

SERVICE DATE – NOVEMBER 4, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 (Sub-No. 95)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

[PETITION TO APPROVE SETTLEMENT AGREEMENT AND
EXEMPT EMBRACED TRANSACTIONS]

Decided: November 3, 2004

By petition filed August 6, 2004, in the lead docket, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS) and Wheeling & Lake Erie Railway Company (W&LE) have asked the Board: (a) to approve a settlement agreement that NS and W&LE entered into to implement and satisfy certain conditions the Board imposed in CSX Corp. et al. — Control — Conrail Inc. et al., 3 S.T.B. 196 (1998); and (b) to find that the settlement agreement is consistent with and reasonably implements those conditions. By five notices and one petition filed August 6, 2004, in the six embraced dockets,² NS and W&LE have asked that the Board issue or grant exemptions, from the prior approval requirements of 49 U.S.C. Subtitle IV, Part A, for the various transactions called for in the settlement agreement.

¹ This decision embraces: STB Finance Docket No. 33388 (Sub-No. 96), Wheeling & Lake Erie Railway Co. — Trackage Rights Exemption — Norfolk Southern Railway Co. Between Bellevue and Toledo, OH; STB Finance Docket No. 33388 (Sub-No. 97), Wheeling & Lake Erie Railway Co. — Trackage Rights Exemption — Norfolk Southern Railway Co. in Cleveland, OH; STB Finance Docket No. 33388 (Sub-No. 98), Norfolk Southern Railway Co. — Trackage Rights Exemption — Wheeling & Lake Erie Railway Co. Between Clairton, PA and Bellevue, OH; STB Finance Docket No. 33388 (Sub-No. 99), Wheeling & Lake Erie Railway Co. — Petition for Exemption — Purchase of the Toledo Pivot Bridge — Norfolk Southern Railway Co.; STB Finance Docket No. 32516 (Sub-No. 1), Wheeling & Lake Erie Railway Co. — Lease and Operation Exemption — Norfolk and Western Railway Co.'s Dock at Huron, OH; and STB Finance Docket No. 32525 (Sub-No. 1), Wheeling & Lake Erie Railway Co. — Trackage Rights Exemption — Norfolk and Western Railway.

² The five notices were filed in STB Finance Docket No. 33388 (Sub-Nos. 96, 97, and 98), STB Finance Docket No. 32516 (Sub-No. 1), and STB Finance Docket No. 32525 (Sub-No. 1). The one petition was filed in STB Finance Docket No. 33388 (Sub-No. 99).

Under 49 U.S.C. 10502(a), the Board, “to the maximum extent consistent with this part, shall exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of a provision of this part — (1) is not necessary to carry out the transportation policy of section 10101 of this title; and (2) either — (A) the transaction or service is of limited scope; or (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.” Section 10502(b) provides that the Board may begin an exemption proceeding on “application” by an interested party. Section 10502(b) further provides that “[t]he Board shall, within 90 days after receipt of any such application, determine whether to begin an appropriate proceeding.”

The petition filed in the lead docket by NS and W&LE, taken together with the five notices and one petition filed in the embraced dockets by NS and W&LE, amounts to a § 10502(b) “application” for the exemptions sought in the embraced dockets. Thus, in compliance with § 10502(b), this order instituting a formal proceeding will be issued. NS and W&LE do not need to submit additional pleadings in response to this decision.

The Board is aware that NS and W&LE have requested expedited consideration of this matter. Therefore, although § 10502(b) provides that a proceeding “begun as a result of an application under this subsection shall be completed within 9 months after it is begun” (i.e., within 9 months of the service date of this decision), the Board will work as expeditiously as possible to complete its consideration well before the deadline.

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

It is ordered:

1. Under 49 U.S.C. 10502(b), a proceeding is instituted to consider the issues raised in the petition filed August 6, 2004, in the lead docket, and in the notices and petition filed that day in the embraced dockets.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary