STB FINANCE DOCKET NO. 33388 (SUB-NO. 90)

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)

Decision No. 8

Decided November 14, 2002

In this, the third and final annual round of the Buffalo Rate Study proceeding, the Board concludes that CSX and NS rates for rail movements into and out of the Buffalo area have not changed significantly over the past year, and that, after adjusting for inflation, these carriers' Buffalo-area rail rates are generally lower than those rates in effect for comparable movements prior to the June 1, 1999 division of Conrail's assets by CSX and NS.

BY THE BOARD:

This decision addresses the reports and comments filed in the third and final annual round of our 3-year Buffalo Rate Study proceeding. The record in this proceeding shows that NS and CSX rates for rail movements into and out of the Buffalo area have not changed significantly over the past year and that, after adjusting for inflation, these carriers' Buffalo-area rail rates are generally lower than those rates in effect for comparable movements prior to the June 1, 1999 division of Conrail's assets by CSX and NS. Because these results affirm our earlier determination that the acquisition and division of Conrail by CSX and NS would not result in significantly higher rates for Buffalo-area rail shippers and that the Conrail transaction would not reduce rail competition in the Buffalo area, we are now concluding, as scheduled, our formal oversight of Buffalo-area rail rates.

BACKGROUND

In a decision served July 23, 1998, we approved, subject to certain conditions, the acquisition of control of Conrail by CSX and NS and the division of Conrail's assets by and between CSX and NS.[1] Prior to this, rail service in the Buffalo area[2] was dominated by Conrail, and many Greater Buffalo rail shippers and advocacy groups 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 (the Buffalo Rate Study or the study) following the division of Conrail's assets and the integration of those assets into CSX and NS, which occurred on June 1, 1999 (the Split Date). We initiated the study in *Buffalo Rate Study Decision No. 1* to examine linehaul and switching rates for rail movements into and out of the Buffalo area. We also required CSX and NS to submit certain information and requested public comments to develop a more complete record. For the initial 6-month review, we required the carriers to provide all interested parties and the Board's staff with the Conrail, CSX, and NS 100% waybill files (subject to a protective order) for rail movements into and out of the Buffalo area for the period beginning June 1, 1997, and ending November 30, 1999.

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[1] *CSX Corp. et al. – Control – Conrail Inc. et al.*, 3 S.T.B. 196 (1998) (*Decision No. 89*), *aff'd sub nom. Erie-Niagara Rail Steering Committee v. STB*, 247 F.3d 437 (2d Cir. 2001). In that decision, we approved, subject to 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 Conrail's assets between CSX and NS.

[2] The terms "Buffalo area," "Greater Buffalo area," and "Niagara Frontier region" are used interchangeably here and are defined as "that area including 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." *See Decision No. 89* at 285 n.133 and 497 n.505; *see also CSX Corp. et al.– Control– Conrail Inc. et al.*, 4 S.T.B. 456 (1999) (*Buffalo Rate Study Decision No. 1*) at 458 n.2.

[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. We also imposed other settlement agreements pertaining to the Buffalo area, and stated that we would hold CSX to certain representations that it had made that were beneficial to that area. *See Decision No. 89* at 284-89.

In *Buffalo Rate Study Decision No. 4*,[4] we preliminarily concluded that CSX and NS had set out and applied an acceptable methodology for measuring rail linehaul rate trends for movements into and out of the Buffalo area for the period preceding and following their division of Conrail's assets. We also found that CSX and NS had "presented evidence to show that, through the first 6 months following the division of Conrail, those [Buffalo-area] rates have, on average, been reduced."[5] *Buffalo Rate Study Decision No. 4*, at 952. Finally, we found CSX and NS to be in compliance with all the conditions related to switching that we had imposed in the Buffalo area. *Id.*, at 952.

In the second phase of the study, we required CSX and NS to supplement the data submitted in the earlier phase with 100% waybill data for their respective rail movements originating or terminating in the Buffalo area between December 1, 1999, and May 31, 2000, thus completing data for the first full post-Split-Date year (June 1, 1999, to May 31, 2000, or Year 1). After CSX and NS filed their reports in July 2000, several Buffalo-area parties filed comments. In addition, the United States Department of Transportation (DOT) filed reply comments. Upon reviewing the carriers' reports and the comments, we concluded that Buffalo-area rail freight rates, on the whole, had declined relative to rates for comparable movements in the prior year, and that CSX and NS were in compliance with all of our conditions related to switching. *Buffalo Rate Study Decision No. 6*,[6] slip op. at 10-11. We continued this proceeding for the second full year of the study by requiring the carriers to make available their updated (through May 31, 2001) waybill files and by providing for parties to file comments and replies.

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[4] *CSX Corp. et al.– Control– Conrail Inc. et al.–Buffalo Rate Study*, 4 S.T.B. 945 (2000) , (*Buffalo Rate Study Decision No. 4*).

[5] CSX, which acquired the major share of Conrail's Buffalo-area assets, concluded that its rail linehaul rates for major movements into and out of the Buffalo area that had pre-Split-Date counterparts on Conrail declined, on average, 8.9% over the first 6 post-Split-Date months, when compared to rates for those same movements in the 12 months prior to the Split Date, with rates decreasing on 30% of those movements and increasing on only 7.6%. *Buffalo Rate Study Decision No. 4*, at 952. NS found that its line haul rates for major movements to and from stations in the Buffalo area since June 1, 1999, were, for the most part, the same or lower than the corresponding Conrail and/or NS rates for those same movements before June 1, 1999, and that no meaningful conclusions could be made for the remaining (non-major) movements. *Id.*, at 947-948.

[6] *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*, STB Finance Docket No. 33388 (Sub-No. 90), (STB served February 2, 2001) (*Buffalo Rate Study Decision No. 6*).

CSX and NS filed their third Buffalo Rate Study reports, incorporating waybill data for the second full post-Split Date year, in August 2001. DOT filed reply comments, in which it supplied its own independent assessment of Buffalo-area rail rate trends. After reviewing the reports and comments, we found that "CSX and NS rates for rail movements into and out of the Buffalo area have not changed significantly over the past year" and that "overall, and with no adjustment for inflation, Buffalo-area rail rates continue to be, on average, somewhat lower than those rates in effect for comparable movements prior to the June 1, 1999 division of Conrail's assets by CSX and NS." *Buffalo Rate Study Decision No. 7*,[7] slip op. at 8. Upon concluding that "the CSX/NS/Conrail transaction has not resulted in higher rates for Buffalo-area shippers," we established the schedule for the "third and final round" of the 3-year proceeding, and directed the carriers to make available their updated (through May 31, 2002) waybill files and to report on their final year's analysis as well as a full overview of this proceeding. *Id.*, slip op. at 8-9.

NS' Report.

NS' fourth report[8] presents an analysis that employs essentially the same methodology used in its prior reports. In its current report, NS examines the revenues it received from freight rates in place during the third full year following the Split Date (June 1, 2001, to May 31, 2002, or Year 3) for its rail movements to or from freight stations in the Buffalo area that are accessible to NS, directly or through reciprocal switching, and compares these with revenues it received from freight rates for comparable movements during the second full year following the Split Date (June 1, 2000, to May 31, 2001, or Year 2).

In determining the trends in rates during the study period, NS focuses on "major movements," defined as movements of a particular commodity, using a four-digit Standard Transportation Commodity Code (STCC) level of detail, between two points, e.g., the Buffalo area and Atlanta, that produced linehaul revenues of more than $20,000 during Year 3. For purposes of comparing Year 3 rates with Year 2 rates, NS found that there were 272 such major movements, accounting for approximately 96% of its total linehaul revenues

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[7] *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*, STB Finance Docket No. 33388 (Sub-No. 90) (STB served December 17, 2001) (*Buffalo Rate Study Decision No. 7*).

[8] NS-6, redacted and unredacted versions, filed August 16, 2002.

from traffic originating or terminating in the Buffalo area during Year 3. NS then determined how each of these movements was priced — per ton or per unit[9] — and compared the revenue per ton or per unit of each of the Year 3 major movements with the revenues per ton or per unit of comparable movements it transported during Year 2.

