

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 (Sub-No. 4)

CSX TRANSPORTATION, INC.--CONSTRUCTION AND OPERATION EXEMPTION--
CONNECTION TRACK AT SIDNEY JUNCTION, OH

AGENCY: Surface Transportation Board (Board).

ACTION: Notice of exemption; Request for comments.

SUMMARY: On June 23, 1997, CSX Transportation, Inc. (CSXT) and Consolidated Rail Corporation (CRC), pursuant to 49 U.S.C. 10502, filed a petition for exemption from the prior approval requirements of 49 U.S.C. 10901 to construct and operate a connection track at Sidney Junction, OH.¹ The Board seeks comments from interested persons respecting the exemption criteria and any other non-environmental concerns² involved in our approval of the construction and operation of CSXT's and CRC's Sidney Junction construction project sought in STB Finance Docket No. 33388 (Sub-No. 4).

DATES: Written comments must be filed with the Board by August 22, 1997. Replies may be filed by CSX and CRC on or before September 11, 1997.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33388 (Sub-No. 4) and must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 33388 (Sub-No. 4), Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.³ In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219-2538; FAX: (202) 219-3289] and to petitioners' representatives: Charles M. Rosenberger, 500 Water Street - J150, Jacksonville, FL 32202; and John J. Paylor, 2001 Market Street- 16A, Philadelphia, PA 19101. Parties to STB Finance Docket No. 33388 will not be automatically placed on the service list for this proceeding.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: (202) 565-1695.]

¹ This proceeding is related to 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 (CSX/NS/CR)*. In *CSX/NS/CR*, Decision No. 9, served June 12, 1997, we granted a petition for waiver that would allow CSXT and CRC to seek approval for construction of four construction projects, including this proposed construction at Sidney Junction, following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application.

² The handling of environmental issues will be discussed below.

³ 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 formatted for WordPerfect 7.0 (or formatted so that it can be converted into WordPerfect 7.0) and clearly labeled with the identification acronym and number of the pleading contained on the diskette. See 49 CFR 1180.4(a)(2). The computer data contained on the computer diskettes submitted to the Board will be subject to the protective order granted in Decision No. 1, served April 16, 1997 (as modified in Decision No. 4, served May 2, 1997), and is for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.

SUPPLEMENTARY INFORMATION: On June 23, 1997, CSX Corporation (CSXC), CSXT, Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and CRC⁴ filed their primary application in the *CSX/NS/CR* proceeding seeking our authorization for: (a) the acquisition by CSX and NS of control of Conrail; and (b) division of Conrail's assets by and between CSX and NS. In Decision No. 9 in that proceeding, we granted the requests by applicants, with respect to four CSX construction projects and three NS construction projects, for waivers of our otherwise applicable "everything goes together" rule.⁵ The waivers would allow CSX and NS to begin the physical construction following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application. This petition for exemption for the construction at Sidney Junction, OH, concerns one of the seven construction projects. By this notice, we are inviting comments on whether the proposed transaction meets the applicable exemption criteria and on any other non-environmental concerns regarding the construction and operation of this particular project.

Pursuant to 49 U.S.C. 10502, CSXT and CRC have filed a petition for exemption from the prior approval provisions of 49 U.S.C. 10901 to construct and operate a connection track in Sidney Junction, OH.⁶ CSXT and CRC cross each other at Sidney Junction. CSXT and CRC propose to construct a connection track in the southeast quadrant between CSXT's main line and CRC's main line. The connection will extend approximately 3,263 feet between approximately milepost BE-96.5 on CSXT's main line between Cincinnati and Toledo, OH, and approximately milepost 163.5 on CRC's main line between Cleveland, OH, and Indianapolis, IN. CSXT anticipates that it must acquire approximately 2.6 acres of right-of-way to construct this connection. A map showing the proposed connection track at Sidney Junction is attached as Exhibit A to CSXT's petition.⁷

Under 49 U.S.C. 10901, a railroad may: (1) construct an extension to any of its railroad lines; (2) construct an additional railroad line; or (3) provide transportation over an extended or additional railroad line, only if the Board issues a certificate authorizing such activity. However, under 49 U.S.C. 10502, the Board shall exempt a rail transaction from regulation when it finds that: (1) application of the pertinent statutory provisions is not necessary to carry out the rail

⁴ CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

⁵ See 49 CFR 1180.4(c)(2)(vi).

⁶ CSXT filed a petition for exemption to construct and operate a connection track in Sidney Junction, OH, as a related filing in Volume 5 of the primary application filed on June 23, 1997, in the *CSX/NS/CR* proceeding. See *CSX/NS-22* (Volume 5) at 126. CSXT and CRC concurrently filed a slightly modified version of the petition for exemption for construction of a connection track in Sidney Junction (*CSX-8*). We will consider both filings together here. As we stated in *CSX/NS/CR*, Decision No. 9, at 6-7:

* * * 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. The operational implications of the merger as a whole, including operations over * * * the seven construction projects, will be examined in the context of the [Environmental Impact Statement] EIS that we are preparing for the overall merger. * * * No rail operations can begin over these seven segments until completion of the EIS process and issuance of a further decision.

⁷ The parties indicate that they do not propose to operate over the connection at this time, and acknowledge that operation over this connection is related to, and contingent upon, the proposed control of Conrail by CSX and NS, approval of which is being sought in STB Finance Docket No. 33388.

transportation policy of 49 U.S.C. 10101; and (2) either the transaction is of limited scope, or regulation is not needed to protect shippers from the abuse of market power.

CSXT and CRC contend that exemption of the proposed construction and operation at Sidney Junction meets all of the elements of the rail transportation policy. Petitioners maintain that, by minimizing the regulatory expense and time inherent in a full application under the provisions of section 10901, exemption will expedite regulatory decisions and reduce regulatory barriers to entry into the industry. They state that exemption will also foster efficient management and promote a safe and efficient rail system. They also indicate that, if the Board approves the primary application, one of CSXT's extremely important service lanes will be its Memphis Gateway route combining CRC's routes in and to the Northeast with CSXT's present route between Cincinnati and Memphis, TN. According to petitioners, this service lane will provide efficient single line service between CSXT's Memphis Gateway and important markets in the eastern United States.

Petitioners indicate that the Memphis Gateway service lane will use CSXT's existing route between Memphis and Sidney, OH, via Cincinnati, and CRC's existing St. Louis line between Sidney and Cleveland, where CSXT will connect with its other service lanes going to the eastern United States. By taking advantage of increased volumes and developing reciprocal overhead blocking strategies with western roads, CSXT maintains that it can avoid classifying traffic to the Northeast at its Cincinnati and Nashville terminals. Westbound CSXT traffic originating in the East and South will be classified in blocks for movement to western points beyond Memphis.

Petitioners state that the exemption will promote effective competition among rail carriers and with other modes, and meet the needs of the shipping public. According to petitioners, the connection at Sidney Junction is crucial to the Memphis Gateway service lane. This connection will connect CSXT's Cincinnati-Toledo line with CRC's Cleveland-Indianapolis line, thus allowing single line service from the Northeast to Memphis. CSXT anticipates that an average of 9.6 trains per day will be operated over this new connection at Sidney Junction.

The environmental report covering the proposed construction and operation of the connection track at Sidney Junction is contained in the Environmental Report filed with the Board in STB Finance Docket No. 33388. In addition, as we required in *CSX/NS/CR*, Decision No. 9, CSX must submit, no later than September 5, 1997 (Day F+75), a preliminary draft environmental assessment (PDEA) for each individual construction project covered by our waiver 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. If a PDEA is insufficient, we may require additional environmental information or reject the document. *See CSX/NS/CR*, Decision No. 9, at 8.

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 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 environmental mitigation. Therefore, in deciding whether to grant petitioners' exemption request, we will consider the entire environmental record, including all public comments, the EA, and the Post EA. *Id.* at 8.

Should we determine that the Sidney Junction construction project could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the proposed control transaction in STB Finance Docket No. 33388. *Id.* at 8. As we have previously emphasized, our consideration of the seven construction projects does not, and will not, in any way, constitute approval of, or even indicate any consideration on our part respecting approval of, the primary application in STB Finance Docket No. 33388. *See CSX/NS/CR*, Decision No. 9, at

6; and Decision No. 5, served and published in the *Federal Register* on May 13, 1997, 62 FR 26352, slip op. at 3. If we grant any exemptions for these seven construction projects, applicants will not be allowed to argue that, because we have granted an exemption and applicants may have expended resources to construct a connection track, we should approve the primary application. Applicants have willingly assumed the risk that we may deny the primary application, or approve it subject to conditions unacceptable to applicants, or approve the primary application but deny an applicant's request to operate over any or all of the seven connections. *Id.*

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

It is ordered:

1. Comments on whether the proposed transaction meets the exemption criteria of 49 U.S.C. 10502 and on any other non-environmental concerns regarding the construction and operation of the connection track in Sidney Junction are due August 22, 1997.

2. Replies are due September 11, 1997.

3. This decision is effective on the date of service.

Decided: July 16, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary