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33388 (SUB69)

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## SURFACE TRANSPORTATION BOARD

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

STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION — STATE OF NEW YORK, BY AND THROUGH ITS  
DEPARTMENT OF TRANSPORTATION, AND THE NEW YORK CITY ECONOMIC  
DEVELOPMENT CORPORATION

Decision No. 134

Decided: November 18, 1999

This decision dismisses, at the parties' request, a petition asking that the Board revisit the conditions granting trackage rights that permit Canadian Pacific Railway Company and its affiliates (collectively, CP) to operate over certain lines now owned by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), in order to serve shippers in the New York City area. The decision relates to the conditions that the Board imposed in approving the "CSX/NS/Conrail" transaction in its Decision No. 89, served July 23, 1998.<sup>1</sup>

In 1998, the Board approved a proposal under which the rail assets of Conrail were taken over by CSX and NS. The original proposal that the private parties negotiated among themselves divided Conrail's assets in a way that enhanced competition in several respects. Additionally, in approving the transaction, the Board imposed conditions that mitigated potential competitive harm and provided other public benefits.

One of these conditions made possible new competitive service for many New York City shippers and receivers that could formerly receive rail service only from Conrail. To permit that new competitive service, the Board granted CP trackage rights over the lines of CSX from Albany, NY, to Oak Point Yard in Bronx, NY. These Board-imposed trackage rights made competitive rail service available to these shippers for the first time since the creation of Conrail more than two decades ago. To ensure that its conditions did not contribute to an unsafe, inefficient, or operationally infeasible railroad operating environment in the congested New York City area, the

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<sup>1</sup> The parties to that transaction were CSX; Norfolk Southern Corporation and Norfolk Southern Railway Company, and their wholly owned subsidiaries (collectively, NS); and Conrail Inc. and Consolidated Rail Corporation, and their wholly owned subsidiaries (collectively, Conrail).

Board required CP to serve its new shippers through a cost-based switching service performed by CSX into and out of Oak Point Yard, rather than having CP itself also operate trains throughout this area.

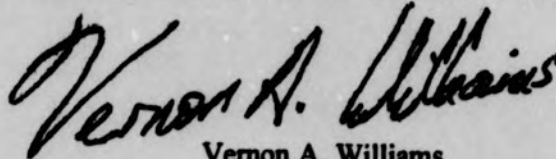
A dispute subsequently arose over two issues: whether the conditions should be construed as permitting CP to handle traffic to or from Harlem River Yard directly, and whether the cost-based switching service that CSX was required to provide for CP at Oak Point Yard be construed as including certain traffic that moves through a CSX transload facility. After CP brought the matter to the Board for resolution, however, the parties indicated that they were engaging in negotiations in an effort to resolve the issues privately, and asked that Board action be withheld to permit them to pursue negotiations. In a joint motion filed by CP and CSX on November 4, 1999, the parties indicated that they had in fact resolved their differences privately, and requested dismissal of CP's petition without prejudice. The motion will be granted and the petition will be dismissed.

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

It is ordered:

1. The joint motion is granted and CP's petition is dismissed without prejudice.
2. This decision is effective on the date of service.

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

A handwritten signature in dark ink, appearing to read "Vernon A. Williams", is written over the printed name and title.

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SERVICE DATE - NOVEMBER 4, 1999

**SURFACE TRANSPORTATION BOARD**

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**

STB Finance Docket No. 33388 (Sub-No. 69)

**RESPONSIVE APPLICATION — STATE OF NEW YORK,  
BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION,  
AND THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

Decision No. 133

Decided: November 3, 1999

Decision No. 132, served in these proceedings on September 22, 1999, provided that the Board would withhold action, until at least November 1, 1999, on certain issues that had been raised concerning enforcement of the "east-of-the-Hudson" condition adopted earlier in the proceedings. Decision No. 132 was issued to permit sufficient time for CSX Corporation and its railroad affiliates (collectively CSX) and Canadian Pacific Railway Company and its railroad affiliates (collectively, CP) -- the carriers involved with implementing the east-of-the-Hudson condition -- to negotiate a resolution of the disputes at issue.

A letter filed on November 2, 1999, by CSX, with the concurrence of CP, advises that the parties are close to reaching a resolution, but that certain matters remain unresolved. Therefore, the November 2 letter asks the Board to extend, through and including November 15, 1999, the period of time within which action on this matter will be held in abeyance.

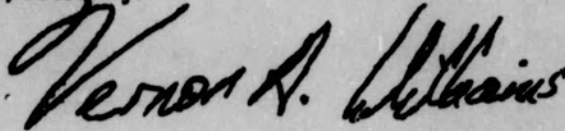
Because the Board generally supports private resolution of disputes, and because cooperation among carriers is particularly critical in situations such as this one, where track and terminal facilities must be shared, the request to withhold action in this matter will be granted.

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

**It is ordered:**

1. Action on the CP petition raising these issues (designated CP-32) will be withheld until at least November 15, 1999.
2. This decision will be effective on the date of service.

By the Board, Vernon A Williams, Secretary.

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

Vernon A. Williams  
Secretary



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SERVICE DATE - NOVEMBER 20, 1998

SURFACE TRANSPORTATION BOARD

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

Decision No. 102

STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION--STATE OF NEW YORK, BY AND THROUGH ITS  
DEPARTMENT OF TRANSPORTATION, AND THE NEW YORK CITY ECONOMIC  
DEVELOPMENT CORPORATION

Decided: November 19, 1998

This decision establishes a schedule to address the condition we imposed on behalf of the State of New York and the New York Department of Transportation (NYDOT) and the New York City Economic Development Corporation (NYCEDC) in connection with the transaction we authorized in Decision No. 89, served July 23, 1998.<sup>1</sup> In our decision approving the primary transaction, we granted in part and denied in part the New York parties' responsive application in Sub-No. 69. As pertinent here, in Decision No. 89, slip op. at 177, we stated:

CSX must attempt to negotiate, with CP, an agreement pursuant to which CSX will grant CP either haulage rights unrestricted as to commodity and geographic scope, or trackage rights unrestricted as to commodity and geographic scope, over the east-of-the-Hudson Conrail line that runs between Selkirk (near Albany) and Fresh Pond (in Queens), under terms agreeable to CSX and CP, taking into account the investment that needs to continue to be made to the line.

By letter filed November 10, 1998, Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited (collectively CP) indicate that the parties have been unable to reach an

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<sup>1</sup> In Decision No. 89, we approved, subject to conditions, the application by CSX Corporation and CSX Transportation, Inc. (collectively CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) under 49 U.S.C. 11321-26 for: (1) the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively Conrail); and (2) the division of Conrail's assets by and between CSX and NS.

agreement and request that we institute a proceeding addressing the matter. CP proposes a 95-day schedule with the filing of simultaneous evidentiary submissions. In a response filed November 12, 1998, CSX concurs with CP's schedule, with further proposals by CSX that: railroads other than CP may be considered as operators over the east-of-the-Hudson route; responsive applicants' descriptions of the terms of requested rights and environmental documentation be filed by Day 30 of the schedule; and the proceeding may be suspended if CSX reaches a tentative agreement with any carrier, including CP.

NYCEDC (by letter filed November 10, 1998) and NYDOT (by letter filed November 13, 1998, designated as NYS-30) endorse CP's proposed schedule. NYDOT also opposes CSX's requests to permit the consideration of railroads other than CP and the filing of new responsive applications. NYDOT asserts that CSX is reluctant to implement the pro-competitive relief granted by the Board on behalf of the New York parties, and contends that the Board should simply move to set the terms of CP's access over the Hudson Line.

While we continue to favor a negotiated solution by CSX and CP, over 3 months have passed since we imposed the east-of-the-Hudson condition and the parties have not reached an agreement on implementation. In order to resolve this matter in a timely manner and to ensure that the Board's important condition is implemented as envisioned, a procedural schedule with shorter time frames than those advanced by the parties is warranted and will be adopted. Accordingly, we will deny CSX's proposals to consider carriers other than CP and to suspend the procedural schedule should a preliminary agreement with another carrier be reached, and instead we will establish an evidentiary procedural schedule pursuant to which CSX and CP will be required to submit their proposed agreements with relevant evidence and argument on or before November 30, 1998, and CSX, CP, NYDOT, and NYCEDC may submit simultaneous responses to the proposed agreements by December 10, 1998.

CP shall resubmit its environmental verified statement filed October 6, 1997, certifying that none of the Board's environmental thresholds would be exceeded by the proposed rail operations over this line. Because CP's original environmental verified statement also embraced operations in other geographic areas, CP may modify its verified statement to apply exclusively to the proposed operations. If CP contemplates changes to its originally proposed operations, it should file a new verified statement, or other appropriate environmental documentation, if the Board's environmental thresholds will be exceeded.

After examining the proposed agreements and responses, we intend to set the terms for the east-of-the-Hudson operations, based in whole or in part on the terms proposed, and bring about an expeditious resolution of this matter, which has already been the subject of substantial analysis in this proceeding. Because of the limited scope of this matter, CP, CSX, NYCEDC, and NYDOT will be required to serve copies of their filings only on one another, and on any other party who submits a request in writing on or after the service date of this decision. Service on all parties of record in STB

Finance Docket No. 33388 would be unduly burdensome and unnecessary. An original and 25 copies (and an electronic version) of all pleadings must be filed with the Board.

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

It is ordered:

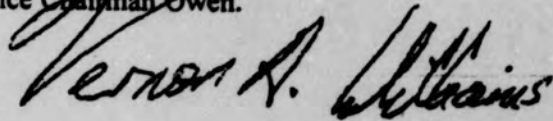
1. Simultaneous proposals from CP and CSX are due November 30, 1998, addressing the east-of-the-Hudson condition imposed in Decision No. 89. Simultaneous responses from CP, CSX, NYCEDC, and NYDOT are due December 10, 1998.

2. CP shall resubmit its environmental verified statement filed October 6, 1997, certifying that none of the Board's environmental thresholds would be exceeded by the proposed rail operations over this line. CP may modify its verified statement to apply exclusively to the proposed operations. If CP contemplates changes to its originally proposed operations, it should file a new verified statement, or other appropriate environmental documentation, if the Board's environmental thresholds will be exceeded.

3. Due to the limited scope of the condition being addressed, we are modifying the service requirement so that CP, CSX, NYCEDC, and NYDOT are required to serve copies of their filings only on one another, and on any other party who submits a request in writing on or after the service date of this decision.

4. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.



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STB    FD    33388    (Sub 69)    12-18-98    C    29884

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SERVICE DATE - LATE RELEASE DECEMBER 18, 1998

**SURFACE TRANSPORTATION BOARD**

**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**

**Decision No. 109**

**STB Finance Docket No. 33388 (Sub-No. 69)**

**RESPONSIVE APPLICATION--STATE OF NEW YORK, BY AND THROUGH ITS  
DEPARTMENT OF TRANSPORTATION, AND THE NEW YORK CITY ECONOMIC  
DEVELOPMENT CORPORATION**

**Decided: December 18, 1998**

This decision addresses the proposals, including the method of compensation, relating to the trackage/haulage rights that we imposed on behalf of the State of New York and the New York Department of Transportation (NYDOT) and the New York City Economic Development Corporation (NYCEDC) in connection with the transaction we authorized in Decision No. 89, served July 23, 1998.<sup>1</sup> In our decision approving the primary transaction, we granted in part and denied in part the New York parties' responsive application in Sub-No. 69. As pertinent here, in Decision No. 89, slip op. at 177 (Ordering Paragraph No. 28), we stated:

CSX must attempt to negotiate, with CP, an agreement pursuant to which CSX will grant CP either haulage rights unrestricted as to commodity and geographic scope, or trackage rights unrestricted as to commodity and geographic scope, over the east-of-the-Hudson Conrail line that runs between Selkirk (near Albany) and Fresh Pond (in Queens), under terms agreeable to CSX and CP, taking into account the investment that needs to continue to be made to the line.

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<sup>1</sup> In Decision No. 89, we approved, subject to conditions, the application by CSX Corporation and CSX Transportation, Inc. (collectively CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) under 49 U.S.C. 11321-26 for: (1) the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively Conrail); and (2) the division of Conrail's assets by and between CSX and NS. NYDOT and NYCEDC are also referred to collectively as the New York parties.

## BACKGROUND

By letter filed November 10, 1998, Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited (collectively CP) indicated that, because the parties have been unable to reach an agreement, CP was requesting that we institute a proceeding addressing the matter. After considering responses to CP's request, including responses from CSX and the New York parties, we established an expedited schedule requiring CP and CSX to submit simultaneous proposals with regard to the east-of-the-Hudson condition under shorter time frames than those advanced by the parties. See Decision No. 102, served November 20, 1998.

In its proposal filed November 30, 1998 (designated as CP-24), CP maintains that it should receive from CSX full-service trackage rights that includes access to all shippers,<sup>2</sup> carriers, and yard facilities located on the east-of-the-Hudson line.<sup>3</sup> On the north end, CP proposes trackage rights over three CSX line segments respectively serving: Rensselaer and Schenectady, NY (referred to as Route 1); the Selkirk Yard (referred to as Route 2); and the Albany/Rensselaer industrial area via CP's Kenwood Yard (referred to as Route 3). On the south, CP seeks a carrier interchange at Fresh Pond Junction, or other appropriate locations, as well as access to the Harlem River Yard, Oak Point Yard, and Hunts Point Terminal and all customers served by those facilities. CP contends that alternatives such as haulage rights will not permit it to obtain the operational efficiencies available from trackage rights. As regards compensation, CP proposes to pay the same car-mile rate and switching fee, i.e., \$0.29 per car-mile and \$250 per car fee, that applicants agreed to pay each other under their transaction agreement. CP maintains that, just as those rates enable applicants effectively to compete with each other, the same charges will allow CP to be an effective competitor with CSX on the line.

CSX's proposal (designated as CSX-167) includes a grant of overhead trackage rights between Selkirk and Fresh Pond, NY, with access to shippers and rail facilities in the Bronx and

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<sup>2</sup> Included in CP-24 were supporting statements by Fort Orange Paper Company, of Castleton, NY (approximately 10 miles southeast of Albany) and ADM Milling Company. Fort Orange Paper Company also filed comments (designated as FOPC-7) on December 10, 1998, in support of CP's request for access to all shippers located on the Hudson Line.

<sup>3</sup> CP states that it is separately negotiating with Metro-North Commuter Railroad (Metro-North) in regard to trackage rights over that portion of the east-of-the-Hudson line owned by Metro-North between Poughkeepsie and High Bridge, NY. CP also indicates that it is separately negotiating with the State of New York for trackage rights on the Oak Point Link from High Bridge to CSX's Harlem River Yard. In conjunction with its trackage rights proposal over CSX, CP asks us to override, under our authority at 49 U.S.C. 11321, any CSX claim of exclusive right to provide freight service over these line segments. See CP-24 at 2, n.1.

Queens, NY, including an interchange with the New York & Atlantic Railroad (NYAR) at Fresh Pond Junction and access to the Oak Point Yard.<sup>4</sup> CSX indicates that such trackage rights substantially conform to the relief sought by the New York parties in their responsive application. As compensation for CP's use of the trackage rights and applicant's rail facilities in the Bronx and Queens, CSX proposes that CP pay a variable fee based on usage and a fixed annual fee based on 50% of the condemnation value of the involved trackage and yard property.<sup>5</sup> CSX also seeks an override or cancellation of its October 20, 1997 settlement agreement with CP, on the ground that the settlement agreement is inconsistent with the additional relief CP will be obtaining in these proceedings.

In its reply (designated as CP-25) filed December 10, 1998, CP maintains that, to conform to the request by the New York parties for full-service rights on the line and the Board's imposition of such a condition, its trackage rights between Selkirk and Fresh Pond Junction should be local, rather than overhead as advanced by CSX. CP also contends that CSX's proposal for a single overhead route via the Selkirk Branch (corresponding generally to CP's Route 3) would deprive it of 20% of the available traffic on the line and prevent it from using the most efficient routings to Canadian and Southern United States markets. As regards operations at the south end of the line, CP complains that CSX would deny it direct access to Hunts Point Terminal, parts of the Harlem River Yard other than the Trailvan Terminal, and new interchanges other than at Fresh Pond Junction with NYAR. According to CP, the condemnation methodology for compensation proposed by CSX has no place in this proceeding, and that CP's proposal conforming to SSW Compensation<sup>6</sup> is based on established Board precedent and should be accepted. Finally, CP submits that CSX's effort to cancel the October 20, 1997 settlement agreement is unwarranted because CP has not

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<sup>4</sup> CSX describes its proposal for access by CP to shippers and rail yards in the Bronx and Queens as a "terminal joint facility" where CSX will be the operator of the facility, but CP will have equal access and be able to run its line haul trains to and from Oak Point Yard, the Harlem River Trailvan Terminal, and the interchange with NYAR at Fresh Pond Junction. In addition, CSX agrees to allow CP to terminate its financial obligations as to the joint facilities by giving CP the option of constructing its own terminal facilities in the metropolitan area.

<sup>5</sup> CSX proposes that CP pay in monthly installments an "annual interest rental fee" of one-half of 10% of the fair market value of its rail line and yard property, with the value to be determined by an independent appraiser jointly selected by the parties.