NS presents exhibits showing the revenues per ton or per unit of each of its major movements to or from the Buffalo area during Year 3. NS' data indicate that there is a Year 2 counterpart for 221 of those movements. NS' study shows that, from Year 2 to Year 3, the rates for the vast majority of the 221 comparable movements — more than 79% — declined, remained steady, or increased by less than 5%.[10] NS states that its analysis has shown that the vast majority of its Buffalo-area traffic experienced decreases, no change, or relatively little increases in rates from Year 2 to Year 3.

In response to our request that it present a full overview of this proceeding, NS submitted an analysis spanning the full study period from the 12 months immediately prior to the Conrail split (June 1, 1998, to May 31, 1999, or Year 0) through Year 3. NS states that it found 260 NS major movements defined in Year 3 for purposes of its comparison of Year 3 with Year 0,[11] representing about 96% of NS' Year 3 Buffalo-area linehaul revenues. Of these 260 Year 3 major movements, 158 movements (61%) had (pre-Split Date) Year 0 counterparts, with these comparable movements incorporating 88% of NS' Year 3 Buffalo-area traffic units. NS states that its analysis of these 158 comparable major movements showed that rates for a majority of its traffic units decreased from Year 0 to Year 3, and that 77% of its 158 comparable major movements decreased, remained the same, or increased by less than 5% between Year 0 and Year 3.

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[9] NS notes that a unit is a carload or, in the case of intermodal traffic, a container or trailer.

[10] NS also states that, as in its prior reports in this proceeding, its non-major movements — representing just 4% of its Year 3 revenues from Buffalo area traffic — were too widely dispersed across commodity groups and geographic areas to permit statistically meaningful conclusions concerning rate trends for these movements.

[11] NS has explained that its "Year 0 to Year 3" analysis required it to drop the "railroad" field from its data records so that Year 3 NS moves could be compared to Year 0 Conrail moves. However, in doing so, NS was no longer able to distinguish among movements in which other carriers joined with NS in originating or terminating movements at the same location using the same route. This resulted in only 260 "Year 0 to Year 3" major movements, as compared to the 272 "Year 2 to Year 3" major movements. NS has explained, and we agree, that this does not significantly affect the results of the two analyses or change the overall conclusions to be drawn from them. *See* NS-6, V.S. Williams, at 7 n.2.

NS states that these overall 3-year results are consistent with the results of its year-to-year analyses in this and previous NS reports. NS asserts that, even assuming, for the sake of argument, that every individual rate increase reflected in its data is attributable to the Conrail transaction itself and not to system-wide or industry-wide factors, its data fail to show any overall upward trend in Buffalo-area rail rates over the 3-year period of the study. Moreover, NS states that, despite the availability of this proceeding, no Buffalo-area parties raised concerns or participated at all here or in the previous annual round of the study. NS asserts that this demonstrates that the study has accomplished its purpose and that no intervention or action by the Board is necessary, other than concluding this proceeding as scheduled.

CSX's Report.

CSX's report[12] encompasses its assessment of Year 2-to-Year 3 rate changes for its Buffalo-area traffic as well as a full overview of this proceeding. As explained below, CSX states that, after proper adjustments to its waybill file to account for certain data anomalies, and with no adjustment for inflation, its Buffalo-area rates increased by 1.7% from Year 2 to Year 3, but decreased overall by 4.8% from (pre-Split Date) Year 0 to Year 3.

The CSX analyses focused on its major Buffalo-area rail movements in Year 3, which it defined as those 4-digit STCC movements between the same origin and destination and generating at least $20,000 in revenues[13] in the period June 1, 2001, through May 31, 2002. It identified 608 of these movements, representing about 96% of its Year 3 Buffalo-area revenues, carloads, and tons.

As in its prior reports in this proceeding, to more accurately determine the proper pricing basis — per ton, per car, or per hundredweight — and to better match the major movements in Year 3 with comparable movements from previous years, CSX then disaggregated the 608 4-digit STCC movements into 790 7-digit STCC movements. Of these 790 Year 3 movements, 570 (72%)

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[12] CSX-8, redacted and unredacted reports, filed August 19, 2002.

[13] CSX states that, as in its prior report in this proceeding, the waybill revenues it has examined only incorporate revenues for transportation services, and do not include any surcharges for fuel cost recovery. CSX notes that, in *Buffalo Rate Study Decision No. 7*, slip op. at 8 n.16, we had found this omission to be appropriate because our Buffalo Rate Study is not intended to focus on whether the rapid and significant rise in diesel fuel prices, or any other adverse industry-wide cost trend, is eventually reflected in rail rates.

were matched to comparable Year 2 movements, and 269 (34%) were matched to (pre-Split Date) Year 0 Conrail movements.

CSX's initial analysis showed a weighted average change of 4% in CSX transportation charges from Year 2 to Year 3 for those 570 major movements in Year 3 with a counterpart in Year 2. CSX states that, as in its prior submissions in this proceeding, it recognized that estimates of average rates from its raw waybill files would fail to take account of year-to-year pricing variances based on differences in types of equipment, car size, car ownership, volume discounts, minimum weight requirements, inconsistent recording of revenues from certain movements undertaken in combination with other carriers,[14] and other variants, such as inclusion in the waybill file of a factor based on an inapplicable public rate in instances where the shipper ultimately pays a lower contract rate. CSX states that, without proper adjustments, these factors can cause the revenue shown in the waybill file to suggest an incorrect rate.

CSX states that it sought input from its pricing managers to identify the particular pricing factors that affected each of the 111 major movements in its Year 2-to-Year 3 comparison group exhibiting apparent rate increases or decreases of more than 8% and that, based on this input, it adjusted its rate change calculations to reflect more accurately its rates on those movements where there was a clearly inappropriate comparison. After these adjustments, CSX estimates that its Buffalo-area rates increased by 1.7% from Year 2 to Year 3.

CSX also assessed rate changes for its 269 major movements in Year 3 that had a Conrail counterpart in Year 0. CSX states that, "based on the estimated average rates for those movements — and without taking inflation into consideration — CSX rates in the third full year after the transaction (Year 3) were on average *4.8 percent lower than the rates charged by Conrail in the year immediately preceding CSX's operation of the Conrail assets.*"[15] CSX-8 at 11-12 (italics in original).

CSX states that its analyses show that it has, for the most part, maintained the low rate levels on movements originating or terminating in the Buffalo area

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[14] CSX states that, for such combination, or jointline, movements, revenues in the waybill file for one year might represent revenues for all of the carriers participating in the movement, but only represent CSX's share of the revenues in other years.

[15] CSX states that it did not adjust the waybill revenues used in this analysis for data anomalies because of the complexity of tracing those anomalies over the years, and it asserts that taking both inflation and data anomalies into consideration would likely result in an even greater overall rate reduction.

that it had established during Year 1. Further, CSX notes that its previous studies had shown that its Year 1 rates were, on average, less than the rates charged by Conrail for comparable pre-Split Date movements. CSX also states that many of the smaller rate increases it has taken in the Buffalo area over the past 3 years result from the normal operation of contractual rate escalation mechanisms, and that any other increases it has taken are consistent with its pricing over its entire system, and do not represent any adverse treatment of its Buffalo-area customers. CSX asserts that its "rate changes both in the Buffalo Area and throughout other parts of its system reflect changing market conditions and are not attributable to CSX's acquisition of Conrail." CSX-8 at 12.

Finally, CSX states that the results of the 3-year study of Buffalo-area rail rates ordered by us in *Decision No. 89* has produced no evidence that rail shippers in the Buffalo area have been adversely affected or disadvantaged vis-a-vis other CSX shippers as a result of the Conrail transaction. Moreover, CSX states that, with each passing year, any linking of Buffalo-area rail rate changes to the Conrail transaction will become less meaningful as the effects of the transaction are outweighed by intervening market factors. CSX suggests that no further need would be served by continuing the study of CSX's Buffalo-area rail rates, and that this study should therefore be considered closed.

Reply Comments of United States Department of Transportation.

