

STB FD 33388 (Sub 1) 10-9-97 C 28387

SERVICE DATE - OCTOBER 9, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 (Sub-No. 1)¹

CSX TRANSPORTATION, INC.--CONSTRUCTION AND OPERATION
EXEMPTION--CONNECTION TRACK AT CRESTLINE, OH

Decided: October 1, 1997

These proceedings are related to STB Finance Docket No. 33388, 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 (CSX/NS/CR). In CSX/NS/CR, Decision No. 9, served June 12, 1997, we granted the requests by applicants² for waivers, with respect to four CSX construction projects and three NS construction projects, from our otherwise applicable rules governing railroad consolidations. The waivers would allow CSX and NS to begin construction of the proposed connection tracks following completion of our environmental review of the projects, and our issuance of further decisions exempting or approving the construction proposals, but prior to our approval of the primary application.³ In the Sub-Nos. 2 through 7 dockets, notices of the petitions for exemption to construct and operate the proposed connections were served on July 23, 1997, and published that day in the Federal Register (62 FR 39591-602).⁴ Our notices provided for the filing of

¹ This decision also embraces the following proceedings: STB Finance Docket No. 33388 (Sub-No. 2), CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Willow Creek, IN; STB Finance Docket No. 33388 (Sub-No. 3), CSX Transportation, Inc.--Construction and Operation Exemption--Connection Tracks at Greenwich, OH; STB Finance Docket No. 33388 (Sub-No. 4), CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Sidney Junction, OH; STB Finance Docket No. 33388 (Sub-No. 5), Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track with Union Pacific Railroad Company at Sidney, IL; STB Finance Docket No. 33388 (Sub-No. 6), Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track with Consolidated Rail Corporation at Alexandria, IN; and STB Finance Docket No. 33388 (Sub-No. 7), Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track with Consolidated Rail Corporation at Bucyrus, OH.

² CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT) (collectively with their wholly owned subsidiaries, CSX), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR) (collectively with their wholly owned subsidiaries, NS), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC) (collectively, Conrail) seek approval and authorization under 49 U.S.C. 11321-25 for: (1) the acquisition by CSX and NS of control of Conrail, and (2) the division of Conrail's assets by and between CSX and NS. The transaction proposed in the primary application will be referred to as the CSX/NS/CR transaction.

³ The waivers apply only to the construction of the proposed connections. Applicants indicate that the operational aspect of their proposed connections has been incorporated into, and is contingent upon, subsequent approval of the primary application.

⁴ With regard to the remaining construction project, in STB Finance Docket No. 33388 (Sub-No. 1), we served and published in the Federal Register, (62 FR 37331) on July 11, 1997, a notice of exemption filed by CSX to construct a connection track between two Conrail lines

(continued...)

comments by August 22, 1997, on whether the proposed construction projects meet the exemption criteria of 49 U.S.C. 10502, and on any other non-environmental concerns regarding the connections.

Comments. Comments regarding applicants' proposed construction projects were filed by Allied Rail Union (ARU), Joseph C. Szabo, on behalf of United Transportation Union-- Illinois Legislative Board (IL-UTU), and the Cities of East Chicago, Hammond, Gary, and Whiting, IN (collectively Four Cities). ARU also filed a petition (ARU-13) to stay the notice of exemption in the Sub-No. 1 proceeding.

ARU contends that, because applicants rely on the purported benefits of the CSX/NS/CR transaction to support their petitions, the exemption requests cannot be granted prior to our approval of the primary application. In opposing the exemption petitions, ARU argues that construction of the connecting tracks prior to approval of the primary application will stifle debate and pressure us to approve the primary application. ARU alleges that the joint activity by CSX and Conrail in the Sub-Nos. 3, 4, and 6 proceedings suggests that CSX is exerting control over Conrail in violation of the prior approval requirements of 49 U.S.C. 11323. In its petition to stay the Sub-No. 1 notice of exemption, ARU repeats these assertions, while adding that, without Conrail's participation, CSX cannot qualify for the class exemption at 49 CFR 1150.36 because CSX does not currently own the rights-of-way where construction will occur.

IL-UTU argues that the construction projects will affect traffic routing and rail employees in Illinois and, therefore, that exemption of the projects should not precede approval, if any, of the primary application. While IL-UTU acknowledges that the applicants have assumed the risk of their pre-approval construction, rail employees would be adversely affected by any carrier mismanagement.

The Four Cities are concerned that the proposed connection at Willow Creek, IN (CSX's exemption sought in Sub-No. 2), together with the applicants' other construction proposals extending eastward from Chicago, could exacerbate traffic congestion and economic development in their respective municipalities. Although the Four Cities acknowledge that their interests are environmental in nature,⁵ they maintain that it is impossible to separate their concerns from the merits of applicants' construction proposals. The Four Cities contend that applicants' northwestern Indiana construction projects should be reviewed in the context of the primary application because the proposals are directly related to the primary application and are not limited in scope. According to the Four Cities, it may be appropriate for the Board, in consideration of their traffic congestion concerns, to require applicants to operate over different routes in the area, and that such operations may render the involved connections useless.

In their exemption petitions, applicants maintain that it is important that these projects (all of which involve relatively short connections between existing rail lines) be constructed prior to a decision on the primary application. Applicants claim that these connections must be in place prior to a decision on the primary application so that, if and when we approve the primary application, CSX and NS will be immediately able to provide efficient service in competition

⁴(...continued)

crossing at Crestline, OH. By decision served September 18, 1997, the effective date of the notice of exemption in Sub-No. 1 was stayed by the Board's Chairman pending further agency action to allow completion of the environmental review process.

⁵ Four Cities are correct in their understanding that they will have a further opportunity to submit comments on environmental matters related to the construction projects following SEA's issuance of Environmental Assessments for each project. See *infra.*, and Decision No. 9, at 8.

with each other. Applicants contend that, without early authorization to construct these connections, both CSX and NS would be severely limited in their ability to serve important (though different) customers. At the same time, applicants recognize that there can be no construction until we complete our environmental review of each of these construction projects and we issue a decision approving the construction, or an exemption from our otherwise applicable construction approval criteria, and impose whatever environmental conditions we find appropriate.

The CSX Connections. In Sub-No. 1, CSX filed a notice of exemption pursuant to 49 CFR 1150.36 for construction of a connection at Crestline, OH. In Sub-Nos. 2 through 4, CSX filed petitions for exemption pursuant to 49 U.S.C. 10502 and 49 CFR 1121.1 and 1150.1(a) for the construction of connections at, respectively, Willow Creek, IN, Greenwich, OH, and Sidney, OH. The connections at issue are as follows:

Sub-No. 1. Two main line Conrail tracks cross at Crestline, and CSX proposes to construct in the northwest quadrant a connection track between those two Conrail main lines. The connection would extend approximately 1,507 feet between approximately MP 75.4 on Conrail's North-South main line between Greenwich, OH, and Indianapolis, IN, and approximately MP 188.8 on Conrail's East-West main line between Pittsburgh, PA, and Ft. Wayne, IN. CSX indicates that the project qualifies under the class exemption at 49 CFR 1150.36 because the construction will occur within existing rail rights-of-way.

Sub-No. 2. CSX and Conrail cross each other at Willow Creek. CSX and Conrail propose to construct a connection track in the southeast quadrant between CSX's main line and Conrail's main line. The connection will extend approximately 2,800 feet between approximately milepost BI-236.5 on CSX's main line between Garrett, IN, and Chicago, IL, and approximately milepost 248.8 on Conrail's main line between Porter and Gibson Yard, IN, near Chicago. CSX anticipates that it must acquire approximately 0.2 acres of right-of-way to construct this connection.

CSX indicates that, if the Board approves the primary application, one of CSX's most important service lanes will be its Northeastern Gateway route extending from Chicago to Albany, NY, with branches eastward to Boston and southward to Newark, NJ. This heavily used service lane will combine CSX's current main line route from Chicago to Greenwich, OH, and Conrail's line between Greenwich and Albany. CSX anticipates that traffic on this corridor will be as high as 50 trains per day within the next 3 years. Petitioners indicate that the proposed connection at Willow Creek will provide a direct link between Conrail and CSX tracks and the parallel line of Indiana Harbor Belt Railroad (IHB) at Willow Creek. The connection will allow the Conrail and CSX lines to be used interchangeably as traffic conditions warrant. Petitioners maintain that the option to switch to IHB at Willow Creek will provide a third main track into Chicago in the 20-mile segment between Porter and the Chicago Terminal at Hammond, IN. CSX expects that an average of 11 trains per day will operate over this connection.

Sub-No. 3. CSX and Conrail cross each other at Greenwich. CSX and Conrail propose to construct connection tracks in the northwest and southeast quadrants between CSX's main line and Conrail's main line at Greenwich. The connection in the northwest quadrant will extend approximately 4,600 feet between approximately milepost BG-193.1 on CSX's main line between Chicago, IL, and Pittsburgh, PA, and approximately milepost 54.1 on Conrail's main line between Cleveland and Cincinnati, OH. A portion of this connection in the northwest quadrant will be constructed on the existing trackage and/or right-of-way of the Wheeling & Lake Erie Railway Company. The connection in the southeast quadrant will extend approximately 1,044 feet between approximately milepost BG-192.5 on CSX's main line and approximately milepost 54.6 on Conrail's main line. CSX anticipates that it must acquire approximately 0.4 acres of right-of-way to construct these connections.

CSX and Conrail state that the proposed connections at Greenwich are of paramount importance if CSX's Northeastern Gateway service lane is to operate as anticipated. The connection track to be constructed in the northwest quadrant will connect two main lines and allow the traffic to flow between Chicago and points in the East. CSX anticipates that an average of 35 trains per day will operate over this connection, and could reach as high as 50 trains per day within the next 3 years.

To compete effectively for traffic moving to and from Chicago, CSX intends to establish a second auxiliary route from the East into Chicago. This service lane will be created from the existing NS line between Chicago and Fort Wayne, which CSX will operate, and Conrail's existing lines between Fort Wayne and Crestline, and between Crestline and Greenwich. CSX states that this auxiliary route will handle primarily bulk traffic, which is less time sensitive. The connection track to be constructed in the southeast quadrant at Greenwich will allow this traffic to be routed through Crestline. CSX anticipates that an average of 9 trains per day will operate over this connection. Petitioners maintain that, without these two connections, CSX cannot physically handle traffic between its current rail line to Chicago and the Conrail lines CSX will operate.

Sub-No. 4. CSX and Conrail cross each other at Sidney Junction. CSX and Conrail propose to construct a connection track in the southeast quadrant between CSX's main line and Conrail's main line. The connection will extend approximately 3,263 feet between approximately milepost BE-96.5 on CSX's main line between Cincinnati and Toledo, OH, and approximately milepost 163.5 on Conrail's main line between Cleveland, OH, and Indianapolis, IN. CSX anticipates that it must acquire approximately 2.6 acres of right-of-way to construct this connection.

Petitioners indicate that one of CSX's extremely important service lanes will be its Memphis Gateway route combining Conrail's routes in and to the Northeast with CSX's present route between Cincinnati and Memphis, TN. According to petitioners, this service lane will provide efficient single line service between CSX's Memphis Gateway and important markets in the eastern United States. The Memphis Gateway service lane will use CSX's existing route between Memphis and Sidney, OH, via Cincinnati, and Conrail's existing St. Louis line between Sidney and Cleveland, where CSX will connect with its other service lanes going to the eastern United States. By taking advantage of increased volumes and developing reciprocal overhead blocking strategies with western roads, CSX maintains that it can avoid classifying traffic to the Northeast at its Cincinnati and Nashville terminals. Westbound CSX traffic originating in the East and South will be classified in blocks for movement to western points beyond Memphis. CSX anticipates that an average of 9.6 trains per day will be operated over this new connection at Sidney Junction.

The NS Connections. NS has filed three exemption petitions in Sub-Nos. 5 through 7, pursuant to 49 U.S.C. 10502 and 49 CFR 1121.1 and 1150.1(a) for the construction of connections at, respectively, Sidney, IL, Alexandria, IN, and Bucyrus, OH. The connections at issue are as follows:

Sub-No. 5. NS's rail carrier affiliate, Norfolk and Western Railway Company (NW), proposes a connection at Sidney, IL, between Union Pacific Railroad Company's (UP) north-south rail line between Chicago, IL, and St. Louis, MO, and NW's east-west rail line between Decatur and Tilton, IL. The track will be approximately 3,256 feet in length, occupy approximately 7.3 acres of land, and will be in the southwest quadrant of the intersection of the two lines at Sidney. NW estimates that 10 trains per day will operate over the proposed track, and that the proposed construction will cost about \$1.8 million.

NW indicates that the Sidney connecting track will permit it to link the NS and Conrail rail systems to provide an efficient, less congested route, partially via UP, between St. Louis and

eastern points on the combined system. Petitioner maintains that the connection will improve the efficiency and quality of NS's rail service by adding or expanding facilities to handle anticipated increases in rail traffic, and by improving NS's handling of through traffic between Tilton and eastern points. NW indicates that the connection will not add new industries or territory to the combined NS/Conrail system proposed in the primary application. NW estimates that the Sidney connection would take approximately 10 months to construct.

Sub-No. 6. NW proposes to construct and operate a connection track at Alexandria, IN, between Conrail's line from Anderson to Goshen, IN, and NW's line from Muncie to Frankfort, IN. The connection will be approximately 970 feet in length, occupy approximately 2.3 acres of land, and will be in the northeast quadrant of the intersection of the two lines. NW estimates that 8 trains per day will operate over the proposed track, and that the proposed construction will cost about \$1.4 million.

NW indicates that the Alexandria connecting track will permit it to link the NS and Conrail rail systems to provide an efficient, less congested route between Chicago, IL, and Cincinnati, OH, and on to Atlanta, GA, and points in the Southeast. Petitioner maintains that the connection will improve the efficiency and quality of NS's rail service by adding or expanding facilities to handle anticipated increases in rail traffic, and by improving NS's handling of through traffic via Alexandria and Muncie, IN. NW also indicates that the connection will not add new industries or territory to the combined NS/Conrail system proposed in the primary application.

Sub-No. 7. NW seeks an exemption to construct and operate a connection track at Bucyrus, OH, between Conrail's line from Ft. Wayne, IN, to Crestline, OH, and NW's line from Bellevue, OH, to Columbus, OH. The connection will be approximately 2,467 feet in length, occupy approximately 5.5 acres of land, and will be in the southeast quadrant of the intersection of the two lines at Bucyrus. NW estimates that eight trains per day will operate over the proposed track, and that the proposed construction will cost about \$2,264,000.

NW indicates that the Bucyrus connecting track will permit it to link the NS and Conrail rail systems to provide an efficient, less congested route between Crestline and eastern points, and Columbus. Petitioner maintains that the connection will improve the efficiency and quality of NS's rail service by adding or expanding facilities to handle anticipated increases in rail traffic, and by improving NS's handling of through traffic via the Bucyrus connection. NW also indicates that the connection will not add new industries or territory to the combined NS/Conrail system proposed in the primary application.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10901, a railroad may: (1) construct an extension to any of its railroad lines; (2) construct an additional railroad line; or (3) provide transportation over an extended or additional railroad line, only if the Board issues a certificate authorizing such activity. However, under 49 U.S.C. 10502, the Board shall exempt a rail transaction from regulation when it finds that: (1) application of the pertinent statutory provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction is of limited scope, or regulation is not needed to protect shippers from the abuse of market power.

Regulation of the construction of the connections under section 10901 is not necessary to carry out the rail transportation policy. Applicants have shown that the connections will, if the primary application is granted, facilitate the efficient operation of the national rail system and enhance the orderly, competitive and safe transportation of freight by rail, as contemplated by 49 U.S.C. 10101(3) and (4). Exemption of the construction of these connections is important to CSX and NS because it will allow them to begin rail operations in competition with each other immediately upon approval, if any, of the primary application. Exempting the construction of

these connections from extended regulatory review will also expedite regulatory decisions, thus furthering the goals in 49 U.S.C. 10101(15). Operations over the connections will be considered with the primary application. Full regulatory review of the construction of connections over which operations cannot yet begin would not be consistent with the rail transportation goal of minimizing regulatory controls. *See* 49 U.S.C. 10101(2). Accordingly, construction of these connections does not implicate issues that would warrant our regulatory review other than under the exemption criteria of section 10502. Additionally, we find that the proposed constructions of connecting trackage would likely facilitate efficient delivery of rail transportation services to shippers in the future, should operational authority be obtained, but, in any event, the constructions would not enable the rail carriers involved to abuse market power to the detriment of shippers. In view of our finding that consideration of the proposals under section 10901 is not necessary to protect shippers from abuse of market power, we need not discuss the alternative test of whether the proposed constructions are limited in scope.

The concerns of ARU and IL-UTU over our possible prejudgment of the primary application are not supported. We have already addressed these concerns in Decision No. 9 and in each of the separate decisions inviting public comment in each sub docket. We have made very clear that our exemption of the construction of these projects will not have any bearing on our determination of whether the transaction contemplated in the primary application is in the public interest. *See* Decision No. 9, at 6-8; STB Finance Docket No. 33388 (Sub-No. 1), served July 11, 1997; and STB Finance Docket No. 33388 (Sub-Nos. 2-7), served July 23, 1997.

In proposing to construct these connections, CSX and NS have assumed the financial risk that the primary application will not be granted. As CSX states in its May 2, 1997 petition for waiver (CSX-1): "In the event that the Board rejects the Primary Application, the connections would remain the property of the railroad or railroads on which they are located. Some or all of the connections might later be determined to provide benefits to the national rail system independent of the proposed transaction. Or, the track materials could be removed and reused elsewhere." *See also* NS-1 at 8. Thus, ARU's and IL-UTU's allegations that the projects constitute a waste of resources are not persuasive. According to the applicants, the benefits from the ability to operate over the connections immediately upon any approval of control and operations support and justify the risk that the primary application will be denied in whole or in part.

ARU also argues that the petitions jointly-filed by CSX and Conrail suggest that CSX has exerted unlawful control of Conrail in violation of 49 U.S.C. 11323. CSX's petitions for exemption to construct these connections do not implicate any control issues. As CSX states in its petition for waiver, construction of these connections "would be entirely at CSX's expense." (CSX-1) at 11.) CSX and Conrail have made their own independent assessment of the benefits of constructing the projects, and each has agreed to the projects based on those benefits. In these circumstances, there is no basis for finding that one carrier controls the other. Because this is the same argument ARU advances in its petition to stay the Sub-No. 1 exemption notice, the ARU petition (ARU-13) also will be denied.⁹

The Four Cities' comments relate exclusively to concerns about the post-acquisition operations of CSX and NS. Similarly, the Four Cities' discussion of the exemption criteria relates entirely to operational, not construction, concerns that are appropriately addressed in our decision on the primary application, and not in any decision issued with respect to the requested construction exemptions. The ability of the Four Cities to raise their operational and environmental concerns is in no way diminished by the fact that we are separately considering applicants' construction requests at this time. *See Illinois Commerce Com'n v. ICC*, 848 F.2d

⁹ We note that the Sub-No. 1 exemption notice remains stayed pending further action by the Board following completion of the environmental review process. *See* no. 4, *infra*.

1246, 1259 (T.C. Cir. 1988); Omaha Public Power District--Construction Exemption--In Otoe County, NE, Finance Docket No. 32630 (ICC served May 2, 1995).

Operations over these connections cannot commence unless and until we approve the primary application. The Four Cities will have the opportunity to comment on the Environmental Assessments that our Section of Environmental Analysis (SEA) is preparing, which will address the operations over the Indiana connections about which they are concerned. The Four Cities may also submit comments on October 21, 1997, raising whatever concerns they might have about operations in their area. As they note, in the event that we require that operations in their area be conducted in a manner different from that which CSX and NS currently plan, there is a risk that connections might have to be constructed at different locations. According to applicants, they are prepared to accept this risk as the price for being able to offer competitive rail service as soon as possible if the primary application is approved.

The environmental reports covering the proposed construction projects are contained in the Environmental Report filed with the Board in STB Finance Docket No. 33388. In addition, as required in Decision No. 9, CSX and NS have submitted preliminary draft environmental assessments (PDEAs), on September 5, 1997, for each individual construction project covered by our June 12, 1997 waiver decision. We have required that each PDEA comply with all of the requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. Also, the PDEAs must be based on consultations with SEA and the federal, state, and local agencies set forth in 49 CFR 1105.7(b), as well as other appropriate parties. If a PDEA is insufficient, we may require additional environmental information or reject the document. See Decision No. 9, at 8.

As part of the environmental review process, SEA will independently verify the information contained in each PDEA, conduct further independent analysis, as necessary, and develop appropriate environmental mitigation measures. For each project, SEA plans to prepare an EA, which will be served on the public for review and comment. The public will have 20 days to comment on the EA, including the proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate environmental mitigation. Therefore, in deciding whether to grant petitioners' exemption requests, we will consider the entire environmental record, including all public comments, the EAs, and the Post EAs. *Id.* at 8.

Should we determine that any of the construction projects could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the proposed control transaction in STB Finance Docket No. 33388. *Id.* at 8. We once again emphasize that our consideration of the seven construction projects does not, and will not, in any way, constitute approval of, or even indicate any consideration on our part respecting approval of, the primary application in STB Finance Docket No. 33388. If we grant any exemptions for these seven construction projects, applicants will not be allowed to argue that, because we have granted an exemption and applicants may have expended resources to construct a connection track, we should approve the primary application. Applicants have willingly assumed the risk that we may deny the primary application, or approve it subject to conditions unacceptable to applicants, or approve the primary application but deny applicant's request to operate over any or all of the seven connections. *Id.* at 6.

As conditioned, this action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we conditionally exempt applicants' construction of the proposed connections in STB Finance Docket No. 33388 (Sub-Nos. 2 through 7), from the prior

approval requirements of 49 U.S.C. 10901, subject to our further consideration of the anticipated environmental impacts of the proposals and a further decision.

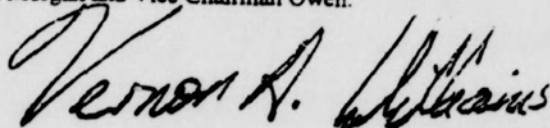
2. ARU's petition to stay the notice of exemption in STB Finance Docket No. 33388 (Sub-No. 1) is denied.

3. On completion of our environmental review, we will issue further decisions addressing environmental matters and making the exemptions effective at that time, if appropriate.

4. Notice will be published in the Federal Register on October 9, 1997.

5. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

A handwritten signature in dark ink, appearing to read "Vernon A. Williams". The signature is fluid and cursive, with the first name "Vernon" being the most prominent.

Vernon A. Williams
Secretary

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SERVICE DATE - SEPTEMBER 16, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 (Sub-No. 1)

CSX TRANSPORTATION, INC.--CONSTRUCTION AND OPERATION EXEMPTION--
CONNECTION TRACK AT CRESTLINE, OH

Decided: September 12, 1997

On June 23, 1997, CSX Transportation, Inc. (CSXT) and Consolidated Rail Corporation (CRC) filed a notice of exemption under 49 CFR 1150.36 to construct a connection track between two CRC main lines crossing at Crestline, OH. The connection will extend approximately 1,507 feet between approximately milepost 75.4 on CRC's North-South main line between Greenwich, OH, and Indianapolis, IN, and approximately milepost 188.8 on CRC's East-West main line between Pittsburgh and Ft. Wayne, IN.¹ Notice of the exemption was served on July 11, 1997, and published that day in the Federal Register (62 FR 37331). The exemption is scheduled to become effective September 19, 1997.

In addition to the Environmental Report, which includes the proposed construction and operation of the connection track at Crestline, filed with the Board in the Primary Control Application in STB Finance Docket No. 33388, CSXT submitted its preliminary draft environmental assessment (PDEA) on September 5, 1997, as directed by the Board in STB Finance Docket No. 33388, Decision No. 9, served June 12, 1997.

As part of the environmental review process, the Board's Section of Environmental Analysis (SEA) will independently verify the information contained in the PDEA, conduct further independent analysis, as necessary, and develop appropriate environmental mitigation measures. SEA plans to prepare an environmental assessment (EA), which will be served on the public for its review and comment. The public will have 20 days to comment on the EA, including the proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare a Post Environmental Assessment containing SEA's final recommendations, including appropriate environmental mitigation.

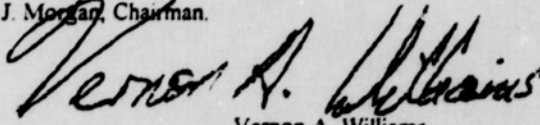
Additional time is needed to enable SEA to consider the full environmental record and complete the environmental process. Accordingly, this exemption will be stayed pending completion of the environmental process. The petition to stay and consider this notice of exemption in conjunction with the primary application, filed by Allied Rail Unions on August 22, 1997 (ARU-13), will be addressed in a later decision.

¹ This proceeding is related to STB Finance Docket No. 33388, 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.

It is ordered:

1. The effectiveness of the exemption in this proceeding is stayed pending further action of the Board.
2. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.

A handwritten signature in dark ink, appearing to read "Vernon A. Williams". The signature is written in a cursive, flowing style with some capitalization.

Vernon A. Williams
Secretary

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STB

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(Sub 1)

7-23-98

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SERVICE DATE - JULY 23, 1998

This decision will be included in the bound volumes
of the STB printed reports at a later date.

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

Sub 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

Decision No. 89¹

Decided: July 20, 1998

The Board approves, with 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.

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¹ This decision covers the STB Finance Docket No. 33388 lead proceeding and the embraced proceedings listed in Appendix A.

**FOR COMPLETE TEXT OF THIS DECISION SEE
LEAD DOCKET DECISION NO. 89**

STB

FD

33388

(Sub 1)

7-23-97

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28029

SERVICE DATE - JULY 23, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388

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

AGENCY: Surface Transportation Board.

ACTION: Decision No. 12; Notice of Acceptance of Primary Application and Related Filings; Notice of Related Abandonments Proposed By Applicants.¹

SUMMARY: The Board is accepting for consideration the primary application and related filings filed June 23, 1997, by CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC).² The primary application seeks Board approval and authorization under 49 U.S.C. 11321-25 for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS. The related filings, which include (among other things) two abandonment petitions and three abandonment notices, seek related relief contingent upon approval of the primary application.

DATES: The effective date of this decision is July 23, 1997. Any person who wishes to participate in this proceeding as a party of record must file, no later than August 7, 1997, a notice of intent to participate. Descriptions of responsive (including inconsistent) applications, and petitions for waiver or clarification regarding those applications, must be filed by August 22, 1997. Responsive (including inconsistent) applications, written comments (including comments of the U.S. Secretary of Transportation and the U.S. Attorney General), protests, requests for conditions, and any other opposition evidence and argument must be filed by October 21, 1997. For further information respecting dates, see Appendix B.

ADDRESSES: An original and 25 copies of all documents must be sent to the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN.: STB Finance Docket No. 33388, 1925 K Street, N.W., Washington, DC 20423-0001.³

In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit one electronic copy of each such document. Further details respecting such electronic submissions are provided below.

Furthermore, one copy of each document filed in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219-2538; FAX: (202) 219-3289] and to each of applicants' representatives: (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004-1202; (2) Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, L.L.P., Suite 600, 888 Seventeenth Street, N.W., Washington, DC 20006-3939; and (3) Paul A.

¹ This decision covers: (i) the primary application, which was filed in the STB Finance Docket No. 33388 lead docket; and (ii) the 39 related filings (1 application, 16 petitions, and 22 notices), which were filed in the 40 embraced dockets listed in Appendix A (one related filing, respecting the proposed abandonment in Edgar and Vermilion Counties, IL, was filed in two dockets).

² CSXC and CSXT, and their wholly owned subsidiaries, are referred to collectively as CSX. NSC and NSR, and their wholly owned subsidiaries, are referred to collectively as NS. CRR and CRC, and their wholly owned subsidiaries, are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

³ In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing in what we expect to become a voluminous record.

Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: The transaction for which approval is sought in the primary application involves: the purchase by CSX and NS, by and through their subsidiaries, of all of the stock of CRR; the operation or use of some of Conrail's lines and assets by CSX and NS separately; and the operation or use of the remainder of Conrail's lines and assets by CSX and NS jointly.

THE APPLICANTS. CSX operates approximately 18,504 route miles and 31,961 track miles of railroad in 20 states east of the Mississippi River and in Ontario, Canada. Of that total, approximately 1,607 miles are operated under trackage rights while the remaining mileage is either owned by CSX or operated by CSX under contract or lease. CSX has principal routes to, and serves, virtually every major metropolitan area east of the Mississippi River, from Chicago, IL, St. Louis, MO, Memphis, TN, and New Orleans, LA, on the West to Miami, FL, Jacksonville, FL, Charleston, SC, Norfolk, VA, Washington, D.C., and Philadelphia, PA, on the East. Other major metropolitan areas served by CSX include Atlanta, GA, Nashville, TN, Cincinnati, OH, Detroit, MI, Pittsburgh, PA, Baltimore, MD, Charlotte, NC, Birmingham, AL, and Louisville, KY. CSX interchanges traffic with other railroads at virtually all of the aforementioned locations and at numerous other points on its railroad system.

NS operates approximately 14,282 route miles and 25,236 track miles of railroad in 20 states, primarily in the South and the Midwest, and in Ontario, Canada. Of that total, approximately 1,520 miles are operated under trackage rights while the remaining mileage is either owned by NS or operated by NS under contract or lease. NS has routes to, and serves, virtually every major market in an area that stretches from Kansas City, MO, in the Midwest to Norfolk, VA, in the East, to Chicago, IL, and Buffalo, NY, in the North, and to New Orleans, LA, and Jacksonville, FL, in the South. These markets include Memphis, Chattanooga and Knoxville, TN; St. Louis, MO; Fort Wayne, IN; Detroit, MI; Toledo, Cincinnati, Columbus, and Cleveland, OH; Louisville and Lexington, KY; Bluefield, WV; Alexandria, Roanoke, Lynchburg, and Richmond, VA; Winston-Salem, Raleigh, Durham, Charlotte, and Morehead City, NC; Greenville, Spartanburg, Columbia, and Charleston, SC; Atlanta, Macon, Valdosta, and Savannah, GA; Bessemer, Birmingham, Montgomery, and Mobile, AL; Des Moines, IA; and Peoria, Springfield, and Decatur, IL. NS interchanges traffic with other railroads at virtually all of the locations mentioned above and at numerous other locations on its railroad system.

Conrail operates approximately 10,500 miles of railroad in the Northeast and Midwest, and its primary network forms an "X" connecting Chicago (via the Chicago Line) and East St. Louis (via the St. Louis and Indianapolis Lines) in the West, with Boston, MA, New York, NY, and Northern New Jersey (via the Chicago Line and other main lines), and with Pittsburgh, Harrisburg, PA, Philadelphia, Baltimore, and Washington, DC (via the Pittsburgh Line and other main lines) in the East. The "hub" of the "X" is located in, and about, Cleveland, OH.

Conrail's Chicago Line extends between Chicago and the Albany, NY, area and connects there (through the Selkirk Branch) with the River Line (serving North Jersey via the west shore of the Hudson River), the Hudson Line (through which Conrail reaches New York City and Long Island), and the Boston Line (which extends to Boston and via which Conrail serves New England). Other important routes contiguous to the Chicago Line include the Detroit Line (between Detroit and a connection with the Chicago Line at Toledo), the Michigan Line (the portion between Detroit and Kalamazoo), and the Kalamazoo Secondary and Branch (between Kalamazoo, MI, and Elkhart, IN, on the Chicago Line), the Montreal Secondary (between Syracuse, NY, and Adirondack Junction, Quebec), and the Southern Tier (between Buffalo, NY, and Croton, NJ).

Conrail's St. Louis Line extends between East St. Louis, IL, and Indianapolis, IN, connecting there with the Indianapolis Line which, in turn, extends between Indianapolis and the Cleveland area (connection with the Chicago Line). Conrail's Cincinnati Line (between Cincinnati and Columbus, OH) and its Columbus Line (between Columbus and Galion, OH, on the Indianapolis Line) and the Scottsbluff Secondary Track (between Columbus and Ridgeway, OH, on the Indianapolis Line) all accommodate traffic flows between other parts of the Conrail system and Cincinnati, Columbus and/or Conrail points served via the West Virginia Secondary Track between Columbus and the Kanawha Valley of West Virginia.

Conrail's principal interchange points are in Chicago, East St. Louis and Salem, IL, via Union Pacific Railroad Company (UPRR) trackage rights between Salem and St. Elmo on the St. Louis Line; Streator, IL; Cincinnati; Hagerstown, MD; and Washington, D.C. Other important interchange points include Effingham, IL; Fort Wayne, IN; Toledo and Columbus, OH; Buffalo and Niagara Falls, NY; Montreal, Quebec; Rotterdam Junction, NY; and Worcester (including Barbers), MA.

THE PROPOSED TRANSACTION. The transaction for which approval is sought in the primary application involves the joint acquisition of control by CSX and NS of CRR and its subsidiaries (the Control Transaction), and the division between CSX and NS of the operation and use of Conrail's assets (the Division). The Control Transaction and the Division are governed principally by an agreement (the Transaction Agreement) dated as of June 10, 1997, between CSXC, CSXT, NSC, NSR, CRR, CRC, and CRR Holdings LLC (CRR Holdings, a recently created limited liability company jointly owned by CSXC and NSC). See CSX/NS-25, Volumes 8B & 8C (the Transaction Agreement, including various schedules and exhibits). The Control Transaction and the Division are also governed by a letter agreement (the CSX/NS Letter Agreement) dated as of April 8, 1997, between CSXC and NSC, but only to the extent such CSX/NS Letter Agreement has not been superseded either by the Transaction Agreement or by the agreement (the CRR Holdings Agreement) that governs CRR Holdings. See CSX/NS-25, Volume 8A at 350-99 (the CSX/NS Letter Agreement) and at 400-36 (the CRR Holdings Agreement).

ACQUISITION OF CONTROL OF CONRAIL. CSX and NS have already acquired 100% of the common stock of CRR in a series of transactions that included a CSX tender offer that was consummated on November 20, 1996, a NS tender offer that was consummated on February 4, 1997, a joint CSX/NS tender offer that was consummated on May 23, 1997, and a merger that was consummated on June 2, 1997. In the aftermath of this series of transactions: CRC remains a direct wholly owned subsidiary of CRR; CRR has become a direct wholly owned subsidiary of Green Acquisition Corp. (Tender Sub); Tender Sub is now a direct wholly owned subsidiary of CRR Holdings; and CRR Holdings is jointly owned by CSXC and NSC (CSXC holds a direct 50% voting interest and a 42% equity interest in CRR Holdings; NSC holds a direct 50% voting interest and a 58% equity interest in CRR Holdings). The merger that was consummated on June 2, 1997 (the Merger), involved the merger of Green Merger Corp. (Merger Sub, a direct wholly owned subsidiary of Tender Sub) into CRR, with CRR being the surviving corporation; and, in connection with the Merger: (i) each remaining outstanding share of CRR common stock not held by CSX, NS, or their affiliates was converted into the right to receive \$115 in cash, without interest; and (ii) the shares of Merger Sub, all of which were then owned by Tender Sub, were converted into 100 newly issued shares of CRR, all of which were placed into a voting trust (the CSX/NS Voting Trust) to prevent CSXC and NSC, and their respective affiliates, from exercising control of CRR and its carrier subsidiaries pending review by the Board of the primary application. See CSX/NS-25, Volume 8A at 323-49 (the agreement that governs the CSX/NS Voting Trust).

