

STB FINANCE DOCKET NO. 33388 (SUB-NO. 93)

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 AREA INFRASTRUCTURE)

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*Decided June 7, 2000*

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Board initiates Buffalo Area Infrastructure proceeding as a followup to the "Conrail"<sup>1</sup> merger.

BY THE BOARD:

Consistent with our oversight of the acquisition of Conrail, we are instituting a proceeding to examine railroad infrastructure issues related to the Buffalo, New York area. Specifically, we are directing CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS) to meet with shippers, railroads, and governmental and local interests in the Buffalo area<sup>2</sup> to further assess existing rail infrastructure and to more fully develop proposals for related improvements for the area.

BACKGROUND

In 1998, the Board 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. One of the conditions imposed called for a 3-year study of rail rates in the Buffalo area (*the Buffalo Rate Study*) following the division of Conrail's assets, which occurred on June 1, 1999. Another condition

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<sup>1</sup> Conrail Inc. and Consolidated Rail Corporation are collectively referred to as Conrail.

<sup>2</sup> The Buffalo area, which is also referred to as the Greater Buffalo area and the Niagara Frontier region, has been previously defined in our Buffalo Rate Study decision, *CSX Corp. et al. — Control — Conrail Inc. et al. — Buffalo Rate Study*, 4 S.T.B. 456 (1999) as the area that includes the New York State counties of Erie and Niagara and those parts of Chautauqua County that lie north or east of CP 58 near Westfield, NY. That definition is accepted in this proceeding.

was a general 5-year oversight condition.<sup>3</sup> Since August 1998, CSX and NS have been reporting monthly on construction and capital projects intended to improve infrastructure across the acquired system and on CSX and NS in the Conrail territory. In addition, there has been substantial correspondence during this period focusing on specific infrastructure issues such as replacement of the non-operating bridge over the Buffalo River at CP Draw, and the Board continues to work closely with the New York Congressional Delegation on rail service issues of concern in the Buffalo area.

In a letter dated May 23, 2000, Congressman Jack Quinn (R-NY) has recognized the Board's efforts and commitment to improving service for Buffalo shippers and has urged the Board to continue its involvement in the Buffalo area by addressing the issue of railroad infrastructure and capacity. In his letter, Congressman Quinn indicates that, thanks to the Board's efforts, the congestion problems resulting from the transition of service from Conrail to CSX and NS have improved. Congressman Quinn goes on to say, however, that inherent long-term problems related to the existing utilization and operation of railroad infrastructure in the Western New York region also need to be addressed if improvements are to be realized. In addition, other members of the New York Congressional Delegation have expressed concerns over the rail infrastructure in the Buffalo area.

#### DISCUSSION AND CONCLUSIONS

Infrastructure issues are always a concern of the Board, and have been addressed in connection with recent merger-related proceedings. For example, in *Joint Petition for Service Order*, 3 S.T.B. 44 (1998) at 48, the Board recognized that problems had developed in Houston, TX, during the implementation of the UP/SP merger,<sup>4</sup> which would not be resolved in the long term until infrastructure was addressed in a meaningful way. UP/SP, the railroad serving the majority of shipper facilities in the Houston terminal, was directed to immediately convene meetings with shippers, involved railroads, and other

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<sup>3</sup> See, *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)*, STB Finance Docket No. 33388 (Sub No. 91) (STB served February 9, 2000)

<sup>4</sup> *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company — Control and Merger — Southern Pacific Railroad Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grand Western Railroad Company*, STB Finance Docket No. 32760.

interested parties to discuss ways of upgrading the Houston Terminal and to address the concerns of each group that was represented. What resulted from this effort was a coordinated plan for improving the Houston area infrastructure. This plan continues to be implemented.

Using this private-sector solution model to address infrastructure issues here, we are directing CSX and NS to immediately convene meetings with shippers, railroads, and other interested parties for the express purpose of discussing more fully plans to improve the Buffalo area rail infrastructure. As the process of infrastructure changes takes time, money, planning, and coordination among all involved parties, CSX and NS are to file with the Board and the parties to this proceeding an initial report within 90 days of the effective date of this decision. The initial report should contain the results of such meetings and the suggestions for addressing Buffalo area infrastructure issues. At a minimum CSX and NS should explain what changes are needed and why, how much these changes will cost, how the additional changes can and should be funded, and the possible timetable for implementing such changes. Once the initial report is filed, we will give interested parties 40 days in which to comment on it. After reviewing the comments on the infrastructure issues, we will take further action as appropriate.

We encourage CSX and NS to reach out to all concerned parties<sup>5</sup> and to work with them to achieve the common goal of improved rail service in the Buffalo area.

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 Area Infrastructure proceeding. Any persons interested in being on the STB Finance Docket No. 33388 (Sub-No. 93) service list and receiving copies of CSX and NS filings relating to Buffalo Area Infrastructure must send us written notification within 10 days of the service date of this decision, 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.

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<sup>5</sup> CSX and NS should review the service list in STB Finance Docket No. 33388. To the extent that infrastructure investments may require Federal and/or state funding, the appropriate governmental authorities should be involved as well.

*It is ordered:*

1. CSX and NS shall immediately convene meetings with shippers, railroads, and other interested parties in the Buffalo area to discuss railroad infrastructure issues consistent with this decision.
2. CSX and NS shall provide an initial report to the Board on the results of the meetings and on suggestions for addressing improvements to the Buffalo area rail infrastructure by September 7, 2000.
3. Interested parties may file comments on the initial report by October 17, 2000.
4. This decision is effective on June 9, 2000, the service date.

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