

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388

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

Decision No. 9<sup>1</sup>

Decided: June 11, 1997

On April 10, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC)<sup>2</sup> filed their notice of intent to file an application seeking our authorization for: (a) the acquisition by CSX and NS of control of Conrail, and (b) the division of Conrail's assets by and between CSX and NS. In Decision No. 5, served and published in the *Federal Register* on May 13, 1997, at 62 FR 26352, we invited comments from interested persons respecting the CSX-1 and NS-1 petitions filed May 2, 1997, by applicants CSX and NS, wherein applicants seek, for seven construction projects, waivers of our otherwise applicable "everything goes together" rule.<sup>3</sup> The requested waivers, if granted, would allow CSX and NS to begin construction on the seven projects following the completion of our environmental review of the constructions, and our issuance of further decisions exempting or approving construction, but in advance of a final ruling on the primary application.

Seven construction projects, more fully detailed below, are the focus of the two petitions. Applicants contend that it is important that these projects (all of which involve relatively short connections between two rail carriers and which have a total length of fewer than 4 miles) be constructed prior to a decision on the primary application. Applicants claim that these connections must be in place prior to a decision on the primary application so that, if and when we approve the

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<sup>1</sup> This decision also embraces the following proceedings: STB Finance Docket No. 33388 (Sub-No. 1), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Crestline, OH*; STB Finance Docket No. 33388 (Sub-No. 2), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Willow Creek, IN*; STB Finance Docket No. 33388 (Sub-No. 3), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Greenwich, OH*; STB Finance Docket No. 33388 (Sub-No. 4), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Sidney Junction, OH*; STB Finance Docket No. 33388 (Sub-No. 5), *Norfolk Southern Railway Company and Consolidated Rail Corporation--Construction--Colson/Bucyrus, OH*; STB Finance Docket No. 33388 (Sub-No. 6), *Norfolk Southern Railway Company and Consolidated Rail Corporation--Construction--Alexandria, IN*; and STB Finance Docket No. 33388 (Sub-No. 7), *Norfolk Southern Railway Company--Construction--Sidney, IL*.

<sup>2</sup> CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRI and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

<sup>3</sup> Our regulations provide that applicants shall file, concurrently with their 49 U.S.C. 11323-25 primary application, all "directly related applications, e.g., those seeking authority to construct or abandon rail lines, \* \* \* ." 49 CFR 1180.4(c)(2)(vi). Our regulations also provide, however, that, for good cause shown, we can waive a portion, but not all, of the requirements otherwise imposed by our regulations. 49 CFR 1180.4(f)(1).

primary application, CSXT (with respect to four of the connections) and NSR (with respect to the other three) will be immediately able to provide efficient service in competition with each other. Applicants contend that, without early authorization to construct these connections, both CSXT and NSR would be severely limited in their ability to serve important (though different) customers. At the same time, applicants recognize that there can be no construction until we complete our environmental review of each of these construction projects and we issue a decision approving the construction, or an exemption from our otherwise applicable construction approval criteria, and impose whatever environmental conditions that we find appropriate.

**The CSX Connections.** If we grant its waiver request, CSXT will file, in four separate dockets,<sup>4</sup> a notice of exemption pursuant to 49 CFR 1150.36 for construction of a connection at Crestline, OH, and petitions for exemption pursuant to 49 U.S.C. 10502 and 49 CFR 1121.1 and 1150.1(a) for the construction of connections at Greenwich and Sidney, OH, and Willow Creek, IN. CSXT indicates that it would consult with appropriate federal, state, and local agencies with respect to any potential environmental effects from the construction of these connections and would file environmental reports with our Section of Environmental Analysis (SEA) at the time that the notice and petitions are filed. The connections at issue are as follows:

- (1) Two main line CRC tracks cross at Crestline, and CSXT proposes to construct in the northwest quadrant a connection track between those two CRC main lines. The connection would extend approximately 1,507 feet<sup>5</sup> between approximately MP 75.4 on CRC's North-South main line between Greenwich, OH, and Indianapolis, IN, and approximately MP 188.8 on CRC's East-West main line between Pittsburgh, PA, and Ft. Wayne, IN.
- (2) CSXT and CRC cross each other at Willow Creek, and CSXT proposes to construct a connection track in the southeast quadrant between the CSXT main line and the CRC main line. The connection would extend approximately 2,800 feet between approximately MP BI-236.5 on the CSXT main line between Garrett, IN, and Chicago, IL, and approximately MP 248.8 on the CRC main line between Porter, IN, and Gibson Yard, IN (outside Chicago).
- (3) The lines of CSXT and CRC cross each other at Greenwich, and CSXT proposes to construct connection tracks in the northwest and southeast quadrants between the CSXT main line and the CRC main line. The connection in the northwest quadrant would extend approximately 4,600 feet between approximately MP BG-193.1 on the CSXT main line between Chicago and Pittsburgh, and approximately MP 54.1 on the CRC main line between Cleveland and Cincinnati. A portion of this connection in the northwest quadrant would be constructed utilizing existing trackage and/or right-of-way of the Wheeling & Lake Erie Railway Company. The connection in the southeast quadrant would extend approximately 1,044 feet between approximately MP BG-192.5 on the CSXT main line and approximately MP 54.6 on the CRC main line.
- (4) CSXT and CRC lines cross each other at Sidney Junction, and CSXT proposes to construct a connection track in the southeast quadrant between the CSXT main line and the CRC main line. The connection would extend approximately 3,263 feet between approximately MP BE-96.5 on the CSXT main line between Cincinnati, OH, and Toledo, OH, and approximately MP 163.5 on the CRC main line between Cleveland, OH, and Indianapolis, IN.

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<sup>4</sup> These dockets will be sub-dockets 1, 2, 3, and 4 under STB Finance Docket No. 33388.

<sup>5</sup> CSXT's correction, filed May 21, 1997, modified the length of this connection from 1,142 feet at MP 75.5 to 1,507 feet at MP 75.4.

CSXT argues that, if it cannot begin the early construction of these four connections, its ability to compete with NSR will be severely compromised. CSXT claims that, if it could not offer competitive rail service from New York to Chicago and New York to Cincinnati using lines that it proposes to acquire from CRC, the achievement of effective competition between CSXT and NSR would be delayed significantly. CSXT adds that, if it cannot compete effectively with NSR “out of the starting blocks,” this initial competitive imbalance could have a deleterious and long-term effect on CSXT's future operations and its ability to compete effectively with NSR, even when the connections are ultimately built. CSXT claims that, if its waiver was not granted, the time needed for construction and signal work could delay competitive operations for as long as 6 months after we take final action on the primary application.

**The NS Connections.** If we grant its waiver request, NSR will file, in three separate dockets,<sup>6</sup> petitions for exemption pursuant to 49 U.S.C. 10502 and 49 CFR 1121.1 and 1150.1(a) for the construction of connections at Alexandria, IN, Colson/Bucyrus, OH,<sup>7</sup> and Sidney, IL. NSR indicates that it would consult with appropriate federal, state, and local agencies with respect to any potential environmental effects from the construction of these connections and would file environmental reports with SEA at the time that the petitions are filed. The connections at issue are as follows:

- (1) The Alexandria connection would be in the northeast quadrant between former CRC Marion district lines to be operated by NSR and NSR's existing Frankfort district line. The new connection would allow traffic flowing over the Cincinnati gateway to be routed via a CRC line to be acquired by NSR to CRC's Elkhart Yard, a major CRC classification yard for carload traffic. This handling would permit such traffic to bypass the congested Chicago gateway. NSR estimates that the Alexandria connection would take approximately 9.5 months to construct.
- (2) The Colson/Bucyrus connection would be in the southeast quadrant between NSR's existing Sandusky district line and the former CRC Ft. Wayne line. This new connection would permit NSR to preserve efficient traffic flows, which otherwise would be broken, between the Cincinnati gateway and former CRC northeastern points to be served by NSR. NSR estimates that the Colson/Bucyrus connection would take approximately 10.5 months to construct.
- (3) The Sidney connection would be between NSR and Union Pacific Railroad Company (UPRR) lines. NSR believes that a connection would be required in the southwest quadrant of the existing NSR/UPRR crossing to permit efficient handling of traffic flows between UPRR points in the Gulf Coast/Southwest and NSR points in the Midwest and Northeast, particularly customers on CRC properties to be served by NSR. NSR estimates that the Sidney connection would take approximately 10 months to construct.

**Comments.** Four comments opposing applicants' waiver requests were filed. Steel Dynamics, Inc. (SDI) filed comments (SDI-3) on May 6, 1997; The Allied Rail Unions (ARU)<sup>8</sup> filed comments (ARU-3) on May 15, 1997; American Trucking Associations, Inc. (ATA) filed

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<sup>6</sup> These dockets would be sub-dockets 5, 6, and 7 under STB Finance Docket No. 33388.

<sup>7</sup> Although NSR in its petition describes this connection as Colson/Bucyrus, the correct designation is Colson/Bucyrus. *See* diagram attached to NS-1.

<sup>8</sup> ARU's membership includes American Train Dispatchers Department/BLE; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees International Union; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; The National Conference of Firemen & Oilers/SEIU; and Sheet Metal Workers' International Association.

comments on May 16, 1997; and The Council on Environmental Quality, Executive Office of the President (CEQ) late-filed comments on June 4, 1997.<sup>9</sup> On June 4, 1997, CSX filed a reply (CSX-3) to the comments of ARU and ATA; and NS filed a reply (NS-3) to the comments of SDI, ARU, and ATA. On June 6, 1997, CSX and NS filed a joint reply (CSX/NS-16) to the comments of CEQ.

*Steel Dynamics, Inc.* SDI asks us to deny NSR's waiver petition and to require NSR to file any construction application or exemption with its primary application.<sup>10</sup> SDI believes that NSR's three proposed construction connections are intertwined with the issues involved in the primary application. Creating separate dockets for these connections, according to SDI, will not be an efficient use of the Board's resources nor permit an adequate review of the issues involved in the Midwest region. SDI contends that the proposed transfer of NSR's Fort Wayne line to CRC, followed by CRC's transfer of the line, under a long-term operating agreement, to CSXT, *see* Decision No. 4, slip op. at 6-7, is intended to disguise the asserted fact that the acquisition of Conrail will create duplicate Chicago-bound lines only about 25 miles apart, running through Waterloo and Fort Wayne, IN. SDI maintains that our consideration of issues as complex as NSR's proposed connections and the possible divestiture of duplicate lines should not precede our review of the primary application.<sup>11</sup>

*The Allied Rail Unions.* ARU opposes the CSX-1 and NS-1 waiver petitions as inconsistent with our review of the primary application. ARU argues that, by requesting the waivers, CSXT and NSR seek leverage for our ultimate approval of the application, while allegedly evading public scrutiny and comment on the transaction as a whole. ARU maintains that the construction projects are directly related to, and are dependent on, our approval of the primary transaction, and that the construction projects should be authorized only if the transaction itself is authorized. ARU argues that our merger regulations already confer a significant advantage on the applicants because they may immediately file for related abandonments and line transfers, even though they do not currently own the affected lines. ARU avers that, as a consequence, CSXT and NSR have no basis to seek additional advantage through their waiver requests. ARU contends that applicants offered no evidence to support their "competitive disadvantage" or "delay of public benefits" arguments. According to the unions, the applicants' arguments on competitive disadvantage are inherently inconsistent because both carriers assert that they will be disadvantaged unless their respective petitions are granted. Accordingly, ARU believes that a reasonable competitive balance can be maintained by denying both waiver petitions.