<sup>6</sup> St. Louis Southwestern Railway Company--Trackage Rights Over Missouri Pacific Railroad Company--Kansas City To St. Louis, 1 I.C.C.2d 776 (1985) (SSW Compensation).



breached any of its obligations thereunder and termination of the agreement would deprive CP of a number of pro-competitive rights that have nothing to do with the east-of-the-Hudson condition.<sup>7</sup>

In its reply (designated as CSX-169), CSX contends that its condemnation method of compensation should be accepted because the CSX/NS/Conrail transaction did not cause a lessening of competition which CP's trackage rights were designed to cure and, therefore, it is an "innocent" party entitled to full constitutional reimbursement for the taking of its property, i.e., a one-half interest in the east-of-the-Hudson line and yard facilities in the Bronx and Queens. On the other hand, CSX complains that CP's proposed \$0.29 per car-mile rate and \$250 per car switching charge are not cost-based, nor are they mutually agreed to or reciprocal as in the case of charges applicants CSX and NS will assess each other. CSX further contends that CP's compensation proposal is deficient because it does not reimburse CSX for the loss of its exclusive freight rights over the portion of the line, between Poughkeepsie and Oak Point Link, owned by Metro-North. According to CSX, under the Final System Plan, Conrail acquired a fee remainder interest in Metro-North's 70-mile line, subject to a 60- to 90-year lease by New York Metropolitan Transportation Authority and its agent Metro-North. Although CSX argues that only the Special Court<sup>8</sup> may determine whether Conrail's freight rights are exclusive, it concedes that the Board may override any rights

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<sup>7</sup> The CP-25 reply includes a verified statement of Joseph J. Plaistow that attempts to demonstrate that CP's compensation approach is reasonable and that CSX's is not. CSX concedes that, insofar as the Plaistow statement attempts to demonstrate that CSX's compensation approach is not reasonable, it is legitimate rebuttal. See CSX-170 (filed December 15, 1998) at 5 n.3 (lines 1-3). CSX insists, however, that, insofar as the Plaistow statement attempts to demonstrate that CP's compensation approach is reasonable, it is not legitimate rebuttal and should therefore be stricken. See CSX-170 at 5 (lines 5-8) & n.3 (lines 3-5; the title of the CSX-170 motion notwithstanding, that motion does not in fact seek to strike the Plaistow statement in its entirety). Although we agree with CSX that, insofar as the Plaistow statement attempts to demonstrate that CP's compensation approach is reasonable, the Plaistow statement should have been included in CP's CP-24 opening submission, we will nevertheless deny the CSX-170 motion to strike. CSX contends that "[n]o harm would be done to CP by striking Mr. Plaistow's evidence; the Board can look to its precedents and establish a formula for the compensation CSX is entitled to receive for the rights the Board is granting." See CSX-170 at 6. In this decision, however, we are not simply "establish[ing] a formula"; we are setting a compensation amount; and, to this end, we have had to rely on some of the data provided in the Plaistow statement. Thus, we are prepared to afford CSX, in the context of a petition for reconsideration, an opportunity to respond, if it is so inclined, to the Plaistow statement and to our calculations derived therefrom.

<sup>8</sup> The United States District Court for the District of Columbia has assumed the jurisdiction of the Special Court.

Conrail may have in the line. If the Board overrides such rights, CSX insists that it should be fully compensated for the invasion of its exclusivity.<sup>9</sup>

CSX submits that, because the east-of-the-Hudson condition is designed to inaugurate competitive rail service on behalf of New York City, CP should not be granted local access to shippers located north of the municipality, including the Albany area. CSX insists that its proposal, which would provide CP with local access to all shippers and rail facilities in the Bronx and Queens and interchange with NYAR in Long Island, fully satisfies the Board's purpose in imposing the condition. In addition, CSX criticizes CP's request for three access routes to the Hudson line by maintaining that the proposal is unwarranted, overreaching, and will cause operating problems in the Albany area by CP.<sup>10</sup>

NYCEDC and NYDOT submitted a joint reply (designated as NYC-23/NYS-32). The New York parties support the proposal advanced by CP and find fault in CSX's proposal, arguing that the condition gives CP full service trackage rights and thus CP should have access to all shippers located on the Hudson line. The New York parties contend that CSX's compensation proposal would create excessive costs to CP and is based on erroneous premises that CSX is an innocent party and that CP will be a co-equal owner of the rail properties.

#### RELATED MATTERS

Housatonic Railroad Company. In comments (designated as HRRC-14) filed December 10, 1998, Housatonic Railroad Company, Inc. (HRC) indicates that it connects with Metro-North's portion of the Hudson Line at Beacon, NY. HRC states that it currently has a trackage rights agreement with Metro-North to interchange traffic with all freight carriers operating over the Hudson Line. To preserve its interchange opportunities, HRC asks the Board to require that CP's trackage rights agreement with CSX expressly permit an interchange between CP and HRC at Beacon, NY.

Providence & Worcester Railroad Company. In a letter filed November 19, 1998, Providence & Worcester Railroad Company (P&W) requests that we assign an administrative law judge to supervise a mediation process relative to our requirement that CSX discuss with P&W "the possibility of expanded P&W service over trackage or haulage rights on the line between Fresh

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<sup>9</sup> CSX, however, asks that we first permit the parties to negotiate this matter and not exercise our override authority at this time. CSX-169 at 21.

<sup>10</sup> Because of its concerns related to the three routes, CSX has offered CP two alternative routes: a route near CP's Kenwood Yard, but requiring the construction of a connection in the \$1 million plus range; or a route currently used by CP, via the Chicago Line, that does not require any improvements or construction expenditure. See Downing R.V.S. at 7-8.

Pond, NY, and New Haven, CT . . .” See Decision No. 89, slip op. at 83-84, 178 (Ordering Paragraph No. 31). P&W complains that, other than mutually beneficial marketing proposals, CSX is unwilling to discuss substantive opportunities by P&W to compete with CSX over the New Haven route. Comments supporting P&W’s request were filed by NYCEDC and NYDOT, in a joint reply (designated as NYC-22/NYS-31), and by Congressmen Jerrold Nadler and Charles E. Schumer in a letter filed December 10, 1998, on behalf of the 24 member New York-Connecticut Congressional delegation.

In a reply to P&W filed December 9, 1998, CSX contends that, in court and Board proceedings, P&W has repeatedly violated its August 6, 1997 settlement agreement with CSX. According to CSX, in exchange for valuable independent rate-making authority between New Haven and New York City, P&W pledged unconditional support for the Conrail transaction. Despite P&W’s litigation, CSX states that it has continued to negotiate with P&W relative to mutually beneficial arrangements over the New Haven route. CSX asks the Board to clarify that unrestricted trackage rights on behalf of P&W, over CSX’s objection, is not what the Board intended when it imposed the condition.

#### DISCUSSION AND CONCLUSIONS

**Trackage Rights—Between Albany and New York City.** The purpose of our east-of-the-Hudson condition is to restore to New York City some of the rail competition that was lost when Conrail was created. In imposing the condition, our focus was not on entities or shippers located in other parts of the state, including those in the Albany area. Nor did we intend to assist particular rail carriers (CP, P&W, and HRC) vis-a-vis the applicants in the Conrail transaction. Further, CP has not shown that a grant of local rights along the entire east-of-the-Hudson route would enhance its ability to efficiently provide service to shippers within New York City. Accordingly, consistent with our intention of enhancing the competitive presence of a second carrier for New York City traffic, CP’s prospective trackage rights will be limited to overhead traffic between Albany and New York City, and local access to industries situated between those points will not be permitted. We are not granting the relief HRC seeks. It has not made the case that the traffic it contemplates carrying would pass through New York City, and thus its request for an interchange with CP is not proximately related to the remedy we sought to impose through the east-of-the-Hudson condition.

We will also deny CP’s request for three access routes to the Hudson Line at Albany. In view of CP’s projected traffic volume (initially one train a day each way) and CP’s existing extensive rail facilities in the Albany area, we do not believe that more than one access route is necessary.<sup>11</sup> We will authorize CP to use Route 1, as proposed by CP in CP-24, Exhibit 2, involving the use of the Chicago Main Line between Rensselaer and Schenectady. CSX takes no exception to

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<sup>11</sup> Should CP’s traffic volume increase substantially, we will reexamine the carrier’s routing requirements under our oversight jurisdiction.



this route. The route appears to make the best connection with the Hudson Line, does not involve Conrail's Selkirk Yard, and does not require complex switching movements or "backward shoves" as CSX witness Downing proposes. Its Schenectady connection makes use of CP's Mohawk Yard and provides CP with a direct connection for its northbound and southbound trains in handling New York Terminal traffic.<sup>12</sup> It is a high-speed, double track line and, other than Amtrak trains, normally handles only Conrail local service trains. The forecast level of CP service of one train in each direction daily, even with the projection of a second train in Year Two, should not adversely affect Amtrak service.

**New York Terminal Operations.** CSX has agreed to CP's request for access to all yards, terminals, other facilities and shippers, present and future, located in the Bronx and Queens, and an interchange with NYAR at Fresh Pond Junction. But, this agreement is conditioned on CP bearing one half of the full ownership costs of all the track and facilities that would be associated with CP's operations. As discussed below, CSX's compensation proposal is unacceptable.

CP proposes that CSX provide it with traditional switching services where this would be the most efficient means of engaging in local service. CP also states that it needs to have the option of providing direct service to customers and facilities in the Bronx and Queens, so as to discipline the quality of switching services provided to CP by CSX. While CP has proposed a \$250 per car switching fee that should adequately compensate CSX for this service, including the limited use by CP of Oak Point Yard, CP has not proposed suitable compensation arrangements that would become necessary if it were to make more extensive use of CSX's New York City track and terminal areas, as would be required if CP were to provide direct service to customers and facilities in the Bronx and Queens.

CP will be permitted to access all shippers in the Bronx and Queens via a \$250 per car switch performed by CSX, including the use of Oak Point Yard as necessary to efficiently perform this switching service. With respect to the contemplated interchange between CP and NYAR: (1) CSX may perform a switching service and bring cars from Oak Point to Fresh Pond or from Fresh Pond to Oak Point for the \$250 "basic" switching fee; or (2) CP could use its trackage rights to interchange directly with NYAR at Fresh Pond, but only if CP enters into a suitable compensation arrangement with CSX for the use of the Fresh Pond yard. We will also grant CP's request that NYAR be given trackage rights from Fresh Pond to Oak Point for its interchange with CP, but only if CP enters into suitable compensation arrangements with CSX for this use of the Oak Point yard. CP failed to suggest any such compensation arrangements, other than the basic \$250 switching fee, for its contemplated uses of the Fresh Pond or Oak Point facilities, even though its proposal to interchange with NYAR at Oak Point would apparently involve no compensation to (i.e., no switching by) CSX.

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<sup>12</sup> CP's access route in the Albany area will also be limited to overhead trackage rights.



**Trackage or Haulage Rights—Between New Haven, CT, and New York City.** P&W asks us to appoint an administrative law judge to supervise a mediation proceeding concerning the New Haven to New York condition we imposed in Ordering Paragraph No. 31. We are denying P&W's request because such a proceeding and the prospect of valuable commercial rights going to P&W, over CSX's opposition, are not what we intended when we asked the parties to negotiate the possibility of expanded P&W service over the New Haven route. Despite P&W's litigious posture, which might well be construed as a breach of the CSX/P&W settlement agreement, CSX has represented that, based on P&W's conduct to date, it will not cancel that agreement. The settlement agreement does comport with our pro-competitive goals and with our desire to have CSX and P&W negotiate mutually beneficial arrangements to increase competition. Accordingly, CSX will be bound to its commitment not to cancel the agreement based upon P&W's conduct up to this point.<sup>13</sup>

**Compensation.** CSX's proposal that CP compensate it for the use of CSX's tracks between the Albany area and Fresh Pond, NY, and for all terminal facilities within the Bronx and Queens based on 50% of the ownership cost is unacceptable. As an initial matter, CP does not need, and we are not providing it with, physical access to, and use and control of, all of these facilities. CSX's proposal requiring CP to pay for 50% of the ownership cost would more than likely place either CP or CSX at a competitive disadvantage unless each carrier captured an equal share of the revenues available on the line. Any compensation established in this proceeding must put the tenant in the same competitive position as the owning carrier.<sup>14</sup> In addition, as stated by CP, it appears that CSX is attempting to charge CP 50% of the ownership cost without giving CP all of the benefits associated with being an actual co-owner of the line, such as control of the facility, or full property rights in the assets.<sup>15</sup>

CP proposes that it: (1) pay a trackage rights fee of \$0.29 per car-mile for the use of CSX's line between the Albany, NY area and Oak Point Yard and pay CSX \$250 per car to perform switching; and (2) interline traffic with NYAR either at Oak Point Yard, allowing NYAR incidental trackage rights between Oak Point Yard and Fresh Pond at \$0.29 per car-mile, or at Fresh Pond via trackage rights between Oak Point and Fresh Pond.<sup>16</sup> CSX argues that both the \$0.29 per car-mile rate and \$250 switching fee, which CP adopted from Decision No. 89, were established based on

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<sup>13</sup> For the same reason, we are not granting CSX's request to cancel its October 20, 1997 settlement agreement with CP.

<sup>14</sup> See SSW Compensation, 1 I.C.C.2d at 786.

<sup>15</sup> Id. at 790, where the ICC rejected this approach.

<sup>16</sup> CP has not provided any specifics on its proposal to use CSX's facilities at Oak Point and Fresh Pond to interline traffic with NYAR. If CP desires to use CSX's yard facilities, it must first enter into a joint facilities agreement with CSX as indicated in this decision.

reciprocity between CSX and NS. CSX argues correctly that no such reciprocity is applicable here. See Union Pacific/Southern Pacific, Decision No. 47 (STB served Sept. 10, 1996), slip op. at 18-19.

**CP's Trackage Rights Fee.** To support its \$0.29 number, CP developed a trackage rights fee of \$0.27 per car-mile using the capitalized earnings (CE) method established in SSW Compensation. Although the CE method established in SSW Compensation is appropriate for developing the trackage rights fee in this proceeding,<sup>17</sup> we find that CP's calculation contains several errors. We have therefore restated CP's estimate of the trackage rights fee for use in this proceeding. The trackage rights fee developed using the SSW Compensation method contains a pro-rata share of all the "below-the-wheel" operating costs<sup>18</sup> as well as a pro-rata share of a rate of return element (referred to as interest rental).

CP's "below-the-wheel" cost calculation of \$0.13 per car-mile based on Conrail's 1995 Uniform Rail Costing System (URCS) system average data, appears to have been calculated in a reasonable manner. We accept CP's "below-the-wheel" cost. But CP's determination of the "interest rental" component of \$0.14 per car-mile contains several errors. Correcting CP's errors results in an interest rental cost of \$0.58 per car-mile. Thus, the total trackage rights compensation per car-mile, including "below-the-wheel" cost, would be \$0.71.<sup>19</sup> The difference between the \$0.71 trackage rights rental fee we have computed under SSW Compensation and the \$0.29 fee CP was prepared to pay will amount to less than \$30 per car for the segment of track over which CP will be operating as CSX's tenant. This small amount should not unduly impede CP's ability to compete for east-of-the-Hudson traffic.

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<sup>17</sup> There are four methods for developing the "interest rental" portion of the trackage rights fee: the reproduction cost new, less depreciation method; the capitalized earnings approach (CE); actual appraised valuation of the line; and stand-alone cost. St. Louis Southwestern Ry. Co. Compensation--Trackage Rights, 8 I.C.C.2d 213 (1991). However, of the four methods, the CE approach is our preferred method for developing the rental component in trackage rights compensation cases because, among other things, it values the property as a going concern for railroad use, i.e., the use to which the property would actually be put. See Atchison, T. & S.F. Ry. Co.--Operating Agreement, 8 I.C.C.2d 297, 304 (1992).

<sup>18</sup> "Below-the-wheel" refers to all operating and maintenance costs associated with operating over the specific line segment at issue, other than the costs associated with equipment (fuel, crew costs, freight cars costs, etc.).

<sup>19</sup> In approving the \$0.29 per car-mile trackage rights fee agreed to by applicants, we made a preliminary assessment that actual application of the SSW Compensation method would result in a fee no lower than \$0.46 on Conrail track, since our means of computing this figure "understate[d] the fees that would be derived under the SSW Compensation method." Decision No. 89, slip op. at 141.

CP computes the fair market value of road property using the book value relationship of road property to total road property plus equipment. See Plaistow V.S. 12/10/98 Exhibit No. (JJP-2-1). We use the value developed by Price Waterhouse for allocating road and equipment property, shown in the NS/CSX statement (CSX/NS-177 Exhibit WWW-5) in the Conrail merger case.<sup>20</sup> This results in a substantially higher number.

CP computes Conrail's earnings by taking its 1995 railroad earnings before taxes (\$571,781,000) and adding to that figure the total benefits that NS and CSX contend would derive from the merger (\$1,445,057,000). This produces a total earnings stream of \$2,016,838,000. CP's inclusion of these benefits is erroneous for several reasons. First, its figure overstates the benefits projected to be realized by NS and CSX by including various public benefits that will not be retained by those carriers. Second, the benefit numbers are for what was designated as a "normal" year, which would not be realized until after the third year following consummation of the merger. Third, and most significant, CP does not make any adjustment for merger benefits in its calculation of earnings for the line segment in question. This results in a significant understatement of the value of this particular line.

Therefore, we have excluded the merger benefits. In keeping with the procedure used in SSW Compensation, we have adjusted Conrail's 1995 earnings upward to account for inflation between 1995 and 1997. Using the change in the GDP deflator between 1997 and 1995 (4.461%), we have restated Conrail's earnings to be \$591,287,959.

CP does not make an adjustment to the earnings multiplier to separate earnings developed from road property from earnings developed from equipment. We reduced the earnings multiplier (to develop the road property earnings multiplier) to take into account the Price Waterhouse percentage of road property to total road property plus equipment. See CSX/NS-177 Exhibit WWW-5.

After making these changes, we have increased the earnings multiplier from 6.26 developed by CP to 24.54. When multiplied by the line segment earnings developed by CP (\$592,490) increased for inflation by the 4.461% GDP deflator factor (\$618,921), we arrive at a value of the line segment of \$15,186,822, compared to CP's figure of \$3,710,105.

Finally, CP uses a 17.2% pre-tax cost of capital rate in its calculations. We calculate both the 1995 and 1997 pre-tax cost of capital rate for the railroad industry to be 17.5%. We have used this higher figure to compute an annual rental payment of \$2,657,694. When divided by 4,583,979

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<sup>20</sup> We use the Price Waterhouse figures because they are the ones that CSX and NS are going to use to allocate Conrail's assets on their books. Thus, they represent the value of road and equipment that the purchasing railroads considered when they acquired Conrail.



car-miles, this produces an interest rental component of \$0.58 per car-mile. When added to the \$0.13 cost factor, the total initial per car-mile cost would be \$0.71.

Of course, trackage rights compensation is based on a retrospective determination of pro-rata shares of traffic between the owning and tenant railroads. Thus, the \$0.71 figure is merely a starting point for determining trackage rights compensation. Actual trackage rights compensation per car-mile should be adjusted periodically to reflect: (1) cost of capital rate for the specific period; (2) number of car-miles for the tenant and owning carriers for the specific time period; and (3) actual other "below-the-wheel" costs for the specific time period. In addition, as noted above, we will permit CSX to seek reconsideration based on its critique of any of the Plaistow evidence upon which we have relied here.

CP's Switching Fee. Absent any special studies of the actual switching cost per car in the New York Terminal Area, CP's \$250 appears to be a reasonable starting point. CP's evidence shows that CSX's 1995 URCS system average cost for switching is \$75.24 per car.<sup>21</sup> Although CSX argues that CP's adoption of the \$250 switching charge from Decision No. 89 is not appropriate because of the lack of reciprocity between CP and CSX, CSX has not provided any evidence that the \$250 fee would not cover the total switching cost here.<sup>22</sup> Further, CP shows that the average cost of 41 reciprocal switching fees it selected from CSX's Switching Tariff 8100 was \$251 (ranging from \$72 to \$390).

Because of the disagreement between the parties concerning this fee, and because CP's switching fee is not based on any specific cost relative to the actual operations in the New York Terminal Area, we will allow the parties, if either of them so desires, to invoke the right proposed by CP for a 6-month special switching study to determine a more precise switching cost. We reject, however, CP's proposed "cap" of \$250 if the study shows the switching cost is higher. Moreover, at the end of 5 years, the parties must renegotiate the fee to reflect costs as they exist at that time, just as is provided for in the National Industrial Transportation League settlement agreement.

CSX claims that it has inherited exclusive rights to operate freight service over Metro-North. On page 18 of its reply, CSX says that "Conrail and CSX interpret this as being an exclusive reservation of freight rights." CSX, however, cites no clear language from the Special Court decision or from the deed that requires or even supports that interpretation. In addition, Metro-North disputes CSX's claim by indicating that Conrail's trackage rights agreement with Metro-North clearly establishes that CSX will have no ownership or equity interest in the line. NYC-23/NYS-32,

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<sup>21</sup> CP uses several incorrect URCS values in developing its CSX switching cost per car. Using the correct URCS data, we find the CSX switching cost per car to be \$76.97.

<sup>22</sup> CSX argues that the \$250 switching fee per-car established between CSX and NS is based on reciprocity.



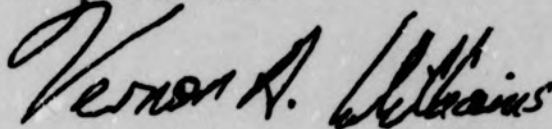
V.S. Bernard at 4. Although CP has asked us to exercise our preemption powers to override any exclusive freight rights claimed by CSX, it would not be appropriate or necessary for us to exercise that power at this time. Only if CSX is able to obtain a ruling from the Special Court that its freight rights were meant to be exclusive, and that Metro-North has contracted to give those rights to a second carrier, would preemption be necessary. With regard to compensation for these rights, we do not require compensation for the competitive or financial value of trackage rights, only the costs (including capital costs) of their use. No capital costs have been set forth by CSX for the portion of the track owned by Metro-North.

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-170 motion to strike is denied.
2. The HRRC-14 request to require that CP's trackage rights include an interchange with HRC at Beacon, NY, is denied.
3. The request by P&W to assign an administrative law judge to supervise a mediation process is denied.
4. The trackage rights and terminal operation proposals by CSX and CP are adopted to the extent set forth in this decision.
5. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.



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Records: 365

STB FD 33388 (Sub 69) 7-23-98 C 29337

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 69*

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. 89<sup>1</sup>

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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<sup>1</sup> 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 69)

11-20-97

C

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28554  
EB

SERVICE DATE - NOVEMBER 20, 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

STB Finance Docket No. 33388 (Sub-No. 35)

RESPONSIVE APPLICATION--NEW YORK STATE ELECTRIC AND GAS CORPORATION

STB Finance Docket No. 33388 (Sub-No. 36)

RESPONSIVE APPLICATION--ELGIN, JOLIET & EASTERN RAILWAY COMPANY, TRANSTAR, INC., AND I & M RAIL LINK, LLC

STB Finance Docket No. 33388 (Sub-No. 39)

RESPONSIVE APPLICATION--LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION

STB Finance Docket No. 33388 (Sub-No. 59)

RESPONSIVE APPLICATION--WISCONSIN CENTRAL LTD.

STB Finance Docket No. 33388 (Sub-No. 61)

RESPONSIVE APPLICATION--BESSEMER AND LAKE ERIE RAILROAD COMPANY

STB Finance Docket No. 33388 (Sub-No. 62)

RESPONSIVE APPLICATION--ILLINOIS CENTRAL RAILROAD COMPANY

STB Finance Docket No. 33388 (Sub-No. 63)

RESPONSIVE APPLICATION--R.J. CORMAN RAILROAD COMPANY/WESTERN OHIO LINE

STB Finance Docket No. 33388

STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION--STATE OF NEW YORK, BY AND THROUGH ITS  
DEPARTMENT OF TRANSPORTATION, AND THE NEW YORK CITY ECONOMIC  
DEVELOPMENT CORPORATION

STB Finance Docket No. 33388 (Sub-No. 72)

RESPONSIVE APPLICATION--THE BELVIDERE & DELAWARE RIVER RAILWAY AND  
THE BLACK RIVER & WESTERN RAILROAD

STB Finance Docket No. 33388 (Sub-No. 75)

RESPONSIVE APPLICATION--NEW ENGLAND CENTRAL RAILROAD, INC.

STB Finance Docket No. 33388 (Sub-No. 76)

RESPONSIVE APPLICATION--INDIANA SOUTHERN RAILROAD, INC.

STB Finance Docket No. 33388 (Sub-No. 77)

RESPONSIVE APPLICATION--INDIANA & OHIO RAILWAY COMPANY

STB Finance Docket No. 33388 (Sub-No. 78)

RESPONSIVE APPLICATION--ANN ARBOR ACQUISITION CORPORATION, D/B/A ANN  
ARBOR RAILROAD

STB Finance Docket No. 33388 (Sub-No. 80)

RESPONSIVE APPLICATION--WHEELING & LAKE ERIE RAILWAY COMPANY

STB Finance Docket No. 33388 (Sub-No. 81)

RESPONSIVE APPLICATION--CANADIAN NATIONAL RAILWAY COMPANY AND  
GRAND TRUNK WESTERN RAILROAD INCORPORATED

STB Finance Docket No. 33388 (Sub-No. 83)

GRAND TRUNK WESTERN RAILROAD INCORPORATED--CONSTRUCTION AND  
OPERATION EXEMPTION--CONNECTING TRACKS AT TRENTON, MI

DECISION NO. 54

AGENCY: Surface Transportation Board.

ACTION: Decision No. 54; Notice of Acceptance of Responsive Applications and Related Filing.

SUMMARY: The Board is accepting for consideration the responsive applications filed: by New York State Electric and Gas Corporation (NYSEG) in STB Finance Docket No. 33388 (Sub-No. 35); jointly by Elgin, Joliet & Eastern Railway Company, Transtar, Inc., and I & M Rail Link, LLC, in STB Finance Docket No. 33388 (Sub-No. 36);<sup>1</sup> by Livonia, Avon & Lakeville Railroad Corporation (LAL) in STB Finance Docket No. 33388 (Sub-No. 39); by Wisconsin Central Ltd. (WCL) in STB Finance Docket No. 33388 (Sub-No. 59); by Bessemer and Lake Erie Railroad Company (BLE) in STB Finance Docket No. 33388 (Sub-No. 61); by Illinois Central Railroad Company (IC) in STB Finance Docket No. 33388 (Sub-No. 62); by R.J. Corman Railroad Company/Western Ohio Line (RJCW) in STB Finance Docket No. 33388 (Sub-No. 63); jointly by (i) the State of New York, acting by and through its Department of Transportation (NYDOT), and (ii) the New York City Economic Development Corporation (NYCEDC) in STB Finance Docket No. 33388 (Sub-No. 69);<sup>2</sup> jointly by the Belvidere & Delaware River Railway (BDRV) and the Black River & Western Railroad (BRW) in STB Finance Docket No. 33388 (Sub-No. 72); by New England Central Railroad, Inc. (NECR), in STB Finance Docket No. 33388 (Sub-No. 75); by Indiana Southern Railroad, Inc. (ISRR), in STB Finance Docket No. 33388 (Sub-No. 76); by Indiana & Ohio Railway Company (IORY) in STB Finance Docket No. 33388 (Sub-No. 77); by Ann Arbor Acquisition Corporation, d/b/a Ann Arbor Railroad (AA), in STB Finance Docket No. 33388 (Sub-No. 78); by Wheeling & Lake Erie Railway Company (W&LE) in STB Finance Docket No. 33388 (Sub-No. 80); and jointly by Canadian National Railway Company (CN) and Grand Trunk Western Railroad Incorporated (GTW) in STB Finance Docket No. 33388 (Sub-No. 81). The Board is also accepting for consideration the notice of exemption filed by GTW in STB Finance Docket No. 33388 (Sub-No. 83). The responsive applications filed in STB Finance Docket No. 33388 (Sub-Nos. 35, 36,

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<sup>1</sup> Elgin, Joliet & Eastern Railway Company and Transtar, Inc. are referred to collectively as EJE. I & M Rail Link, LLC is referred to as IMRL.

<sup>2</sup> The responsive application filed jointly by NYDOT and NYCEDC purports to be filed both in STB Finance Docket No. 33388 (Sub-No. 69) (this being the sub-number docket reserved by NYDOT) and in STB Finance Docket No. 33388 (Sub-No. 54) (this being the sub-number docket reserved by NYCEDC). Although there are two responsive applicants there is only one responsive application, and we will treat this single application as if it had been filed in STB Finance Docket No. 33388 (Sub-No. 69) only.

39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81) are responsive to the primary application filed June 23, 1997, in STB Finance Docket No. 33388 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).<sup>3</sup> The notice of exemption filed in STB Finance Docket No. 33388 (Sub-No. 83) is related to the responsive application filed in STB Finance Docket No. 33388 (Sub-No. 81).<sup>4</sup>

**DATES:** The effective date of this decision is November 20, 1997. Comments regarding the responsive filings must be filed with the Board by December 15, 1997. Rebuttal in support of these responsive filings must be filed with the Board by January 14, 1998. Briefs (not to exceed 50 pages) must be filed with the Board by February 23, 1998.

**ADDRESSES:** An original and 25 copies of all comments referring to STB Finance Docket No. 33388 (Sub-No. 35), STB Finance Docket No. 33388 (Sub-No. 36), STB Finance Docket No. 33388 (Sub-No. 39), STB Finance Docket No. 33388 (Sub-No. 59), STB Finance Docket No. 33388 (Sub-No. 61), STB Finance Docket No. 33388 (Sub-No. 62), STB Finance Docket No. 33388 (Sub-No. 63), STB Finance Docket No. 33388 (Sub-No. 69), STB Finance Docket No. 33388 (Sub-No. 72), STB Finance Docket No. 33388 (Sub-No. 75), STB Finance Docket No. 33388 (Sub-No. 76), STB Finance Docket No. 33388 (Sub-No. 77), STB Finance Docket No. 33388 (Sub-No. 78), STB Finance Docket No. 33388 (Sub-No. 80), STB Finance Docket No. 33388 (Sub-No. 81), and/or STB Finance Docket No. 33388 (Sub-No. 83) 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.<sup>5</sup>

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<sup>3</sup> 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 or CR. CSX, NS, and Conrail are referred to collectively as the primary applicants.

<sup>4</sup> The responsive applications filed in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81) and the notice of exemption filed in STB Finance Docket No. 33388 (Sub-No. 83) are hereinafter referred to collectively as the "responsive filings."

<sup>5</sup> 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 on all other parties of record. 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 has already become a voluminous record.



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.

In addition, one copy of each document filed in these proceedings must be served on: the U.S. Secretary of Transportation; the U.S. Attorney General; Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426; Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004-1202 (representing primary applicants CSXC and CSXT); Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, LLP, Suite 600, 888 Seventeenth Street, N.W., Washington, DC 20006-3939 (representing primary applicants NSC and NSR); and Paul A. Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, DC 20036 (representing primary applicants CRR and CRC).

In addition, one copy of all comments filed in these proceedings must be served on the appropriate responsive applicant's representative: William A. Mullins, Esq., Troutman Sanders LLP, 1300 I Street, N.W., Suite 500 East, Washington, D.C. 20005-3314 (representing NYSEG); Thomas J. Litwiler, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601-6710 (representing EJE, IMRL, BLE, IC, and WCL); Kevin M. Sheys, Esq., Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, DC 20036-6200 (representing LAL and RJCW); William L. Slover, Esq., Slover & Loftus, 1224 Seventeenth Street, NW, Washington, DC 20036-3003 (representing NYDOT); Charles A. Spitulnik, Esq., Hopkins & Sutter, 888 Sixteenth Street, NW, Washington, DC 20006 (representing NYCEDC); Peter A. Greene, Esq., Thompson Hine & Flory LLP, 1920 N Street, N.W., Suite 800, Washington, DC 20036 (representing BDRV and BRW); Karl Morell, Esq., Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005 (representing NECR, ISRR, IORY, and AA); Charles H. White, Jr., Esq., Galland, Kharasch & Garfinkle, P.C., 1054 Thirty-First Street, N.W., Washington, DC 20007-4492 (representing W&LE); and L. John Osborn, Sonnenschein Nath & Rosenthal, 1301 K Street, N.W., Suite 600 East, Washington, DC 20005 (representing CN and GTW).

In addition, one copy of all documents filed in these proceedings must be served on all other persons designated parties of record on the Board's service list in STB Finance Docket No. 33388. See the service list attached to Decision No. 21 (served August 19, 1997), as modified in Decision No. 27 (served September 8, 1997), and as further modified in Decision No. 43 (served October 7, 1997).<sup>6</sup>

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<sup>6</sup> Members of the United States Congress and Governors are not parties of record and therefore need not be served with copies of filings, unless any such Member or Governor is designated as a party of record. See Decision No. 12 (served July 23, 1997, and published that

(continued...)

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

**SUPPLEMENTARY INFORMATION:** In the primary application filed with the Board on June 23, 1997, primary applicants CSXC, CSXT, NSC, NSR, CRR, and CRC 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 the assets of Conrail by and between CSX and NS. In various related filings also filed June 23, 1997, the primary applicants seek related relief contingent upon approval of the primary application. In Decision No. 12, the Board accepted for consideration the primary application and the various related filings, and directed that responsive applications be filed by October 21, 1997.

**RESPONSIVE FILINGS: CONDITIONS REQUESTED.** In STB Finance Docket No. 33388 (Sub-No. 35), NYSEG seeks: (1) on behalf of NSR,<sup>7</sup> or a third-party carrier suitable to NYSEG, trackage rights over the CRC lines between Buffalo, NY, and NYSEG's Kintigh Station; specifically, from the Niagara Branch MP 19.0 (CP-21)<sup>8</sup> to the Tuscarora Wye, for approximately 4,200 feet, to Lockport Branch MP 69.6 (CP-69) to the connection with Somerset Railroad Corporation at Lockport Branch MP 58.8 (CP-59) (a total distance of approximately 11.2 miles);<sup>9</sup> or (2) on behalf of CSXT, or a third-party carrier suitable to NYSEG, trackage rights over the CRC lines between Buffalo, NY, and NYSEG's Milliken, Goudey, and Greenidge plants; specifically, from Chicago Line MP 1.7 (CP-DRAW) over the Bison Running Track to

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<sup>6</sup>(...continued)

day in the Federal Register at 62 FR 39577), slip op. at 19, 62 FR at 39588.

<sup>7</sup> If exercised by NSR, modification of NSR's trackage rights over CSXT and New York Central Lines LLC (NYC), as shown on pp. 220-52 and 329-35 of Volume 8B of the primary application, would also be required to eliminate any restrictions contained therein that would prevent transportation to NYSEG's Kintigh Station, including, but not confined to, limitations against interchanging with, or operating over, property of Somerset Railroad Corporation.

<sup>8</sup> Milepost is abbreviated MP. Control point is abbreviated CP.

<sup>9</sup> If exercised by a third-party carrier, these rights would include full access over: The Chicago Line between CP-2 and FW Tower (CP-437) and the Belt Line Branch owned by NYC and operated by CSX between the connection at FW Tower (CP-437), Buffalo, NY, at or near MP 0.0, and the connection with the Niagara Branch (CP-1) at or near MP 7.2, and the Niagara Branch operated by CSX between the connection with the Belt Line Branch, at or near MP 7.5, "and to" Tuscarora Wye to CP-69 at MP 69.6 of the Lockport Branch to MP 58.8 (CP-59) and connection track to MP 0.0 of the Somerset Railroad Corporation. This would cover a total distance of approximately 33.2 miles.

Southern Tier Line MP 419.8 to Binghamton MP 215.3 including Binghamton Running Track and #4 Yard Track with connections to: Vestal Industrial Track; on Vestal Industrial Track from MP 192.3 to MP 195.4; and connections to Lehigh Secondary at Southern Tier MP 255.2, Lehigh Secondary Track MP 269.5 to 271.6 and connection to Ithaca Secondary; Ithaca Secondary from MP 271.6 to the end of line at Milliken Station, MP 321.0; connections to Corning Secondary at Southern Tier Line MP 290.1 and 290.8, Corning Secondary from MP 70.6 (CP-Glass) and MP 70.9 (GP - Gibson/CP-Corning) to MP 0 (CP-335), including sidings, runarounds, and passing tracks (a total distance of approximately 333.4 miles).

