

STB FD 33388 (Sub 75) 11-25-98 C 29814

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SEC

SERVICE DATE - NOVEMBER 25, 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. 105

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

NEW ENGLAND CENTRAL RAILROAD, INC.--TRackage RIGHTS--
CSX TRANSPORTATION, INC.

Decided: November 24, 1998

In Decision No. 89, in addition to approving the primary application,¹ the Board granted the responsive application by New England Central Railroad, Inc. (NECR) in STB Finance Docket No. 33388 (Sub-No. 75) insofar as it seeks trackage rights from CSX between Palmer and West Springfield, MA. To implement this condition, the Board required CSX and NECR to negotiate the details of the trackage rights arrangement and, if negotiations were not successful, to submit separate proposals by September 21, 1998.² In subsequent decisions, the Board extended the due date for completion of these negotiations, most recently to November 20, 1998. See Decision Nos. 94 and 97, served, respectively, on October 1 and 26, 1998. By correspondence filed November 20, 1998, CSX states that the parties continue to believe that they will be able to conclude the trackage rights agreement by mutual consent. To resolve this matter, CSX seeks an additional extension to December 21, 1998. CSX states that NECR concurs in this request. The extension will be granted.

¹ In Decision No. 89, served July 23, 1998, the Board 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.

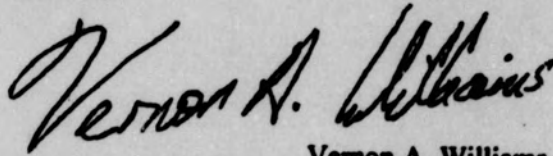
² On September 21, 1998, NECR reported that, while the parties were close to reaching a final agreement on their Palmer-West Springfield trackage rights arrangement, NECR and CSX were in irreconcilable disagreement over one matter. Thus, NECR filed a petition on that date (designated as NECR-10) seeking a Board ruling on the matter or clarification of the condition. CSX filed its reply (designated as CSX-164) on October 13, 1998. In Decision No. 100, served November 6, 1998, the Board denied the relief sought by NECR.

It is ordered:

1. The deadline set forth in Decision No. 89, Ordering Paragraph No. 64, is extended to December 21, 1998. If any terms of the trackage rights arrangement between Palmer and West Springfield, MA, are not resolved through negotiations between CSX and NECR, the parties must submit separate proposals no later than December 21, 1998.

2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

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

Vernon A. Williams
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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)

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

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

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RESPONSIVE APPLICATION--LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION

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RESPONSIVE APPLICATION--WISCONSIN CENTRAL LTD.

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RESPONSIVE APPLICATION--BESSEMER AND LAKE ERIE RAILROAD COMPANY

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RESPONSIVE APPLICATION--ILLINOIS CENTRAL RAILROAD COMPANY

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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.

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RESPONSIVE APPLICATION--INDIANA SOUTHERN RAILROAD, INC.

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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

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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);¹ 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);² 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,

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

² 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).³ 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).⁴

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 20423-0001.⁵

³ 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.

⁴ 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."

⁵ 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).⁶

⁶ 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,⁷ 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)⁸ 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);⁹ 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

⁶(...continued)

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

⁷ 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.

⁸ Milepost is abbreviated MP. Control point is abbreviated CP.

⁹ 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,¹⁰ 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.¹¹

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.¹²

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,

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

¹¹ 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.

¹² 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.¹³

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.¹⁴

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;¹⁵ (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 Orr, 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.

¹³ 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.

¹⁴ 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.

¹⁵ 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.¹⁶

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.¹⁷

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

¹⁶ 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.

¹⁷ 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 7.¹⁸ 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,¹⁹ 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.²⁰

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

¹⁸ 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.

¹⁹ 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).

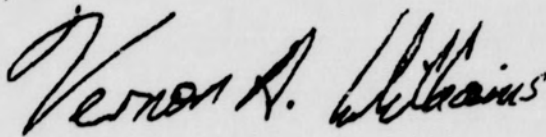
²⁰ The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. See 49 CFR 1104.3(a), as amended in Expedited Procedures for Processing Rail Rate Reasonableness, 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".

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Secretary

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SERVICE DATE - NOVEMBER 6, 1998

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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. 100

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

NEW ENGLAND CENTRAL RAILROAD, INC.--TRACKAGE RIGHTS--
CSX TRANSPORTATION, INC.

