick Counties, NE, STB Docket No. AB-6 (Sub-No. 408X), served December 20, 2004; Union Pacific Railroad Company—Abandonment Exemption—In Yuma and Maricopa Counties, AZ, STB Docket No. AB-33 (Sub-No. 178X), served December 23, 2002.

Intent to File a Reply

ISRR, IPL and PSI filed their responses on March 16, 2006 after ISRR requested and received a 10-day extension. Solar filed its response on March 22, 2006 after requesting and receiving an extension until that date. All of these responses support ISRR's request for affirmative relief by way of trackage rights over AWW's lines or a mandatory switching condition — a request that is based only on theories that the Board and its predecessor have consistently rejected.

The responses to NSR's petition, however, are substantially more than mere "replies" to that petition. ISRR specifically requests affirmative relief and in fact appends as Exhibit B to its reply a "Trackage Rights Application," which states that it is submitted "pursuant to 49 U.S.C.

§§ 11321-25 and the Surface Transportation Board's (the 'Board's') Railroad Consolidation Procedures, 49 C.F.R. Part 1180." The other replies support ISRR's request for affirmative relief. These "replies" are therefore in effect affirmative motions to which NSR and NSC would have a right under § 1104.13(a) to reply.

Although it seems doubtful that § 1104.13(c) (which generally prohibits replies to replies) would apply here, NSR and NSC respectfully request, to the extent necessary, that the Board waive it, as it has done on many occasions in the interests of a complete record and to ensure a just determination of the issues. See, e.g., MVC Transportation, LLC – Acquisition Exemption – P&LE Properties, Inc., Finance Docket No. 34462, served October 20, 2004; Norfolk Southern Railway Co. – Abandonment Exemption – In Nottoway, Prince Edward, Cumberland, and Appomattox Counties, VA, Docket No. AB-290 (Sub-No. 252X), served January 18, 2005; Union Pacific Railroad Co. – Abandonment Exemption – In Rio Grande and Mineral Counties, CO, Docket No. AB-33 (Sub-No. 132X), served June 22, 2004; CSX Transportation Inc. – Abandonment Exemption – In Summit County, OH, Docket No. AB-55 (Sub-No. 631X), served May 12, 2004; Reading Blue Mountain and Northern Railroad Co. – Lease and Operation Exemption – Norfolk Southern Railway Co. and Pennsylvania Lines LLC, Finance Docket No. 34048, served August 1, 2001; Jefferson Terminal Railroad Co. – Acquisition and Operation Exemption – Crown Enterprises, Finance Docket No. 33950, decision served March 19, 2001.²

Permitting NSR to reply in this case is especially appropriate given that this is an exemption petition, and therefore deemed to be an "informal proceeding". See Burlington Northern Railroad Co. – Abandonment Exemption – Between Mesa and Basin City, Franklin

² Board decisions permitting a reply to a reply also note that its rules are to be "construed liberally to secure just . . . determination of the issues presented." 49 C.F.R. § 1100.3.

County, WA, Docket No. AB-6 (Sub-No. 370X), decision served January 27, 1997 (waiving the rule against the filing of a reply to a reply and noting that it was an informal exemption proceeding as opposed to a formal application proceeding). Moreover, it should be noted that the procedures employed by the Board in a formal application proceeding under 49 U.S.C. § 11323 typically allow for rebuttal by the applicant. Thus, allowing NSR to reply would not only be consistent with the generally informal nature of exemption proceedings, see id., but also with the procedures employed by the Board in a proceeding to consider a formal application under 49 U.S.C. § 11323.

As NSR and NSC intend to show in their reply, the filings submitted by ISRR, IPL, PSI, and Solar contain various factual inaccuracies, and they are based on legal or policy contentions that are directly contrary to well established Board precedents, which the replies simply ignore. For example, among other incorrect statements, ISRR argues that more review of the transaction is warranted or that ISRR should get trackage rights or some other condition because the transaction allegedly results in a “classic two-to-one situation.”³ However, AWW currently is the only carrier to reach the mines; NSR will be the only carrier to reach the mines after the transaction. Not only is this not a “classic” two-to-one, it is not a two-to-one situation at all. Furthermore, the Board has consistently rejected the proposition that the consolidation of an origin carrier with a destination carrier will harm competition or shippers and the related contention that a carrier will favor its own long haul route over more efficient interline routes with other carriers. ISRR, PSI, IPL and Solar cite no cases in support of their contentions. Although arguments such as these should not delay the granting of this petition at all, NSR’s reply will ensure that the Board has a complete and accurate record upon which to grant this

³ ISRR Brief at 11. See also Reply of Solar Sources Underground, LLC at 3.

petition for exemption. Moreover, allowing NSR to reply will neither unfairly prejudice any party nor delay the proceeding.

ISRR's Request For Oral Argument

On March 24, 2006, ISRR filed a letter requesting the Board to hold oral argument in this proceeding. NSC and NSR believe that this proceeding presents no difficult issues that would warrant the unusual step of holding oral argument, and that requiring oral argument would be at odds with the basic purpose of an exemption proceeding to reduce regulatory burdens and expedite proceedings in appropriate cases, which this case clearly is. At a minimum, NSC and NSR respectfully suggest that the Board will be in a better position to evaluate the need for oral argument after it receives and reviews the reply that NSC and NSR intend to file and should therefore defer any decision respecting oral argument until then.

CONCLUSION

For the foregoing reasons, NSC and NSR respectfully request that the Board allow them to amend the petition for exemption to add NSC and to file a reply on or before April 11, 2006 to the replies filed by ISRR, IPL, PSI, and Solar in this docket.

Respectfully submitted,



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*Attorneys for
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March 27, 2004

CERTIFICATE OF SERVICE

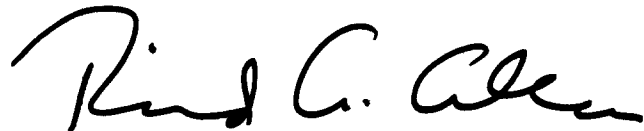
I certify that on March 27, 2006, a true copy of the foregoing " Motion of Norfolk Southern Corporation and Norfolk Southern Railway Company for Leave to Amend Petition for Exemption and to File a Reply to Replies" was served by hand or first class mail, postage prepaid upon:

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A handwritten signature in black ink, reading "Richard A. Allen". The signature is fluid and cursive, with the first name "Richard" and last name "Allen" clearly legible.

Richard A. Allen