

STB FINANCE DOCKET NO. 33388¹

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. 102

Decided November 19, 1998

The Board establishes a schedule to address a condition imposed previously in *CSX Corp. et al. - Control - Conrail Inc. et al.*, 3 S.T.B. 196 (1998) (*Decision No. 89*), on behalf of the State of New York and the New York Department of Transportation and the New York City Economic Development Corporation.

BY THE BOARD:

This decision establishes a schedule to address the condition we imposed on behalf of the State of New York and the New York Department of Transportation (NYDOT) and the New York City Economic Development Corporation (NYCEDC) in connection with the transaction we authorized in *CSX Corp. et al. - Control - Conrail Inc. et al.*, 3 S.T.B. 196 (1998) (*Decision No. 89*).² In our decision approving the primary transaction, we granted in part and denied in part the New York parties' responsive application in Sub-No. 69. As pertinent here, in *Decision No. 89*, 3 S.T.B. at 388-89, we stated:

¹ This decision also includes 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*.

² In *Decision No. 89*, we approved, subject to conditions, the application by CSX Corporation and CSX Transportation, Inc. (collectively CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) under 49 U.S.C. 11321-26 for: (1) the acquisition 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.

CSX must attempt to negotiate, with CP, an agreement pursuant to which CSX will grant CP either haulage rights unrestricted as to commodity and geographic scope, or trackage rights unrestricted as to commodity and geographic scope, over the east-of-the-Hudson Conrail line that runs between Selkirk (near Albany) and Fresh Pond (in Queens), under terms agreeable to CSX and CP, taking into account the investment that needs to continue to be made to the line.

By letter filed November 10, 1998, Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited (collectively CP) indicate that the parties have been unable to reach an agreement and request that we institute a proceeding addressing the matter. CP proposes a 95-day schedule with the filing of simultaneous evidentiary submissions. In a response filed November 12, 1998, CSX concurs with CP's schedule, with further proposals by CSX that: railroads other than CP may be considered as operators over the east-of-the-Hudson route; responsive applicants' descriptions of the terms of requested rights and environmental documentation be filed by Day 30 of the schedule; and the proceeding may be suspended if CSX reaches a tentative agreement with any carrier, including CP.

NYCEDC (by letter filed November 10, 1998) and NYDOT (by letter filed November 13, 1998, designated as NYS-30) endorse CP's proposed schedule. NYDOT also opposes CSX's requests to permit the consideration of railroads other than CP and the filing of new responsive applications. NYDOT asserts that CSX is reluctant to implement the pro-competitive relief granted by the Board on behalf of the New York parties, and contends that the Board should simply move to set the terms of CP's access over the Hudson Line.

While we continue to favor a negotiated solution by CSX and CP, over 3 months have passed since we imposed the east-of-the-Hudson condition and the parties have not reached an agreement on implementation. In order to resolve this matter in a timely manner and to ensure that the Board's important condition is implemented as envisioned, a procedural schedule with shorter time frames than those advanced by the parties is warranted and will be adopted. Accordingly, we will deny CSX's proposals to consider carriers other than CP and to suspend the procedural schedule should a preliminary agreement with another carrier be reached, and instead we will establish an evidentiary procedural schedule pursuant to which CSX and CP will be required to submit their proposed agreements with relevant evidence and argument on or before November 30, 1998, and CSX, CP, NYDOT, and NYCEDC may submit simultaneous responses to the proposed agreements by December 10, 1998.

CP shall resubmit its environmental verified statement filed October 6, 1997, certifying that none of the Board's environmental thresholds would be exceeded by the proposed rail operations over this line. Because CP's original environmental verified statement also embraced operations in other geographic areas, CP may modify its verified statement to apply exclusively to the proposed operations. If CP contemplates changes to its originally proposed operations, it should file a new verified statement, or other appropriate environmental documentation, if the Board's environmental thresholds will be exceeded.

After examining the proposed agreements and responses, we intend to set the terms for the east-of-the-Hudson operations, based in whole or in part on the terms proposed, and bring about an expeditious resolution of this matter, which has already been the subject of substantial analysis in this proceeding. Because of the limited scope of this matter, CP, CSX, NYCEDC, and NYDOT will be required to serve copies of their filings only on one another, and on any other party who submits a request in writing on or after November 20, 1998. Service on all parties of record in STB Finance Docket No. 33388 would be unduly burdensome and unnecessary. An original and 25 copies (and an electronic version) of all pleadings must be filed with the Board.

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

It is ordered:

1. Simultaneous proposals from CP and CSX are due November 30, 1998, addressing the east-of-the-Hudson condition imposed in *Decision No. 89*. Simultaneous responses from CP, CSX, NYCEDC, and NYDOT are due December 10, 1998.

2. CP shall resubmit its environmental verified statement filed October 6, 1997, certifying that none of the Board's environmental thresholds would be exceeded by the proposed rail operations over this line. CP may modify its verified statement to apply exclusively to the proposed operations. If CP contemplates changes to its originally proposed operations, it should file a new verified statement, or other appropriate environmental documentation, if the Board's environmental thresholds will be exceeded.

3. Due to the limited scope of the condition being addressed, we are modifying the service requirement so that CP, CSX, NYCEDC, and NYDOT are required to serve copies of their filings only on one another, and on any other party who submits a request in writing on or after November 20, 1998.

4. This decision is effective on November 20, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.