

## 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

STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION — STATE OF NEW YORK, BY AND THROUGH ITS  
DEPARTMENT OF TRANSPORTATION, AND THE NEW YORK CITY ECONOMIC  
DEVELOPMENT CORPORATION

Decision No. 134

Decided: November 18, 1999

This decision dismisses, at the parties' request, a petition asking that the Board revisit the conditions granting trackage rights that permit Canadian Pacific Railway Company and its affiliates (collectively, CP) to operate over certain lines now owned by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), in order to serve shippers in the New York City area. The decision relates to the conditions that the Board imposed in approving the "CSX/NS/Conrail" transaction in its Decision No. 89, served July 23, 1998.<sup>1</sup>

In 1998, the Board approved a proposal under which the rail assets of Conrail were taken over by CSX and NS. The original proposal that the private parties negotiated among themselves divided Conrail's assets in a way that enhanced competition in several respects. Additionally, in approving the transaction, the Board imposed conditions that mitigated potential competitive harm and provided other public benefits.

One of these conditions made possible new competitive service for many New York City shippers and receivers that could formerly receive rail service only from Conrail. To permit that new competitive service, the Board granted CP trackage rights over the lines of CSX from Albany, NY, to Oak Point Yard in Bronx, NY. These Board-imposed trackage rights made competitive rail service available to these shippers for the first time since the creation of Conrail more than two decades ago. To ensure that its conditions did not contribute to an unsafe, inefficient, or operationally infeasible railroad operating environment in the congested New York City area, the

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<sup>1</sup> The parties to that transaction were CSX; Norfolk Southern Corporation and Norfolk Southern Railway Company, and their wholly owned subsidiaries (collectively, NS); and Conrail Inc. and Consolidated Rail Corporation, and their wholly owned subsidiaries (collectively, Conrail).

Board required CP to serve its new shippers through a cost-based switching service performed by CSX into and out of Oak Point Yard, rather than having CP itself also operate trains throughout this area.

A dispute subsequently arose over two issues: whether the conditions should be construed as permitting CP to handle traffic to or from Harlem River Yard directly, and whether the cost-based switching service that CSX was required to provide for CP at Oak Point Yard be construed as including certain traffic that moves through a CSX transload facility. After CP brought the matter to the Board for resolution, however, the parties indicated that they were engaging in negotiations in an effort to resolve the issues privately, and asked that Board action be withheld to permit them to pursue negotiations. In a joint motion filed by CP and CSX on November 4, 1999, the parties indicated that they had in fact resolved their differences privately, and requested dismissal of CP's petition without prejudice. The motion will be granted and the petition will be dismissed.

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

It is ordered:

1. The joint motion is granted and CP's petition is dismissed without prejudice.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams  
Secretary