At the present time, the affairs of CRR and CRC are under the control of their independent boards of directors. The Transaction Agreement provides that, following the effective date of the Board's approval of the primary application (the Control Date), CRR and CRC will each be managed by a board of directors consisting of six directors divided into two classes, each class having three directors. On each board, CSXC will have the right to designate three directors and NSC will likewise have the right to designate three directors; and actions that require the approval of either board will require approval both by a majority of the directors on that board designated by CSX and by a majority of the directors on that board designated by NS.

DIVISION OF CONRAIL. The Transaction Agreement provides that, if the primary application is approved, the division of the operation and use of Conrail's assets will be effected on the Closing Date, which is defined as the third business day following the date on which certain conditions precedent (including the effectiveness of a final Board order and, where necessary, sufficient labor implementing agreements) shall have been satisfied or waived, or such other date as may be agreed upon. See CSX/NS-18 at 11; CSX/NS-25, Volume 8B at 45. It is anticipated that, during the period beginning on the Control Date and ending on the Closing Date, CSX and NS will exercise joint control of Conrail as a separately functioning rail system.

Formation of NYC and PRR. To effect the Division, CRC will form two wholly owned subsidiaries (referred to collectively as the Subsidiaries): New York Central Lines LLC (NYC) and Pennsylvania Lines LLC (PRR). CSXC will have exclusive authority to appoint the officers and directors of NYC; NSC will likewise have exclusive authority to appoint the officers and

directors of PRR; and CRC, as the sole member of the Subsidiaries, will (with certain exceptions) follow CSX's and NSC's directions with respect to the management and operation of NYC and PRR, respectively.

Allocation of Conrail Assets and Liabilities. On the date of the Division, CRC will assign to NYC and PRR certain of CRC's assets. NYC will be assigned those CRC assets designated to be operated as part of CSX's rail system (the NYC-Allocated Assets), and PRR will be assigned those CRC assets designated to be operated as part of NS's rail system (the PRR-Allocated Assets). These assets will include, among other things, certain lines and facilities currently operated by CRC, whether owned by CRC or operated by CRC under trackage rights. Certain additional assets (referred to as the Retained Assets) will continue to be held by CRR and CRC (or their subsidiaries other than NYC and PRR) and will be operated by them for the benefit of CSX and NS. In addition, on the date of the Division: the former Conrail line now owned by NS that runs from Fort Wayne, IN, to Chicago, IL (the Fort Wayne Line), will be transferred to CRC in a like-kind exchange for CRC's Chicago South/Illinois Lines (the Streator Line); and CRC will assign the Fort Wayne line to NYC, to be operated together with the other Conrail lines to be assigned to NYC and used by CSX as part of CSX's rail system.

Assets Allocated to NYC. The NYC-Allocated Assets will include the following primary routes currently operated by Conrail (routes over which Conrail operates pursuant to trackage rights are designated "TR"):

(1) NY/NJ Area to Cleveland (New York Central Railroad route), including (a) line segments from North NJ Terminal to Albany (Selkirk), (b) Albany to Poughkeepsie, NY, (c) Poughkeepsie to New York City (TR), (d) New York City to White Plains (TR), (e) Albany to Cleveland via Syracuse, Buffalo and Ashtabula, OH, (f) Boston to Albany, (g) Syracuse to Adirondack Jct., PQ, (h) Adirondack Jct. to Montreal (TR), (i) Woodard, NY, to Oswego, NY, (j) Syracuse to Hawk, NY, (k) Hawk to Port of Oswego (TR), (l) Buffalo Terminal to Niagara Falls/Lockport, (m) Lockport to West Somerset (TR), (n) Syracuse to NYSW/FL connections, NY, (o) Albany/Boston Line to Massachusetts branch lines, (p) Albany/Boston Line to Massachusetts branch lines (TR), (q) New York City to Connecticut branch lines (TR), (r) Connecticut branch lines (TR), (s) Connecticut Branch lines, (t) Churchville, NY, to Wayneport, NY, (u) Mortimer, NY, to Avon, NY, and (v) Rochester Branch, NY;

(2) Crestline, OH, to Chicago (Pennsylvania Railroad route), including (a) Crestline to Dunkirk, OH, (b) Dunkirk to Ft. Wayne, IN, (c) Ft. Wayne to Warsaw, IN, (d) Warsaw to Chicago Terminal (Clarke Jct.), IN, and (e) Adams, IN, to Decatur, IN;

(3) Berea to E. St. Louis, including (a) Cleveland Terminal to Crestline, (b) Crestline to E. St. Louis via Galion, OH, Ridgeway, OH, Indianapolis, IN, Terre Haute, IN, Effingham, IL, and St. Elmo, IL, (c) Anderson, IN, to Emporia, IN, (d) Columbus to Galion, (e) Terre Haute to Danville, IL, (f) Danville to Olin, IN, (g) Indianapolis to Rock Island, IN, (h) Indianapolis to Crawfordsville, (i) Indianapolis to Shelbyville, IN, (j) HN Cabin, IL, to Valley Jct., IL, (k) St. Elmo to Salem, IL (TR), (l) Muncie (Walnut Street), IN, to New Castle RT, IN (TR), and (m) New Castle RT, IN;

(4) Columbus to Toledo, including (a) Columbus to Toledo via Ridgeway, (b) Toledo Terminal to Woodville, and (c) Toledo Terminal to Stonyridge, OH;

(5) Bowie to Woodzell, MD, including (a) Bowie to Morgantown, and (b) Brandywine to Chalk Point;

(6) NY/NJ to Philadelphia (West Trenton Line), including Philadelphia to North NJ Terminal;

(7) Washington, D.C., to Landover, MD;

(8) Quakertown Branch, line segment from Philadelphia Terminal to Quakertown, PA (TR), and

(9) Chicago Area, line segment from Porter, IN, to the westernmost point of Conrail ownership in Indiana.

Along with these lines, CSXT will operate certain yards and shops, as well as the Conrail Philadelphia Headquarters and Philadelphia area information technology facilities.

Assets Allocated to PRR. The PRR-Allocated Assets will include the following primary routes currently operated by Conrail (routes over which Conrail operates pursuant to trackage rights are designated "TR"):

- (1) NJ Terminal to Crestline (Pennsylvania Railroad route), including (a) North NJ Terminal to Allentown, PA. via Somerville, NJ, (b) Little Falls, NJ, to Dover, NJ (TR), (c) Orange, NJ, to Denville, NJ (TR), (d) Dover to Rockport (TR), (e) Rockport to E. Stroudsburg via Phillipsburg, NJ, (f) Allentown Terminal, (g) Orange to NJ Terminal (TR), (h) NJ Terminal to Little Falls (TR), (i) Bound Brook to Ludlow, NJ (TR), (j) Allentown, PA. to Harrisburg via Reading, (k) Harrisburg Terminal, (l) Harrisburg to Pittsburgh, (m) Conemaugh Line via Saltsburg, PA, (n) Pittsburgh to W. Brownsville, PA, (o) Central City, PA. to South Fork, PA, (p) Pittsburgh Terminal, (q) Monongahela, PA. to Marianna, PA, (r) Pittsburgh to Alliance, OH, via Salem, (s) Beaver Falls, PA. to Wampum, PA, (t) Alliance to Cleveland Terminal, (u) Mantua, OH, to Cleveland Terminal, (v) Alliance to Crestline, (w) Alliance to Omal, OH, (x) Rochester, PA. to Yellow Creek, OH, (y) E. Steubenville, WV, to Weirton, WV, (z) Steubenville Branches Bridge, OH, (aa) Pittsburgh Branches, (bb) Ashtabula to Youngstown, OH, (cc) Ashtabula Harbor to Ashtabula, (dd) Niles, OH, to Latimer, OH, (ee) Alliance, OH, to Youngstown, (ff) Youngstown to Rochester, (gg) Allentown to Hazelton, PA, (hh) CP Harris, PA. to Cloe, PA (TR), (ii) Cloe to Sheiotta, PA, (jj) Tyrone, PA. to Lock Haven, PA (TR), (kk) Creekside, PA. to Homer City, PA, (ll) Monongahela Railroad, (mm) portion of Kinsman Connection in Cleveland, (nn) portion of 44 Ind. Track including Dock 20 Lead, and (oo) Gem Ind. Track-Lordstown, OH;
- (2) Cleveland to Chicago (New York Central Railroad route), including (a) Cleveland Terminal to Toledo Terminal, (b) Elyria, OH, to Lorain, OH, (c) Toledo Terminal to Sylvania, OH, (d) Toledo Terminal to Goshen, IN, (e) Elkhart, IN, to Goshen, and (f) Elkhart to Porter, IN;
- (3) Philadelphia to Washington (Amtrak's Northeast Corridor, referred to as NEC), including (a) Philadelphia Terminal to Perryville, MD (TR), (b) Wilmington Terminal, DE, (c) Perryville to Baltimore (TR), (d) Baltimore Terminal, (e) Baltimore Bay View to Landover, MD (TR), (f) Baltimore to Cockeysville, MD, (g) Pocomoke, MD. to New Castle Jct., DE, (h) Harrington, DE, to Frankford/Indian River, DE, (i) Newark, DE, to Porter, DE, (j) Claremont R.T., (k) Loneys Lane Lead, and (l) Grays Yard (TR);
- (4) Michigan Operations (excluding the Detroit Shared Assets Area), including (a) Toledo Terminal to Detroit Terminal, (b) Detroit Terminal to Jackson, MI, (c) Jackson to Kalamazoo, MI, (d) Kalamazoo to Elkhart, IN, (e) Jackson to Lansing, MI, (f) Kalamazoo to Grand Rapids, (g) Kalamazoo to Porter, IN (TR), (h) Kalamazoo Ind. Track, and (i) Comstock Ind. Track;
- (5) Eastern Pennsylvania lines, including (a) Philadelphia Terminal to Reading, (b) Reading Terminal, (c) Thorndale, PA. to Woodbourne, PA, (d) Leola/Chesterbrook, PA, lines, (e) Philadelphia Terminal to Lancaster, PA (TR), (f) Lancaster to Royalton, PA (TR), (g) Lancaster to Lititz/Columbia, PA, (h) portion of Stoney Creek Branch, (i) West Falls Yard, and (j) Venice Ind. Track;
- (6) Indiana lines, including (a) Anderson to Goshen via Warsaw, (b) Marion to Red Key, IN, and (c) Lafayette Ind. Track;
- (7) Buffalo to NY/NJ Terminal, including (a) NJ/NY Jct. to Suffern, NY (TR), (b) Suffern to Port Jervis, NY, (c) Port Jervis to Binghamton, (d) Binghamton to Waverly, (e) NJ/NY Jct. to Spring Valley, NY (TR), (f) Paterson Jct., NJ, to Ridgewood, NJ (TR), (g) Waverly to Buffalo, (h) Waverly to Mehoopany, PA, (i) Sayre, PA, to Ludlowville, NY, (j) Lyons, NY, to Himrods Jct., NY, (k) Corning, NY, to Himrods Jct., NY, (l) North Jersey Terminal to Paterson Jct., NJ (TR), (m) Paterson Jct. to North Newark, NJ, and (n) NJ/NY Jct. to North Jersey Terminal (TR);
- (8) Buffalo to Harrisburg and South, including (a) Perryville, MD, to Harrisburg, PA, (b) Carlisle, PA, to Harrisburg, (c) Wago, PA, to York (area), PA, (d) Harrisburg to Shocks, PA, (e) Williamsport, MD, to Buffalo via Harrisburg, PA, (f) Watsonstown, PA, to Strawberry Ridge, PA, (g) Ebenezer Jct., NY, to Lackawanna, NY, (h) Hornell, NY, to Corry, PA, (i) Corry to Erie, PA (TR), and (j) Youngstown to Oil City, PA;

(9) Cincinnati to Columbus to Charleston, WV, including (a) Columbus to Cincinnati, (b) Cincinnati Terminal, (c) Columbus Terminal to Truro, OH, (d) Truro to Charleston, WV, (e) Charleston to Cornelia, WV, and (f) Charleston to Morris Fork, WV;

(10) Chicago South/Illinois operations, including (a) Osborne, IN, to Chicago Heights, IL, via Hartsdale, (b) Hartsdale to Schneider, IN, (c) Schneider to Hennepin, IL, (d) Keensburg, IL, to Carol, IL, and (e) Schneider to Wheatfield, IN; and

(11) Chicago Market, including (a) Western Ave. Operations/Loop to Cicero/Elsdon, IL, (b) Chicago to Porter, IN, (c) Clarke Jct., IN, to CP 501, IN, (d) CP 509 to Calumet Park, IL, (e) Western Ave. Ind. Track, (f) Old Western Ave. Ind. Track, (g) North Joint Tracks, (h) Elevator Lead & Tri-River Dock, (i) CR&I Branch, (j) 49th Street Ind. Track, (k) 75th Street to 51st Street (TR), (l) Port of Indiana, IN, and (m) CP 502, IN, to Osborne, IN.

Along with these lines, the abandoned Conrail line from Danville to Schneider, IL, will also be a PRR-Allocated Asset.

Allocated Assets: Other Aspects. Certain equipment will be included in the NYC-Allocated Assets and the PRR-Allocated Assets and will be made available to CSXT and NSR pursuant to a CSXT Equipment Agreement and a NSR Equipment Agreement, respectively. Much of the locomotive equipment and rolling stock equipment, however, will not be included in the NYC- and PRR-Allocated Assets but will be included, instead, in the Retained Assets (discussed below), and will be leased by CRC or its affiliates to NYC or PRR pursuant to equipment agreements to be negotiated by the parties.

CRC currently holds certain trackage rights over CSXT and NSR. In general (though there are exceptions), CRC will assign the trackage rights that it holds over CSXT to PRR (to be operated by NSR), and it will assign the trackage rights that it holds over NSR to NYC (to be operated by CSXT).

The shares currently owned by Conrail in TTX Company (TTX, formerly known as Trailer Train) will be allocated to NYC and PRR. Applicants' current ownership interest in TTX is: CSX, 9.345%; NS, 7.788%; CRC, 21.807%. Following approval of the primary application, the ownership of TTX by applicants and their subsidiaries will be as follows: CSX, 9.345%; NYC, 10.125%; NS, 7.788%; PRR, 11.682%.

Conrail's 50% interest in Triple Crown Services Company will be allocated to PRR.

Certain additional special treatments are provided in particular areas within the allocated assets. A description of the areas in which special arrangements are made is set forth below under the caption "Other Areas with Special Treatments."

Applicants indicate that they have taken steps to ensure that all of the existing contractual commitments of Conrail to its shippers will be fulfilled. The Transaction Agreement provides that all transportation contracts of CRC in effect as of the Closing Date (referred to as Existing Transportation Contracts) will remain in effect through their respective stated terms and will be allocated as NYC-Allocated Assets and PRR-Allocated Assets, and that the obligations under them shall be carried out after the Closing Date by CSXT, utilizing NYC-Allocated Assets, and by NSR, using PRR-Allocated Assets, or pursuant to the Shared Assets Areas Agreements, as the case may be. The Transaction Agreement further provides, with respect to the Existing Transportation Contracts: that CSXT and NSR will allocate the responsibilities to serve customers under these contracts; and that CSXT and NSR shall cooperate as necessary to assure shippers under these contracts all benefits, such as volume pricing, volume refunds, and the like, to which they are contractually entitled.

Retained Assets. The Retained Assets include assets contained within three Shared Assets Areas (the Detroit Shared Assets Area, the North Jersey Shared Assets Area, and the South Jersey/Philadelphia Shared Assets Area) that are more fully described below.

* The Transaction Agreement also contemplates that certain CRC facilities currently used for the benefit of the entire Conrail system: will be operated, during a transition period following the Closing Date, for the joint benefit of CSX and NS; and will be operated, after such transition period, for the party to whom they have been allocated. See CSX/NS-18 at 11 (lines 14-18) and 12 (line 1 & n.3).

The Retained Assets also include Conrail's System Support Operations (SSO) facilities, including equipment and other assets associated with such facilities, currently used by Conrail to provide support functions benefitting its system as a whole, including Conrail's: (1) customer service center in Pittsburgh, PA; (2) crew management facility in Dearborn, MI; (3) system maintenance-of-way equipment center in Canton, OH; (4) signal repair center in Columbus, OH; (5) system freight claims facility in Buffalo, NY; (6) system non-revenue billing facility at Bethlehem, PA; (7) system rail welding plant at Lucknow (Harrisburg), PA; (8) system road foreman/engineer training center at Philadelphia and Conway, PA; (9) police operations center at Mt. Laurel, NJ; (10) the Philadelphia Division headquarters building and offices located at Mount Laurel, NJ; and (11) other SSO facilities identified by CSX and NS prior to the Closing Date. Each SSO Facility will be operated by Conrail for the benefit of CSXT/NYC and NSR/PRR, and the costs of operating each SSO Facility will be retained by Conrail as "Corporate Level Liabilities" and will be shared between CSX and NS.⁵

Liabilities. In general: NYC will assume all liabilities arising on or after the Closing Date that relate predominantly to the NYC-Allocated Assets; PRR will assume all such liabilities that relate predominantly to the PRR-Allocated Assets; CRC will be responsible for all such liabilities that do not relate predominantly to the NYC- or PRR-Allocated Assets; and CRC will also be responsible for certain liabilities arising prior to the Closing Date.

Separation Costs (as defined in the Transaction Agreement, *see* CSX/NS-25, Volume 8B at 20) incurred following the Control Date in connection with Conrail agreement employees now working jobs at or in respect of NYC-Allocated Assets will be the sole responsibility of CSX, while Separation Costs incurred in connection with Conrail agreement employees now working jobs at or in respect of PRR-Allocated Assets will be the sole responsibility of NS. Separation Costs incurred in connection with Conrail agreement employees working jobs at or in respect of Retained Assets will be shared by CSX and NS. Separation Costs incurred following the Control Date for Conrail agreement employees at Conrail's Altoona and Hollidaysburg shops will be the responsibility of NS, and Separation Costs incurred following the Control Date in connection with agreement employees at Conrail's Philadelphia headquarters and technology center and Conrail's Pittsburgh customer service center will be the responsibility of CSX. Separation Costs for eligible Conrail non-agreement employees will be shared by CSX and NS.

After the Closing Date, compensation and other expenses (excluding Separation Costs) for agreement employees (other than certain Conrail employees performing general and administrative functions) working jobs at or in respect of NYC-Allocated Assets will be the sole responsibility of CSX, while such expenses for such agreement employees working jobs at or in respect of PRR-Allocated Assets will be the sole responsibility of NS.

Operation of Assets. Applicants indicate: that CSXT and NYC will enter into the CSXT Operating Agreement, which provides for CSXT's use and operation of the NYC-Allocated Assets; that NSR and PRR will enter into the NSR Operating Agreement, which provides for NSR's use and operation of the PRR-Allocated Assets; and that CRC, NYC, PRR, CSXT and/or NSR will enter into Shared Assets Areas Operating Agreements, which provide for the operation of certain Shared Assets Areas for the benefit of both CSXT and NSR.

CSXT and NSR Operating Agreements. The CSXT Operating Agreement and the NSR Operating Agreement (collectively, the Allocated Assets Operating Agreements) provide that CSXT and NSR will each have the right, for an initial term of 25 years, to use and operate, as part of their respective systems, the NYC-Allocated Assets and the PRR-Allocated Assets. Those agreements will require CSXT and NSR each to bear the responsibility for and the cost of operating and maintaining their respective Allocated Assets. CSXT and NSR will each receive for its own benefit and in its own name all revenues and profits arising from or associated with the operation of its Allocated Assets.

CSXT will pay NYC an operating fee based on the fair market rental value of the NYC-Allocated Assets. NSR will similarly pay PRR an operating fee based on the fair market rental value of the PRR-Allocated Assets. CSXT and NSR will have the right to receive the benefits of NYC and PRR, respectively, under any contract or agreement included in the NYC-Allocated Assets or the PRR-Allocated Assets, respectively, and, with the consent of NYC and PRR, respectively, to modify or amend any such contract or agreement on behalf of NYC and PRR.

⁵ At least some of the SSO Facilities will apparently be operated for the joint benefit of CSX and NS "for a short period" only. *See* CSX/NS-18 at 12 (lines 2-5).

CSXT and NSR will each have the right to renew its Allocated Assets Operating Agreement for two additional terms of ten years each. The Allocated Assets Operating Agreements contemplate that, upon termination of the agreements, CSXT and NSR will be deemed to have returned their Allocated Assets to NYC or PRR, subject to any regulatory requirements.

Shared Assets Areas and Operating Agreements. Both CSXT and NSR will be permitted to serve shipper facilities located within the three Shared Assets Areas (North Jersey, South Jersey/Philadelphia, and Detroit), which will be owned, operated, and maintained by CRC for the exclusive benefit of CSX and NS. CSXT and NSR will enter into a Shared Assets Area Operating Agreement with CRC in connection with each of the Shared Assets Areas, and CRC will grant to CSXT and NSR the right to operate their respective trains, with their own crews and equipment and at their own expense, over any tracks included in the Shared Assets Areas. CSXT and NSR will each have exclusive and independent authority to establish all rates, charges, service terms, routes, and divisions, and to collect all freight revenues, relating to freight traffic transported for its account within the Shared Assets Areas. Other carriers that previously had access to points within the Shared Assets Areas will continue to have the same access as before.

(1) The North Jersey Shared Assets Area encompasses all northern New Jersey trackage east of and including the NEC, and also (a) certain line segments north of the NEC as it turns East to enter the tunnel under the Hudson River, (b) the CRC Lehigh line west to Port Reading Junction, (c) the rights of CRC on the New Jersey Transit Raritan line, (d) the CRC Port Reading Secondary line west to Bound Brook, (e) the CRC Perth Amboy Secondary line west to South Plainfield, and (f) the NEC local service south to the Trenton area.

(2) The South Jersey/Philadelphia Shared Assets Area encompasses all CRC "Philadelphia" stations and stations within the Philadelphia City limits, industries located on the CRC Chester Industrial and Chester Secondary tracks, all CRC trackage in Southern New Jersey, CRC's rights on the NEC north from Zoo Tower in Philadelphia to Trenton, NJ, and the Ameriport intermodal terminal and any replacement of such terminal built substantially through public funding.

(3) The Detroit Shared Assets Area encompasses all CRC trackage and access rights east of the CP-Townline (Michigan Line MP 7.4) and south to and including Trenton (Detroit Line MP 20).⁶

Other Areas with Special Treatments. A number of other areas, though not referred to as Shared Assets Areas, are nevertheless subject to special arrangements that provide for a sharing of routes or facilities to a certain extent.

(1) Monongahela Area: Although the CRC lines formerly a part of the Monongahela Railway will be operated by NSR, CSXT will have equal access for 25 years, subject to renewal, to all current and future facilities located on or accessed from the former Monongahela Railway, including the Waynesburg Southern.

(2) Chicago Area: Both CSXT and NSR will have access to CRC's rights concerning access to and use of the Willow Springs Yard of The Burlington Northern and Santa Fe Railway Company (BNSF); applicants will enter into an agreement concerning their respective rights as successors to Conrail and as parties controlling the controlling shareholder in the Indiana Harbor Belt Railway (IHB), a 51%-owned subsidiary of CRC (the stock of IHB will be a CRC-retained asset); certain trackage rights of CRC over IHB will be assigned or made available to NYC to be operated by CSXT or to PRR to be operated by NSR; CSXT and NSR will enter into an agreement to permit each of them to maintain current access and trackage rights enjoyed by them over terminal railroads in the Chicago area; and CSX will be granted an option, exercisable if CSXT and BNSF come under common control, to purchase the Streator Line from Osborne, IN, to Streator, IL.

(3) Ashtabula Harbor Area: NSR will have the right to operate and control CRC's Ashtabula Harbor facilities, with CSXT receiving use and access, up to a proportion of the total ground storage, throughput, and tonnage capacity of 42%.

⁶ For a more complete description of the three Shared Assets Areas, see CSX/NS-18 at 46-49 (and references there cited).

- (4) Buffalo Area: CSXT will operate Seneca Yard, and NSR will receive access to yard tracks in that yard.
- (5) Cleveland Area: CRC's switching yard at Collinwood will be operated by CSXT and its Rockport Yard will be operated by NSR.
- (6) Columbus, OH: NSR will operate CRC's Buckeye Hump Yard, and CSXT will operate the former Local Yard and intermodal terminal at Buckeye.
- (7) Erie, PA: Norfolk and Western Railway Company (NW, a wholly owned NSR subsidiary) will have a permanent easement and the right to build a track on the easement along the CRC right of way through Erie, PA, to be operated by CSXT. NW will have trackage rights in Erie to connect its route from Corry to its existing Buffalo-Cleveland line if such connection can be achieved without using the CRC Buffalo-Cleveland line to be operated by CSXT.
- (8) Fort Wayne, IN: CSX will operate the line between Fort Wayne and Chicago, currently owned by NSR.
- (9) Indianapolis, IN: NSR will have overhead trackage rights from Lafayette and Muncie to Hawthorne Yard to serve, via CSXT switch, shippers that presently receive service from two railroads.
- (10) Toledo, OH: CRC's Stanley Yard will be operated by CSXT, and its Airline Junction Yard will be operated by NSR.
- (11) Washington, D.C.: CRC's Landover Line from Washington, D.C., to Landover, MD, will be allocated to NYC, and NSR will be given overhead trackage rights.

(12) Allocation of Rights with Respect to Freight Operations Over Amtrak's NEC: CRC's NEC overhead trackage rights north of New York (Penn Station) will be assigned to NYC. Both NYC and PRR will have overhead rights to operate trains between Washington, D.C., and New York (Penn Station), subject to certain limitations. From Zoo Tower, Philadelphia, to Penn Station, NY, CRC's NEC rights to serve local customers will be part of the Retained Assets and CRC will assign those rights to NYC and PRR, with NYC and PRR having equal access to all local customers and facilities. Between Washington, D.C., and Zoo Tower, Philadelphia, CRC's NEC rights to serve local customers will be assigned to PRR. The right to serve local customers on the NEC north of New York (Penn Station) will be assigned to NYC.⁷

SUCCESSION TO CONRAIL ACTIVITIES. Applicants intend that the Allocated Assets conveyed to NYC and PRR will be operated for them by CSXT and NSR, respectively, and that both the Allocated Assets conveyed to NYC and PRR as well as the Retained Assets made available by CRC to CSXT or NSR or both will be enjoyed and used by CSXT and NSR (subject to the terms of the governing agreements) as if the carrier in question were itself CRC. Applicants similarly intend that the Shared Assets Areas will be used, enjoyed, and operated as fully by CSXT and NSR as if each of them were CRC.

THE CONTINUING CONRAIL ACTIVITIES. From the Closing Date forward, CSXT and NSR will be responsible for all of the operating expenses and new liabilities attributable to the assets which they are operating. It is expected, however, that most of the pre-Closing Date liabilities of CRC, CRR, and their subsidiaries will remain in place. It is contemplated that CRC will pay its pre-Closing Date liabilities, including its debt obligations, out of payments received, either directly or through NYC and PRR, from CSXT and NSR in connection with the Allocated Assets and the Shared Assets Areas. Applicants expect that such payments will be sufficient to permit CRC and its subsidiaries (1) to cover their operating, maintenance, and other expenses, (2) to pay all of their obligations as they mature, (3) to provide dividends to CRR sufficient to permit it to discharge its debts and obligations as they mature, and (4) to receive a fair return for the operation, use, and enjoyment by CSXT and NSR of the Allocated Assets and Shared Assets Areas. Applicants add, however, that if for any reason these sources of funds to CRC and CRR prove insufficient to permit them to pay and discharge their obligations, CSX and NS have agreed that CRR Holdings shall provide the necessary funds, which it will obtain from CSXC and NSC.

⁷ For a more complete description of the areas addressed here under the heading "Other Areas with Special Treatments," see CSX/NS-18 at 49-54 (and references there cited).

Applicants anticipate that, following the Division of Conrail, approximately 350 employees will be employed by Conrail in the Philadelphia area (where the headquarters of CRR and CRC are now located). These employees will include Conrail employees managing and operating trains for CSX and NS, the employees in the local Shared Assets Area, and the management personnel for the continuing Conrail functions. In addition, each of CSX and NS anticipates establishing a regional headquarters-type function in Philadelphia at which an undetermined number of additional personnel will be employed.

It is intended that, following the Division: CRC will not hold itself out to the public as performing transportation services directly and for its own account; CRC will not enter into any contract (other than with CSXT or NSR) for the performance of transportation services; and all transportation services performed by CRC will be performed as agent or subcontractor of CSXT or NSR.

"2-to-1" SITUATIONS. Applicants claim: that the division of Conrail proposed in the primary application has enabled applicants to avoid, "wherever possible," situations where shippers will see their rail options decline from two carriers to one; and that in "virtually all of the few" 2-to-1 situations that the division proposed in the primary application would otherwise have entailed, CSX and NS have agreed to provide one another with trackage and/or haulage rights that will permit the continuation of two rail carrier service. *See CSX/NS-18 at 4. See also CSX/NS-18 at 74-75* (CSX will provide trackage or haulage rights that will allow for alternative rail service to facilities that otherwise would be, as a result of the transaction proposed in the primary application, rail-served solely by CSX) and 80 (NS will provide trackage or haulage rights that will allow for alternative rail service to facilities that otherwise would be, as a result of the transaction proposed in the primary application, rail-served solely by NS).

LABOR IMPACT. Applicants have provided three Labor Impact Exhibits, each using a different base line in calculating the impacts that the transactions proposed in the primary application and the related filings will have on rail carrier employees. *See CSX/NS-26* (filed July 7, 1997), which: (a) corrects the single Labor Impact Exhibit filed with the primary application itself on June 23, 1997. *see CSX/NS-18 at 24-25; CSX/NS-20, Volume 3A at 485-546; and CSX/NS-20, Volume 3B at 493-526; and* (b) adds two additional Labor Impact Exhibits. *See also* Decision No. 7, served May 30, 1997, slip op. at 8-9 (we required applicants to use the year 1995 as the base line for setting forth the impacts the proposed transactions will have on rail carrier employees, but we added that applicants, if they were so inclined, would be allowed to supplement 1995 data with data demonstrating employment reductions in 1996 and/or 1997).

Applicants' 1996/97 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 3,090 jobs and the creation of 1,109 jobs (for a net loss of 1,981 jobs), and will also result in the transfer of an additional 2,323 jobs. *See CSX/NS-26, 1996/97 Exhibit at 13.* The 1996/97 Exhibit is based on an April 1, 1997 nonagreement employee count and a November 1996 agreement employee count.

Applicants' 1996 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 3,822 jobs and the creation of 1,152 jobs (for a net loss of 2,670 jobs), and will also result in the transfer of an additional 2,323 jobs. *See CSX/NS-26, 1996 Exhibit at 16.* The 1996 Exhibit is based on calendar year 1996 average monthly employment levels.⁴

Applicants' 1995 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 6,654 jobs and the creation of 1,699 jobs (for a net loss of 4,955 jobs), and will also result in the transfer of an additional 2,228 jobs. *See CSX/NS-26, 1995 Exhibit at 33.* The 1995 Exhibit is based on calendar year 1995 average monthly employment levels. *But see CSX/NS-26, Peifer/Spenski V.S. at 1 n.1* (1995 data is incomplete).

Applicants emphasize that the projections contained in their Labor Impact Exhibits are short term projections; applicants maintain that, in the long term, the transactions proposed in the

⁴ The 1996 Labor Impact Exhibit submitted with the CSX/NS-26 filing on July 7, 1997, is a slightly corrected version of the Labor Impact Exhibit submitted with the primary application itself on June 23, 1997.

primary application and the related filings will provide opportunities for rail transportation growth and, therefore, new jobs. Applicants anticipate that, if we approve the transactions proposed in the primary application and the related filings, we will impose on such transactions the standard labor protective conditions customarily imposed on similar such transactions. See CSX/NS-18 at 25.

RELIEF REQUESTED IN THE PRIMARY APPLICATION. In the STB Finance Docket No. 33388 lead docket, applicants seek: approval of the transaction proposed in the primary application (in paragraph 1 below); approval of certain "elements" of that transaction, referred to as Transaction Elements (in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 below); and a "fairness determination" respecting the terms under which CSX and NS have acquired all of the common stock of CRR (in paragraph 12 below).

(1) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the acquisition by CSXC and NSC (each a noncarrier corporation controlling one or more rail carriers) of joint control of, and the power to exercise joint control over, CRR (also a noncarrier corporation controlling one or more rail carriers). See 49 U.S.C. 11323(a)(5).⁹

(2) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the acquisition by NYC and PRR of, and of the operation by CSXT and NSR over, the CRC lines and other assets, including without limitation trackage and other rights, that will be allocated to NYC and PRR, respectively. Applicants also ask that we expressly provide that, pursuant to the sought approval and authorization under 49 U.S.C. 11323 and 11324, and notwithstanding any purported limitations on assignability, NYC and PRR each will have the same right, title, and interest in the CRC lines and other assets forming its part of the Allocated Assets as CRC itself now has, including the power to pass the use and enjoyment of those lines and other assets to CSXT and NSR.¹⁰

(3) Applicants request a declaratory order that 49 U.S.C. 10901 does not apply to the transfer of the Allocated Assets to NYC and PRR.¹¹ Applicants concede that, because NYC and PRR are not now carriers, an argument can be made that authority under 49 U.S.C. 10901 is required for the transfer; applicants maintain, however, that the transfer should be viewed in context as simply a part of a larger transaction involving the operation by CSX and NS of the assets to be transferred to NYC and PRR, respectively; and applicants claim that the transfer, when viewed in context, requires authorization not under 49 U.S.C. 10901 but rather under 49 U.S.C. 11323 and 11324. In the event we do not issue the sought declaratory order, applicants seek authorization for the transfer of the CRC assets to NYC and PRR: under 49 U.S.C. 10901; and, in order to bring the transfer within the scope of the immunizing power of 49 U.S.C. 11321(a), also under 49 U.S.C. 11323 and 11324.

(4) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: (i) for CSXT and NSR to enter into the Allocated Assets Operating Agreements and to operate the assets held by NYC and PRR, respectively; (ii) for CSXT, NSR, and CRC to enter into the three Shared Assets Areas Operating Agreements and to operate the assets in such areas; and (iii) for CSX and NS to use, operate, perform, and enjoy the Allocated Assets and the assets in the Shared Assets Areas consisting of assets other than routes (including, without limitation, the Existing Transportation Contracts). See 49 U.S.C. 11323(a)(2). See also 49 U.S.C. 11323(a)(6).

⁹ As applicants note, although joint control by CSXC and NSC of Conrail as a separately functioning rail system will last only until the Division is effected, such joint control, even though transitory, requires approval and authorization under 49 U.S.C. 11323(a)(5). See CSX/NS-18 at 90 & n.14.

¹⁰ The CRC lines and other assets to be allocated to NYC and PRR include both: (i) those owned by CRC; and also (ii) those not owned by CRC but operated by CRC under leases, trackage rights, and similar arrangements (such arrangements are hereinafter referred to as "Trackage Agreements"). Because applicants are concerned that CRC's interests under some of these Trackage Agreements may be subject to limitations on assignability, approval and authorization under 49 U.S.C. 11323 and 11324 has been sought in order to bring these Trackage Agreements within the scope of the immunizing power of 49 U.S.C. 11321(a). See *Norfolk & Western Ry. Co. v. American Train Dispatchers' Ass'n*, 499 U.S. 117 (1991).

¹¹ As applicants note, the immunizing power of 49 U.S.C. 11321(a) does not extend to an authorization under 49 U.S.C. 10901.

Applicants also request a declaratory order, or a declaration to the same effect as a declaratory order: (a) that, by virtue of the immunizing power of 49 U.S.C. 11321(a), CSX and NS will have the authority to conduct operations over the routes of CRC covered by the Trackage Agreements as fully and to the same extent as CRC itself could, whether or not such routes are listed in CSX/NS-18, Appendix L (CSX/NS-18 at 216-24), and notwithstanding any clause in any such agreement purporting to limit or prohibit unilateral assignment by CRC of its rights thereunder; and (b) that, also by virtue of the immunizing power of 49 U.S.C. 11321(a), CSX and NS may use, operate, perform, and enjoy the Allocated Assets and the assets in the Shared Assets Areas consisting of assets other than routes (including, without limitation, the Existing Transportation Contracts) as fully and to the same extent as CRC itself could.

(5) For the period following the transfer of CRC assets to NYC and PRR, applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: (a) for CSXC, NSC, and CRR to continue to control NYC and PRR; and (b) for the common control, by CSXC, CSXT, NSC, NSR, CRR, and CRC of (i) NYC and PRR, and (ii) the carriers currently controlled by CSXC, CSXT, NSC, NSR, CRR, and CRC. Such authorization and approval will be necessary because, as applicants note: CRC, NYC, and PRR will not be part of a "single system" of rail carriers, and therefore authorization to control CRC will not in and of itself imply authorization to control NYC and PRR; and, although CSX will exercise day-to-day control of NYC and NS will exercise day-to-day control of PRR, the fact that certain major actions concerning NYC and PRR will remain under the control of CRC will result in an ongoing common control relationship involving CSXC, NSC, and CRR, and the subsidiaries of each.

(6) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: for the acquisition by CSXT of certain trackage rights over PRR; and for the acquisition by NSR of certain trackage rights over NYC. *See* 49 U.S.C. 11323(a)(6). The lines over which these trackage rights will run are listed in items 1.B and 1.A, respectively, of Schedule 4 to the Transaction Agreement. *See* CSX/NS-25, Volume 8B at 110-21.¹²

(7) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the trackage rights provided to CSXT, *see* CSX/NS-25, Volume 8C at 715-57, to access all current and future facilities located on or accessed from the former Monongahela Railway, including the Waynesburg Southern. *See* 49 U.S.C. 11323(a)(6).¹³

(8) The trackage rights covered by paragraph 6 include, among many other such trackage rights, certain trackage rights to be acquired by NSR over the NYC Bound Brook, NJ-Woodbourne, PA line. *See* CSX/NS-25, Volume 8B at 112 (item 20). These particular trackage rights, however, are intended to be temporary in duration, and will expire, by their terms, at the end of 3 years. Applicants therefore seek authorization, pursuant to 49 U.S.C. 10903, for NSR to discontinue the Bound Brook-Woodbourne trackage rights in accordance with the terms thereof.¹⁴

(9) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of certain incidental trackage rights granted in connection with operations within the Shared

¹² The trackage rights identified in Schedule 4 to the Transaction Agreement, *see* CSX/NS-25, Volume 8B at 110-21, fall into three categories: existing trackage rights held by CRC over other carriers, which are covered in paragraph 4 above; new trackage rights to be held by CSXT over PRR and by NSR over NYC, which are covered in this paragraph 6; and certain additional new trackage rights provided for in the related filings in STB Finance Docket No. 33388 (Sub-Nos. 25, 27, 28, 29, 30, 32, 33, & 34), which are covered in the "Related Filings" discussion below. *See* CSX/NS-18 at 96 n.17.

¹³ Applicants indicate, *see* CSX/NS-18 at 96 (lines 9-10), that the rights referenced in paragraphs 6 and 7 fall under 49 U.S.C. 11323(a)(2) (approval and authorization required for a "purchase, lease, or contract to operate property of another rail carrier by any number of rail carriers"). The rights referenced in paragraphs 6 and 7, however, appear to be trackage rights, and we therefore believe that these rights fall under 49 U.S.C. 11323(a)(6) (approval and authorization required for the acquisition "by a rail carrier of trackage rights over, . . . or joint use of, a railroad line . . . owned or operated by another rail carrier").

¹⁴ Applicants indicate that, in due course, NSR will "abandon" its Bound Brook-Woodbourne trackage rights. *See* CSX/NS-18 at 96-97 (item e) and 103 (item e). We think it would be more accurate to say that NSR will "discontinue" these trackage rights.

Assets Areas. These trackage rights include: (i) trackage rights granted by CSXT to NSR and CRC; and (ii) trackage rights granted by NSR to CSXT and CRC. See CSX/NS-18 at 97-98. See also CSX/NS-25, Volume 8C at 76, 115-16, and 156.¹⁵

(10) To the extent that any matter concerning either (i) the joint ownership by CSX and NS of CRR, CRC, NYC, and/or PRR, or (ii) the Transaction Agreement and the Ancillary Agreements referred to therein,¹⁶ including the provision for handling Existing Transportation Contracts, might be deemed to be a pooling or division by CSX and NS of traffic or services or of any part of their earnings, applicants request approval for such pooling or division under 49 U.S.C. 11322.¹⁷

(11) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, for the transfer of CRC's Streator Line from CRC to NSR/NW.¹⁸

(12) Applicants seek a determination that the terms under which CSX and NS, both individually and jointly, have acquired all of the common stock of CRR are fair and reasonable to the stockholders of CSXC, the stockholders of NSC, and the stockholders of CRR. See *Schwabacher v. United States*, 334 U.S. 192 (1948).

RELATED FILINGS. In STB Finance Docket No. 33388 (Sub-No. 1), CSXT has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Crestline, OH, a connection track in the northwest quadrant of the intersection of CRC's North-South line between Greenwich, OH, and Indianapolis, IN, and CRC's East-West line between Pittsburgh, PA, and Ft. Wayne, IN. The connection will extend approximately 1,507 feet between approximately MP 75.4 on the North-South line and approximately MP 188.8 on the East-West line.¹⁹

In STB Finance Docket No. 33388 (Sub-No. 2), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, in Willow Creek, IN, a connection track in the southeast quadrant of the intersection between

¹⁵ Applicants indicate, see CSX/NS-18 at 98 (lines 1-2), that the rights referenced in paragraph 9 fall under 49 U.S.C. 11323(a)(2). The rights referenced in paragraph 9, however, appear to be trackage rights, and we therefore believe that these rights fall under 49 U.S.C. 11323(a)(6).

¹⁶ As used in the Transaction Agreement, the term "Ancillary Agreements" means the Equipment Agreements, the CSXT Operating Agreement, the NSR Operating Agreement, the NYC LLC Agreement, the PRR LLC Agreement, the CRR Holdings LLC Agreement, the Trackage Rights Agreements, the CSXT/NSR Haulage Agreements, the Tax Allocation Agreement, the Shared Assets Agreements, and the Other Operating Agreements. See CSX/NS-25, Volume 8B at 10.

¹⁷ Such approval under 49 U.S.C. 11322 is sought because, as applicants note, payments with respect to the rights granted in connection with both the Allocated Assets and the Shared Assets Areas, as well as payments for the services performed by CRC in connection with the Shared Assets Areas, are to be made by CSXT and NSR to entities (CRC or its subsidiaries) in which both CSX and NS will have economic interests.

¹⁸ See Decision No. 4 (served May 2, 1997), slip op. at 7 n.16: "The transfer of the Streator line from CRC to NSR will be considered in the lead docket because this transfer, like all aspects of the division of CRC assets between CSX and NS, is integral to, and an inseparable part of, the control transaction." See also CSX/NS-22 at 446, defining the Streator Line as the CRC line running: (i) between MP 6.3 at Osborn, IN, and MP 33.2 at Schneider, IN; and (ii) between MP 56.4 at Wheatfield, IN, and MP 186.0 at Moronts, IL.

¹⁹ In accordance with the waiver granted in Decision No. 9, served June 12, 1997, and as indicated in the notice published in the *Federal Register* on July 11, 1997 (62 FR 37331), we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Crestline connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 1) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Crestline connection track, if authorized, will be examined in the context of the environmental impact statement (EIS) that will be prepared by our Section of Environmental Analysis (SEA).

CSXT's line between Garrett, IN, and Chicago, IL, and CRC's line between Porter, IN, and Gibson Yard, IN (outside Chicago). The connection will extend approximately 2,800 feet between approximately MP BI-236.5 on the CSXT line and approximately MP 248.8²⁰ on the CRC line.²¹

In STB Finance Docket No. 33388 (Sub-No. 3), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, in Greenwich, OH, connection tracks in the northwest and southeast quadrants of the intersection between the CSXT line between Chicago and Pittsburgh and the CRC line between Cleveland and Cincinnati. The connection in the northwest quadrant, a portion of which will be constructed utilizing existing trackage and/or right-of-way of the Wheeling & Lake Erie Railway Company, will extend approximately 4,600 feet between approximately MP BG-193.1 on the CSXT line and approximately MP 54.1 on the CRC line. The connection in the southeast quadrant will extend approximately 1,044 feet between approximately MP BG-192.5 on the CSXT line and approximately MP 54.6 on the CRC line.²²

In STB Finance Docket No. 33388 (Sub-No. 4), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Sidney Junction, OH, a connection track in the southeast quadrant of the intersection between the CSXT line between Cincinnati, OH, and Toledo, OH, and the CRC line between Cleveland, OH, and Indianapolis, IN. The connection will extend approximately 3,263 feet between approximately MP BE-96.5 on the CSXT line and approximately MP 163.5 on the CRC line.²³

In STB Finance Docket No. 33388 (Sub-No. 5), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Sidney, IL, a connection track between the UPRR north-south line between Chicago, IL, and St. Louis, MO, and the NW east-west line between Decatur, IL, and Tilton, IL. The connection, which will

²⁰ We question the MP 248.8 designation. *see* CSX/NS-22 at 106 (line 1); our review of CRC's timetable for its Porter Branch suggests that the correct designation may be MP 246.8. We also question CSXT's assertion that the Sub-No. 2 connection track will provide a direct link between CRC and CSXT tracks "and the parallel IHB line at Willow Creek," *see* CSX/NS-22 at 106 (lines 16-17); our review of CRC's timetable for its Porter Branch suggests that the link with IHB may be at Ivanhoe, not at Willow Creek.

²¹ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Willow Creek connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 2) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Willow Creek connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

²² In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Greenwich connection tracks, as proposed in the STB Finance Docket No. 33388 (Sub-No. 3) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Greenwich connection tracks, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

²³ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Sidney Junction connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 4) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Sidney Junction connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

be in the southwest quadrant of the intersection of the two lines, will be approximately 3,256 feet in length.²⁴

In STB Finance Docket No. 33388 (Sub-No. 6), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Alexandria, IN, a connection track between the CRC line between Anderson, IN, and Goshen, IN, and the NW line between Muncie, IN, and Frankfort, IN. The connection, which will be in the northeast quadrant of the intersection of the two lines, will be approximately 970 feet in length.²⁵

In STB Finance Docket No. 33388 (Sub-No. 7), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Bucyrus, OH, a connection track between NW's Bellevue, OH-Columbus, OH line and CRC's Ft. Wayne, IN-Crestline, OH line. The connection, which will be in the southeast quadrant of the intersection of the two lines, will be approximately 2,467 feet in length.²⁶

In STB Finance Docket No. 33388 (Sub-No. 8), CSXT has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Little Ferry, NJ, two connection tracks between the CRC Selkirk-North Bergen line and the New York, Susquehanna and Western Railway (NYS&W) Paterson-Croton line. The first connection will extend approximately 480 feet between approximately MP 5.75 on the CRC line and approximately MP 5.65 on the NYS&W line. The second connection will extend approximately 600 feet between approximately MP 4.04 on the CRC line and approximately MP 4.15 on the NYS&W line.

In STB Finance Docket No. 33388 (Sub-No. 9), CSXT and The Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT, a wholly owned CSXT subsidiary) have filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track in the vicinity of 75th Street SW, Chicago, IL, in the southwest quadrant of the intersection of the lines of B&OCT and The Belt Railway Company of Chicago (BRC). The connection will extend approximately 1,640 feet between approximately MP DC-22.43 on B&OCT's North-South line between Cleveland and Brighton Park, and approximately MP 12.95 on BRC's East-West line between Bedford Park Yard and South Chicago Yard.

In STB Finance Docket No. 33388 (Sub-No. 10), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate a connection track in Exermont, IL, in the northwest quadrant of the intersection between CSXT's Cincinnati-East St. Louis line and CRC's Cleveland-East St. Louis line. The connection will

²⁴ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Sidney connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 5) embraced docket; and (ii) operation thereover by NW. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Sidney connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

²⁵ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Alexandria connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 6) embraced docket; and (ii) operation thereover by NW. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Alexandria connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

²⁶ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Bucyrus connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 7) embraced docket; and (ii) operation thereover by NW. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Bucyrus connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

extend approximately 3,590 feet between approximately MP BC-327.9 on the CSXT line and approximately MP 231.4 on the CRC line.

In STB Finance Docket No. 33388 (Sub-No. 11), CSXT and B&OCT have filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track in the vicinity of Lincoln Avenue in Chicago, IL, in the northeast quadrant of the intersection of the lines of B&OCT and IHB. The connection will extend approximately 840 feet between approximately MP DC-9.5 on B&OCT's line between Cleveland and Barr Yard, and approximately MP 10.43 on IHB's line between Gibson Yard and Blue Island Jct.

In STB Finance Docket No. 33388 (Sub-No. 12), NSR has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Kankakee, IL, a connection track between the Illinois Central Railroad Company (ICR) Chicago, IL-Gibson City, IL north-south line, over which NSR has trackage rights, and the CRC Sreator, IL-Schneider, IN east-west line. The connection, which will be in the southeast quadrant of the intersection of the two lines, will be approximately 1,082 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 13), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Tolono, IL, in the southeast quadrant of the intersection of the ICR line between Chicago, IL, and Centralia, IL, and the NW line between Decatur, IL, and Tilton, IL. The connection will be about 1,600 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 14), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Butler, IN, a connection track between NW's Detroit, MI-Fort Wayne, IN line and CRC's Elkhart, IN-Toledo, OH line. The connection, which will be in the northwest quadrant of the intersection of the two lines, will be approximately 1,750 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 15), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Tolleston, IN. This track, which will connect a NW line and a CRC line, will be about 930 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 16), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a double track connection at Hagerstown, MD. This track, which will connect a NW line and a CRC line, will be about 800 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 17), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Ecorse Junction (Detroit), MI. This track, which will connect a NW line and a CRC line, will be about 400 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 18), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Blasdell (Buffalo), NY, a connecting track approximately 2,500 feet in length between NW's Erie, PA-Buffalo, NY Line and CRC's Buffalo, NY-Harrisburg, PA Line.

In STB Finance Docket No. 33388 (Sub-No. 19), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Gardenville Junction (Buffalo), NY, a connecting track approximately 1,700 feet in length between CRC's Buffalo, NY-Harrisburg, PA Line and CRC's Ebenezer Secondary Track.

In STB Finance Docket No. 33388 (Sub-No. 20), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Columbus, OH, a NW-CRC connecting track approximately 1,423 feet in length. See CSX/NS-22 at 315 (map).

In STB Finance Docket No. 33388 (Sub-No. 21), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Oak Harbor, OH, a connecting track approximately 4,965 feet in length between, and in the northwest quadrant of the intersection of, NW's Toledo, OH-Bellevue, OH line and CRC's Toledo, OH-Cleveland, OH line.

In STB Finance Docket No. 33388 (Sub-No. 22), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Vermilion, OH, a connecting track approximately 5,398 feet in length between NW's Cleveland, OH-Bellevue, OH line and CRC's Toledo, OH-Cleveland, OH line.

In STB Finance Docket No. 33388 (Sub-No. 23), NW has filed a notice of exemption under 49 CFR 1180.2(d)(5) regarding a joint project involving relocation of NW's rail line running down 19th Street in Erie, PA (a distance of approximately 6.1 miles, between approximately MP B-85.10 near Downing Avenue and approximately MP B-91.25 west of Pittsburgh Avenue) to a parallel railroad right-of-way currently owned and operated by CRC that will be allocated to CSXT in connection with the primary application.

In STB Finance Docket No. 33388 (Sub-No. 24), CRC and NW have filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 11323-25 regarding the acquisition by CRC (or by NYC) of the Fort Wayne Line, between MP 441.8 at Fort Wayne, IN, and MP 319.2 at Tolleston (Gary), IN. See CSX/NS-22 at 446 and 449 (indicating that the mileposts are as stated in the preceding sentence). But see CSX/NS-22 at 461-62 (indicating that the mileposts are MP 441.8 at Tolleston and MP 319.2 at Fort Wayne).

In STB Finance Docket No. 33388 (Sub-No. 25), NW and CSXT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of trackage rights over approximately 32.7 miles of a CSXT line between Lima, OH (Erie Junction), at or near CSXT MP BE-129.2, and Sidney, OH, at or near CSXT MP BE-96.5. The trackage rights to be acquired by NW include overhead trackage rights between Lima and Sidney and local trackage rights that will allow NW to serve 2-to-1 shippers at Sidney.

In STB Finance Docket No. 33388 (Sub-No. 26), CSXC, CSXT, and The Lakefront Dock and Railroad Terminal Company (LD&RT) have filed an application seeking approval and authorization under 49 U.S.C. 11323-25 for the acquisition and exercise by CSXC and CSXT of control of LD&RT, and the common control of LD&RT and CSXT and the other rail carriers controlled by CSXT and/or CSXC. LD&RT, a Class III railroad in which CSXT and CRC each currently owns a 50% voting stock interest, operates approximately 17 miles of yard tracks at Oregon, OH.

In STB Finance Docket No. 33388 (Sub-No. 27), NW and CSXT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage rights over approximately 5 to 6 miles of a CSXT line between Columbus, OH (Parsons Yard), at or near CSXT MP CJ 71.5, and Scioto, OH, at or near CSXT MP CK 2.5.

In STB Finance Docket No. 33388 (Sub-No. 28), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 2.02 miles of a NW line between Columbus, OH (Watkins Yard), at or near NW MP N-696.7, and Bannock, OH, at or near NW MP N-698.72.

In STB Finance Docket No. 33388 (Sub-No. 29), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 1.4 miles of a NW line between Erie Junction (Delray), MI, at or near MP D4.4, and Ecorse Junction, MI, at or near MP D5.8.

In STB Finance Docket No. 33388 (Sub-No. 30), NW and CSXT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage rights over approximately 1.7 miles of a CSXT line between the connection of two CSXT lines near Washington Street at or near MP 123.7, and the connection of two CSXT lines at Pine at or near MP 122.0, in Indianapolis, IN.

In STB Finance Docket No. 33388 (Sub-No. 31), CSXC and CSXT have filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 11323-25, to the extent those provisions may apply, regarding the acquisition by CSXC and CSXT of control of Albany Port Railroad Corporation (APR). APR, which operates approximately 16.5 miles of track at the Port of Albany, NY, is owned in equal 50% shares by CRC and D&H Corporation (D&H, an affiliate of Canadian Pacific Limited); and, if the primary application is approved, CRC's 50% interest in APR will be allocated to CSXT in the Division.²⁷

In STB Finance Docket No. 33388 (Sub-No. 32), NW and B&OCT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage

²⁷ Implicit in the Sub-No. 31 docket is a request for a determination that acquisition by CSXC and CSXT of a 50% interest in APR will not enable CSXC and CSXT to "control" APR within the meaning of 49 U.S.C. 11323.

rights over approximately 9.8 miles of the IHB McCook Branch between the connection of IHB and B&OCT at McCook, IL, at or near MP 28.5, and the connection of IHB and Canadian Pacific Rail System at Franklin Park, IL, at MP 39.3.²⁸

In STB Finance Docket No. 33388 (Sub-No. 33), NW and B&OCT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of trackage rights over B&OCT's Barr Subdivision between the connection of the NSR Chicago Line and the B&OCT line at Pine Junction, IN (CP 497) and: (i) the connection with B&OCT's McCook Subdivision at Blue Island Junction, IL, at or near MP DC 14.9, a distance of approximately 14.9 miles; and beyond to (ii) the B&OCT/IHB connection at McCook, IL, at or near MP 28.5, a distance of approximately 13.6 miles.

In STB Finance Docket No. 33388 (Sub-No. 34), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 45.5 miles of a NW line between Bucyrus, OH, at or near NW MP S-63.0, and Sandusky, OH, at or near NW MP S-108.5. The trackage rights to be acquired by CSXT, although described as "overhead" trackage rights, will allow CSXT to access 2-to-1 shippers at Sandusky.

In STB Docket Nos. AB-167 (Sub-No. 1181X) and AB-55 (Sub-No. 551X), CRC and CSXT, respectively, have filed a notice of exemption under 49 CFR 1152.50 to abandon an approximately 29-mile portion of the Danville Secondary Track between MP 93.00± at Paris, IL, and MP 122.00± at Danville, IL, in Edgar and Vermilion Counties, IL. The line, which is presently owned and operated by CRC and which is proposed to be operated by CSXT pursuant to the authority sought in the primary application, traverses United States Postal Service Zip Codes 61846, 61870, 61883, 61924, and 61944.

In STB Docket No. AB-290 (Sub-No. 194X), NW has filed a notice of exemption under 49 CFR 1152.50 to abandon a line between MP SK-2.5 near South Bend, IN, and MP SK-24.0 near Dillon Junction, IN, a distance of approximately 21.5 miles in St. Joseph and La Porte Counties, IN. The line traverses or adjoins United States Postal Service Zip Codes 46613, 46614, 46619, 46536, 46554, and 46365.

In STB Docket No. AB-290 (Sub-No. 195X), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line between MP I-137.3 near Dillon Junction, IN, and MP I-158.8 near Michigan City, IN, a distance of approximately 21.5 miles in La Porte County, IN. The line traverses or adjoins United States Postal Service Zip Codes 46350 and 46360.

In STB Docket No. AB-290 (Sub-No. 196X), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line between MP TM-5.0 in Toledo, OH, and MP TM-12.5 near Maumee, OH, a distance of approximately 7.5 miles in Lucas County, OH. The line traverses or adjoins United States Postal Service Zip Codes 43612, 43613, 43606, 43607, 43609, and 43614.

In STB Docket No. AB-290 (Sub-No. 197X), NW has filed a notice of exemption under 49 CFR 1152.50 to abandon the Toledo Pivot Bridge extending between MP CS-2.8 and MP CS-3.0 near Toledo, OH, a distance of approximately 0.2 miles in Lucas County, OH. The line traverses or adjoins either United States Postal Service Zip Code 42611 or United States Postal Service Zip Code 43611 (see CSX/NS-22 at 84-86).

PRIMARY APPLICATION AND RELATED FILINGS ACCEPTED. We are accepting the primary application for consideration because it is in substantial compliance with the applicable regulations, waivers, and requirements. See 49 U.S.C. 11321-25; 49 CFR part 1180. We are also accepting for consideration all of the related filings, which are also in substantial compliance with the applicable regulations, waivers, and requirements.²⁹

²⁸ Applicants indicate that the Sub-No. 32 trackage rights run for approximately 9.8 miles. See CSX/NS-22 at 420 and 425. By our calculations, however, these trackage rights would appear to run for approximately 10.8 miles.

²⁹ We reserve the right to require the filing of supplemental information from applicants or any other party or individual, if necessary to complete the record in this matter.

PUBLIC INSPECTION. The primary application and all related filings, including the various accompanying exhibits, are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC.

PROCEDURAL SCHEDULE. In Decision No. 6, served May 30, 1997, and published that day in the *Federal Register* at 62 FR 29387, we adopted a procedural schedule.³⁰ To provide further notice to interested persons, we have attached that schedule to this decision as Appendix B and have filled in all of the dates.

NOTICE OF INTENT TO PARTICIPATE. Any person who wishes to participate in this proceeding as a party of record (POR) must file with the Secretary of the Board, no later than August 7, 1997, an original plus 25 copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on Judge Leventhal and on applicants' representatives.

We will serve, as soon as practicable after August 7, 1997, a notice containing the official service list (the service list notice). Each party of record will be required to serve upon all other parties of record, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each party of record will also be required to file with the Secretary of the Board, within 10 days of the service date of the service list notice, an original plus five copies of a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a party of record after the service date of the service list notice must have its own certificate of service indicating that both Judge Leventhal and all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record (PORs) and therefore need not be served with copies of filings, unless any such Member or Governor is designated as a POR.

As noted in Decision No. 6, slip op. at 5, 62 FR at 29389, we will serve copies of our decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service. The telephone number for DC News is: (202) 289-4357.³¹

³⁰ In Decision No. 9, we added to the procedural schedule adopted in Decision No. 6 by requiring applicants to file, by September 5, 1997, Preliminary Draft Environmental Assessments for the construction projects referenced in the STB Finance Docket No. 33388 (Sub-Nos. 1, 2, 3, 4, 5, 6, and 7) embraced dockets. As indicated in the notice published in the *Federal Register* on July 11, 1997 (62 FR 37331), we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Crestline connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 1) embraced docket; and (ii) operation thereof by CSXT. As indicated in the notices published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Willow Creek, Greenwich, Sidney Junction, Sidney, Alexandria, and Bucyrus connection tracks, as proposed in the STB Finance Docket No. 33388 (Sub-Nos. 2, 3, 4, 5, 6, and 7) embraced dockets, respectively; and (ii) operation thereof by applicants. As further indicated in the notice published on July 11, 1997, and in the notices published concurrently herewith, the operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Crestline, Willow Creek, Greenwich, Sidney Junction, Sidney, Alexandria, and Bucyrus connection tracks, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

³¹ An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. Our Railroad Consolidation Procedures provide: "Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order." See 49 CFR 1180.4(a)(3), as recently amended in *Railroad Consolidation Procedures--Modification of Fee Policy*, STB Ex Parte No. 556, 62 FR 9714, 9717 (Mar. 4, 1997) (interim (continued...))

DESCRIPTIONS OF, AND PETITIONS RESPECTING, RESPONSIVE (INCLUDING INCONSISTENT) APPLICATIONS.

Because the transaction proposed by applicants constitutes a major transaction within the meaning of our rail consolidation rules (49 CFR part 1180),³¹ railroads intending to file responsive (including inconsistent) applications must submit descriptions of those applications by August 22, 1997. The description must state that the commenting railroad intends to file an application seeking affirmative relief that requires an application to be filed with the Board (e.g., divestiture, purchase, trackage rights, inclusion, construction, or abandonment) and must include a general statement of what that application is expected to include. This will be considered a prefiling notice without which the Board will not entertain applications for this type of relief.

Petitions for waiver or clarification by responsive (including inconsistent) applicants must be filed by August 22, 1997. Each responsive (including inconsistent) application filed and accepted will be consolidated with the primary application in this proceeding. Parties should contact the Office of the Secretary, Case Control Unit, at 202-565-1681 to obtain docket numbers for their responsive (including inconsistent) applications.

Any responsive (including inconsistent) applicant must file, by October 1, 1997, either: (1) a verified statement that the responsive (including inconsistent) application will have no significant environmental impact; or (2) a responsive environmental report (RER) that contains detailed environmental information regarding the responsive (including inconsistent) application. See Decision No. 6, slip op. at 3-4, 62 FR at 29388-89.

RESPONSIVE (INCLUDING INCONSISTENT) APPLICATIONS, COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION EVIDENCE AND ARGUMENT.

Any interested persons, including the U.S. Secretary of Transportation and the U.S. Attorney General, may file written comments, protests, requests for conditions, and any other opposition evidence and argument, and/or responsive (including inconsistent) applications, no later than October 21, 1997. This deadline applies to comments, etc., addressing either the primary application or any of the related filings submitted with the primary application. An original and 25 copies of such comments, etc., must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN.: STB Finance Docket No. 33388, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, as previously noted, parties are also requested to submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

Written comments, etc., must be concurrently served by first class mail on the U.S. Secretary of Transportation, the U.S. Attorney General, Judge Leventhal, applicants' representatives, and all other parties of record.

Written comments, etc., shall include: (1) the docket number and title of the proceeding; (2) the name, address, and telephone number of the commenting party and its representative upon whom service shall be made; (3) the commenting party's position, i.e., whether it supports or opposes the proposed transaction; (4) a list of any specific protective conditions sought; and (5) an analysis of the issues with particular attention to our general policy statement for the merger or control of at least two Class I railroads (49 CFR 1180.1), the statutory criteria (49 U.S.C. 11324), and antitrust policy.

Protesting parties are advised that, if they seek either the denial of the primary application or the imposition of conditions upon any approval thereof, on the theory that approval without imposition of conditions will harm either their ability to provide essential services and/or competition, they must present substantial evidence in support of their positions. See *Lamoille Valley R.R. Co. v. ICC*, 711 F.2d 295 (D.C. Cir. 1983).

-OTHER DATES. The procedural schedule adopted in Decision No. 6 further provides: (1) that rebuttal in support of the primary application, or in support of any of the related filings,

³¹(...continued)

rules), 62 FR 28375 (May 23, 1997) (final rules). Furthermore, DC News will provide, for a charge, copies of the primary application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order heretofore entered in this proceeding.

³² See Decision No. 2, served April 21, 1997, and published that day in the *Federal Register* at 62 FR 19390.

must be filed by December 15, 1997; (2) that responses to any responsive (including inconsistent) applications, as well as responses to all comments, protests, requests for conditions, and other opposition evidence and argument, must also be filed by December 15, 1997; (3) that rebuttal in support of any responsive (including inconsistent) applications must be filed by January 14, 1998; (4) that briefs may be filed by February 23, 1998; (5) that oral argument will be heard on April 9, 1998; (6) that, at the discretion of the Board, a voting conference will be held on April 14, 1998; and (7) that the final written decision, addressing the primary application and the related filings, and also addressing any responsive (including inconsistent) applications, will be served on June 8, 1998.

DATES RESPECTING ABANDONMENTS. We will process the abandonments proposed by applicants in accordance with the overall procedural schedule, rather than applying the procedural schedules required by 49 U.S.C. 10904 and our 49 CFR part 1152 abandonment regulations.³³ Therefore, with respect to each related abandonment proposal: (1) in order to be designated a party of record (POR), a person must file with the Secretary of the Board, no later than August 7, 1997, an original plus 25 copies of a notice of intent to participate along with a certificate of service indicating that the notice has been properly served on Judge Leventhal and on applicants' representatives; (2) opposition submissions, requests for public use conditions,³⁴ and/or Trails Act requests³⁵ must be filed by October 21, 1997; (3) rebuttal in support of the abandonment proposals, and/or responses to any requests for public use conditions and Trails Act requests, must be filed by December 15, 1997; (4) as with the primary application and all related matters, briefs may be filed by February 23, 1998, oral argument will be held on April 9, 1998, and a voting conference will be held, at the Board's discretion, on April 14, 1998; and (5) if, in the final decision served on June 8, 1998, we approve the primary application, we shall also address, in that final decision, each of the abandonment proposals, and all matters (including requests for public use conditions and Trails Act requests) relative thereto; and if we exempt any of the abandonment proposals, we shall require interested persons to file, no later than 10 days after the date of service of the final decision, offers of financial assistance³⁶ with respect to any of the exempted abandonments.

DISCOVERY. In Decision No. 1, served April 16, 1997, this proceeding was assigned to Judge Leventhal for the handling of all discovery matters and the initial resolution of all discovery disputes. In Decision No. 10, served June 27, 1997, Judge Leventhal adopted discovery guidelines to govern the conduct of discovery in this proceeding.

DEADLINES APPLICABLE TO APPEALS AND REPLIES. As noted in Decision No. 6, slip op. at 7, 62 FR at 29390: any appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date of his decision; any response to any such appeal must be filed within 3 working days of the date of filing of the appeal; and any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.

ENVIRONMENTAL REVIEW PROCESS: SCOPE. By notice served July 3, 1997, and published in the *Federal Register* on July 7, 1997, at 62 FR 36332, the Board's Section of Environmental Analysis (SEA): (a) provided notice to interested persons that, to evaluate and consider the potential environmental impacts that may result from the transactions proposed in the primary application and in the related filings, SEA intends to prepare an environmental impact statement (EIS); (b) set out the draft scope of the EIS that SEA intends to prepare; (c) directed that written comments respecting the draft scope be filed by August 6, 1997; and (d) set forth projected time frames for conducting the EIS process.

ELECTRONIC SUBMISSIONS. In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit, on diskettes

³³ All references herein to our 49 CFR part 1152 abandonment regulations are to our new regulations, which took effect on January 23, 1997. See *Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903*, STB Ex Parte No. 537, 61 FR 67876 (Dec. 24, 1996), 62 FR 34669 (June 27, 1997).

³⁴ See 49 CFR 1152.28 (61 FR at 67894).

³⁵ See 49 CFR 1152.29 (61 FR at 67894-96).

³⁶ See 49 CFR 1152.27 (61 FR at 67891-94).

(3.5-inch IBM-compatible floppies) or compact discs, one electronic copy of each such document. Textual materials must be in, or convertible into, WordPerfect 7.0. Spreadsheets must be in, or convertible into, Lotus 1-2-3 Version 7.³⁷ Each diskette or compact disc should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such diskette or compact disc should be provided to any other party upon request. The data contained on the diskettes and compact discs submitted to the Board will be subject to the protective order granted in Decision No. 1, served April 16, 1997 (as modified in Decision No. 4, served May 2, 1997), and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.³⁸

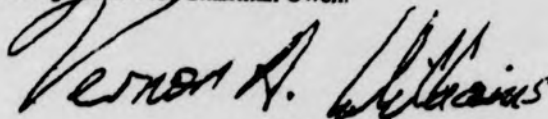
This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The primary application in STB Finance Docket No. 33388, and the related filings in the various embraced dockets listed in Appendix A, are accepted for consideration.
2. The parties shall comply with the procedural requirements described in this decision.
3. Any appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date of his decision, and any response to any such appeal must be filed within 3 working days of the date of filing of the appeal.
4. Any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.
5. This decision is effective on July 23, 1997.

Decided: July 15, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.



Vernon A. Williams.
Secretary

³⁷ Parties intending to submit spreadsheets in formats other than Lotus 1-2-3 Version 7 may wish to consult with our staff regarding such submissions. Some (though not all) spreadsheets prepared in other formats, though perhaps not convertible into Lotus 1-2-3 Version 7, may nevertheless be useable by our staff. For further information, contact Julia M. Farr, (202) 565-1613.

³⁸ The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. *See* 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

APPENDIX A: EMBRACED PROCEEDINGS

This decision covers both the STB Finance Docket No. 33388 lead proceeding and the following embraced proceedings:

STB Finance Docket No. 33388 (Sub-No. 1), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Crestline, OH;*

STB Finance Docket No. 33388 (Sub-No. 2), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Willow Creek, IN;*

STB Finance Docket No. 33388 (Sub-No. 3), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Tracks at Greenwich, OH;*

STB Finance Docket No. 33388 (Sub-No. 4), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Sidney Junction, OH;*

STB Finance Docket No. 33388 (Sub-No. 5), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Union Pacific Railroad Company at Sidney, IL;*

STB Finance Docket No. 33388 (Sub-No. 6), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Alexandria, IN;*

STB Finance Docket No. 33388 (Sub-No. 7), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Bucyrus, OH;*

STB Finance Docket No. 33388 (Sub-No. 8), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Little Ferry, NJ;*

STB Finance Docket No. 33388 (Sub-No. 9), *CSX Transportation, Inc. and The Baltimore and Ohio Chicago Terminal Railroad Company--Construction and Operation Exemption--Connection Track at 75th Street SW, Chicago, IL;*

STB Finance Docket No. 33388 (Sub-No. 10), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Exermond, IL;*

STB Finance Docket No. 33388 (Sub-No. 11), *CSX Transportation, Inc. and The Baltimore and Ohio Chicago Terminal Railroad Company--Construction and Operation Exemption--Connection Track at Lincoln Avenue, Chicago, IL;*

STB Finance Docket No. 33388 (Sub-No. 12), *Norfolk Southern Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Kankakee, IL;*

STB Finance Docket No. 33388 (Sub-No. 13), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Illinois Central Railroad Company at Tolono, IL;*

STB Finance Docket No. 33388 (Sub-No. 14), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Butler, IN;*

STB Finance Docket No. 33388 (Sub-No. 15), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Tolleston, IN;*

STB Finance Docket No. 33388 (Sub-No. 16), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Hagerstown, MD;*

STB Finance Docket No. 33388 (Sub-No. 17), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Ecorse Junction (Detroit), MI;*

STB Finance Docket No. 33388 (Sub-No. 18), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Blasdell (Buffalo), NY;*

STB Finance Docket No. 33388 (Sub-No. 19), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Gardenville Junction (Buffalo), NY;*

STB Finance Docket No. 33388 (Sub-No. 20), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Columbus, OH;*

STB Finance Docket No. 33388 (Sub-No. 21), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Oak Harbor, OH;*

STB Finance Docket No. 33388 (Sub-No. 22), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Vermilion, OH;*

STB Finance Docket No. 33388 (Sub-No. 23), *Norfolk and Western Railway Company--Joint Relocation Project Exemption--Over CSX Transportation, Inc. (Currently Consolidated Rail Corporation) at Erie, PA;*

STB Finance Docket No. 33388 (Sub-No. 24), *Consolidated Rail Corporation--Acquisition Exemption--Line Between Fort Wayne, IN. and Tolleston (Gary), IN;*

STB Finance Docket No. 33388 (Sub-No. 25), *Norfolk and Western Railway Company--Trackage Rights Exemption--CSX Transportation, Inc.;*

STB Finance Docket No. 33388 (Sub-No. 26), *CSX Corporation and CSX Transportation, Inc.--Control--The Lakefront Dock and Railroad Terminal Company;*

STB Finance Docket No. 33388 (Sub-No. 27), *Norfolk and Western Railway Company--Trackage Rights Exemption--CSX Transportation, Inc.;*

STB Finance Docket No. 33388 (Sub-No. 28), *CSX Transportation, Inc.--Trackage Rights Exemption--Norfolk and Western Railway Company;*

STB Finance Docket No. 33388 (Sub-No. 29), *CSX Transportation, Inc.--Trackage Rights Exemption--Norfolk and Western Railway Company;*

STB Finance Docket No. 33388 (Sub-No. 30), *Norfolk and Western Railway Company--Trackage Rights Exemption--CSX Transportation, Inc.;*

STB Finance Docket No. 33388 (Sub-No. 31), *CSX Corporation and CSX Transportation, Inc.--Control Exemption--Albany Port Railroad Corporation;*

STB Finance Docket No. 33388 (Sub-No. 32), *Norfolk and Western Railway Company--Trackage Rights Exemption--The Baltimore and Ohio Chicago Terminal Railroad Company;*

STB Finance Docket No. 33388 (Sub-No. 33), *Norfolk and Western Railway Company--Trackage Rights Exemption--The Baltimore and Ohio Chicago Terminal Railroad Company;*

STB Finance Docket No. 33388 (Sub-No. 34), *CSX Transportation, Inc.--Trackage Rights Exemption--Norfolk and Western Railway Company;*

STB Docket No. AB-167 (Sub-No. 1181X), *Consolidated Rail Corporation--Abandonment Exemption--In Edgar and Vermilion Counties, IL;*

STB Docket No. AB-55 (Sub-No. 551X), *CSX Transportation, Inc.*--Abandonment Exemption--
In Edgar and Vermilion Counties, IL;

STB Docket No. AB-290 (Sub-No. 194X), *Norfolk and Western Railway Company*--
Abandonment Exemption--Between South Bend and Dillon Junction in St. Joseph and La Porte
Counties, IN;

STB Docket No. AB-290 (Sub-No. 195X), *Norfolk and Western Railway Company*--
Abandonment Exemption--Between Dillon Junction and Michigan City in La Porte County, IN;

STB Docket No. AB-290 (Sub-No. 196X), *Norfolk and Western Railway Company*--
Abandonment Exemption--Between Toledo and Maumee in Lucas County, OH; and

STB Docket No. AB-290 (Sub-No. 197X), *Norfolk and Western Railway Company*--
Abandonment Exemption--Toledo Pivot Bridge in Lucas County, OH.

APPENDIX B: PROCEDURAL SCHEDULE

May 16, 1997	Preliminary Environmental Report filed.
June 23, 1997	Primary application and related filings filed. Environmental Report filed.
July 23, 1997	Publication in the <i>Federal Register</i> , by this date, of: notice of acceptance of primary application and related filings; and notice of the five related abandonment filings.
August 6, 1997	Comments on the draft scope of the Environmental Impact Statement due. ³⁹
August 7, 1997	Notice of intent to participate in proceeding due.
August 22, 1997	Description of anticipated responsive (including inconsistent) applications due; petitions for waiver or clarification due with respect to such applications.
September 5, 1997	Preliminary Draft Environmental Assessments for the construction projects referenced in Decision No. 9 due.
October 1, 1997	Responsive Environmental Report and Environmental Verified Statements of responsive (including inconsistent) applicants due.
October 21, 1997	Responsive (including inconsistent) applications due. All comments, protests, and requests for conditions, and any other opposition evidence and argument due. ⁴⁰ Comments of the U.S. Secretary of Transportation and the U.S. Attorney General due. With respect to all related abandonments: opposition submissions, requests for public use conditions, and Trails Act requests due.
November 20, 1997	Notice of acceptance (if required) of responsive (including inconsistent) applications published in the <i>Federal Register</i> .
December 15, 1997	Response to responsive (including inconsistent) applications due. Response to comments, protests, requested conditions, and other opposition evidence and argument due. Rebuttal in support of primary application and related filings due. With respect to all related abandonments: rebuttal due; and responses to requests for public use and Trails Act conditions due.
January 14, 1998	Rebuttal in support of responsive (including inconsistent) applications due.
February 23, 1998	Briefs due, all parties (not to exceed 50 pages).
April 9, 1998	Oral argument (close of record).

³⁹ See the notice served July 3, 1997, and published in the *Federal Register* on July 7, 1997, at 62 FR 36332. As indicated in that notice, slip op. at 3, 62 FR at 36333, it is not necessary to be a party of record to file comments on the draft scope of the EIS and/or to participate in the environmental review process.

⁴⁰ As indicated in the notice published in the *Federal Register* on July 11, 1997 (62 FR 37331), petitions for reconsideration with respect to the physical construction of the Crestline connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 1) embraced docket, and/or operation thereover by CSXT, are due by July 31, 1997. As indicated in the notices published in the *Federal Register* concurrently herewith, comments respecting the physical construction of the Willow Creek, Greenwich, Sidney Junction, Sidney, Alexandria, and Bucyrus connection tracks, as proposed in the STB Finance Docket No. 33388 (Sub-Nos. 2, 3, 4, 5, 6, and 7) embraced dockets, respectively, and/or operation thereover by applicants, are due by August 22, 1997.

April 14, 1998 Voting conference (at Board's discretion).

June 8, 1998 Date of service of final decision.

With respect to any exempted abandonments: offers of financial assistance may be filed no later than 10 days after the date of service of the final decision.

NOTES: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents, subject to protective order, will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Discovery on responsive (including inconsistent) applications will begin immediately upon their filing.

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SERVICE DATE - JULY 11, 1997

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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub-No. 1)]

CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at
Crestline, OH

CSX Transportation, Inc. (CSXT) and Consolidated Rail Corporation (CRC) have filed a notice of exemption under 49 CFR 1150.36 to construct a connection track between two CRC main lines in the NW Quadrant. The connection will extend approximately 1,507 feet between approximately milepost 75.4 on CRC's North-South main line between Greenwich, OH, and Indianapolis, IN, and approximately milepost 188.8 on CRC's East-West main line between Pittsburgh and Ft. Wayne, IN.¹

¹ This proceeding is related to STB Finance Docket No. 33388, *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 (CSX/NS/CR)*. In *CSX/NS/CR*, Decision No. 9, served June 12, 1997, the Board granted the applicants' Petition for Waiver, allowing CSXT and CRC to seek approval for construction of four "first day" connections, including this proposed connection at Crestline, OH, prior to Board approval of the Primary Control Application. CSXT filed a notice of exemption to construct and operate a connection track in Crestline, as a related filing in Volume 5 of the primary application filed on June 23, 1997, in the *CSX/NS/CR* proceeding. See *CSX/NS-22* (Volume 5) at 94. CSXT and CRC concurrently filed a slightly modified version of the notice of exemption for construction of a connection track in Crestline (CSX-5). The Board will consider both filings in tandem. As the Board stated in *CSX/NS/CR*, Decision No. 9, at 6-7:

* * * in reviewing these projects separately, we will consider the regulatory and environmental aspects of these proposed constructions and

Construction is scheduled to begin on or about 90 days after the filing date of this notice, but not before the effective date of the exemption, which is 70 days after publication of this notice in the *Federal Register*, unless stayed.

The Board's Section of Environmental Analysis (SEA) will analyze the potential environmental impact of this proposed construction and operation, which is addressed in the environmental documents prepared in the primary application in STB Finance Docket No. 33388. The environmental report covering the proposed construction and operation of the connection track at Crestline is contained in the Environmental Report filed with the Board in STB Finance Docket No. 33388. In addition, as the Board required in *CSX/NS/CR*, Decision No. 9, CSX must submit, no later than September 5, 1997 (Day F+75), a preliminary draft environmental assessment (PDEA) for each individual construction project covered by the Board's waiver decision. Each PDEA must comply with all of the requirements for environmental reports contained in the environmental rules at 49 CFR 1105.7. Also, the PDEA must be based on consultations with SEA and the federal, state, and local agencies set forth in 49 CFR 1105.7(b), as well as other

applicants' proposed operations over these lines together in the context of whether to approve each individual physical construction project. The operational implications of the merger as a whole, including operations over the * * * construction projects, will be examined in the context of the [Environmental Impact Statement] EIS that we are preparing for the overall merger. * * * No rail operations can begin over these [four CSX connections] until completion of the EIS process and issuance of a further decision.

appropriate parties. If a PDEA is insufficient, the Board may require additional environmental information or reject the document. See *CSX/NS/CR*, Decision No. 9, at 8.

As part of the environmental review process, SEA will independently verify the information contained in each PDEA, conduct further independent analysis, as necessary, and develop appropriate environmental mitigation measures. For each project, SEA plans to prepare an EA, which will be served on the public for its review and comment. The public will have 20 days to comment on the EA, including the proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate environmental mitigation. *Id.* at 8. The effective date of this exemption may be stayed pending consideration of the environmental record and completion of the environmental process.

Should the Board determine that the Crestline construction project could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the proposed control transaction in STB Finance Docket No. 33388, *CSX/NS/CR*. *Id.* at 8. The Board's consideration of this construction project does not, and will not, in any way, constitute approval of, or even indicate any consideration on our part respecting approval of, the primary application in STB Finance Docket No. 33388.

STB Finance Docket No. 33388 (Sub-No. 1)

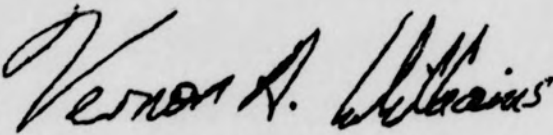
This exemption will be effective on September 19, 1997, unless stayed. Petitions to stay the effective date of this notice on any grounds must be filed by July 21, 1997. Petitions for reconsideration must be filed by July 31, 1997.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33388 (Sub-No. 1), must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001 and served on: Dennis G. Lyons, Arnold & Porter, 555 Twelfth Street, N.W., Washington, DC 20004-1206. Parties to STB Finance Docket No. 33388 will not be automatically placed on the service list for this proceeding.

Decided: July 3, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.



Vernon A. Williams

Secretary

SERVICE LIST FOR: 07/11/1997 STB FD 33388 1 CSX TRANSPORTATION, INC.--CONSTRUCTI

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SERVICE DATE - JUNE 12, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 *Sub 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

Decision No. 9¹

Decided: June 11, 1997

On April 10, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC)² filed their notice of intent to file an application seeking our authorization for: (a) the acquisition by CSX and NS of control of Conrail, and (b) the division of Conrail's assets by and between CSX and NS. In Decision No. 5, served and published in the *Federal Register* on May 13, 1997, at 62 FR 26352, we invited comments from interested persons respecting the CSX-1 and NS-1 petitions filed May 2, 1997, by applicants CSX and NS, wherein applicants seek, for seven construction projects, waivers of our otherwise applicable "everything goes together" rule.³ The requested waivers, if granted, would allow CSX and NS to begin construction on the seven projects following the completion of our environmental review of the constructions, and our issuance of further decisions exempting or approving construction, but in advance of a final ruling on the primary application.

Seven construction projects, more fully detailed below, are the focus of the two petitions. Applicants contend that it is important that these projects (all of which involve relatively short

¹ This decision also embraces the following proceedings: STB Finance Docket No. 33388 (Sub-No. 1), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Crestline, OH*; STB Finance Docket No. 33388 (Sub-No. 2), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Willow Creek, IN*; STB Finance Docket No. 33388 (Sub-No. 3), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Greenwich, OH*; STB Finance Docket No. 33388 (Sub-No. 4), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Sidney Junction, OH*; STB Finance Docket No. 33388 (Sub-No. 5), *Norfolk Southern Railway Company and Consolidated Rail Corporation--Construction--Colson/Bucyrus, OH*; STB Finance Docket No. 33388 (Sub-No. 6), *Norfolk Southern Railway Company and Consolidated Rail Corporation--Construction--Alexandria, IN*; and STB Finance Docket No. 33388 (Sub-No. 7), *Norfolk Southern Railway Company--Construction--Sidney, IL*.

² CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRI and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

³ Our regulations provide that applicants shall file, concurrently with their 49 U.S.C. 11323-25 primary application, all "directly related applications, e.g., those seeking authority to construct or abandon rail lines, * * * 49 CFR 1180.4(c)(2)(vi). Our regulations also provide, however, that, for good cause shown, we can waive a portion, but not all, of the requirements otherwise imposed by our regulations. 49 CFR 1180.4(f)(1).

connections between two rail carriers and which have a total length of fewer than 4 miles) be constructed prior to a decision on the primary application. Applicants claim that these connections must be in place prior to a decision on the primary application so that, if and when we approve the primary application, CSXT (with respect to four of the connections) and NSR (with respect to the other three) will be immediately able to provide efficient service in competition with each other. Applicants contend that, without early authorization to construct these connections, both CSXT and NSR would be severely limited in their ability to serve important (though different) customers. At the same time, applicants recognize that there can be no construction until we complete our environmental review of each of these construction projects and we issue a decision approving the construction, or an exemption from our otherwise applicable construction approval criteria, and impose whatever environmental conditions that we find appropriate.

The CSX Connections. If we grant its waiver request, CSXT will file, in four separate dockets,⁴ a notice of exemption pursuant to 49 CFR 1150.36 for construction of a connection at Crestline, OH, and petitions for exemption pursuant to 49 U.S.C. 10502 and 49 CFR 1121.1 and 1150.1(a) for the construction of connections at Greenwich and Sidney, OH, and Willow Creek, IN. CSXT indicates that it would consult with appropriate federal, state, and local agencies with respect to any potential environmental effects from the construction of these connections and would file environmental reports with our Section of Environmental Analysis (SEA) at the time that the notice and petitions are filed. The connections at issue are as follows:

- (1) Two main line CRC tracks cross at Crestline, and CSXT proposes to construct in the northwest quadrant a connection track between those two CRC main lines. The connection would extend approximately 1,507 feet⁵ between approximately MP 75.4 on CRC's North-South main line between Greenwich, OH, and Indianapolis, IN, and approximately MP 188.8 on CRC's East-West main line between Pittsburgh, PA, and Ft. Wayne, IN.
- (2) CSXT and CRC cross each other at Willow Creek, and CSXT proposes to construct a connection track in the southeast quadrant between the CSXT main line and the CRC main line. The connection would extend approximately 2,800 feet between approximately MP BI-236.5 on the CSXT main line between Garrett, IN, and Chicago, IL, and approximately MP 248.8 on the CRC main line between Porter, IN, and Gibson Yard, IN (outside Chicago).
- (3) The lines of CSXT and CRC cross each other at Greenwich, and CSXT proposes to construct connection tracks in the northwest and southeast quadrants between the CSXT main line and the CRC main line. The connection in the northwest quadrant would extend approximately 4,600 feet between approximately MP BG-193.1 on the CSXT main line between Chicago and Pittsburgh, and approximately MP 54.1 on the CRC main line between Cleveland and Cincinnati. A portion of this connection in the northwest quadrant would be constructed utilizing existing trackage and/or right-of-way of the Wheeling & Lake Erie Railway Company. The connection in the southeast quadrant would extend approximately 1,044 feet between approximately MP BG-92.5 on the CSXT main line and approximately MP 54.6 on the CRC main line.

⁴ These dockets will be sub-dockets 1, 2, 3, and 4 under STB Finance Docket No. 33388.

