

STB FINANCE DOCKET NO. 33388 (SUB-NO. 90)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
(BUFFALO RATE STUDY)

Decided December 10, 1999

AGENCY: Surface Transportation Board

ACTION: Decision No. 1; Notice of Buffalo Rate Study Proceeding and Request for Comments.

SUMMARY: In 1998, the Board approved, subject to certain conditions: (1) the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail) 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. One of the conditions imposed called for a 3-year study of rail rates in the State of New York's Buffalo area (the Buffalo Rate Study or the Study) following the division of Conrail's assets, which occurred on June 1, 1999. Through this decision, we are initiating our Buffalo Rate Study to examine linehaul and switching rates for rail movements into and out of the Buffalo area. We are requiring certain information to be submitted by CSX and NS, and are requesting public comments to develop a more complete record. We are also setting the timetable for the submission of additional information and comments as the Study progresses.

DATES: For the initial 6-month review, the carriers' rail 100% waybill files for the period beginning June 1, 1997, and ending November 30, 1999, should be made available to all interested parties and to Board staff by December 30, 1999. CSX and NS comprehensive filings are due by January 14, 2000; comments from

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.

other parties are due by February 14, 2000; and CSX and NS replies to comments are due by February 29, 2000.

For the first full-year review, the carriers' rail 100% waybill files for the period ending May 31, 2000, should be made available to all interested parties and to Board staff by June 30, 2000. CSX and NS comprehensive filings are due by July 14, 2000; comments from all interested parties are due by August 14, 2000; and CSX and NS replies to comments are due by August 29, 2000.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33388 (Sub-No. 90) and must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Finance Docket No. 33388 (Sub-No. 90), 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of all documents in this proceeding must be sent to each representative: (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004-1202; and (2) Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, L.L.P., 888 Seventeenth Street, N.W., Washington, DC 20006-3939.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must 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 clearly label pleadings and attachments and corresponding computer diskettes 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, or convertible by and into, Lotus 1-2-3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. Parties may individually seek a waiver from the disk-CD requirement. The computer data contained on the computer diskettes and CDs submitted will be subject to the protective order discussed below.

FOR FURTHER INFORMATION, CONTACT: Michael A. Redisch, (202) 565-1544. [TDD for the hearing impaired: (202) 565-1695.]

BACKGROUND

In *CSX Corp. et al. — Control — Conrail Inc. et al.*, 3 S.T.B. 196 (1998) (*Conrail*), we approved, subject to certain conditions, the acquisition of control of Conrail by CSX and NS and the division of the assets of Conrail by and between CSX and NS. That division occurred on June 1, 1999. Prior to this, rail

service in the Buffalo area² was dominated by Conrail. The Greater Buffalo interests were particularly critical of Conrail's pre-transaction market power in the area.

We determined that, while the method we approved for the division of Conrail's Buffalo-area assets — with the largest share going to CSX — would not create direct two-railroad service for all shippers in the Buffalo area, it would improve local competition significantly.³

As a precautionary measure, we also imposed a condition that called for a 3-year study of rail rates in the Buffalo area following the division of Conrail's assets and the integration of those assets into CSX and NS, which occurred on June 1, 1999. We will begin our Buffalo Rate Study with an initial review of the first 6 months (June 1, 1999, through November 30, 1999), which will be followed by a review of the first year (June 1, 1999, through May 31, 2000).

COMMENTS AND INFORMATION REQUESTED

In this initial stage of the Buffalo Rate Study, we will require that CSX and NS file information sufficient for us to determine that they are in compliance with all the conditions related to switching that we have imposed in the Buffalo area.⁴ We will also require CSX and NS to submit information sufficient for us

² The Erie-Niagara Rail Steering Committee (ENRSC), an ad hoc committee representing businesses located in the New York State counties of Erie and Niagara, and in those parts of Chautauqua County that lie north or east of CP 58 near Westfield, referred to this area as the Niagara Frontier region. We will use this term, as well as the Greater Buffalo area or the Buffalo area, interchangeably. See, *Conrail*, at 497 n. 505.

³ We found that the transaction would result in a much stronger "second railroad" presence in the Buffalo area than had been the case previously, especially given the enhancements we imposed. For example, in a settlement reached with the National Industrial Transportation League (NITL), CSX and NS agreed to mitigate the market power they would otherwise inherit from Conrail at exclusively served points where Conrail performed switching services, and we expanded those terms in approving the transaction and imposed that agreement as expanded and other settlement agreements pertaining to the Buffalo area, as discussed below, including certain representations made by CSX beneficial to that area.

⁴ Conrail's switching fees had been \$450 within its Buffalo switching district and \$390 at other points in the Niagara frontier area. The NITL agreement retains switching for 10 years by CSX and NS for all facilities that received switching by Conrail to either of those carriers, and at an inflation-adjusted fee no higher than \$250 for the first 5 years. We extended the switching component of the NITL agreement to situations where shortlines paid switching charges to Conrail and where Conrail received switching services from NS or CSX (*Conrail*, 3 S.T.B. at 255). We also extended the NITL agreement to certain international rail movements into and out of Niagara Falls (*id.* at 287).

(continued...)

4 S.T.B.

to determine the trend in rates for rail movements into and out of the Buffalo area for the period beginning June 1, 1997, which is before the parties submitted the *Conrail* application subsequently approved by us, until November 30, 1999. And we will require that CSX and NS make available to interested parties and to Board staff the Conrail, CSX, and NS rail 100% waybill files for rail movements into and out of the Buffalo area (subject to the protective order discussed below) for the period of June 1, 1997, through November 30, 1999, so that we may obtain an independent determination of the trends in rail rates into and out of the Buffalo area during this period.⁵ Comprehensive filings addressing the matters discussed above are due from CSX and NS by January 14, 2000.

We are also requesting comments from shippers and their representatives, from other railroads serving the Buffalo area, and from other interested parties, seeking their views and evidence concerning trends in Buffalo-area rail rates and information to help us determine if local businesses and other railroads have available the switching rates to which they are entitled. Comments from all interested parties are due by February 14, 2000; and CSX and NS replies to comments are due by February 29, 2000.

Later next year, consistent with the June 1, 1999, division date, we will rebase this Buffalo Rate Study on a fiscal year ending May 31st of each year. Updates of the carriers' rail 100% waybill files for rail movements into and out of the Buffalo area for the period ending May 31, 2000, should be made available, subject to the protective order discussed below, to all interested parties and to Board staff by June 30, 2000. CSX and NS comprehensive filings are due by July 14, 2000; comments from other parties are due by August 14, 2000; and CSX and NS replies to comments are due by August 29, 2000.

⁴(...continued)

While the NITL agreement covered only post-integration switching by CSX for NS and NS for CSX, CSX explained that it had also negotiated voluntary agreements with both Canadian National Railway Company and its affiliates (collectively, CN) and Canadian Pacific Railway Company and its affiliates (collectively, CP) that provide lower switching fees for enlarged volumes than formerly available to CN and CP from Conrail in the Greater Buffalo area. In addition, the agreements provide increased access to CN and CP for cross-border truck competitive traffic. We imposed these CN and CP settlements as conditions to our approval of the transaction.

⁵ Our understanding is that information contained in the rail 100% waybill files for the period ending November 30, 1999, should be available by December 30, 1999. Proper documentation for these files, including a way to translate from Conrail's (old) freight station codes to CSX's and NS' (new) freight station codes, should also be made available at that time. Further, to facilitate the continued use of waybill data in this proceeding, CSX and NS should be prepared to provide updates to their original waybill submissions on a quarterly basis.

4 S.T.B.

Protective Order. Parties may submit filings (including waybill data and computer data), as appropriate, under seal marked Confidential or Highly Confidential pursuant to the Protective Order entered in STB Finance Docket No. 33388 in Decision No. 1 (served April 16, 1997), as modified in various respects in Decision No. 4 (served May 2, 1997), Decision No. 15 (served August 1, 1997), Decision No. 22 (served August 21, 1997), Decision No. 46 (served October 17, 1997), and Decision No. 87 (served June 11, 1998). Waybill files being made available to interested parties shall 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 a 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 for this Buffalo Rate Study proceeding. Any persons interested in being on the STB Finance Docket No. 33388 (Sub-No. 90) service list and receiving copies of CSX and NS filings relating to the Buffalo Rate Study must send us written notification with copies to the railroads' representatives.

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

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