*American Trucking Associations, Inc.* ATA asks us to reserve judgment on the seven construction projects until the primary application is filed and reviewed by the parties. ATA contends that our approval of the waivers, despite any disclaimer to the contrary, could be interpreted by the public as tacit support for the primary application and inadvertently stifle full debate on the relevant issues. According to ATA, early consideration of the construction projects will unreasonably burden the parties and the Board's staff by requiring incremental participation in the transaction approval process. ATA also maintains that the competitive impact of the seven

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<sup>9</sup> As indicated in Decision No. 5, the comments filed by CEQ were due no later than June 2, 1997. We have accepted and considered CEQ's comments, and have permitted applicants to reply to the comments by June 6, 1997.

<sup>10</sup> SDI did not address the merits of CSXT's waiver petition.

<sup>11</sup> SDI also asserts that NS has not sought waiver of our requirement that waiver petitions be filed at least 45 days prior to the filing of the primary application. *See* 49 CFR 1180.4(f)(2). SDI therefore asks us to clarify that NS may not file its application before June 16, 1997, regardless of whether NS-1 is granted. We note that, in accordance with the procedural schedule adopted in Decision No. 6 (served and published on May 30, 1997) applicants may not file their primary application until 30 days after the filing of applicants' Preliminary Environmental Report, which was filed on May 16, 1997. The primary application, therefore, may be filed only on or after June 16, 1997. SDI's request in this regard is moot.

construction projects could not be adequately determined in the absence of consideration of the primary application.

*The Council on Environmental Quality, Executive Office of the President.* CEQ believes that the construction and operation aspects of applicants' track connection projects should be assessed at the same time so that the environmental impacts of operating these rail lines can be properly evaluated. CEQ cites its regulations at 40 CFR 1508.25(a)(1) that, when actions are "closely related," they "should be discussed in the same impact statement." CEQ also maintains that bifurcation of the related decisions appear to conflict with 40 CFR 1506.1(c)(3), which prohibits agencies from taking actions that will prejudice the ultimate decision in a programmatic environmental impact statement (EIS). In this regard, CEQ contends that, even though the proposed merger does not involve a programmatic EIS, if we grant the proposed waivers, the likelihood that we will subsequently deny the merger tends to decrease.

According to CEQ, courts have recognized the need to prepare a comprehensive EIS when actions are functionally or economically related in order to prevent projects from being improperly segmented. CEQ argues that the fact that applicants are willing to risk our eventual disapproval of the merger does not remove the interdependence of these individual decisions.

## DISCUSSION AND CONCLUSIONS

Applicants' waiver petitions will be granted. It is understandable that applicants want to be prepared to engage in effective, vigorous competition immediately following consummation of the control authorization that they intend to seek in the primary application.<sup>12</sup> We are not inclined to prevent applicants from beginning the construction process simply to protect them from the attendant risks. We emphasize what applicants acknowledge--that any resources they expend in the construction of these connections may prove to be of little benefit to them if we deny the primary application, or approve it subject to conditions unacceptable to applicants, or approve the primary application but deny applicants' request to operate over any or all of the seven connections. Nonetheless, given applicants' willingness to assume those risks, we will grant the waivers they seek in CSX-1 and NS-1.

ARU maintains in its comments that applicants have no basis for seeking the waivers. Our rules, however, specifically provide for such requests, and we have entertained numerous waiver and clarification petitions in previous rail merger cases, as well as this one. *See, e.g.* Decision No. 7 (STB served May 30, 1997). ATA and SDI argue that the competitive effect of the involved connections should be considered as part of the primary application. We agree. Applicants' operations over these connections are interdependent with the primary application, and we will

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<sup>12</sup> In this regard, we note that ARU is simply wrong in its assertion that a reasonable competitive balance can be maintained by denying both waiver petitions, so that neither carrier would face unanswered competition from the other. In their original petitions requesting waiver, both CSX and NS separately explained that these connections would permit each carrier to be able, as soon as possible following any Board approval of the primary application, to link its expanded system and compete with the other carrier in areas in which the other carrier's infrastructure would already be in place. As CSX has further explained (CSX-3 at 8):

CSX and NS have requested permission to construct connections that largely address different markets. Three of CSX's connections are intended to allow it to provide competitive services on routes linking Chicago and New York and the fourth on Northeast-Southeast routes served via Cincinnati. These are routes that NS will be able to serve immediately upon any Board approval of the Acquisition. NS's proposed connections, on the other hand, are focused on allowing it to compete with CSX in serving southwestern markets and to make use of an important Chicago-area yard used for interchanging traffic with western carriers. Denying the waiver petitions will only assure that inequality in competition, and the potential long term problems created by such inequality, will occur.

consider the competitive impact of the projects and the environmental effects of those operations along with our consideration of the primary application. Without authority to operate over the seven track connections for which the waivers are sought, applicants' construction projects alone will have no effect on competition. We emphasize that the waiver petitions that we are granting here are restricted to the construction of, and not the operation over, the seven connection projects described above.

The commenters complain that granting the waivers constitutes a prejudicial "rush to judgment" with respect to the primary application. However, as we emphasized in our May 13, 1997 request for comments, our grant of these waivers will not, in any way, constitute approval of, or even indicate any consideration on our part respecting approval of, the primary application. We also found it appropriate to note that, if we granted the waivers sought in the CSX-1 and NS-1 petitions, applicants would not be allowed to argue that, because we had granted the waivers, we should approve the primary application. We affirm those statements here.

**Environmental considerations.** CEQ has advised us not to consider the proposed construction projects separately from the operations that will be conducted over them. CEQ's recommendation is based upon its regulations at 40 CFR 1508.25(a)(1)(i)-(iii), and upon various court decisions, indicating that "when a given project effectively commits decisionmakers to a future course of action [] this form of linkage argue[s] strongly for joint environmental evaluation." *Coalition of Sensible Transp. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987). We believe, however, that we have the authority to consider the proposed construction projects separately, and agree with the applicants that permitting the construction proceedings to go forward now would be in the public interest and would not foreclose our ability to take the requisite hard look at all potential environmental concerns.

After reviewing the matter, we do concur with CEQ that regulatory and environmental issues concerning both the construction and operating aspects of these seven small construction projects should be viewed together.<sup>13</sup> Thus, in reviewing these projects separately, we will consider the regulatory and environmental aspects of these proposed constructions and applicants' proposed operations over these lines together in the context of whether to approve each individual physical construction project.<sup>14</sup> The operational implications of the merger as a whole, including operations over the 4 or so miles embraced in the seven construction projects, will be examined in the context of the EIS that we are preparing for the overall merger. That EIS may result in further environmental mitigating conditions. No rail operations can begin over these seven segments until completion of the EIS process and issuance of a further decision.

We believe that CEQ may have misconstrued the merger project as consisting of just two roughly equivalent elements: construction and operation. In fact, these seven construction projects, including the operations over them, are but a tiny facet of an over \$10 billion merger project. To put matters in perspective, the construction projects together amount to fewer than 4 miles of connecting track for a 44,000-mile rail system covering the eastern half of the United States.<sup>15</sup> Our

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<sup>13</sup> The applicable statute for both construction and operation of new rail lines is 49 U.S.C. 10901, which requires us to permit such actions unless they are shown to be inconsistent with the public convenience and necessity.

<sup>14</sup> We will have the information we need to do this because applicants' environmental report that will accompany the application will address the environmental impacts of both the construction and proposed operation of these projects. In addition, as discussed below, applicants will be required to file a detailed preliminary draft environmental assessment (PDEA) for each of the seven projects.

<sup>15</sup> Applicants point out that much of the construction on these short segments will take place within existing rights-of-way, suggesting that they will be unlikely to have significant environmental impacts. *Compare Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985)(*Thomas*)(where the Forest  
(continued...)

approval of the construction exemptions will in no way predetermine the outcome of our merger decision. As was the case in *North Carolina v. City of Virginia Beach*, 951 F.2d 596, 602 (4th Cir. 1991) (*North Carolina*), segmentation of one phase of a larger project prior to completion of environmental review will not have “direct and substantial probability of influencing [the agency’s] decision” on the overall project. *Accord, South Carolina ex. rel. Campbell v. O’Leary*, 64 F.3d 892, 898-99 (4th Cir. 1995). Approval of the constructions will not make approval of the merger any more likely, and we have made that clear to the railroads in advance. *Compare Thomas* (where the Forest Service committed substantial *public* funds to a road project that could not be recovered absent its approval of related logging projects) *with North Carolina*, 951 F.2d at 602 (where, as here, the facts reflect that the city proposing the project accepted the risk that funds expended or constructed could be lost if the overall project were not approved).