⁵ CSXT's correction, filed May 21, 1997, modified the length of this connection from 1,142 feet at MP 75.5 to 1,507 feet at MP 75.4.

- (4) CSXT and CRC lines cross each other at Sidney Junction, and CSXT proposes to construct a connection track in the southeast quadrant between the CSXT main line and the CRC main line. The connection would extend approximately 3,263 feet between approximately MP BE-96.5 on the CSXT main line between Cincinnati, OH, and Toledo, OH, and approximately MP 163.5 on the CRC main line between Cleveland, OH, and Indianapolis, IN.

CSXT argues that, if it cannot begin the early construction of these four connections, its ability to compete with NSR will be severely compromised. CSXT claims that, if it could not offer competitive rail service from New York to Chicago and New York to Cincinnati using lines that it proposes to acquire from CRC, the achievement of effective competition between CSXT and NSR would be delayed significantly. CSXT adds that, if it cannot compete effectively with NSR "out of the starting blocks," this initial competitive imbalance could have a deleterious and long-term effect on CSXT's future operations and its ability to compete effectively with NSR, even when the connections are ultimately built. CSXT claims that, if its waiver was not granted, the time needed for construction and signal work could delay competitive operations for as long as 6 months after we take final action on the primary application.

The NS Connections. If we grant its waiver request, NSR will file, in three separate dockets,⁶ petitions for exemption pursuant to 49 U.S.C. 10502 and 49 CFR 1121.1 and 1150.1(a) for the construction of connections at Alexandria, IN, Colson/Bucyrus, OH,⁷ and Sidney, IL. NSR indicates that it would consult with appropriate federal, state, and local agencies with respect to any potential environmental effects from the construction of these connections and would file environmental reports with SEA at the time that the petitions are filed. The connections at issue are as follows:

- (1) The Alexandria connection would be in the northeast quadrant between former CRC Marion district lines to be operated by NSR and NSR's existing Frankfort district line. The new connection would allow traffic flowing over the Cincinnati gateway to be routed via a CRC line to be acquired by NSR to CRC's Elkhart Yard, a major CRC classification yard for carload traffic. This handling would permit such traffic to bypass the congested Chicago gateway. NSR estimates that the Alexandria connection would take approximately 9.5 months to construct.
- (2) The Colson/Bucyrus connection would be in the southeast quadrant between NSR's existing Sandusky district line and the former CRC Ft. Wayne line. This new connection would permit NSR to preserve efficient traffic flows, which otherwise would be broken, between the Cincinnati gateway and former CRC northeastern points to be served by NSR. NSR estimates that the Colson/Bucyrus connection would take approximately 10.5 months to construct.
- (3) The Sidney connection would be between NSR and Union Pacific Railroad Company (UPRR) lines. NSR believes that a connection would be required in the southwest quadrant of the existing NSR/UPRR crossing to permit efficient handling of traffic flows between UPRR points in the Gulf Coast/Southwest and NSR points in the Midwest and Northeast, particularly customers on CRC properties to be served by NSR. NSR estimates that the Sidney connection would take approximately 10 months to construct.

⁶ These dockets would be sub-dockets 5, 6, and 7 under STB Finance Docket No. 33388.

⁷ Although NSR in its petition describes this connection as Colson/Bucyrus, the correct designation is Colson/Bucyrus. See diagram attached to NS-1.

Comments. Four comments opposing applicants' waiver requests were filed. Steel Dynamics, Inc. (SDI) filed comments (SDI-3) on May 6, 1997; The Allied Rail Unions (ARU)⁸ filed comments (ARU-3) on May 15, 1997; American Trucking Associations, Inc. (ATA) filed comments on May 16, 1997; and The Council on Environmental Quality, Executive Office of the President (CEQ) late-filed comments on June 4, 1997.⁹ On June 4, 1997, CSX filed a reply (CSX-3) to the comments of ARU and ATA; and NS filed a reply (NS-3) to the comments of SDI, ARU, and ATA. On June 6, 1997, CSX and NS filed a joint reply (CSX/NS-16) to the comments of CEQ.

Steel Dynamics, Inc. SDI asks us to deny NSR's waiver petition and to require NSR to file any construction application or exemption with its primary application.¹⁰ SDI believes that NSR's three proposed construction connections are intertwined with the issues involved in the primary application. Creating separate dockets for these connections, according to SDI, will not be an efficient use of the Board's resources nor permit an adequate review of the issues involved in the Midwest region. SDI contends that the proposed transfer of NSR's Fort Wayne line to CRC, followed by CRC's transfer of the line, under a long-term operating agreement, to CSXT, *see* Decision No. 4, slip op. at 6-7, is intended to disguise the asserted fact that the acquisition of Conrail will create duplicate Chicago-bound lines only about 25 miles apart, running through Waterloo and Fort Wayne, IN. SDI maintains that our consideration of issues as complex as NSR's proposed connections and the possible divestiture of duplicate lines should not precede our review of the primary application.¹¹

The Allied Rail Unions. ARU opposes the CSX-1 and NS-1 waiver petitions as inconsistent with our review of the primary application. ARU argues that, by requesting the waivers, CSXT and NSR seek leverage for our ultimate approval of the application, while allegedly evading public scrutiny and comment on the transaction as a whole. ARU maintains that the construction projects are directly related to, and are dependent on, our approval of the primary transaction, and that the construction projects should be authorized only if the transaction itself is authorized. ARU argues that our merger regulations already confer a significant advantage on the applicants because they may immediately file for related abandonments and line transfers, even though they do not currently own the affected lines. ARU avers that, as a consequence, CSXT and NSR have no basis to seek additional advantage through

⁸ ARU's membership includes American Train Dispatchers Department/BLE; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees International Union; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; The National Conference of Firemen & Oilers/SEIU; and Sheet Metal Workers' International Association.

⁹ As indicated in Decision No. 5, the comments filed by CEQ were due no later than June 2, 1997. We have accepted and considered CEQ's comments, and have permitted applicants to reply to the comments by June 6, 1997.

¹⁰ SDI did not address the merits of CSXT's waiver petition.

¹¹ SDI also asserts that NS has not sought waiver of our requirement that waiver petitions be filed at least 45 days prior to the filing of the primary application. *See* 49 CFR 1180.4(f)(2). SDI therefore asks us to clarify that NS may not file its application before June 16, 1997, regardless of whether NS-1 is granted. We note that, in accordance with the procedural schedule adopted in Decision No. 6 (served and published on May 30, 1997) applicants may not file their primary application until 30 days after the filing of applicants' Preliminary Environmental Report, which was filed on May 16, 1997. The primary application, therefore, may be filed only on or after June 16, 1997. SDI's request in this regard is moot.

their waiver requests. ARU contends that applicants offered no evidence to support their "competitive disadvantage" or "delay of public benefits" arguments. According to the unions, the applicants' arguments on competitive disadvantage are inherently inconsistent because both carriers assert that they will be disadvantaged unless their respective petitions are granted. Accordingly, ARU believes that a reasonable competitive balance can be maintained by denying both waiver petitions.

American Trucking Associations, Inc. ATA asks us to reserve judgment on the seven construction projects until the primary application is filed and reviewed by the parties. ATA contends that our approval of the waivers, despite any disclaimer to the contrary, could be interpreted by the public as tacit support for the primary application and inadvertently stifle full debate on the relevant issues. According to ATA, early consideration of the construction projects will unreasonably burden the parties and the Board's staff by requiring incremental participation in the transaction approval process. ATA also maintains that the competitive impact of the seven construction projects could not be adequately determined in the absence of consideration of the primary application.

The Council on Environmental Quality, Executive Office of the President. CEQ believes that the construction and operation aspects of applicants' track connection projects should be assessed at the same time so that the environmental impacts of operating these rail lines can be properly evaluated. CEQ cites its regulations at 40 CFR 1508.25(a)(1) that, when actions are "closely related," they "should be discussed in the same impact statement." CEQ also maintains that bifurcation of the related decisions appear to conflict with 40 CFR 1506.1(c)(3), which prohibits agencies from taking actions that will prejudice the ultimate decision in a programmatic environmental impact statement (EIS). In this regard, CEQ contends that, even though the proposed merger does not involve a programmatic EIS, if we grant the proposed waivers, the likelihood that we will subsequently deny the merger tends to decrease.

According to CEQ, courts have recognized the need to prepare a comprehensive EIS when actions are functionally or economically related in order to prevent projects from being improperly segmented. CEQ argues that the fact that applicants are willing to risk our eventual disapproval of the merger does not remove the interdependence of these individual decisions.

DISCUSSION AND CONCLUSIONS

Applicants' waiver petitions will be granted. It is understandable that applicants want to be prepared to engage in effective, vigorous competition immediately following consummation of the control authorization that they intend to seek in the primary application.¹² We are not

¹² In this regard, we note that ARU is simply wrong in its assertion that a reasonable competitive balance can be maintained by denying both waiver petitions, so that neither carrier would face unanswered competition from the other. In their original petitions requesting waiver, both CSX and NS separately explained that these connections would permit each carrier to be able, as soon as possible following any Board approval of the primary application, to link its expanded system and compete with the other carrier in areas in which the other carrier's infrastructure would already be in place. As CSX has further explained (CSX-3 at 8):

CSX and NS have requested permission to construct connections that largely address different markets. Three of CSX's connections are intended to allow it to provide competitive services on routes linking Chicago and New York and the fourth on Northeast-Southeast routes served via Cincinnati. These are routes that NS will be able to serve immediately upon any Board approval of the Acquisition. NS's proposed

(continued...)

inclined to prevent applicants from beginning the construction process simply to protect them from the attendant risks. We emphasize what applicants acknowledge--that any resources they expend in the construction of these connections may prove to be of little benefit to them if we deny the primary application, or approve it subject to conditions unacceptable to applicants, or approve the primary application but deny applicants' request to operate over any or all of the seven connections. Nonetheless, given applicants' willingness to assume those risks, we will grant the waivers they seek in CSX-1 and NS-1.

ARJ maintains in its comments that applicants have no basis for seeking the waivers. Our rules, however, specifically provide for such requests, and we have entertained numerous waiver and clarification petitions in previous rail merger cases, as well as this one. *See, e.g.* Decision No. 7 (STB served May 30, 1997). ATA and SDI argue that the competitive effect of the involved connections should be considered as part of the primary application. We agree. Applicants' operations over these connections are interdependent with the primary application, and we will consider the competitive impact of the projects and the environmental effects of those operations along with our consideration of the primary application. Without authority to operate over the seven track connections for which the waivers are sought, applicants' construction projects alone will have no effect on competition. We emphasize that the waiver petitions that we are granting here are restricted to the construction of, and not the operation over, the seven connection projects described above.

The commenters complain that granting the waivers constitutes a prejudicial "rush to judgment" with respect to the primary application. However, as we emphasized in our May 13, 1997 request for comments, our grant of these waivers will not, in any way, constitute approval of, or even indicate any consideration on our part respecting approval of, the primary application. We also found it appropriate to note that, if we granted the waivers sought in the CSX-1 and NS-1 petitions, applicants would not be allowed to argue that, because we had granted the waivers, we should approve the primary application. We affirm those statements here.

Environmental considerations. CEQ has advised us not to consider the proposed construction projects separately from the operations that will be conducted over them. CEQ's recommendation is based upon its regulations at 40 CFR 1508.25(a)(1)(i)-(iii), and upon various court decisions, indicating that "when a given project effectively commits decisionmakers to a future course of action [] this form of linkage argue[s] strongly for joint environmental evaluation." *Coalition of Sensible Transp. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987). We believe, however, that we have the authority to consider the proposed construction projects separately, and agree with the applicants that permitting the construction proceedings to go forward now would be in the public interest and would not foreclose our ability to take the requisite hard look at all potential environmental concerns.

After reviewing the matter, we do concur with CEQ that regulatory and environmental issues concerning both the construction and operating aspects of these seven small construction projects should be viewed together.¹² Thus, in reviewing these projects separately, we will

¹²(...continued)

connections, on the other hand, are focused on allowing it to compete with CSX in serving southwestern markets and to make use of an important Chicago-area yard used for interchanging traffic with western carriers. Denying the waiver petitions will only assure that inequality in competition, and the potential long term problems created by such inequality, will occur.

¹³ The applicable statute for both construction and operation of new rail lines is 49 U.S.C. 10901, which requires us to permit such actions unless they are shown to be inconsistent (continued...)

consider the regulatory and environmental aspects of these proposed constructions and applicants' proposed operations over these lines together in the context of whether to approve each individual physical construction project.¹⁴ The operational implications of the merger as a whole, including operations over the 4 or so miles embraced in the seven construction projects, will be examined in the context of the EIS that we are preparing for the overall merger. That EIS may result in further environmental mitigating conditions. No rail operations can begin over these seven segments until completion of the EIS process and issuance of a further decision.

We believe that CEQ may have misconstrued the merger project as consisting of just two roughly equivalent elements: construction and operation. In fact, these seven construction projects, including the operations over them, are but a tiny facet of an over \$10 billion merger project. To put matters in perspective, the construction projects together amount to fewer than 4 miles of connecting track for a 44,000-mile rail system covering the eastern half of the United States.¹⁵ Our approval of the construction exemptions will in no way predetermine the outcome of our merger decision. As was the case in *North Carolina v. City of Virginia Beach*, 951 F.2d 596, 602 (4th Cir. 1991) (*North Carolina*), segmentation of one phase of a larger project prior to completion of environmental review will not have "direct and substantial probability of influencing [the agency's] decision" on the overall project. *Accord, South Carolina ex. rel. Campbell v. O'Leary*, 64 F.3d 892, 898-99 (4th Cir. 1995). Approval of the constructions will not make approval of the merger any more likely, and we have made that clear to the railroads in advance. *Compare Thomas* (where the Forest Service committed substantial public funds to a road project that could not be recovered absent its approval of related logging projects) with *North Carolina*, 951 F.2d at 602 (where, as here, the facts reflect that the city proposing the project accepted the risk that funds expended or constructed could be lost if the overall project were not approved).

Nor will separate consideration and approval of these small construction projects in any way undermine our ability to give meaningful and thorough consideration to all environmental issues surrounding the larger merger proposal. We have not, by segmenting these construction projects, broken down the environmental impacts of the merger into insignificant pieces escaping environmental review. *See Swain v. Brinegar*, 542 F.2d 364 (7th Cir. 1976). Indeed, we are preparing an EIS for the overall merger, and we will undertake appropriate environmental documentation for each of the seven individual construction projects. Our approach is appropriate because the environmental impacts of these constructions tend to be localized, whereas the impacts of the merger will affect a much larger area (quite likely the Eastern United States).

¹³(...continued)

with the public convenience and necessity.

¹⁴ We will have the information we need to do this because applicants' environmental report that will accompany the application will address the environmental impacts of both the construction and proposed operation of these projects. In addition, as discussed below, applicants will be required to file a detailed preliminary draft environmental assessment (PDEA) for each of the seven projects.

¹⁵ Applicants point out that much of the construction on these short segments will take place within existing rights-of-way, suggesting that they will be unlikely to have significant environmental impacts. *Compare Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985) (*Thomas*) (where the Forest Service proposed to construct a road through a pristine wilderness). Applicants also suggest that there are no alternative routings for these projects. That issue, however, has not yet been determined; it will be examined in the environmental assessments (EAs) or other environmental documents that will be prepared for each of these construction projects.

In sum, separate consideration of the seven construction projects and their environmental impacts should not be precluded by 40 CFR 1508.25 because: (1) approval of the construction projects will not automatically trigger approval of the merger; moreover, we have already determined to do an EIS for the merger and separate approval of these construction projects will in no way affect that decision; and (2) these appear to be "garden-variety connection projects" that will proceed at the railroads' financial risk, independent of the much larger merger proposal.

Having decided to grant the petitions for waiver, we will now set out some details of how we plan to proceed. In order to fulfill our responsibilities under the National Environmental Policy Act (NEPA) and related environmental laws, we will require applicants to submit certain information on the environmental effects of the construction and operation of the seven proposed connections. As noted, the applicants will file an environmental report with the primary application that will address all of the construction projects associated with the proposed merger, including the seven connections discussed in this decision.

In addition, we will require that applicants provide a specific PDEA for each individual construction project covered by this decision. Each PDEA must comply with all of the requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. Also, the PDEA must be based on consultations with our Section of Environmental Analysis (SEA) and the federal, state, and local agencies set forth in 49 CFR 1105.7(b), as well as other appropriate parties. The information in the PDEA should be organized as follows: Executive Summary; Description of Each Construction Project Including Proposed Operations; Purpose and Need for Agency Action; Description of the Affected Environment; Description of Alternatives; Analysis of the Potential Environmental Impacts; Proposed Mitigation; and Appropriate Appendices that include correspondence and consultation responses. If a PDEA is insufficient, we may require additional environmental information or reject the document. We advise the applicants to consult with SEA as soon as possible concerning the preparation and content of each PDEA.

As part of the environmental review process, SEA will independently verify the information contained in each PDEA, conduct further independent analysis, as necessary, and develop appropriate environmental mitigation measures. For each project, SEA plans to prepare an EA, which will be served on the public for its review and comment. The public will have 20 days to comment on the EA, including the proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate mitigation. In making our decision, we will consider the entire environmental record, including all public comments, the EAs, and the Post EAs.

Should we determine that any of the construction projects could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the proposed merger and will not be separately considered. In order to provide SEA with adequate time to incorporate the proposed connections into the draft EIS, if warranted, applicants must file the PDEAs no later than Day F+75 under the procedural schedule established in Decision No. 6.

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

It is ordered:

1. The CSX-1 and NS-1 petitions for waiver are granted.
2. NSR and CSXT must serve copies of this decision on the Council on Environmental Quality, the Environmental Protection Agency's Office of Federal Activities, and the Federal

Railway Administration, and certify that they have done so within 5 days from the date of service of this decision.

3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

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