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SERVICE DATE - LATE RELEASE FEBRUARY 9, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 (Sub-No. 91)¹

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
(GENERAL OVERSIGHT)

ACTION: Decision No. 1; Notice of General Oversight Proceeding, and Request for Comments from Interested Persons On the Progress of Implementation of the Conrail Transaction and the Workings of the Various Conditions Imposed.

SUMMARY: In 1998, in 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, Decision No. 89 (STB served July 23, 1998) (CSX/NS/CR Dec. No. 89), we approved, subject to various conditions (including a 5-year general oversight condition): (1) the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail or CR) by (a) CSX Corporation and CSX Transportation, Inc. (collectively, CSX) and (b) Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS); and (2) the division of the assets of Conrail by and between CSX and NS. We are now instituting a proceeding to implement the general oversight condition imposed in CSX/NS/CR Dec. No. 89. We are requiring CSX and NS to file progress reports respecting the Conrail transaction and to make certain data available to interested persons. We are inviting interested persons to submit comments on the progress of implementation of the Conrail transaction and the conditions we imposed.

DATES: CSX and NS must file progress reports by June 1, 2000, and must make their 100% traffic waybill tapes available to interested persons by June 15, 2000. Comments of interested persons will be due on July 14, 2000. Replies will be due on August 3, 2000.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33388 (Sub-No. 91) and must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Finance Docket No. 33388 (Sub-No. 91), 1925 K Street, N.W.,

¹ A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33388.

Washington, DC 20423-0001. In addition, one copy of all documents filed in this proceeding must be sent to: (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004-1202 (representing CSX); and (2) Richard A. Allen, Esq., Zuckert, Scutt & Rasenberger, LLP, 888 17th Street, N.W., Washington, DC 20006-3939 (representing NS).

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties must also submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all pleadings and attachments (e.g., textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence) and must clearly label pleadings and attachments and corresponding computer disks/CDs with an identification acronym and pleading number. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in some version of Lotus, Excel, or Quattro Pro. Parties may individually seek a waiver from the disk-CD requirement.

FOR FURTHER INFORMATION, CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: In CSX/NS/CR Dec. No. 89, we established general oversight for 5 years so that we might assess the progress of implementation of the Conrail transaction and the workings of the various conditions we imposed.² We retained jurisdiction to impose additional conditions and/or to take other action if, and to the extent, we determined that it was necessary to address harms caused by the Conrail transaction. As part of our oversight, we specifically indicated that we would monitor implementation of the transaction and the workings of our conditions to ensure adherence by CSX and NS to the various representations they made on the record during the course of the proceeding; to examine impacts involving the relationship of shortline railroads to their Class I connections and to other Class I railroads; to assess impacts within the Chicago switching district; to review the effect of the acquisition premium on the rate reasonableness jurisdictional threshold and on revenue adequacy determinations; and to monitor transaction-related impacts on Amtrak passenger operations and regional rail passenger operations. See CSX/NS/CR Dec. No. 89, slip op. at 20-21 (item 38), 160-61, 173-74 (ordering paragraph 1). We also indicated that, under the oversight process, we would continue to monitor our environmental mitigating conditions. CSX/NS/CR Dec. No. 89, slip op. at 161.

² As discussed below: (1) operational issues associated with implementation of the Conrail transaction are being handled separately through our Office of Compliance and Enforcement; and (2) we have initiated a separate 3-year proceeding to examine linehaul and switching rates for rail movements into and out of New York's Buffalo area.

We are now instituting this STB Finance Docket No. 33388 (Sub-No. 91) proceeding to implement the general oversight condition imposed in CSX/NS/CR Dec. No. 89.³ We invite information from interested parties as to both the status of implementation and the effects of the various conditions we imposed.

We are requiring CSX and NS to file, by June 1, 2000, progress reports respecting their implementation of the Conrail transaction. These progress reports should contain in-depth analyses of implementation of the transaction and of the workings of the various conditions. We are further requiring CSX and NS to make their 100% traffic waybill tapes available to interested persons by June 15, 2000. These tapes should include the most up-to-date data then accessible by CSX and NS.

We are directing that interested persons submit, by July 14, 2000, any comments respecting the progress of implementation of the Conrail transaction and the workings of the various conditions we imposed. Comments may be directed to any relevant matters, except as clarified below regarding operational monitoring matters and Buffalo Rate Study matters. Replies to comments must be submitted by August 3, 2000.

Operational Monitoring. In CSX/NS/CR Dec. No. 89, we imposed, in addition to the 5-year general oversight condition, an operational monitoring condition, see CSX/NS/CR Dec. No. 89, slip op. at 162-65, 176 (ordering paragraph 18). We emphasized that “our 5-year oversight is separate from our operational monitoring,” CSX/NS/CR Dec. No. 89, slip op. at 161. Thus, we do not intend to address matters respecting operational monitoring in the STB Finance Docket No. 33388 (Sub-No. 91) general oversight proceeding. Rather, as indicated in CSX/NS/CR Dec. No. 89, slip op. at 165, parties should bring any ongoing matters respecting operational monitoring or individual shipper service issues directly to the attention of the Director, Office of Compliance and Enforcement, Suite 780, at the Board's headquarters located at 1925 K Street, N.W., Washington, DC 20423-0001.

Buffalo Rate Study. By decision issued late last year in 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 (Buffalo Rate Study), STB Finance Docket No. 33388 (Sub-No. 90), Decision No. 1 (STB served Dec. 15, 1999, and published in the Federal Register on Dec. 20, 1999, at 64 FR 71188), we initiated the 3-year Buffalo Rate Study, also separate from general oversight, to examine linehaul

³ We are establishing a procedural schedule similar to that imposed in 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 [General Oversight], STB Finance Docket No. 32760 (Sub-No. 21).

and switching rates for rail movements into and out of the State of New York's Buffalo area. Pleadings respecting (a) the trend in rates for rail movements into and out of the Buffalo area, and (b) the conditions related to switching that we imposed in the Buffalo area, should be submitted in the STB Finance Docket No. 33388 (Sub-No. 90) Buffalo Rate Study proceeding in accordance with the procedural schedule applicable to that proceeding. See Buffalo Rate Study, Decision No. 2 (STB served Dec. 28, 1999, and published in the Federal Register on Jan. 4, 2000, at 65 FR 319) (revising the procedural schedule applicable to the Buffalo Rate Study proceeding). Other Buffalo-related matters specifically regarding the progress of implementation of the Conrail transaction and the workings of the various merger conditions should be submitted in the STB Finance Docket No. 33388 (Sub-No. 91) general oversight proceeding in accordance with the procedural schedule indicated in this decision.

Protective Order. Parties may submit filings (including electronic submissions contained on disks and CDs), as appropriate, under seal marked Confidential or Highly Confidential⁴ pursuant to the protective order entered in STB Finance Docket No. 33388 in Decision No. 1 (served Apr. 16, 1997), as modified in various respects in Decision No. 4 (served May 2, 1997), Decision No. 15 (served Aug. 1, 1997), Decision No. 22 (served Aug. 21, 1997), Decision No. 46 (served Oct. 17, 1997), and Decision No. 87 (served June 11, 1998). Waybill files made available to interested persons will be subject to this protective order.

Service List. A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33388. This decision will serve as notice that persons who were parties of record in STB Finance Docket No. 33388 will not automatically be placed on the service list as parties of record in the STB Finance Docket Sub-No. 91 general oversight proceeding. Any persons interested in being on the STB Finance Docket No. 33388 (Sub-No. 91) service list and receiving copies of CSX's and NS's filings relating to the general oversight proceeding must send us written notification with copies to CSX's and NS's representatives.⁵

⁴ Parties submitting filings under seal will be expected to file redacted versions that will be placed in the public docket.

⁵ Persons who wish to be placed on both the STB Finance Docket No. 33388 (Sub-No. 90) Buffalo Rate Study service list and the STB Finance Docket No. 33388 (Sub-No. 91) general oversight service list must submit two separate written notifications (one applicable to the Buffalo Rate Study proceeding, and one applicable to the general oversight proceeding).

STB Finance Docket No. 33388 (Sub-No. 91)

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

Decided: February 8, 2000.

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

Vernon A. Williams
Secretary