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SERVICE DATE - DECEMBER 9, 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. 107

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

RESPONSIVE APPLICATION--WHEELING & LAKE ERIE RAILWAY COMPANY

Decided: December 8, 1998

This decision addresses the petition for clarification (designated as WLE-10) filed October 22, 1998, by Wheeling & Lake Erie Railway Company (W&LE or petitioner) with respect to the transaction we authorized in Decision No. 89, served July 23, 1998.¹ In its petition, W&LE states that, as directed by the Board, it has negotiated with applicants with the goal of reaching an agreement on the conditions we imposed in Decision No. 89, but several matters remain unresolved. W&LE therefore asks us to resolve these issues in the manner and to the extent it requests.² By separate replies filed November 10, 1998 (designated as NS-72 and CSX-166), applicants CSX and NS oppose W&LE's requested relief.³

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.

² W&LE supplemented its petition for clarification by: correspondence filed October 30, 1998; a response (designated as WLE-11) filed November 10, 1998, to matters raised by applicants; and a reply (designated as WLE-12) filed November 19, 1998, to CSX-166.

³ In addition, on October 22, 1998, NS filed a report and proposal with respect to the conditions (designated as NS-71), and CSX filed related correspondence on October 22 and 23, 1998.

BACKGROUND

In our decision approving the primary transaction, we granted in part and denied in part W&LE's responsive application in Sub-No. 80. As pertinent here, in Decision No. 89, slip op. at 109, we stated:

We will require applicants to provide certain remedies to W&LE to prevent further erosion of W&LE's financial viability due to this transaction. We will require applicants to provide: (a) overhead haulage or trackage rights access to Toledo, OH, with connections to the Ann Arbor Railroad and other railroads there; (b) an extension of W&LE's lease for the Huron Docks and trackage rights access to the Huron Docks over NS' Huron Branch; (c) overhead haulage or trackage rights to Lima, OH, including a connection to the Indiana and Ohio Railroad. Further, we will require that applicants negotiate with W&LE concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregate shippers or to serve shippers along CSX's main line from Benwood to Brooklyn Junction, WV.

As regards items (a), (b), and (c) above, we required the parties to attempt to negotiate an agreement; and, if negotiations were not fully successful, applicants and W&LE could submit separate proposals 90 days after the service date of Decision No. 89. *Id.* at 109 and 181. With regard to the mutually beneficial arrangements, we required the parties to enter into negotiations and inform us of any arrangements that they have reached.

W&LE asserts that applicants CSX and NS have taken too narrow of an approach to the negotiations over the imposed conditions. According to petitioner, the conditions imposed on its behalf must be viewed from the broader perspective that W&LE provides essential rail services in a highly industrialized area, that the Conrail transaction threatens W&LE's viability as a strategic regional railroad, and that each of the Board's conditions was designed to provide W&LE with new traffic and revenue opportunities to promote the carrier's financial viability and well-being. Therefore, petitioner maintains that, in order to provide meaningful relief, applicants should be directed to grant W&LE: access to local industries in Toledo and Lima, OH,⁴ via reciprocal switching at a switching rate of \$184 per car; permanent, lease-to-own trackage rights access to NS' Huron Docks without the existing restriction as to commodity; local trackage rights over CSX's line

⁴ With respect to trackage rights to Lima, OH, W&LE also seeks: direct access to Clark Oil Refinery and "the BP refining complex," including the right to purchase Conrail's tracks leading to these facilities; and an interchange with Indiana & Ohio Railway Company (IORY) and R.J. Corman Railroad Company/Western Ohio Line (RJC).

between Benwood and Brooklyn Junction, WV; and trackage rights over NS to institute service on behalf of aggregates shippers.⁵

CSX and NS contend that the relief sought by W&LE goes beyond the scope of our conditions and should be denied. Applicants argue that W&LE is not seeking clarification, but instead is seeking reconsideration and the imposition of new conditions on applicants. As regards W&LE's request for access to local industries in Toledo and Lima, applicants assert that petitioner is asking for additional concessions beyond anything the carrier sought in its responsive application. Such relief, according to applicants, can only properly be sought in a petition to reopen, not through a clarification request. With respect to mutually beneficial arrangements, applicants maintain that W&LE is asking for conditions that will not benefit either CSX or NS. Applicants assert that the Board's language is unambiguous and requires no clarification.

RELIEF SOUGHT BY W&LE

Trackage rights access to Toledo. W&LE states that it has elected to serve Toledo by way of trackage rights from Bellevue to Toledo, OH, via the existing NS route between these two points. According to petitioner, the parties have agreed to submit to the Board those regulatory filings necessary to enable W&LE to initiate trackage rights operations to Toledo and to permit the sale of NS' Maumee River pivot bridge to W&LE, with NS retaining operating rights over the bridge. W&LE states that discussions are progressing concerning its use of two tracks at NS' Homestead Yard for the pickup and delivery of traffic. W&LE asks that it be given access to these yard tracks for the purposes of staging its traffic. W&LE also proposes that the Board require the parties to reach an agreement as to NS' reconstruction of certain track facilities (i.e., a so-called Bellevue mini-plant) that will facilitate operations around Bellevue, subject to terms and conditions to be agreed upon by the parties.

W&LE maintains that the Board intended it to have access to local Toledo industries, and not merely to connections with other railroads in the Toledo area, including CSX and NS. According to petitioner, the Board did not intend to limit W&LE's access to Toledo only for the purpose of interchanging traffic there with the Ann Arbor and other railroads in the vicinity, as applicants have contended in negotiations. W&LE submits that, if the Board adopts applicants' interpretation of the Toledo condition, W&LE will lack sufficient traffic and revenue opportunities to support viable service to Toledo.

To minimize interfering with existing rail operations in the Toledo area, W&LE proposes to limit its local presence by depending upon other carriers in Toledo, including NS and CSX, to provide reciprocal switching services to W&LE at all points and stations in the Toledo area

⁵ On December 4, 1998, Lafarge Lime Ohio, Inc. (Lafarge), an aggregates shipper, also urged that W&LE be given access to Lafarge's facilities.

currently open for such service. W&LE proposes to pay \$184 per car for such reciprocal switching service. W&LE submits that the applicants have no basis to reject W&LE's reciprocal switching proposal, and urges the Board to grant its requested arrangement (including the proffered reciprocal switch charge) as necessary for W&LE to compete successfully in the Toledo market.

NS contends that the Board quite plainly granted W&LE overhead haulage or trackage rights access to Toledo and that nowhere in Decision No. 89 does the Board even suggest that its condition includes local access to shippers at Toledo. NS points out that W&LE's own responsive application and operating plan sought access to Toledo expressly to effect an interchange with IORY, Ann Arbor Railroad Company (AA), and Canadian National Railway Company (CN). WLE-4 at 74 and 82. Although NS disputes petitioner's claim that the imposed condition permits W&LE to interchange with all other railroads at Toledo, including the applicants, NS states that it is willing to permit W&LE to interchange with NS and CSX at Toledo, provided that any interchange between W&LE and CSX takes place at CSX's yard facilities.⁶ As regards petitioner's proposals for access to NS' Homestead Yard and the construction project at Bellevue, NS maintains that these matters are not directly linked to the Board's conditions and, in view of the parties' ongoing negotiations, should not be imposed as conditions now.

Huron Docks. W&LE indicates that, although some progress has been made on the issue of its access to Huron Docks, NS disagrees with its proposal concerning the appropriate terms and duration of an agreement. Accordingly, W&LE renews its request for permanent, lease-to-own trackage rights access to NS' Huron Docks without the current restrictions in the lease as to commodity. W&LE maintains that its proposal provides for long-term operations that are consistent with the Board's intent to accomplish two objectives: (1) to preserve a meaningful competitive transportation alternative for Wheeling-Pittsburgh Steel at Mingo Junction, OH; and (2) to protect for the long term W&LE's access to the substantial revenue opportunity W&LE already enjoys by having access to the Huron Docks. W&LE also contends that its access to the Huron Docks is critical to its refinancing of long-term debt and consequently to W&LE's future viability.

NS states that the Board clearly did not order divestiture of the Huron Docks and did not order unrestricted access by W&LE. NS maintains that, to the contrary, the Board required applicants to "extend W&LE's lease at, and trackage rights access to," Huron Docks at Lake Erie. Decision No. 89, slip op. at 181. NS contends that, rather than accepting petitioner's overreaching request, the Board should adopt its proposal offering W&LE: an extension of longer duration than the original lease term; the right to terminate the lease on 6-months' notice, without reserving a similar right for NS; and consideration, on a case-by-case basis, of exceptions to the current commodity restrictions.

⁶ NS also indicates that it has agreed to provide W&LE with overhead trackage rights to interchange points in Toledo with AA and CN, and that it has reached agreement with W&LE as to route, compensation, and effective date of those rights. See NS-72 at 6.

Trackage rights access to Lima, OH. W&LE states that CSX has agreed to its proposed route (CSX from Carcy, OH, to Lima via Upper Sandusky) and trackage rights rates. Contrary to CSX's remaining position, however, W&LE contends that the Board's condition permits W&LE to obtain access to local industries in Lima, in addition to a connection with IORY. W&LE asks the Board to extend the scope of the relief at Lima to include direct access to the BP refining complex and Clark Oil Refinery at Lima⁷ and an interchange with RJC, a short line rail carrier also serving the Lima area.

W&LE states that access to Lima was not a part of its responsive application, but rather is a novel component of the Board's remedies extended to W&LE.⁸ According to W&LE, applicants incorrectly assume that W&LE would derive significant economic benefit by merely having a connection with IORY. Petitioner states that, after a number of meetings with IORY, it does not appear that the two carriers have the ability to generate any appreciable interchange business between themselves. Without access to local industry, W&LE has determined that the prospective volume of interchange between W&LE and IORY (and RJC) at Lima is so small that W&LE's service to and from this point would result in an operating deficit.

W&LE stresses that its access to Lima will be meaningless unless the condition is interpreted to include local access. As it proposes in the case of Toledo, W&LE offers to limit its service to local industry at Lima to access via reciprocal switch to all industries and stations in Lima currently open to reciprocal switching, at a switching charge of \$184 per car. W&LE submits that its proposal is not merely reasonable, but also offers the least disruptive arrangement to the applicants' planned operations in Lima. W&LE believes that its reciprocal switch access to Lima, along with access to Clark Oil Refinery and the BP refining complex, IORY, and RJC, will generate sufficient traffic and revenue opportunities to permit W&LE to sustain its trackage rights operations, and maintain a constructive presence.

⁷ W&LE states that it has identified a route to the Clark Oil Refinery and adjacent BP facilities that appears to be a short rail segment between the IORY and the Clark/BP properties (a line that apparently will be conveyed to CSX). Petitioner believes that CSX can serve the above-mentioned facilities without the need for the Conrail branch trackage. In the event that CSX seeks to dispose of the trackage in question through abandonment or sale, W&LE requests that it be given the right to purchase this line to ensure its continued access to the industry immediately surrounding the Clark Oil Refinery.

⁸ Although W&LE originally sought a connection with IORY and other carriers at Toledo, there is no available interchange with IORY at that location. We therefore granted W&LE overhead haulage or trackage rights to Lima to enable petitioner to connect with IORY. See Decision No. 89, slip op. at 109 and 181.

CSX maintains that, as in the case of Toledo, petitioner requests concessions at Lima that are not supported in the record. According to CSX, W&LE seeks rights at Lima that not only go beyond the Board's decision, but also beyond anything that W&LE sought in its responsive application and request for conditions. CSX contends that petitioner's new proposal for local access should not be entertained because the Board expressly denied the carrier's numerous requests in its responsive application for direct commercial access. CSX also opposes petitioner's request for additional trackage rights to interchange with RJC at Lima.

Aggregate and Benwood-to-Brooklyn Junction Service. In its responsive application, W&LE requested haulage rights, with underlying trackage rights, between Benwood and Brooklyn Junction. W&LE states that these rights would allow it to provide single-carrier service in moving British Petroleum coke traffic from Toledo to Cressup, WV, via a more direct route, and that PPG, Bayer, and other shippers on the line would benefit from its local access. W&LE states that, although it believes that access to customers on this line is an essential component of settlement negotiations, CSX refuses to discuss W&LE operations over this line. Accordingly, W&LE seeks confirmation from the Board that conclusion of a mutually acceptable arrangement is an integral part of the remedial condition and that CSX must grant W&LE local trackage rights over the Benwood-Brooklyn Junction line. W&LE proposes trackage rights fees at NS/CSX merger-related charges of 29 cents per car-mile.

With respect to negotiations over an aggregate traffic agreement, W&LE states that NS has asserted that many of the aggregate locations where W&LE could previously have been a part of a mutually beneficial solution have essentially retained single-line CSX or NS service by virtue of other protective conditions included in Decision No. 89. In view of that response, W&LE believes that the parties have reached an impasse. Furthermore, W&LE notes that the applicants seem committed to negotiating on aggregate-related matters only at the exclusion of discussions on Benwood to Brooklyn Junction.

W&LE believes that the Board intended that the full scope of relief to be afforded W&LE should include agreements for access to provide additional service to aggregate shippers. For that reason, W&LE urges the Board to direct applicants to enter into arrangements which will allow W&LE to provide expanded service for aggregate shippers. As in the case of its Benwood-to-Brooklyn Junction operations, W&LE offers to pay trackage rights compensation equal to the CSX/NS merger related charges of 29 cents per car-mile.

CSX and NS indicate that, although they are willing to continue discussions with W&LE to identify mutually beneficial opportunities, they are not willing to provide W&LE with local trackage rights to all aggregate shippers and customers located on the Benwood-Brooklyn Junction line. Applicants contend that it would not make business sense for them to allow petitioner to use their lines and directly serve their customers with no reciprocal benefits for them. CSX indicates that it has submitted a number of proposals to W&LE for its consideration, including a proposal concerning movements on behalf of a shipper on the Benwood-Brooklyn Junction line. NS

maintains that neither it nor CSX has ever taken the position that negotiations on aggregate-related matters could only proceed if discussions as to Benwood-Brooklyn Junction are excluded, or vice versa.

DISCUSSION AND CONCLUSIONS

The relief sought by W&LE will not be granted. In Decision No. 89, we found that W&LE's projection of an annual diversion of between \$12.7 and \$15 million in traffic revenue to applicants was overstated, and that a more realistic estimate was probably between \$1.4 and \$3.0 million. We also found that the extensive conditions sought by W&LE were a substantial overreach both in terms of geographic scope and financial impact. We concluded nevertheless that the traffic losses and W&LE's precarious financial situation warranted the imposition of less intrusive conditions. In imposing those conditions, we intended to give W&LE the opportunity

to achieve operational cost savings and expand its market reach through connections with other regional carriers. Despite petitioner's assertions to the contrary, it was not our intention to maximize W&LE's financial prospects in each instance where we imposed a condition on its behalf.⁹

To address petitioner's situation, we granted W&LE overhead haulage or trackage rights to Toledo with rights to connect to AA and other railroads there. We also granted W&LE identical overhead rights to Lima that included a connection with IORY. Our conditions in this regard mirrored the relief sought by W&LE in its responsive application. In its responsive application, petitioner requested access to certain carriers, including AA and IORY, and to one shipper, British Petroleum, at Toledo, but W&LE did not seek access to local industries in Toledo. W&LE stated that it wanted these new carrier connections to provide operational flexibility and opportunities to develop new, more efficient traffic patterns:

* * * By the addition of a series of relatively short and simple connections, the W&LE will have the ability to bring many efficiencies to rail transportation in this region. In addition, W&LE seeks the ability to establish new interchanges that will develop traffic patterns that do not exist today. With a location central to a geographic area that includes the heart of Conrail, the W&LE needs to reach out to connections that make sense to our customers, and to provide a real transportation alternative.

⁹ As regards our conditions, W&LE did not seek reopening or reconsideration of Decision No. 89 for the purpose of contesting the scope of the relief we imposed on its behalf or for asking us to grant it further relief. See Decision No. 96, served October 19, 1998, slip op. at 17-18. The time has passed for an administrative appeal from our decision. W&LE cannot substitute its current petition for clarification for a substantive challenge to that decision.

WLE-4, VS Wait at 68 (emphasis in original).

* * * [W&LE would operate] one train in each direction per day, six days per week between an existing connection with the Norfolk Southern at Yeomans, Ohio, and Toledo for interchange with the Ann Arbor Railroad, Canadian National, and the Indiana & Ohio. Additional traffic would be loaded hoppers of petroleum coke received from British Petroleum.

Id. at 82.

Thus, the relief that W&LE seeks goes beyond the conditions that the Board imposed as relates to Toledo and Lima--conditions that largely reflected what W&LE had originally sought and that adequately incorporate the Board's concerns regarding W&LE's viability. Regarding the other relief that W&LE seeks, W&LE also requested in its responsive application local trackage rights on CSX's Benwood-Brooklyn Junction line, access to shippers PPG and Bayer at Natrium, WV, and to BP coke traffic moving between Toledo and Cressup, WV, and commercial access to specific aggregates shippers. We did not, however, grant direct commercial access to British Petroleum, Lafarge, or any other specific shippers or locations. Instead, we required applicants to negotiate with W&LE concerning mutually beneficial arrangements, including the various rights sought by W&LE in its requests for local access. By definition, our imposition of the arrangements now sought by petitioner, over applicants' objections, would not be of mutual benefit.

W&LE renews its request for permanent, lease-to-own trackage rights access to NS' Huron Dock with the current lease's restrictions as to commodity. We did not grant that relief in Decision No. 89. To the contrary, we quite plainly required applicants to "extend W&LE's lease at, and trackage rights access to," Huron Dock on Lake Erie. Id. at 181. NS indicates that it has offered petitioner an extension of even longer duration than the current lease term and it is willing to consider exceptions to the commodity restrictions now in force. Again, petitioner's divestiture request is overreaching.

We ask the parties to continue good faith negotiations in a manner consistent with our findings in Decision No. 89. We will continue to assess this situation carefully during the course of our oversight proceeding to ensure that W&LE has the opportunity to achieve operational cost savings and remain a viable carrier in the region where it currently operates.

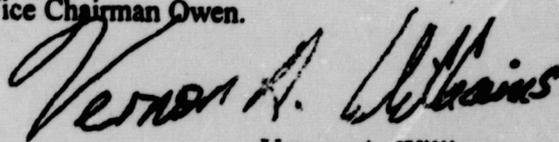
This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for clarification and further instruction (WLE-10) is denied.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

A handwritten signature in black ink, appearing to read "Vernon A. Williams". The signature is written in a cursive style with a large initial "V".

Vernon A. Williams
Secretary

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SERVICE DATE - NOVEMBER 30, 1998

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Washington, D.C. 20423

November 23, 1998

STB Finance Docket No. 33388¹

Sub 80

**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**

NOTICE

A court action, entitled as shown below,
was instituted on or about November 20, 1998,
involving Decision No. 96 in the above-entitled proceeding:

No. 98-1552

Indiana Rail Road Company

v.

Surface Transportation Board

United States of America

before the

United States Court of Appeals for the District of Columbia Circuit

Vernon A. Williams

VERNON A. WILLIAMS
Secretary

¹ Embraces STB Finance Docket No. 33388 (Sub-No. 80),
Responsive Application—Wheeling & Lake Erie Railway Company.

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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);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 NSF, 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).

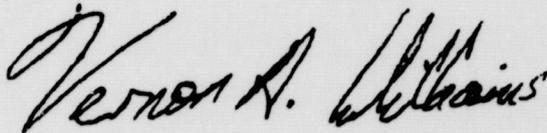
²⁰ The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. See 49 CFR 1104.3(a), as amended in Expedited Procedures for Processing Rail Rate Reasonableness,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

Vernon A. Williams
Secretary

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SERVICE DATE - NOVEMBER 23, 1998

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Washington, D.C. 20423

November 16, 1998

STB Finance Docket No. 33388¹

Sub 80

**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**

NOTICE

A court action, entitled as shown below,
was instituted on or about November 12, 1998,
involving Decision No. 96 in the above-entitled proceeding:

No. 98-4343

Wyandot Dolomite, Inc.

v.

Surface Transportation Board

United States of America

before the

United States Court of Appeals for the Sixth Circuit

Vernon A. Williams

VERNON A. WILLIAMS
Secretary

¹ Embraces STB Finance Docket No. 33388 (Sub-No. 80),
Responsive Application—Wheeling & Lake Erie Railway Company.

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STB FD 33380 (Sub 80) 11-13-98 C 29769

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SEC

SERVICE DATE - NOVEMBER 13, 1998

**SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423**

November 9, 1998

STB Finance Docket No. 33388¹

**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. 96

NOTICE

A court action, entitled as shown below,
was instituted on or about October 29, 1998,
involving the above-entitled proceeding:

No. 98-1493

National Lime & Stone Company

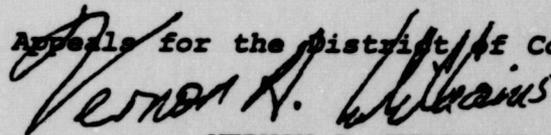
v.

Surface Transportation Board

United States of America

before the

United States Court of Appeals for the District of Columbia Circuit



**VERNON A. WILLIAMS
Secretary**

¹ Embraces STB Finance Docket No. 33388 (Sub-No. 80),
Responsive Application—Wheeling & Lake Erie Railway Company.

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Records: 365

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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 80

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**