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SERVICE DATE - LATE RELEASE MAY 27, 1998

SURFACE TRANSPORTATION BOARD

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. 83

Decided: May 26, 1998

On May 18, 1998, the Cities of East Chicago, IN, Hammond, IN, Gary, IN, and Whiting, IN (collectively, the Four City Consortium or the Four Cities), filed a Motion to Strike certain materials submitted by CSX<sup>1</sup> to the Board's Section of Environmental Analysis (SEA) during the environmental review process for the proposed Conrail Acquisition. For the reasons discussed below, the motion to strike will be denied.

The Four Cities argue that we should strike three documents and portions of two other documents that CSX submitted to SEA between March 5, 1998, and May 12, 1998. The Four Cities complain that they did not have an adequate opportunity to review and appropriately respond to these materials, given the short time available prior to the late May 1998 schedule for the issuance of the Final Environmental Impact Statement (Final EIS) in this case. However, in the Final EIS, which was served May 22, 1998, SEA thoroughly analyzed the environmental issues regarding the acquisition-related changes in rail traffic in the Four Cities. In doing so, SEA performed its own independent analysis and considered both the information submitted by CSX (in its Operating Plan and subsequent submissions) and all public comments, including those filed by the Four Cities as late as May 7, 1998. Moreover, in the Final EIS, SEA recommended mitigation measures for the Four Cities to address the potential adverse environmental impacts of the proposed Conrail Acquisition. As the Final EIS explains, SEA recommended mitigation in the Four Cities

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<sup>1</sup> In this proceeding, CSX Corporation and CSX Transportation, Inc. (collectively CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) seek approval and authorization under 49 U.S.C. 11323-25 for: (1) the acquisition by CSX and NS of control of Conrail Inc., and Consolidated Rail Corporation (collectively Conrail); and (2) the division of Conrail's assets by and between CSX and NS.

because of the unique circumstances of those communities. The recommended mitigation was not based on the acquisition-related increases in the number of trains.<sup>2</sup>

The Four Cities' suggestion that SEA must provide a formal comment period and opportunity to respond every time an applicant updates or modifies its traffic projections is not correct. Nor is there merit to the Four Cities' claim that parties participating in the environmental review process are bound to comply with our procedural schedule for submission of material on the merits and may not submit new evidence or studies to SEA upon closure of the evidentiary phases of a proceeding. The environmental review process is a fluid and open one that encourages the broadest possible participation by the public throughout the process.<sup>3</sup> As the environmental review progresses, it is not unusual for an applicant to propose voluntary mitigation options and other changes to the applicant's original operating plans that can affect projected train traffic levels. SEA normally considers these types of changes as part of its ongoing environmental analysis and recommendations.

Where such changes could potentially affect parties' rights, SEA provides an opportunity for additional comment. (See the additional comment period announced in the Final EIS for parties affected by NS's proposed train traffic changes in the Greater Cleveland area, which could result in potential train traffic increases in Ohio and Pennsylvania, while reducing traffic in some areas of Cleveland.) Here, however, there is no such problem. As noted, SEA, in the Final EIS, carefully analyzed all of the information provided by the Four Cities, as well as CSX, and has recommended mitigation for those communities. The Four Cities will have an opportunity to raise any concerns about the adequacy of SEA's environmental review and its recommended mitigation for the Four Cities at the oral argument being held in this case on June 3 and 4, 1998, where environmental, as well as economic and competitive transportation, issues can be raised. The Four Cities, like all other parties, then will have the opportunity to bring any remaining concerns to our attention

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<sup>2</sup> We understand that SEA in the Final EIS established two thresholds to evaluate whether potential adverse environmental impacts are significant enough to warrant mitigation. SEA developed criteria of significance to measure quantitatively whether a particular impact area (such as hazardous materials transport or highway/rail at-grade crossing safety or delay) was significantly impacted and that therefore mitigation would be appropriate. SEA also recommended mitigation for certain locations which had unique circumstances, including the Four Cities. As a result, the determination to mitigate was not based upon traffic considerations that the Four Cities seek to challenge.

<sup>3</sup> During its environmental review, SEA frequently consults informally with appropriate federal, state, and local agencies, applicants, and communities and other interested parties to verify and evaluate the information provided by applicants. The environmental review process is an informal one. There is no requirement that persons filing environmental comments serve copies of those comments on parties of record.

through an administrative appeal of our July 23, 1998 final written decision on the proposed Conrail Acquisition. In that decision, we will address environmental, economic, and competitive transportation issues and impose such conditions as we deem appropriate, including environmental conditions.

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

It is ordered:

1. The Four City Consortium's Motion to Strike is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary