

STB FD 33388 (Sub 3) 6-23-97 A 180342

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June 23, 1997

BY HAND

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423



Re: Finance Docket No. 33388, Sub-No. 3, 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

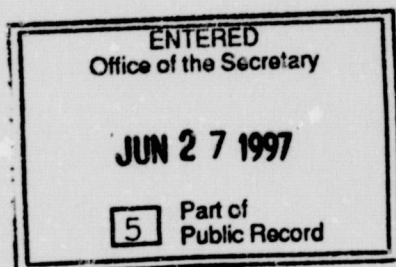
Dear Secretary Williams:

Enclosed please find CSX-7 (Petition for Exemption for Construction) to be filed in Sub-No. 3 of the above referenced docket.

Accompanying this letter are twenty-five copies of the Petition, as well as a formatted diskette in WordPerfect 5.1.

Thank you for your assistance in this matter. Please contact myself (202-942-5858) or Susan Cassidy (202-942-5966) if you have any questions.

Kindly date stamp the enclosed additional copy of this letter at the time of filing and return it to our messenger.



Very truly yours,

Dennis G. Lyons/sbc

Dennis G. Lyons
ARNOLD & PORTER
Counsel for CSX Corporation
and CSX Transportation, Inc.

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 33388 (SUB-NO. 3)

CSX TRANSPORTATION, INC. AND CONSOLIDATED RAIL CORPORATION -
CONSTRUCTION OF CONNECTION TRACKS AT GREENWICH, OHIO

PETITION FOR EXEMPTION
FOR CONSTRUCTION

Pursuant to 49 U.S.C. Section 10502 and 49 C.F.R. Part 1121, CSX Transportation, Inc. ("CSXT") and Consolidated Rail Corporation ("CRC") hereby file this petition for exemption from the prior approval provisions of 49 U.S.C. Section 10901 to construct connection tracks in Greenwich, Ohio. On May 2, 1997, CSX Corporation ("CSXC"), CSXT,¹ Conrail Inc. ("CRI") and CRC² filed a Petition for Waiver of 49 C.F.R. § 1180.4(c)(2)(vi) as that provision relates to four connections that CSXT and CRC propose to construct prior to Board approval of the Primary Application in Finance Docket No. 33388. In their Petition, CSX and Conrail requested that the Board waive the

¹ CSXC and CSXT are referred to collectively as "CSX."

² CRI and CRC are referred to collectively as "Conrail."

requirement that all construction projects related to the primary transaction be evaluated as a related application. The Petition addressed only the construction of these four connections and not the operating rights that would result if the Board were to grant the Primary Application. One of the four connections involved in the waiver petition was this proposed connection at Greenwich.

In Decision No. 9, served on June 12, 1997, the Board granted the Petition for Waiver (Finance Docket No. 33388, CSX-1), allowing CSXT and CRC to seek approval for construction of four "first day" connections, including one at Greenwich, Ohio. CSXT and CRC hereby submit this Petition for Exemption for the construction of a connection at Greenwich, Ohio. Consequently, the Board should consider the related application filed in Sub-docket No. 3 in Volume 5 of the Primary Application only as a request for operating rights over this connection.

In support of this Petition, CSXT and CRC state the following:

DESCRIPTION OF THE PARTIES

The names and addresses of the railroads proposing to construct the connection tracks at Greenwich, Ohio are:

CSX Transportation, Inc.
500 Water Street
Jacksonville, Florida 32202

Consolidated Rail Corporation
Two Commerce Square
2001 Market Street
Philadelphia, Pennsylvania 19101

DESCRIPTION OF THE PROPOSED CONSTRUCTION

CSXT and CRC cross each other at Greenwich. CSXT and CRC propose to construct connection tracks in the NW and SE Quadrants between CSXT's main line and CRC's main line at Greenwich. The connection in the NW Quadrant will extend approximately 4,600 feet between approximately Milepost BG-193.1 on CSXT's main line between Chicago and Pittsburgh, and approximately Milepost 54.1 on CRC's main line between Cleveland and Cincinnati. A portion of this connection in the NW Quadrant will be constructed utilizing existing trackage and/or right-of-way of the Wheeling & Lake Erie Railway Company. The connection in the SE Quadrant will extend approximately 1,044 feet between approximately Milepost BG-192.5 on CSXT's main line and approximately Milepost 54.6 on CRC's main line. It is anticipated that approximately 0.4 acres of right-of-way must be acquired to construct these connections. A map showing the proposed connections at Greenwich is attached as Exhibit A.

As indicated earlier, the parties do not propose to operate over the connection at this time. Operation over this connection is related to, and contingent upon, the proposed control of Conrail by CSX and NS,³ approval for which is being sought in Finance Docket No. 33388.

ARGUMENT

Under 49 U.S.C. Section 10901, a railroad may (1) construct an extension to any of its railroad lines; (2) construct an additional railroad line; or (3) provide transportation

³ Norfolk Southern Corporation ("NSC") and NSRC are referred to collectively as "NS."

over an extended or additional railroad line, only if the Board issues a certificate authorizing such activity.

However, under 49 U.S.C. Section 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. Section 10101; and (2) either the transaction is of limited scope, or regulation is not needed to protect shippers from the abuse of market power.

A. Granting The Exemption Would Be Consistent With
The Rail Transportation Policy

CSXT and CRC believe that the proposed construction of the connection tracks at Greenwich, Ohio is appropriate for exemption from the formal procedures of 49 U.S.C. Section 10901. Exemption of the construction of these connection tracks is exactly the type of minor transaction Congress contemplated when it enacted Section 10502.

Requiring CSXT and CRC to comply with the formal filing requirements of Section 10901 clearly is not necessary to carry out the rail transportation policy of Section 10101, which represents Congress' most recent expression of rail transportation policy. As relevant here, the rail transportation policy of Section 10101 requires that in exercising its regulatory authority, the Board will minimize the need for Federal regulatory control over the rail transportation system, will promote a safe and efficient rail transportation system, will ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, will reduce regulatory barriers to entry into and exit from the industry, will encourage honest and efficient management of railroads, and will promote a sound transportation system meeting the needs

of the public and the national defense.

Exemption of the proposed construction meets all of these elements of the rail transportation policy. First, by minimizing the regulatory expense and time inherent in a full application under the provisions of Section 10901, exemption would expedite regulatory decisions and reduce regulatory barriers to entry into the industry. Preparation and filing of an application under Section 10901 not only would be expensive, it also would be burdensome in view of the substantial amount of supporting documents required, and unnecessary considering the inconsequential size of the transaction.

Second, construction of these connections prior to the Board's final decision on the Primary Application would foster efficient management and promote a safe and efficient rail system. If the Board were to approve the Primary Application, the existence of these crucial connections on day one would allow CSXT to effectuate an orderly, safe, and efficient transition of traffic and to implement more quickly the expected benefits of the transaction. In particular, the connection in the NW Quadrant at Greenwich would provide the vital link between CSXT's main line into Chicago and CRC's main line to the East. The connection in the SE Quadrant would provide the vital link to allow CSXT to use its auxiliary route into Chicago for non-time sensitive shipments. Without these two connections, CSXT's Northeastern Gateway service lane would not be able to operate efficiently so as to provide effective competition in the East.

Finally, the exemption would promote effective competition among rail carriers and with other modes, and help meet the needs of the shipping public. One of the essential features of the proposed transaction in Finance Docket No. 33388 is the operation by CSXT

of CRC's so-called Water Level Route between Albany and Cleveland. The operation of this important corridor along with the construction of the connection tracks at Greenwich would create a more efficient operation for CSXT and thus make it more competitive for traffic to and from points east of Cleveland/Pittsburgh moving to Chicago. Furthermore, by improving its operations into the Chicago area, CSXT would be able to compete vigorously with other modes of transportation for intermodal and other traffic.

B. The Proposed Connection Is Of Limited Scope

The transaction involved in this proceeding is of limited scope. The proposed construction of connection tracks at Greenwich involve only a 4,600 foot track and a 1,044 foot track connecting CSXT and CRC. The connection tracks will be constructed on existing rail rights of way except for a small portion involving only 0.4 acres to be acquired.

C. Shippers Will Not Be Subject To An Abuse of Market Power

Because there will be no operation over these connections until approval for such operation is granted by the Board, construction of the proposed connections will have no effect on market power. The purpose of the connection tracks is to create additional alternatives and to improve service to all shippers and receivers whose rail traffic passes through Chicago. However, the competitive effects of operation over the proposed connections will be addressed by the Board in its review of the Primary and Related Applications.

ENVIRONMENTAL REPORT

The environmental report covering the proposed construction and operation of the connection tracks at Greenwich, Ohio is contained in the Environmental Report being filed

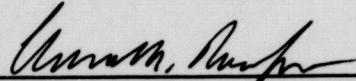
with the Board in Finance Docket No. 33388. As information, the below listed parties were advised in writing on May 16, 1997 of CSXT's intent to file this related application.

Mr. Larry Weaver
State Single Point of Contact
State/Federal Funds Coordinator
Office of Budget and Management
30 East Broad Street, 34th Floor
Columbus, Ohio 43266-0411

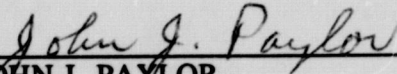
Mr. Robert J. Feddern
Chief Inspector - Railroad Section
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43266-0573

Ms. Wanda Large, Senior Planner
Ohio Department of Transportation
Division of Rail Transportation
LeVeque Tower
50 West Broad Street, 15th Floor
Columbus, Ohio 43215