To assess the trend in rail rates for the Buffalo area, DOT conducted its own independent rate study, using the 100% waybill data submitted by CSX and NS and employing the same basic analytical approach used by CSX and NS and accepted by the Board in the prior phases of this proceeding. In doing so, DOT states that it examined changes in rail rates for major movements, identified as having generated revenues greater than or equal to $20,000, grouped by origin city/destination city pairs and by commodity identified at the 4-digit STCC level. DOT states that the method it used to assess rate changes is based upon changes in revenue per car from one period to another, with carrier revenue serving as a surrogate for customer rates. Finally, DOT agrees with NS and CSX that, to be included in the study set, traffic has to have a corresponding move in each of the periods under study to ensure that the comparisons are valid.

DOT notes that a weighted average of the carriers' results gives a more accurate overall picture of their rail rates, as the Board has recognized in this proceeding. DOT finds that, on average, over the period embraced by the Buffalo Rate Study — from the period prior to the Split Date through June 2002 — CSX and NS rate levels in Buffalo have declined after inflation is considered. Based upon its own analysis of the carriers' rates and the fact that Buffalo area shippers have not filed any contrary information or evidence, DOT concludes that there is no indication in the record that the acquisition and division of Conrail by CSX and NS have reduced rail competition in the Buffalo area.

NS' and CSX's Responses to DOT.

NS agrees with DOT's ultimate conclusion that there is no indication in the record that the acquisition and division of Conrail by CSX and NS have reduced rail competition in the Buffalo area. NS notes that the results of DOT's study are consistent with NS' view that the Conrail transaction has not resulted in any overall increase in rail rates in the Buffalo area and has not created any systemic competitive problems in the Buffalo area.

CSX states that DOT's independent study of the CSX and NS waybill data confirms the railroads' detailed analyses reporting that Buffalo-area shippers have not been subjected to increased rates as a result of the Conrail transaction.

DISCUSSION AND CONCLUSIONS

CSX, NS, and DOT have appropriately applied what we have found to be a reasonable methodology, using CSX and NS rail waybill data to measure rate changes for rail movements into and out of the Buffalo area. The analyses conducted by NS, CSX, and DOT all use the same type of data and general methodology to compare rates for rail movements into and out of the Buffalo area during Year 3 to rates for comparable movements during both Year 2 and Year 0. Moreover, all of the parties used the same criterion to identify major movements (i.e., movements generating revenues greater than or equal to $20,000) in the most recent study period, and they compare rates for these movements to rates for comparable movements in the previous periods.

As with prior years' submissions, there are slight differences in data and methodology. Most notably, DOT has used revenue per car as its proxy for rates, while NS has made its comparisons on either a per-ton or per-unit basis, and CSX has made its comparisons on a per-car, per-ton, or per-hundredweight basis. In another small difference in approaches, both NS and DOT have assessed rate changes for rail movements at the 4-digit STCC level, while CSX has assessed rate changes at the 7-digit STCC level. The CSX waybill data used by CSX and DOT do not include any revenues associated with its diesel fuel surcharges. There also appear to be slight differences among the parties in their methods for identifying origins and destinations. Finally, CSX has devoted considerable effort to investigating and correcting data imperfections.

The parties' analyses, while differing slightly in approach and in numeric results, all show that CSX and NS rates for rail movements into and out of the Buffalo area have not changed significantly over the past year. Even more notably, DOT has found that, although railroad rates have increased slightly from the period prior to the Split Date to June 2002, overall rate levels in Buffalo have actually declined after inflation is considered. Similarly, CSX and NS have shown that their Buffalo-area rates have not significantly or disproportionately increased during the 3-year term of this study. Any evidence, claim or allegation to the contrary is absent in this proceeding.

These results affirm our determination in the Conrail proceeding that the acquisition and division of Conrail by CSX and NS would not result in significantly higher rates for Buffalo-area rail shippers and that the Conrail transaction would not reduce rail competition in the Buffalo area. Given that this study to date has not presented evidence of an adverse impact on the area, and in light of the fact that parties other than DOT, notably Buffalo-area shippers, have not appeared during the past 2 years, we are concluding this proceeding as scheduled.

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

It is ordered:

1. This proceeding is concluded as scheduled.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Burkes.