

Surface Transportation Board Announces Results of January 19 Voting Conference

Surface Transportation Board Chairman Roger Nober today announced the results of the voting conference held today, January 19, 2005 by the STB.

In its first order of business, the Board elected Commissioner W. Douglas Buttrey as Vice Chairman for 2005.

The Board voted unanimously to adopt each of the draft decisions in the 10 matters before it. A summary of those votes is attached as a fact sheet. The Board also announced a decision in another matter, which the Board had previously adopted. A summary of that matter is also attached.

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ATTACHMENT

Fact Sheet

VOTING RESULTS OF SURFACE TRANSPORTATION BOARD'S JANUARY 19, 2005 VOTING CONFERENCE

• ***Public Service Company of Colorado d/b/a [doing business as] Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, STB Docket No. 42057.***

At issue in this railroad rate-complaint proceeding is the Board's June 2004 decision finding that the rate charged by The Burlington Northern and Santa Fe Railway Company for the transportation of coal from origins in the Powder River Basin of Wyoming to Xcel Energy's (Xcel) Pawnee steam electric-generating plant near Brush, Colorado was too high. Based upon a stand-alone cost analysis, the Board prescribed maximum reasonable rates through the year 2020 and awarded reparations to Xcel.

Upon reconsideration of the 2004 decision, the Members voted, 3-0, to modify the rate prescription and reparations award in this proceeding.

• ***Delaware and Hudson Railway Company, Inc.--Discontinuance of Trackage Rights Exemption--in Susquehanna County, PA, and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie, and Genesee Counties, NY, STB Docket No. AB-156 (Sub-No. 25X).***

(Embraced cases: *Canadian Pacific Railway Company--Trackage Rights Exemption--Norfolk Southern Railway Company, STB Finance Docket No. 34561, and Norfolk Southern Railway Company--Trackage Rights Exemption--Delaware and Hudson Railway Company, Inc., STB Finance Docket No. 34562.*)

These proceedings involve several operational arrangements among railroads operating in New York State to streamline and enhance the efficiency of their operations in certain railroad corridors within the State.

The Members voted, 3-0, to (1) deny petitions of the United Transportation Union-New York Legislative Board, and the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters, asking the Board to revoke trackage rights obtained through regulatory exemptions authorized in STB Finance Docket Nos. 34561 and 34562; and (2) grant the Delaware and Hudson Railway Company's petition for exemption from regulation to discontinue trackage rights, subject to the standard "*Oregon Short Line*" labor-protective conditions.

• ***CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation [Petition to Approve Settlement Agreement and Exempt Embraced Transactions]***, STB Finance Docket No. 33388 (Sub-No. 95).

[Embraced cases: *Wheeling & Lake Erie Railway Co.--Trackage Rights Exemption--Norfolk Southern Railway Co. Between Bellevue and Toledo, OH*, STB Finance Docket No. 33388 (Sub-No. 95); *Wheeling & Lake Erie Railway Co.--Trackage Rights Exemption--Norfolk Southern Railway Co. in Cleveland, OH*, STB Finance Docket No. 33388 (Sub-No. 97); *Norfolk Southern Railway Co.--Trackage Rights Exemption--Wheeling & Lake Erie Railway Co. Between Clairton, PA and Bellevue, OH*, STB Finance Docket No. 33388 (Sub-No. 98); *Wheeling & Lake Erie Railway Co.--Petition for Exemption--Purchase of the Toledo Pivot Bridge--Norfolk Southern Railway Co.*, STB Finance Docket No. 33388 (Sub-No. 99); *Wheeling & Lake Erie Railway Co.--Lease and Operation Exemption--Norfolk and Western Railway Co.'s Dock at Huron, OH*, STB Finance Docket No. 32516 (Sub-No. 1); and *Wheeling & Erie Railway Co.--Trackage Rights Exemption--Norfolk and Western Railway*, STB Finance Docket No. 32525 (Sub-No. 1).]

This proceeding involves a petition by the Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS) and the Wheeling & Lake Erie Railway Company (W&LE) asking the Board to (1) approve a settlement agreement that both entered into to implement and satisfy certain conditions imposed by the STB in connection with its 1998 approval of the transaction by which the CSX Corporation and CSX Transportation, Inc. and NS acquired control of the Consolidated Rail Corporation (Conrail) and divided Conrail's assets between them (the "Conrail merger").

The Members voted, 3-0, to find that the Settlement Agreement entered into by NS and W&LE is consistent with and reasonably implements certain conditions imposed in the Conrail merger.

• ***SMS Rail Service, Inc.--Petition for Declaratory Order***, STB Finance Docket No. 34483.

At issue is an SMS Rail Service, Inc. (SMS) petition for a declaratory order asking the Board (1) to resolve a dispute between SMS and the Norfolk Southern Railway Company (NS) concerning whether SMS's Paulsboro, New Jersey operations are those of a railroad common carrier (a railroad offering its transportation services to the public, as opposed to transportation service provided to a shipper under a contract); and (2) to direct NS to interact with SMS in certain, specified ways.