Decided: November 4, 1998

On September 21, 1998, New England Central Railroad, Inc. (NECR or petitioner) filed a petition (designated as NECR-10) to set one term of a trackage rights arrangement or for clarification with respect to the transaction we authorized in Decision No. 89, served July 23, 1998.¹ In its petition, NECR states that, although the parties are close to reaching a final agreement on their trackage rights arrangement, one matter remains as to which it and CSX are in irreconcilable disagreement. NECR therefore asks us to resolve this issue in the manner and to the extent sought in its petition. By reply filed October 13, 1998 (designated as CSX-164), CSX opposes NECR's requested relief.

BACKGROUND

In our decision approving the primary transaction, we also granted NECR's responsive application in Sub-No. 75 insofar as it sought trackage rights from CSX between Palmer, MA, and West Springfield, MA. As pertinent here, in Decision No. 89, slip op. at 105, we stated:

Despite the fact that its diversion evidence is flawed, NECR has shown that it will be financially harmed by this transaction. Moreover, it is clear that NECR provides important services both for its shippers and for Amtrak. Accordingly, to

¹ 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.

ensure NECR's continued ability to provide these services, we will require applicants to grant NECR trackage rights as sought between Palmer, MA, and Springfield, MA. These trackage rights will facilitate through movements with NECR's affiliate, Connecticut Southern Railroad.

To implement this condition, we required CSX and NECR to negotiate the details of the trackage rights arrangement and, if negotiations were not successful, to submit separate proposals no later than September 21, 1998. *Id.* at 105 and 180. In subsequent decisions, we extended the parties' reporting due date, most recently to November 20, 1998. *See* Decision Nos. 94 and 97, served October 1 and 26, 1998.

According to NECR, the disputed issue concerns a so-called blocking provision² in a 1996 acquisition agreement between Conrail and Connecticut Southern Railroad (CSO), and the extent to which the blocking provision is overridden (if at all) by our trackage rights condition on NECR's behalf. Petitioner indicates that the blocking provision requires CSO to pay certain penalties to Conrail for each loaded car CSO interchanges with a carrier other than Conrail. Petitioner maintains that the blocking provision in CSO's contract should not apply to any traffic interchanged between CSO and NECR pursuant to the Palmer-Springfield trackage rights now under negotiations.

CSX has stated that it will not apply the blocking provision to traffic for which the only potential Conrail participation is over the Palmer-Springfield segment, including traffic that originates on NECR and terminates on CSO, or vice versa. NECR contends that this interpretation insufficiently limits the blocking provision and thus is inconsistent with the relief we intended for the following reasons: (1) our grant of trackage rights between Palmer and Springfield, MA, on behalf of NECR was without limitation; (2) we were presumably aware that most of the traffic that would be interchanged between CSO and NECR would originate or terminate at points beyond the NECR, a party we specifically found would be financially harmed by the Conrail transaction; (3) CSX's position is at odds with its broader assertion in the proceeding that the Board can override private contracts where necessary; and (4) CSX's partial lifting of the blocking provision is inconsistent with its refusal to permit a total override of the provision.

CSX maintains that the petition conflicts with NECR's position, earlier in this proceeding, that its affiliated carriers, including CSO, need not and should not be parties to NECR's responsive application. CSX also argues that the condition we imposed need not be altered or clarified to meet our objective of preserving the services offered by NECR, and that elimination of the blocking

² Blocking provisions are features in many contracts for the sale or lease of rail lines by Class I carriers to shortline carriers. They are imposed by the sellers to ensure that the traffic originated by shortline carriers on these line segments continues to flow over the lines of the seller to the maximum extent possible. *See* Decision No. 89, slip op. at 77.

provision for traffic moving from or to CSO via the Palmer Springfield trackage rights would represent an unnecessary and unreasonable windfall for CSO. According to CSX, granting NECR's request would permit CSO to evade the blocking provision entirely, since Guilford Rail System and Providence and Worcester Railroad Company, the only railroads other than Conrail with which CSO now directly connects, could avoid the blocking provision by routing traffic to and from CSO by means of intermediate movements on NECR via the Palmer-Springfield segment.

DISCUSSION AND CONCLUSIONS

We will not grant the relief sought by NECR. In Decision No. 89, we found that applicants' estimate that the transaction would lead to the annual diversion of \$1.6 million from NECR was more reliable than NECR's estimate of \$8 million. We also found that this traffic diversion could impair NECR's ability to continue to provide important services, and we imposed the condition at issue here to remedy that harm. Our intent was not to indemnify NECR against those losses dollar for dollar. Rather, our intent was to give NECR the opportunity to achieve significant operational cost savings and obtain additional traffic sufficient to ensure that its services would not be unduly impaired.

CSX has explained that it has accepted our admonition that blocking provisions must not be "interpreted in such a way that the transaction would expand their reach." Decision No. 89, slip op. at 77. Accordingly, CSX states that it will not interpret the blocking provision it has inherited to apply to traffic in which the only potential Conrail participation is over the Palmer-Springfield segment, including traffic that originates on NECR and terminates on CSO, or vice versa. See CSX-164 at 6. With this interpretation, which we believe to be correct, NECR will be able to take advantage of the operational cost savings and the potential to gain truck-competitive traffic it envisioned from its new linkage with CSO. As NECR has explained:

If NECR is granted the right to connect with the CSO, the two railroads would be able to achieve a number of efficiencies. For example, employees could be utilized more efficiently and locomotives could be shared thereby reducing costs for both carriers. Because of current [Conrail] restrictions, it takes two weeks for NECR to move a locomotive over the 30-mile [Conrail] line between the NECR and CSO. Under current conditions, locomotive sharing between NECR and CSO is simply not practical.

NECR-8, RVS Carlstrom at 7.

NECR is aware of traffic currently handled by trucks to markets served by its affiliate, the Connecticut Southern Railroad (CSO), which could be diverted to a joint NECR-CSO movement. We estimated that NECR would be able to generate about \$2 million annually from this traffic.

Id. at 5.

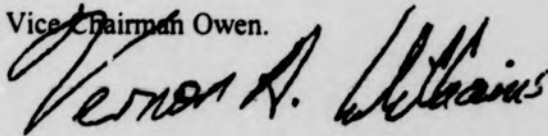
While the magnitude of the operational cost savings that will accrue to these two affiliated small railroads and the degree to which the blocking provision will impede their ability jointly to compete for new, truck-competitive traffic are not altogether clear, we find on this record that NECR has failed to demonstrate that the condition we imposed on NECR's behalf must be clarified or expanded as sought by NECR.³ We will, however, continue to assess this situation carefully during the course of our oversight proceeding, and we will be prepared to alter the original condition if it is not working as intended to preserve the important services offered by NECR to its shippers and to Amtrak.

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

It is ordered:

1. The petition to set terms of trackage rights agreement or for clarification (NECR-10) is denied.
2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.



Vernon A. Williams
Secretary

³ We note that NECR has not raised the issue of the blocking provision previously in this proceeding. Moreover, the Association of American Railroads and the American Short Line and Regional Railroad Association at our urging recently have reached an agreement addressing blocking provisions along with a number of other issues involving the relationship between the larger and smaller railroads. See Association of American Railroads and American Short Line and Regional Railroad Association--Agreement--Application Under 49 U.S.C. 10706, STB Docket No. S5R 100 (STB served Sept. 22, 1998). CSX confirms that it will honor this agreement.

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Records: 365

STB FD 33308 (Sub 75) 10-26-98 C 29708

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SEC

SERVICE DATE - OCTOBER 26, 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. 97

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

NEW ENGLAND CENTRAL RAILROAD, INC.--TRackage RIGHTS--
CSX TRANSPORTATION, INC.

Decided: October 23, 1998

On September 21, 1998, New England Central Railroad, Inc. (NECR) filed a petition (designated as NECR-10) for the Board to set one term of a trackage rights arrangement or to provide clarification with respect to the transaction the Board authorized in Decision No. 89, served July 23, 1998.¹ The Board subsequently granted CSX's request, to which NECR concurred, to extend the deadline for concluding the trackage rights negotiation by 30 days to October 21, 1998. See Decision No. 94, served October 1, 1998. By correspondence filed October 21, 1998, CSX states that, apart from the matter addressed in the NECR-10 petition, the parties expect to resolve the remaining issues by mutual consent. To resolve these issues, CSX seeks an additional 30-day extension to November 20, 1998. CSX states that NECR concurs with this request. The extension will be granted.

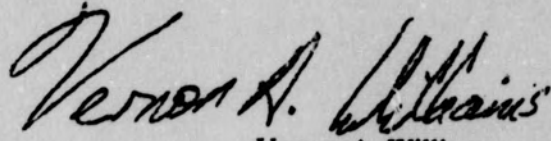
¹ In Decision No. 89, the Board approved, subject to conditions, the applications by CSX Corporation and CSX Transportation, Inc. (collectively CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) under 49 U.S.C. 11321-26 for: (1) the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively Conrail); and (2) the division of Conrail's assets by and between CSX and NS. In that decision, the Board also approved NECR's responsive application in Sub-No. 75 insofar as it seeks trackage rights between Palmer, MA, and West Springfield, MA. The Board required CSX and NECR to negotiate the details of such trackage rights and, if negotiations are not fully successful, to submit separate proposals no later than September 21, 1998. See Decision No. 89, slip op. at 105 and 180.

It is ordered:

1. The deadline set forth in Decision No. 89, Ordering Paragraph No. 64, is extended to November 20, 1998. If any terms of the trackage rights arrangement between Palmer, MA, and West Springfield, MA, are not resolved through negotiations between CSX and NECR, the parties must submit separate proposals no later than November 20, 1998.

2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

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

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Records: 366

STB FD 33388 (Sub 75) 10-1-98 C 29641

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SERVICE DATE - OCTOBER 1, 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. 94

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

NEW ENGLAND CENTRAL RAILROAD, INC.--TRACKAGE RIGHTS--
CSX TRANSPORTATION, INC.

Decided: September 30, 1998

On September 21, 1998, New England Central Railroad, Inc. (NECR) filed a petition (designated as NECR-10) for the Board to set one term of a trackage rights arrangement or to provide clarification with respect to the transaction we authorized in Decision No. 89, served July 23, 1998.¹ In its petition, NECR indicates that, because the parties are close to reaching an agreement on all but one aspect of the trackage rights arrangement, it is presently asking for the Board's assistance only on that one matter. NECR also seeks a waiver of the September 21, 1998 deadline for bringing disputes to the Board in the event the parties are unable to agree on other aspects of the arrangement.

By letter dated September 21, 1998, CSX submitted a status report on its negotiations with NECR pursuant to Ordering Paragraph No. 64 in Decision No. 89, and addressed the issue raised by NECR. Referring to the issue as "extraneous," CSX states that it believes that all necessary trackage rights agreement terms have been or will shortly be agreed upon. According to CSX, the parties are still negotiating two items, which they hope to resolve without Board intervention. CSX therefore requests that the Board extend the Decision No. 89 deadline for concluding these trackage

¹ 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. In that decision, we also approved NECR's responsive application in Sub-No. 75 insofar as it seeks trackage rights between Palmer, MA, and West Springfield, MA. We required CSX and NECR to negotiate the details of such trackage rights and, if negotiations are not fully successful, to submit separate proposals no later than September 21, 1998. See Decision No. 89, slip op. at 105 and 180.

rights negotiations by 30 days to permit the parties to resolve those issues. CSX indicates its understanding that NECR concurs in this request.

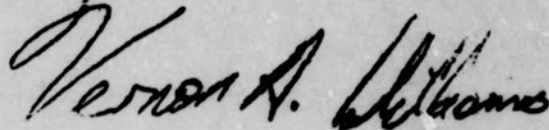
We find the requests to extend the Decision No. 89 deadline to allow the parties to complete negotiations to be reasonable. We will grant a 30-day extension of the September 21, 1998 deadline.

It is ordered:

1. The deadline set forth in Decision No. 89, Ordering Paragraph 64, is extended 30 days to October 21, 1998. If any of the terms of the trackage rights arrangement between Palmer, MA, and West Springfield, MA, are not resolved through negotiations between CSX and NECR, the parties must submit separate proposals no later than October 21, 1998.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

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 - 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 75

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
—CONTROL AND OPERATING LEASES/AGREEMENTS—
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Decision No. 89¹

Decided: July 20, 1998

The Board approves, with certain conditions: (1) the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail) by (a) CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and (b) Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS); and (2) the division of the assets of Conrail by and between CSX and NS.

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

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