In STB Finance Docket No. 33388 (Sub-No. 36), EJE and IMRL seek to acquire, and thereafter to divide into two equal parts, CRC's 51% stock ownership of the Indiana Harbor Belt Railroad Company (IHB).

In STB Finance Docket No. 33388 (Sub-No. 39), LAL seeks to acquire ownership of or trackage rights on approximately 1.0 route mile of trackage constituting CRC's Genesee Junction yard in Chili, NY.

In STB Finance Docket No. 33388 (Sub-No. 59), WCL seeks to acquire from The Baltimore & Ohio Chicago Terminal Railroad Company (B&OCT, a wholly owned CSX subsidiary) a portion of B&OCT's Altenheim Subdivision, including rail line, side track, yard trackage, and associated right-of-way and appurtenances, beginning at a connection between WCL and B&OCT trackage at B&OCT MP 37.4 at Madison Street, Forest Park, IL, and extending to a point of connection with Union Pacific Railroad Company (UPRR) and Conrail's Panhandle Line in the vicinity of Rockwell Street, Chicago, IL.

In STB Finance Docket No. 33388 (Sub-No. 61), BLE seeks overhead trackage rights over: (1) CRC's Mon Line between the connection with BLE (Union Railroad Company, a BLE affiliate) at Pittsburgh (Duquesne), PA, and CRC's Shire Oaks Yard in Shire Oaks, PA (a distance of approximately 14 miles); and/or (2) CSXT's line (formerly the Pittsburgh & Lake Erie Railroad Company) between the connection with BLE (Union Railroad Company) at Bessemer (Pittsburgh), PA, and CSXT's Newell Interchange Yard near Brownsville, PA (a distance of approximately 40 miles). The overhead trackage rights sought by BLE would be restricted to the transportation of coal originating at current or future mines on the former Monongahela Railway Company lines and destined to the P&C Dock at Conneaut, OH, for movement beyond.

In STB Finance Docket No. 33388 (Sub-No. 62), IC seeks to acquire CSXT's Leewood-Aulon Line in Memphis, TN, which extends between CSXT MP F-371.4 (IC MP 387.9) at Leewood and CSXT MP F-373.4 (IC MP 390.0) at Aulon, a distance of approximately 2 miles.



In STB Finance Docket No. 33388 (Sub-No. 63), RJCW seeks to acquire ownership of or trackage rights on Conrail's line of railroad between approximately MP 54.4 and approximately MP 52.1 in Lima, OH.

In STB Finance Docket No. 33388 (Sub-No. 69), NYDOT and NYCEDC seek: (1) full service trackage rights in favor of a rail carrier other than Conrail or CSX, to be designated jointly by NYDOT and NYCEDC, over the lines of Conrail between points of connection with the Delaware & Hudson Railway (D&H) at CP-160 near Schenectady, NY, and Selkirk Yard near Selkirk, NY, on the one hand, and, on the other, CP-75 near Poughkeepsie, NY, together with sufficient rights on tracks within Selkirk Yard to permit the efficient interchange of freight with D&H; (2) full service trackage rights in favor of a rail carrier other than Conrail or CSX, to be designated jointly by NYDOT and NYCEDC, over the lines of Conrail between the point of Conrail ownership at Mott Haven Junction ("MO"), NY, and the point of connection with the lines of the Long Island Railroad near Fresh Pond ("MONT"), NY, via the Harlem River Yard; and (3) to the extent necessary to permit uninterrupted rail freight transportation between CP-160 and/or Selkirk Yard, on the one hand, and, on the other, Fresh Pond, a declaration that, pursuant to 49 U.S.C. 11321(a), Metro-North Commuter Railroad Company, a subsidiary of the Metropolitan Transportation Authority of the State of New York, may grant unrestricted trackage rights over the lines between CP-75 and Mott Haven Junction to a rail carrier other than Conrail or CSX, notwithstanding any provisions of any agreements which purport to limit or prohibit such a grant.

In STB Finance Docket No. 33388 (Sub-No. 72), BDRV and BRW seek: (1) removal of the restriction on certain D&H trackage rights that prevents interchange between D&H and BDRV at Phillipsburg, NJ, and between D&H and BRW at Three Bridges, NJ; (2) a grant of overhead trackage rights to BDRV over lines to be acquired by NS from Phillipsburg, NJ, to Manville, NJ (a distance of 40 miles), or to some other operationally feasible point at which BDRV and CSXT can interchange traffic; (3) a grant of overhead trackage rights to BRW over lines to be acquired by NS from Three Bridges, NJ, to Manville, NJ (a distance of 13 miles), or to some other operationally feasible point at which BRW and CSXT can interchange traffic; and (4) a grant of overhead trackage rights to BDRV and BRW over lines to be acquired by NS between the BDRV-NS connection at Phillipsburg, NJ, and the BRW-NS connection at Three Bridges, NJ (a distance of 29 miles).

In STB Finance Docket No. 33388 (Sub-No. 75), NECR seeks "limited trackage rights": (1) between Palmer, MA, and West Springfield, MA, a distance of 18 miles, over the CRC line to be acquired by CSXT; (2) between West Springfield, MA, on the one hand, and, on the other, Albany, Selkirk, and Mechanicville, NY, a distance of 98 miles, over the CRC line to be acquired by CSXT; and (3) between Albany, NY, and the New Jersey/New York Shared Assets



Area,<sup>10</sup> a distance of 140 miles, over the CRC line located on the west side of the Hudson River that is to be acquired by CSXT.<sup>11</sup>

In STB Finance Docket No. 33388 (Sub-No. 76), ISRR seeks: (1) overhead trackage rights in Indianapolis, IN, between MP 6.0 on ISRR's Petersburg Subdivision and Indianapolis Power & Light's Perry K facility, over the CRC line to be acquired by CSXT; (2) overhead trackage rights in Indianapolis, IN, between MP 6.0 on ISRR's Petersburg Subdivision and Indianapolis Power & Light's Stout facility located on the line of the Indiana Rail Road Company (INRD), over a segment of the CRC line to be acquired by CSXT and a segment of the INRD line; (3) local trackage rights over CRC's lines in Indianapolis, IN, including the Indianapolis Belt Line, to be acquired by CSXT (ISRR seeks trackage rights over all CRC lines in Indianapolis needed to access the 2-to-1 shippers located in Indianapolis); (4) local trackage rights between Indianapolis and Shelbyville, IN, a distance of 27 miles, over the CRC line to be acquired by CSXT; (5) local trackage rights between Indianapolis and Crawfordsville, IN, a distance of 44 miles, over the CRC line to be acquired by CSXT; and (6) local trackage rights between Indianapolis and Muncie, IN, a distance of 55 miles, over the CRC line to be acquired by CSXT.<sup>12</sup>

In STB Finance Docket No. 33388 (Sub-No. 77), IORY seeks: (1) overhead trackage rights over CSXT between East Norwood, OH, and Washington Court House, OH, a distance of 65 miles, with the right to connect at Midland City with IORY's Greenfield branch; (2) local trackage rights between Monroe, OH, and Middletown, OH, a distance of 5 miles, over the CRC line to be acquired by NSR (with the right to connect at Middletown with CSXT and IORY's existing trackage rights through Middletown over the CRC line between Springfield and Cincinnati); (3) local trackage rights between Sidney, OH, and Quincy, OH, a distance of 10 miles, over the CRC line to be acquired by CSXT; (4) local trackage rights between Sharronville, OH, and Columbus, OH, a distance of 125 miles, over the CRC line to be acquired by NSR; (5) local trackage rights between Quincy, OH, and Marion, OH, a distance of 52 miles, over the CRC line to be acquired by CSXT; (6) local trackage rights between Lima, OH, and Fort Wayne,

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<sup>10</sup> The "New Jersey/New York Shared Assets Area" is apparently the area that applicants refer to as the North Jersey Shared Assets Area.

<sup>11</sup> NECR's use of the term "limited trackage rights" is intended to include: (a) the right to operate trains over the lines described in the text; and (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described.

<sup>12</sup> ISRR's use of the term "local trackage rights" is intended to include: (a) the right to operate trains over the lines described in the text; (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described; and (c) the right to serve all shippers, sidings, and team tracks located on the lines thus described.

IN, a distance of 59 miles, over the CRC line to be acquired by CSXT; (7) local trackage rights over CRC's Erie track in Lima, OH; and (8) local trackage rights between Quincy, OH, and Marysville, OH, over the CRC line to be acquired by CSXT.<sup>13</sup>

In STB Finance Docket No. 33388 (Sub-No. 78), AA seeks: (1) "limited trackage rights" between Toledo, OH, and Chicago, IL, via Elkhart, IN, a distance of 230 miles, over the CRC line to be acquired by NS; and (2) a condition permitting AA to interchange traffic with CP Rail System at Ann Arbor, MI.<sup>14</sup>

In STB Finance Docket No. 33388 (Sub-No. 80), W&LE seeks: (1) haulage and trackage rights to Chicago, IL, including access to Belt Railway of Chicago and rights for interchange with all carriers, specifically including WCL;<sup>15</sup> (2) haulage and trackage rights from Bellevue, OH, to Toledo, OH, a distance of 54 miles, for an interchange with the Ann Arbor Railroad, Canadian National, and the Indiana & Ohio Railroad (also including access to British Petroleum for movement of coke to Cressup, WV); (3) haulage and trackage rights to Erie, PA, with the right to interchange with other railroads; (4) the right "to lease to own" CRC's Randall Secondary from Cleveland, MP 2.5, to Mantua, MP 27.5; (5) the right "to lease to own" the Huron Branch (Shinrock to Huron) and Huron dock on Lake Erie; (6) haulage and trackage rights on CSX from Benwood to Brooklyn Junction and its yard facilities for commercial access to PPG and Bayer; (7) access on the Conrail Fort Wayne Line to the National Stone quarry near Bucyrus, via the Spore Industrial Track, a distance of 6.2 miles from CP Colsan, MP 200.5, on the Fort Wayne Line (access to the Fort Wayne line would be from the W&LE at CP Or., MP 124, and from a point near Fairhope at MP 97.8); (8) trackage rights on the NS Sandusky District from Chatfield, OH, to Colsan, OH (for a junction with the Conrail Fort Wayne Line and access to the Spore Industrial Track); (9) access (apparently via trackage rights) to a stone quarry located on the Northern Ohio Railway at Maple Grove, via a junction on the NS Fostoria District at MP 269.4; (10) access (apparently via trackage rights over, among other lines, the former Conrail Akron Secondary) to the stone terminals in the Macedonia, Twinsburg, and Ravenna areas; (11) access, via haulage and trackage rights, to Wheeling Pittsburgh Steel at Allenport, PA; and (12) access,

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<sup>13</sup> IORY's use of the term "local trackage rights" is intended to include: (a) the right to operate trains over the lines described in the text; (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described; and (c) the right to serve all shippers, sidings, and team tracks located on the lines thus described.

<sup>14</sup> AA's use of the term "limited trackage rights" is intended to include: (a) the right to operate trains over the line described in the text; and (b) the right to interchange with all carriers, including shortlines, at all junctions on the line thus described.

<sup>15</sup> These rights would apparently run between Chicago, on the west, and Carey and/or Bellevue, OH, on the east.

via haulage and trackage rights on the CSX New Castle Subdivision, to the Ohio Edison Power plant at Niles, OH, and to Erie, PA, for interchange to the Buffalo & Pittsburgh. W&LE also requests that provision be made for an inclusion proceeding in the event that W&LE fails during a post-merger oversight period.<sup>16</sup>

In STB Finance Docket No. 33388 (Sub-No. 81), CN and GTW seek trackage rights over the Conrail northbound mainline between approximately MP 16.5 and MP 18.0 at Trenton, MI, a distance of approximately 1.5 miles, for the purpose of serving Detroit Edison's Trenton Channel power plant.

In STB Finance Docket No. 33388 (Sub-No. 83), GTW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Trenton, MI, a connection between the Conrail northbound mainline and the GTW Shoreline Subdivision.

**RESPONSIVE FILINGS ACCEPTED.** Because the responsive applications filed by NYSEG, EJE/IMRL, LAL, WCL, BLE, IC, RJCW, NYDOT/NYCEDC, BDRV/BRW, NECR, ISRR, IORY, AA, W&LE, and CN/GTW, and also the notice of exemption filed by GTW, are in substantial compliance with the applicable regulations, we are accepting for consideration such responsive applications and such notice of exemption.<sup>17</sup>

**PUBLIC INSPECTION.** The responsive filings 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. The responsive filing made by any particular responsive applicant may also be obtained upon request from that applicant's representative named above.

**PROCEEDINGS CONSOLIDATED.** The responsive filings in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, 81, and 83) are consolidated for disposition with the primary application in STB Finance Docket No. 33388 (and all embraced proceedings).

**COMMENTS MAY BE SUBMITTED.** Interested persons may participate formally by submitting written comments regarding any or all of these responsive filings, subject to the filing and service requirements specified above. Such comments (referred to as "Response[s]" in the procedural schedule, see Decision No. 12, slip op. at 26, 62 FR at 39591) must be filed with the

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<sup>16</sup> Various additional W&LE condition requests are scattered throughout the verified statements submitted by W&LE witnesses in the WLE-4 pleading filed October 21, 1997.

<sup>17</sup> We reserve the right to require the filing of supplemental information from any responsive applicant or any other party or individual, if necessary to complete the record in this matter. See Decision No. 12, slip op. at 18 n.29, 62 FR at 39587 n.29.



Board by December 15, 1997. Comments must include the following: the commenter's position in support of or in opposition to the transaction proposed in the responsive filing; any and all evidence, including verified statements, in support of or in opposition to such proposed transaction; and specific reasons why approval of such proposed transaction would or would not be in the public interest.

**REQUESTS FOR AFFIRMATIVE RELIEF WILL NOT BE ACCEPTED.** Because the responsive applications accepted for consideration in this decision contain proposed conditions to approval of the primary application in STB Finance Docket No. 33388, the Board will entertain no requests for affirmative relief with respect to these responsive applications. Parties may only participate in direct support of or in direct opposition to these responsive applications as filed.

**PLEADINGS NOT TREATED AS RESPONSIVE APPLICATIONS.** A pleading styled as a "responsive application" was filed on October 21, 1997, in a sub-number docket (Sub-No. 74) under the STB Finance Docket No. 33388 lead docket by Congressman Dennis J. Kucinich. While titled as a responsive application, this pleading does not address the criteria for such applications as required under 49 CFR part 1180. Rather, this pleading constitutes a comment on, and a request for conditions with respect to, the CSX/NS/CR primary application, and we will treat it as such and will docket this pleading in the STB Finance Docket No. 33388 lead docket.

Certain additional pleadings styled as "responsive applications" were filed in the STB Finance Docket No. 33388 lead docket on or about October 21, 1997, by: Jacobs Industries Ltd.; the State of Delaware Department of Transportation; ASHTA Chemicals Inc.; Southern Tier West Regional Planning and Development Board; and Resources Warehousing & Consolidation Services, Inc. Because these pleadings also do not satisfy the 49 CFR part 1180 requirements applicable to responsive applications, we will treat these pleadings as comments on, and/or requests for conditions with respect to, the CSX/NS/CR primary application.

**ADDITIONAL PLEADINGS TREATED AS FILED IN LEAD DOCKET.** Certain additional pleadings filed on or about October 21, 1997, though not labeled "responsive applications," were filed in various sub-number dockets under the STB Finance Docket No. 33388 lead docket by: Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission (in Sub-No. 37); New Jersey Department of Transportation and New Jersey Transit Corporation (in Sub-No. 38); the Rhode Island Department of Transportation (in Sub-No. 42); Buffalo & Pittsburgh Railroad, Inc., Allegheny & Eastern Railroad, Inc., Rochester & Southern Railroad, Inc., and Pittsburgh & Shawmut Railroad, Inc. (in Sub-Nos. 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 56); the Eastern Shore Railroad, Inc. (in Sub-No. 57); Louisville & Indiana Railroad Company (in Sub-No. 64); Housatonic Railroad Company, Inc. (in Sub-No. 70); the Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence



& Hudson Railway Company Limited (in Sub-No. 85); and the Commonwealth of Massachusetts (in Sub-No. 86). Because these pleadings contain comments on, and/or requests for conditions with respect to, the CSX/NS/CR primary application, they will be docketed in, and they will be treated as having been filed in, the STB Finance Docket No. 33388 lead docket.

**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 (3.5-inch IBM-compatible floppies) or compact discs, one electronic copy of each such document. Textual materials must be in, or be convertible by and into, WordPerfect 7.0. Spreadsheets must be in, or be convertible by and into, Lotus 1-2-3 Version 7.<sup>18</sup> 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 applicable to this proceeding,<sup>19</sup> 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.<sup>20</sup>

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

It is ordered:

1. The responsive applications in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81), and the notice of exemption in STB Finance

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<sup>18</sup> 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 by and into Lotus 1-2-3 Version 7, may nevertheless be useable by our staff. For further information, contact Julia M. Farr, (202) 565-1613.

<sup>19</sup> The protective order governing this proceeding was entered in Decision No. 1 (served April 16, 1997), and has been modified, in minor respects, in Decision Nos. 4, 15, 22, and 46 (served May 2, 1997, August 1, 1997, August 21, 1997, and October 17, 1997, respectively).

<sup>20</sup> 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).

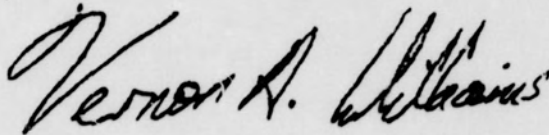
Docket No. 33388 (Sub-No. 83), are accepted for consideration, and are consolidated for disposition with the primary application in STB Finance Docket No. 33388 (and all embraced proceedings).

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on November 20, 1997.

Decided: November 12, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

A handwritten signature in cursive script, reading "Vernon A. Williams".

Vernon A. Williams  
Secretary

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