The Members voted, 3-0, (1) to find that SMS is functioning as a rail common carrier at Paulsboro and that SMS must be considered and treated as such; and (2) to decline to prescribe specific parameters to the SMS-NS relationship.

• ***Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (Arbitration Review)***, STB Finance Docket No. 32760 (Sub-No. 43).

This case involves a request by the Union Pacific Railroad Company (UP) to late-file an appeal to an arbitrator's award decision in a labor arbitration proceeding.

The Members voted, 3-0, to deny UP's petition seeking to late-file an appeal of the arbitration award.

• ***Wisconsin & Southern Railroad Co.--Acquisition Exemption--Union Pacific Railroad Company***, STB Finance Docket No. 34633.

At issue in this case is the Wisconsin & Southern Railroad Co.'s (WSOR) petition seeking an exemption from the Board's prior-approval regulations to purchase, lease, and operate approximately 14 miles of Union Pacific Railroad Company railroad line between Sheboygan and Plymouth, Wisconsin.

The Members voted, 3-0, to grant the petition, subject to labor-protective conditions and a condition that WSOR notify the shippers on the line of the proposed purchase and lease.

• ***Lamoille Valley Railroad Company--Abandonment and Discontinuance of Trackage Rights Exemption--in Caledonia, Washington, Orleans, Lamoille, and Franklin Counties, VT***, STB Docket No. AB-444 (Sub-No. 1X).

At issue in this case is a petition to reopen a proceeding involving the Lamoille Valley Railroad Company's notice of

exemption from Board regulation for the abandonment of portions of a railroad line and the discontinuance of trackage rights over a separate, adjoining line.

The Members voted, 3-0, to deny the petition to reopen.

• ***Lake Superior & Ishpeming Railroad Company--Abandonment Exemption--in Marquette County, MI, STB Docket No. AB-68 (Sub-No. 4X).***

This case involves the Lake Superior & Ishpeming Railroad Company (LS&I) petition for an exemption from the Board's prior-approval regulations to allow LS&I to abandon an approximately nine-mile segment of a railroad line, known as the "Republic Subdivision," running south from Humboldt Junction to the line's end at the Republic Mine in Marquette County, Michigan.

The Members voted, 3-0, to grant the petition for exemption, subject to trail use, public use, environmental, and standard employee-protective conditions.

• ***Minnesota Commercial Railway Company--Adverse Discontinuance--in Ramsey County, MN, STB Docket No. AB-882.***

(Embraced case: *MT Properties, Inc.--Adverse Abandonment--in Ramsey County, MN, STB Docket No. AB-884.*)

At issue is a petition by the City of New Brighton, Minnesota (the City) for certain exemptions and a waiver from certain Board regulations relative to procedures for obtaining authority for the abandonment of a railroad line. The City intends to file a third-party, or "adverse" application for the abandonment and discontinuance of service over approximately one-half mile of a railroad line, known as the "Butcher Spur," owned by MT Properties, Inc. (MT) and operated by the Minnesota Commercial Railway Company (MCRC). The City states that it has been unable to reach an agreement with either MT or MCRC.

The Members voted, 3-0, to grant in part and deny in part the City's petition for exemption and waiver in anticipation of the filing of the City's application for the adverse discontinuance of service and abandonment of a portion of the Butcher Spur.

• ***Motor Carrier Bureaus--Periodic Review Proceeding, STB Ex Parte No. 656.***

At issue in this case are changes to update the Board's December 13, 2004 notice (published in the *Federal Register* on December 17, 2004) in this proceeding relative to the status of two motor carrier rate bureaus, the Nationwide Bulk Trucking Association, Inc. (NBTA) and the Machinery Haulers Association, Inc. (MHA), and a request for an extension of time for the filing of comments.

The Members voted, 3-0, to amend its notice to inform the public that the NBTA and MHA continue to have antitrust immunity, and to grant the requested extension of time for filing comments.

Prior to today's voting conference, pursuant to a remand to the Board by the Third Circuit Court of Appeals for compliance with the procedural requirements of the National Historic Preservation Act, the Board reinitiated the historic review process and completed that process by negotiating a Final Memorandum of Agreement (MOA) and filing the executed MOA with the Advisory Council for Historic Preservation. Finding that the historic review process is now complete, the Board removed the previously imposed historic preservation condition and terminated the abandonment licensing proceeding, thus permitting the Norfolk Southern Railway Company, as successor to Conrail, to fully abandon the 33.9-mile "Enola Branch" line in Lancaster and Chester Counties, Pennsylvania, in the case entitled ***Consolidated Rail Corporation--Abandonment Exemption--in Lancaster and Chester Counties, PA***, Docket No. AB-167 (Sub-No. 1095X).

The Board provides the summaries above as a courtesy to the public and the media. The actions of the Board in these cases, however, are the Board's written decisions. Those decisions will be forthcoming. Printed copies of the decisions will be available for a fee by contacting **ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706, telephone (202) 306-4004**, or via asapdc@verizon.net. The decisions also will be available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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