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SERVICE DATE - November 15, 1996

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33220

CSX CORPORATION AND CSX TRANSPORTATION, INC.--CONTROL
AND MERGER--CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

AGENCY: Surface Transportation Board.

ACTION: Decision No. 2; Notice of prefiling notification.

SUMMARY: Pursuant to 49 CFR 1180.4(b), CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC)¹ have notified the Surface Transportation Board (Board) of their intent to file an application seeking authority under 49 U.S.C. 11323-25 for: (1) the acquisition of control of CRI by Green Acquisition Corp. (Acquisition), a wholly owned subsidiary of CSXC; (2) the merger of CRI into Acquisition; and (3) the resulting common control of CSXT and CRI by CSXC. The Board finds this to be a major transaction as defined in 49 CFR part 1180.

DATES: Applicants intend to file their application on or before March 1, 1997.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33220 and must be sent to the Office of the Secretary, Case Control Branch, ATTN: STB Finance Docket No. 33220, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.² In addition, one copy of all documents in this proceeding must be sent to each of the applicants' representatives: (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004-1202; and (2) Paul A. Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 927-5352.
[TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: In the notice of intent filed October 18, 1996, applicants state that under an Agreement and

¹ CSXC and CSXT are referred to collectively as CSX. CRI and CRC are referred to collectively as Conrail. CSX and Conrail are referred to collectively as Applicants.

² In addition to submitting an original and 25 copies of all documents filed with the Board, the parties are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette which is formatted for WordPerfect 5.1 (or formatted so that it can be converted into WordPerfect 5.1) and is clearly labeled with the identification acronym and number of the pleading contained on the diskette [49 CFR 1180.4(2)]. The computer data contained on the computer diskettes submitted will be subject to the protective order entered in Decision No. 1, served on October 25, 1996, in this proceeding, and is for the exclusive use of Board employees reviewing substantive matters in this proceeding. The flexibility provided by such computer file data will facilitate expedited review by the Board and its staff.

Plan of Merger dated October 14, 1996, CSXC, Acquisition, and CRI have agreed that Acquisition will acquire all of the common stock of CRI. Acquisition plans first to acquire, in one or more tender offers, up to 40% of the stock of CRI for cash and place that stock in a voting trust pending review of the merger by the Board.³ Upon the satisfaction of certain conditions, including approval of the merger by the Board, CRI would be merged into Acquisition. The operations of the CSXT and CRC railroads would then be consolidated.

Applicants state that they will use the year 1995 for purposes of their impact analyses to be filed in the application, and that they anticipate filing their application on or before March 1, 1997.

The Board finds that this is a major transaction, as defined at 49 CFR 1180.2(a), as it is a control and merger transaction involving two or more Class I railroads. The application must conform to the regulations set forth at 49 CFR part 1180 and must contain all information required therein for major transactions, except as modified by any advance waiver.⁴ The carriers are also required to submit maps with overlays that show the existing routes of both carriers and their competitors.

By petition also filed October 18, 1996 (CSX/CR-2), applicants requested a protective order to protect confidential, highly confidential, and proprietary information, including contract terms, shipper-specific traffic data, and other traffic data to be submitted in connection with the control application. By decision served October 25, 1996 (Decision No. 1), applicants' petition for a protective order was granted.

Also on October 18, 1996, applicants filed a petition to establish a procedural schedule (CSX/CR-3), and to request a waiver under 49 CFR 1152.24(e)(5) to permit modifications of the procedures and timetables prescribed in 49 CFR 1152.25(d)(6) and (7) so that the filing of any opposition evidence, comments, rebuttal and briefing in any merger-related abandonments filed with the primary application would be due in accordance with the procedural schedule subsequently adopted in this proposed merger

³ Applicants filed a copy of the proposed voting trust agreement on October 23, 1996, as amended on November 1, 1996, to be entered into by and between CSXC, Acquisition, and an institutional trustee. Applicants state that they believe that Acquisition's planned purchase of CRI's voting stock will not give CSXC and its affiliates the power to exercise control of CRI and its affiliates. Applicants, however, requested that Board staff issue an informal, non-binding opinion stating whether the voting trust agreement and the arrangements described therein would effectively insulate CSXC and its affiliates from any violation of Subtitle IV of Title 49 of the United States Code and Board policy against unauthorized acquisition of control of CRI's carrier subsidiaries. An informal opinion letter was issued on November 1, 1996.

⁴ The ICC Termination Act of 1995, Pub.L. No. 104-88, 109 Stat. 803, requires that we consider the effect of the proposed transaction "on competition among rail carriers in the affected region or in the national rail system." 49 U.S.C. 11324(b)(5). Applicants are reminded to include analysis on both of these criteria in their competitive analyses.

proceeding.⁵ We will address these matters in a separate decision.

Applicants also request that, in keeping with recent merger proceedings, the Board initially turn all discovery matters (excluding the procedural schedule) over to an Administrative Law Judge (ALJ) to be designated, and direct that parties wishing to engage in discovery consult with the ALJ. The process of assigning an ALJ to this proceeding is underway, and we will leave all discovery matters, including the adoption of any guidelines governing discovery initially, to the discretion of the ALJ. A decision naming the ALJ will be issued as soon as possible.

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

Decided: November 8, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams
Secretary

⁵ Applicants indicate that they intend to file shortly a petition for waiver or clarification of Railroad Consolidation Procedures, and related relief.