Respectfully submitted,

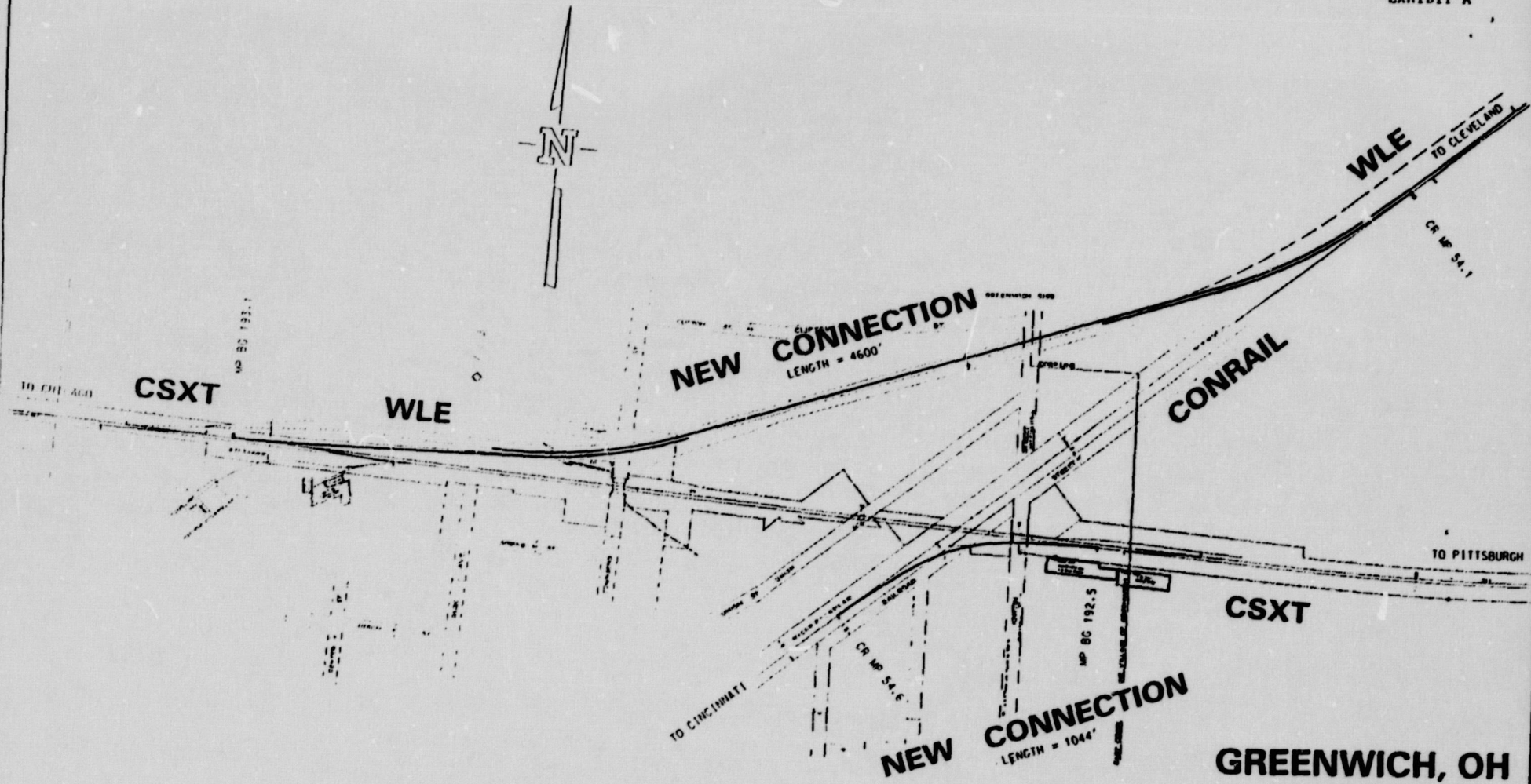


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(215) 209-5047

Dated: June 28th, 1997

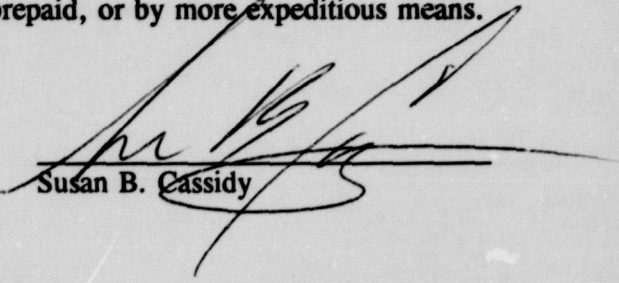


GREENWICH, OH

CSX
TRANSPORTATION

CERTIFICATE OF SERVICE

I, Susan B. Cassidy, certify that I have caused to be served this day a true and correct copy of the foregoing Petition for Exemption for Construction (CSX-7) on all parties that have appeared in Finance Docket No. 33388 and on those environmental parties specified by the Board in Decision No. 5, by first class mail, postage prepaid, or by more expeditious means.



Susan B. Cassidy

Dated: June 23, 1997