Nor will separate consideration and approval of these small construction projects in any way undermine our ability to give meaningful and thorough consideration to all environmental issues surrounding the larger merger proposal. We have not, by segmenting these construction projects, broken down the environmental impacts of the merger into insignificant pieces escaping environmental review. *See Swain v. Brineger*, 542 F.2d 364 (7th Cir. 1976). Indeed, we are preparing an EIS for the overall merger, and we will undertake appropriate environmental documentation for each of the seven individual construction projects. Our approach is appropriate because the environmental impacts of these constructions tend to be localized, whereas the impacts of the merger will affect a much larger area (quite likely the Eastern United States).

In sum, separate consideration of the seven construction projects and their environmental impacts should not be precluded by 40 CFR 1508.25 because: (1) approval of the construction projects will not automatically trigger approval of the merger; moreover, we have already determined to do an EIS for the merger and separate approval of these construction projects will in no way affect that decision; and (2) these appear to be “garden-variety connection projects” that will proceed at the railroads’ financial risk, independent of the much larger merger proposal.

Having decided to grant the petitions for waiver, we will now set out some details of how we plan to proceed. In order to fulfill our responsibilities under the National Environmental Policy Act (NEPA) and related environmental laws, we will require applicants to submit certain information on the environmental effects of the construction and operation of the seven proposed connections. As noted, the applicants will file an environmental report with the primary application that will address all of the construction projects associated with the proposed merger, including the seven connections discussed in this decision.

In addition, we will require that applicants provide a specific PDEA for each individual construction project covered by this decision. Each PDEA must comply with all of the requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. Also, the PDEA must be based on consultations with our Section of Environmental Analysis (SEA) and the federal, state, and local agencies set forth in 49 CFR 1105.7(b), as well as other appropriate parties. The information in the PDEA should be organized as follows: Executive Summary; Description of Each Construction Project Including Proposed Operations; Purpose and Need for Agency Action; Description of the Affected Environment; Description of Alternatives; Analysis of the Potential Environmental Impacts; Proposed Mitigation; and Appropriate Appendices that include correspondence and consultation responses. If a PDEA is insufficient, we may require additional environmental information or reject the document. We advise the applicants to consult with SEA as soon as possible concerning the preparation and content of each PDEA.

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<sup>15</sup>(...continued)

Service proposed to construct a road through a pristine wilderness). Applicants also suggest that there are no alternative routings for these projects. That issue, however, has not yet been determined; it will be examined in the environmental assessments (EAs) or other environmental documents that will be prepared for each of these construction projects.

As part of the environmental review process, SEA will independently verify the information contained in each PDEA, conduct further independent analysis, as necessary, and develop appropriate environmental mitigation measures. For each project, SEA plans to prepare an EA, which will be served on the public for its review and comment. The public will have 20 days to comment on the EA, including the proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate mitigation. In making our decision, we will consider the entire environmental record, including all public comments, the EAs, and the Post EAs.

Should we determine that any of the construction projects could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the proposed merger and will not be separately considered. In order to provide SEA with adequate time to incorporate the proposed connections into the draft EIS, if warranted, applicants must file the PDEAs no later than Day F+75 under the procedural schedule established in Decision No. 6.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

*It is ordered:*

1. The CSX-1 and NS-1 petitions for waiver are granted.
2. NSR and CSXT must serve copies of this decision on the Council on Environmental Quality, the Environmental Protection Agency's Office of Federal Activities, and the Federal Railway Administration, and certify that they have done so within 5 days from the date of service of this decision.
3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary