STB FD 33388 2-25-99 C 30072

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SEC

SERVICE DATE - FEBRUARY 25, 1999

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 117

Decided: February 24, 1999

In Decision No. 89 (served July 23, 1998), the Board required applicants[1] to complete and certify compliance with certain environmental conditions within 6 months of the effective date of the decision (by February 22, 1999). CSX and NS have filed three requests for extension of time to file these certifications.

By letter filed February 19, 1999, CSX has requested an extension of the deadline provided for in Environmental Condition 29(A), which requires CSX to "install warning signs with a flashing hazard light to notify motorists in advance that they are approaching the highway/rail at-grade crossing at U.S. Route 24." See Decision No. 89, slip op. at 410. On February 10, 1999, Ohio Department of Transportation (ODOT) advised CSX of its view that these devices not be installed, citing its specific concerns as to why these warning devices might not in fact promote the safety objective of the Board. ODOT suggested that further analysis of the matter was warranted. Accordingly, CSX requests a 3-month extension of time to permit the further analysis and consultation recommended by ODOT.

By letter filed February 22, 1999, CSX has requested an extension of the deadline provided for in Environmental Conditions 29(C), 31(F), 32(B), 34(C), 38(B), and 41(B), which require CSX to "provide and install, including any necessary computer hardware and training, Operation Respond software at the local emergency response center serving minority and low-income

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[1] CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), and their wholly owned subsidiaries, and also the wholly owned CRC subsidiary to be known as New York Central Lines LLC (NYC), are referred to collectively as CSX. Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), and their wholly owned subsidiaries, and also the wholly owned CRC subsidiary to be known as Pennsylvania Lines LLC (PRR), are referred to collectively as NS. Conrail Inc. (CRR) and Consolidated Rail Corporation (CRC), and also their wholly owned subsidiaries other than NYC and PRR, are referred to collectively as Conrail or CR. CSX, NS, and Conrail are referred to collectively as applicants.

populations in the vicinity of their rail line segments" in the following Ohio communities: Defiance, Fostoria, Holgate, New London, Tiffin, and Willard. See Decision No. 89, slip op. at 411-415. CSX reports that it has ordered the required hardware and software, but has not yet delivered it to the emergency response officials. CSX indicates that compliance with these environmental conditions is well underway, but that it was not finally completed as of February 22, 1999. Therefore, CSX requests a 2-month extension of time in which to deliver the computer hardware and Operation Respond software and to provide any required training.

By letter filed February 22, 1999, NS has requested an extension of the deadline provided for in Environmental Conditions 27(A) and 30(A), which require NS, "with the advice and consent of the relevant local governmental entity" to "adapt and modify the local component of their required Hazardous Materials Emergency Response Plan to account for the special needs of minority and low-income populations in the vicinity of their rail line segments." NS provided the adapted Plans to Cleveland Heights, OH, and Euclid, OH, in November 1998. However, before certifying compliance with these conditions, NS requests an additional 2 months to respond to any comments from the communities on the Plans and to allow sufficient time to address the site-specific needs of these communities.

The requests for extensions are reasonable, and will be granted. As the projected date for "Day One" of the transfer of operations from Conrail to CSX and NS is now June 1, 1999, no prejudice should occur as a result of these extensions of time. The revised deadlines requested by CSX and NS will therefore be adopted.

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

It is ordered:

1. The certification deadline in Environmental Condition 29(A) is revised to read as follows: "CSX shall certify compliance with this condition by May 22, 1999."

2. The certification deadlines in Environmental Conditions 29(C), 31(F), 32(B), 34(C), 38(B), and 41(B) are revised to read as follows: "CSX shall certify compliance with this condition by April 22, 1999."

3. The certification deadlines in Environmental Conditions 27(A) and 30(A) are revised to read as follows: "NS shall certify compliance with this condition by April 22, 1999."

4. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams

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SERVICE DATE - FEBRUARY 23, 1999

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 116

Decided: February 22, 1999

By letter filed February 17, 1999, the State of Ohio parties (i.e., the State of Ohio by and through the Ohio Attorney General, the Ohio Rail Development Commission, and the Public Utilities Commission of Ohio) have requested an additional 45-day extension of the deadline provided for in Environmental Condition 8(B), which requires applicants[1] to complete any negotiations with the State of Ohio regarding highway/rail at-grade crossing improvements by February 18, 1999. See Decision No. 89, slip op. at 399 (directing applicants to complete such negotiations within 120 days of the effective date of Decision No. 89); Decision No. 115, slip op. at 2 (directing applicants to complete such negotiations by February 18, 1999). The State of Ohio parties advise: that they have worked diligently with applicants and with representatives of affected Ohio communities; that, as a result, comprehensive corridor arrangements have been concluded with NS, and comprehensive agreements in principle have been reached with CSX; and that an additional extension of 45 days is needed to formalize arrangements with CSX and to provide a comprehensive report of the results that have been achieved. The State of Ohio parties add that they have been authorized to represent that applicants concur in the request for an additional 45-day extension.

The request for an additional 45-day extension is reasonable. The revised deadline contemplated by the State of Ohio parties will therefore be adopted.

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[1] CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), and their wholly owned subsidiaries, and also the wholly owned CRC subsidiary to be known as New York Central Lines LLC (NYC), are referred to collectively as CSX. Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), and their wholly owned subsidiaries, and also the wholly owned CRC subsidiary to be known as Pennsylvania Lines LLC (PRR), are referred to collectively as NS. Conrail Inc. (CRR) and Consolidated Rail Corporation (CRC), and also their wholly owned subsidiaries other than NYC and PRR, are referred to collectively as Conrail or CR. CSX, NS, and Conrail are referred to collectively as applicants.

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

It is ordered:

1. Environmental Condition 8(B) is revised to read as follows: "Applicants shall complete any negotiations with the State of Ohio regarding highway/rail at-grade crossing improvements by April 5, 1999."[2]

2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams

Vernon A. Williams
Secretary

[2] NS has apparently already concluded such negotiations. By letter filed February 17, 1999, NS has advised that it has entered into a Rail Corridor Safety Agreement with the Ohio Rail Development Commission and the Public Utilities Commission of Ohio that provides for, inter alia, a schedule for the provision of grade crossing safety improvements and a cost-sharing agreement whereby NS will participate in four corridor-based projects to enhance public safety at public highway-railroad grade crossing locations in Ohio. A copy of the Rail Corridor Safety Agreement is attached to NS's letter.

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SERVICE DATE - LATE RELEASE FEBRUARY 8, 1999

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 115

Decided: February 5, 1999

In Decision No. 89, we approved, subject to certain conditions, the acquisition of control of Conrail Inc. (CRR) and Consolidated Rail Corporation (CRC), and the division of the assets thereof, by (1) CSX Corporation (CSXC) and CSX Transportation, Inc. (CSXT), and (2) Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR).[1] Acquisition of control of Conrail was effected by CSX and NS on the Control Date, which was August 22, 1998 (the effective date of Decision No. 89). The division of the assets of Conrail has not yet been effected; it will be effected on a date that has been referred to variously as Day One, the Closing Date, and the Split Date (and which we have generally referred to as Day One). CSX and NS have recently indicated that Day One will occur on June 1, 1999.

Among the many issues we addressed in Decision No. 89 were those raised by Indianapolis Power & Light Company (IP&L), which sought the imposition of conditions regarding coal traffic moving to its Perry K and Stout plants, both of which (IP&L contended) could be served pre-transaction by two railroads: Indiana Southern Railroad, Inc. (ISRR); and Indiana Rail Road Company (INRD, an 89%-owned CSX subsidiary). See Decision No. 89, slip op. at 264-69 (summary of the evidence and arguments, and the related requests for affirmative relief, contained in IP&L's submissions). See also Decision No. 89, slip op. at 212-14 (summary of the evidence and arguments, and the related requests for affirmative relief, contained in ISRR's submissions). See also Decision No. 89, slip op. at 116-17 (our discussion of IP&L's relevant issues) and at 93-95 (our overlapping discussion of Indianapolis issues). See also Decision No. 89, slip op. at 177 (ordering paragraph 23).

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[1] CSXC and CSXT and their wholly owned subsidiaries, and also the wholly owned CRC subsidiary to be known as New York Central Lines LLC (NYC), are referred to collectively as CSX. NSC and NSR and their wholly owned subsidiaries, and also the wholly owned CRC subsidiary to be known as Pennsylvania Lines LLC (PRR), are referred to collectively as NS. CRR and CRC, and also their wholly owned subsidiaries other than NYC and PRR, are referred to collectively as Conrail or CR. CSX, NS, and Conrail are referred to collectively as applicants.

In Decision No. 93, we denied the INRD-1 petition for leave to intervene for the purpose of seeking reconsideration of ordering paragraph 23, which states, among other things, that applicants "must allow IP&L to choose between having its Stout plant served by NS directly or via switching by INRD." See Decision No. 89, slip op. at 177 (ordering paragraph 23). We noted, in denying INRD's petition: that INRD, as a railroad affiliated with and controlled by CSX, had had ample notice of the pendency of this proceeding; that INRD had had constructive, if not actual, notice of the relief that had been sought as regards Stout; that INRD should have presented its case before the record was closed; that it would be anomalous at best to permit INRD to make an argument not made by its majority owner, which had acquiesced in our grant of the relief challenged by INRD; and that, having permitted itself to be represented by its majority owner throughout this proceeding, it was too late for INRD to take a different stance. See Decision No. 93, slip op. at 2-3.

In Decision No. 96, we granted in part and denied in part the IP&L-15 petition for clarification or reconsideration of Decision No. 89, and we directed CSX, NS, ISRR, and IP&L to attempt to negotiate a mutually satisfactory solution respecting any MP 6.0 interchange problems (and respecting any related problems that might be necessarily incidental to a MP 6.0 interchange problem), and to advise us, no later than December 18, 1998, of the status of their negotiations. See Decision No. 96, slip op. at 14-15 (discussion of the IP&L issues) and 26 (ordering paragraph 8).

In Decision No. 111, we extended to January 19, 1999, the deadline by which CSX, NS, ISRR, and IP&L were to advise us of the status of their negotiations respecting any MP 6.0 interchange problems. We also considered, but took no action on, IP&L's request for removal of the expiration date of Conrail Tariff No. 4611 (which IP&L indicated would expire in February 1999). We added, however, that IP&L could renew that request if an agreement had not been reached by January 19, 1999.

In this decision, we consider the IP&L issues described in the following papers: NS-74 (filed January 19, 1999); an ISRR letter (filed January 19, 1999); an IP&L letter (filed January 19, 1999); a CSX letter (filed January 20, 1999, and enclosing a CSX fax dated January 19, 1999); an INRD letter (filed February 3, 1999); and IPL-20 (filed February 4, 1999).

POSITIONS OF THE PARTIES

NS asks that we order INRD (either directly or via CSX) to grant NS the necessary trackage rights.

ISRR: makes the same request; asks that we consider allowing NS to assign its rights to ISRR; and urges that we either (a) convene an informal meeting under the Board's auspices, or (b) set a procedural schedule for filings by the parties.

IP&L: asks that we make clear that NS shall assign its rights (at least in part) to ISRR; asks that we order INRD (either directly or via CSX) to grant NS the necessary trackage rights; asks that

we promptly order Conrail to eliminate the expiration date in Conrail Tariff No. 4611; and asks that we consider inviting all involved parties to an informal meeting with one or more members of the Board, or before an Administrative Law Judge, to determine whether the Board's good offices might expedite resolution of the IP&L issues.

CSX reports, with respect to Perry K, that CSX and ISRR have agreed that the interchange will occur at Crawford Yard. CSX also reports, with respect to Stout: that CSX, NS, and ISRR have agreed that the NS/ISRR interchange will occur at Crawford Yard; that CSX and NS have agreed on the trackage rights necessary for NS to operate from Crawford Yard to the connection with the INRD track; but that NS and INRD have not yet reached agreement regarding NS access to Stout.

INRD contends that, because it is not a party to this proceeding, any order that purports to be directed to INRD and that either requires INRD to take some action or that prohibits INRD from taking some action would deny INRD due process. INRD further contends that, while CSX has the power to compel INRD to enter into a trackage rights agreement, Indiana state law, as it pertains to minority stockholders, places limits on the use of that power as stockholders in close corporations owe a fiduciary duty to each other.[2]

DISCUSSION AND CONCLUSIONS

(1) In Decision Nos. 89 and 96, we imposed a condition intended to result in the availability of direct NS service to Stout free of CSX and/or INRD switching charges. See Decision No. 89, slip op. at 94 n.151; Decision No. 96, slip op. at 26 (ordering paragraph 8). INRD is apparently balking at implementation of that condition. Thus, we will direct CSX to procure the necessary trackage rights from INRD. Because CSX holds an 89% controlling interest in INRD,[3] we have properly treated INRD as an appendage of CSX for purposes of our analysis of the competitive impacts of the CSX/NS/CR transaction. Because CSX is an applicant in this proceeding, we may require CSX to comply with conditions we have imposed pursuant to 49 U.S.C. 11324 to avoid the anticompetitive impacts that an unconditioned CSX/NS/CR transaction would otherwise have generated. And, because CSX holds an 89% controlling interest in INRD, CSX is in a position to compel INRD's compliance with the competition-preserving conditions we imposed in Decision Nos. 89 and 96.

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[2] IP&L has moved to strike (IPL-20) INRD's letter as an unauthorized filing by a nonparty. INRD states that its February 3rd letter is not intended as making, and should not be construed as making, a general appearance in this proceeding. Because we agree and do not construe INRD's filing as its making a general appearance in the proceeding, the IP&L motion to strike is moot.

[3] See CSX/NS-18 at 271-72 (filed June 23, 1997), where CSX indicated: that it "controls" Midland United Corporation (MUC) through ownership of 89% of its issued shares; and that MUC owns 100% of the issued shares of INRD.

(2) ISRR and IP&L continue to seek additional relief vis-à-vis Stout. As explained below, no material error, changed circumstances, or new evidence has been presented that would justify our reopening of this matter.

ISRR states that the arrangements proposed by CSX for the contemplated ISRR-NS interchange at Crawford yard would be inefficient because CSX will not allow ISRR onto CSX tracks leading to Crawford Yard until NS crews and locomotives have arrived at the yard. And IP&L asserts that it has been informed by NS that it will be unable to effectively compete with INRD for movements into Stout, since NS would have to send locomotives and a crew from Lafayette and Muncie — a one way distance of at least 60 miles — to haul IP&L's train less than 10 miles. But, NS itself has said that it "believes that, from an operating standpoint, the procedure proposed by CSX for interchanging traffic at Crawford Yard, unlike a Milepost 6.0 interchange, is feasible." NS-74 at 2.

If NS comes to share ISRR's concerns over any potential inefficiencies associated with an ISRR-NS movement into Stout, or if, after having been given an opportunity to work, the ISRR-NS movement into Stout proves to be problematic, ISRR and NS may choose to negotiate a mutually beneficial agreement through which ISRR operates as NS' agent for movements into that plant. In addition, demonstrated deficiencies in the operations into Stout may be examined as part of our review in the oversight process of whether there is a need at that time to modify the terms of the relief we have granted in order to preserve competition that existed prior to implementation of the approved transaction.

(3) With respect to Conrail Tariff No. 4611, Conrail will continue to be a separate rail system in this area until Day One. As such, Conrail will continue to be subject, until then, to all of the duties of a common carrier railroad. It must continue to establish rates for these services and make the rates, and any related charges and service terms publicly available, provided service is not rendered under contract.

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

It is ordered:

1. By February 18, 1999: CSX must procure the necessary trackage rights from INRD and must advise us, in writing, that such rights have been procured.

2. By February 23, 1999: NS must advise whether the necessary trackage rights have or have not been procured.

3. All requests for relief contained in the papers filed January 19, 1999, January 20, 1999, and February 3, 1999, and not specifically granted in these ordering paragraphs, are denied.

4. The papers filed January 19, 1999, January 20, 1999, February 3, 1999, and February 4, 1999, by CSX, NS, ISRR, and IP&L, and any further papers filed in this proceeding by CSX, NS, ISRR, IP&L, and/or Conrail, respecting the IP&L matters discussed in this decision and respecting no other matter, need be served only upon CSX, NS, ISRR, IP&L, Conrail, and the U.S. Department of Justice and upon any other party that has made, on or after the service date of this decision, a written request that such further papers be served upon such party.

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

By the Board, Chairman Morgan and Vice Chairman Clyburn.

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SERVICE DATE - FEBRUARY 5, 1999

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Decision No. 114

Decided: February 4, 1999

In Decision No. 89, served July 23, 1998, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively Conrail) and the division of Conrail's assets by CSX Corporation and CSX Transportation, Inc. (collectively CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS). As pertinent here, Environmental Condition No. 21 of Appendix Q in Decision No. 89 requires CSX and NS to implement various mitigation measures in Northwestern Indiana (specifically, in the cities of East Chicago, Hammond, Gary, and Whiting, IN, also known as the Four City Consortium or the Four Cities). In Decision No. 96, served October 19, 1998, in response to the Four Cities' request for additional monthly reporting on the line segments in the Four Cities area, we modified Environmental Condition No. 21(i), which requires applicants to conduct regularly scheduled meetings with representatives of the Four Cities for 3 years. Our revised condition specifies that applicants will be required at those meetings to provide a status report on average train traffic volumes and speed on the applicable portions of the four rail segments in the area, and on the progress of operational and capital improvements required by us to address highway/rail at-grade crossing safety and delay issues in the Four Cities area.

On December 23, 1998, CSX provided us with a copy of a settlement agreement between CSX and the Four Cities executed on October 26, 1998. CSX explains that this settlement agreement incorporates the conditions imposed by us in Decision No. 89, Appendix Q, Environmental Condition No. 21(a)-(h), but supersedes the modification of Condition No. 21(i) in Decision No. 96, with respect to CSX. Specifically, although the settlement agreement does not change NS' reporting requirements, CSX will be required to provide the information specified in Section VI of the October 26, 1998 settlement agreement. By supplemental letter filed January 20, 1999, CSX requests that Condition No. 21(i) be amended to reflect the parties' settlement agreement and that the negotiated agreement between CSX and the Four Cities be added to the CSX Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89, which requires CSX to comply with the terms of all listed negotiated agreements developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction. CSX states that the Four Cities concur with its request.

In view of the October 26, 1998 settlement agreement between CSX and the Four Cities, and the parties' acceptance of the modified reporting format in Section VI of that agreement, we will: (1) add the negotiated agreement between CSX and the Four Cities to Condition No. 51 of Appendix Q of Decision No. 89; and (2) delete Condition Nos. 21(a)-(h) of Appendix Q of Decision No. 89 (which apply only to CSX and have been superseded by the parties' settlement agreement). In addition, we will renumber Condition No. 21(i) of Decision No. 96 as Environmental Condition No. 21 and modify that condition to apply only to NS. These changes do not affect the reporting requirements previously imposed on NS.

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

It is ordered:

1. This proceeding is reopened. In accordance with the settlement agreement between CSX and the Four Cities, executed on October 26, 1998, the following is added to the CSX Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:

> 10. The Cities of East Chicago, Hammond, Gary, and Whiting, IN (also known as the Four Cities Consortium or the Four Cities), dated October 26, 1998.

In addition, Environmental Condition No. 21 of Appendix Q of Decision No. 89 is deleted. Furthermore, Environmental Condition No. 21(i) of Decision No. 96 is renumbered as Environmental Condition No. 21, and the condition is modified to read as follows:

> NS shall attend regularly scheduled meetings with representatives of the Four City Consortium for 3 years following the effective date of the Board's final decision. Representatives of the Indiana Harbor Belt Railroad shall also be invited. These meetings would provide a forum for assessing traffic delay, emergency response, and driver compliance with railway grade crossing warning systems through improved education and enforcement. At each meeting, NS shall provide a status report on average train traffic volumes and speeds on the applicable portions of rail line segment N-469, and on the progress of operational and capital improvements required by the Board to address highway/rail at-grade crossing safety and delay issues in the Four City Consortium area. CSX shall comply with the terms of its negotiated agreement with the Four City Consortium, as set forth in Environmental Condition No. 51.

2. This decision shall be effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

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SERVICE DATE - JANUARY 22, 1999

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 113

Decided: January 21, 1999

In Decision No. 89, in addition to approving the primary application,[1] the Board imposed a condition requiring CSX to meet with Illinois Central Railroad Company (IC) to attempt to resolve their dispute regarding dispatching of the Leewood-Aulon line in Memphis, TN, and to advise the Board by September 21, 1998, of the status of their negotiations. See Decision No. 89, slip op. at 102 and 178. At the parties' requests, the Board extended this deadline, most recently to January 19, 1999. See Decision Nos. 95, 98, and 104, served, respectively, October 1, October 26, and November 24, 1998. By letter filed on January 19, 1999, CSX reports that it has sent a proposal to IC, and IC has just recently sent to CSX its own proposal for resolving this matter, which is currently being reviewed by CSX. As a result, CSX indicates that more time is needed to reach a final resolution. CSX and IC therefore request an additional 60-day extension to March 22, 1999. The extension request will be granted.

It is ordered:

1. The request for an extension for submitting a status report regarding dispatching of the Leewood-Aulon line is granted. The due date is extended to March 22, 1999.

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[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. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

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SERVICE DATE - JANUARY 22, 1999

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 112

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

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

Decided: January 21, 1999

This decision addresses the motion filed December 23, 1998 (designated as FOPC-8) by Fort Orange Paper Company (FOPC) to clarify a decision the Board issued in connection with the transaction authorized in Decision No. 89, served July 23, 1998.[1] In Decision No. 109, served December 18, 1998, upon considering respective proposals by CSX and by Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited (collectively CP), the Board adopted certain trackage rights and terminal operation guidelines to implement the east-of-the-Hudson

[1] In Decision No. 89, 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.

condition imposed in the CSX/NS/Conrail transaction.[2] Among other conclusions by the Board in Decision No. 109, the Board found that, consistent with its intention to restore to New York City some of the rail competition that was lost when Conrail was created, CP's prospective trackage rights between Albany and New York City will be limited to overhead traffic, and that local access to shippers located between those points would not be permitted. Id. at 6.

FOPC contends that the Board's decision to limit CP's trackage rights to overhead traffic is contrary to the CSX/NS/Conrail transaction condition requiring CSX to negotiate an agreement with CP unrestricted as to commodity and geographic scope. FOPC also insists that the Board's ruling in Decision No. 109 precluding local access to industries on the Hudson Line, including FOPC's facility near Albany, is inconsistent with the Board's prior statement in Decision No. 89, slip op. at 116, that the east-of-the-Hudson condition "may help FOPC." While disagreeing with the limitation of CP's trackage rights in Decision No. 109, FOPC argues that the Board failed to provide an adequate explanation for these alleged inconsistencies.

According to CSX, the Board could not have been clearer in Decision No. 109 that its purpose was not to assist shippers such as FOPC, but rather to restore rail competition to New York City. CSX maintains that, unlike shippers in New York City who are the intended beneficiaries of CP's additional competition, shippers on the Hudson Line north of the city, such as FOPC, were never served by two carriers even prior to the creation of Conrail and were not the entities or locality the Board had in mind when it found that CP's settlement agreement with CSX did not go far enough toward introducing new competition to New York City. CSX indicates that FOPC has previously admitted that it cannot establish that it will be harmed by the CSX/NS/Conrail transaction. CSX contends that FOPC's motion is, in substance and effect, a petition for reconsideration that alleges no new evidence or changed circumstances and involves no material error and that it should therefore be denied.

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[2] We imposed the east-of-the-Hudson condition on behalf of the State of New York and the New York Department of Transportation and the New York City Economic Development Corporation. In our decision approving the primary transaction, we specifically stated: "CSX must attempt to negotiate, with CP, an agreement pursuant to which CSX will grant CP either haulage rights unrestricted as to commodity and geographic scope, or trackage rights unrestricted as to commodity and geographic scope, over the east-of-the-Hudson Conrail line that runs between Selkirk (near Albany) and Fresh Pond (in Queens), under terms agreeable to CSX and CP, taking into account the investment that needs to continue to be made to the line." Decision No. 89, slip op. at 177.

DISCUSSION AND CONCLUSIONS

FOPC's motion will be denied. In Decision No. 89, when we said that the east-of-the-Hudson condition "may help FOPC," it is apparent that we did not know what the parties ultimately would agree to, or whether any agreement would be reached. The parties could have reached an agreement favorable to FOPC. The fact that such an agreement was not reached does not elevate the prospect of an outcome benefitting FOPC to a Board imposed condition. Specifically, we disagree with FOPC's position that the word "may" is the same as "will." Moreover, the reason we imposed the condition requiring CSX to negotiate an agreement with CP unrestricted as to commodity and geographic scope was because we had found that the CSX-CP settlement agreement was not sufficient with respect to development of competition and traffic to and from New York City. See Decision No. 89, slip op. at 82-83. We reiterate that the purpose of our east-of-the-Hudson condition is to restore rail competition to New York City. Although shippers located on the Hudson Line north of New York City may benefit from the increased rail competition into and out of the city, our intended relief was directed primarily to the city, not to shippers located in other parts of the state, including FOPC.[3] FOPC has failed to support its contentions.

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

It is ordered:

1. The FOPC-8 motion for clarification is denied.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams

Vernon A. Williams
Secretary

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[3] While FOPC suggests that our order requiring CSX to negotiate haulage or trackage rights with CP that are "not restricted as to commodity or geographic scope" means that we intended for those rights to encompass access to Albany-area shippers such as itself, this is simply not the case. Instead, it was our intent to build on the privately negotiated settlement agreement with CP that, absent our order, would have provided new rail competition into and out of New York City and Long Island, but largely and unduly restricted to truck-competitive traffic and to origins and destinations that would not compete with what would become long-haul and/or single-line CSX routings.

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Records: 366

STB FD-33388 11-2-01 C-203 32209

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32209 SERVICE DATE - NOVEMBER 2, 2001
EB

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

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. 203

Decided: October 31, 2001

In Environmental Condition No. 8(A) of Appendix Q of Decision No. 89[1] (Decision No. 89, slip op. at 399), we required NS to install "4-Quadrant Gates, or Alternative Mitigation such as Median Barriers" at the at-grade crossing located at SR 7, DOT: 468 599F, in Clarke County, Berryville, VA. Alternatively, as provided in Environmental Condition No. 8(A), NS may satisfy this requirement by entering into a Negotiated Agreement with the affected local jurisdiction and the state department of transportation to provide for alternative safety improvements in the vicinity of the identified highway/rail at-grade crossing that achieve at least an equivalent level of safety enhancement.[2]

In Decision No. 154, served on May 31, 2000, we granted NS' request for a 1-year extension to August 22, 2001, to complete the Environmental Condition No. 8(A) requirements for the SR 7 at-grade crossing. According to NS, it had been informed by the Virginia Department of Rail and Public Transportation (VADRPT) that the SR 7 at-grade crossing in Berryville was not conducive to the installation and operation of either 4-quadrant gates or median barriers, due to the physical layout of the grade crossing, and that VADRPT was considering an alternative package of grade crossing safety improvements.

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[1] In Decision No. 89, served July 23, 1998, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail) and the division of Conrail's assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

[2] Environmental Condition No. 8(A) required compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000.

By letter filed on September 27, 2001, NS advises that VADRPT, in consultations with NS, subsequently determined that the preferred alternative safety upgrading for the SR 7 at-grade crossing should provide for cantilever signals and new train detection circuitry as proposed in plans that NS provided to VADRPT on November 3, 2000. NS further states that, on November 28, 2000, it was informed by VADRPT that the Commonwealth had installed curbs at the SR 7 at-grade crossing and that NS was authorized to proceed with the proposed alternative safety upgrading work. NS informs the Board that the safety upgrading work at this crossing was then completed and that the crossing improvements were placed in service on August 14, 2001. Accordingly, NS believes that Environmental Condition No. 8(A) has been satisfied with respect to the SR 7 at-grade crossing.

In view of NS' completion of the safety upgrading work at the SR 7 at-grade crossing in a manner satisfactory to VADRPT, we agree with NS that Environmental Condition No. 8(A) has been satisfied with respect to the SR 7 at-grade crossing.

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

It is ordered:

1. In view of NS' completion of the safety upgrading work at the SR 7 at-grade crossing, DOT: 468 599F, in Clarke County, Berryville, VA, in a manner satisfactory to the Virginia Department of Rail and Public Transportation, Environmental Condition No. 8(A) of Appendix Q of Decision No. 89 has been satisfied with respect to the SR 7 at-grade crossing.

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

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

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Records: 338

STB FD-33388 10-19-01 C-202 32184

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32184 SERVICE DATE - OCTOBER 19, 2001
EB

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

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. 202

Decided: October 17, 2001

In Environmental Condition No. 8(A) of Appendix Q of Decision No. 89, served July 23, 1998,[1] we required applicants to negotiate with the State of Ohio (by and through the Ohio Attorney General, the Ohio Rail Development Commission (ORDC), and the Public Utilities Commission of Ohio (PUCO)) regarding certain highway/rail at-grade crossing improvements.[2] On May 27, 1999, CSX submitted a Railroad Corridor Agreement (Agreement), dated May 17, 1999, entered into by CSX, PUCO, and ORDC regarding highway/rail at-grade crossing improvements in Ohio. In Decision No. 129, served June 16, 1999, we added the Agreement to the list of Negotiated Agreements entered into by CSX in Environmental Condition No. 51 of Appendix Q of Decision No. 89, and amended Environmental Condition No. 8(A) by deleting the 20 CSX highway/rail at-grade crossings located in the State of Ohio that were listed under "CSX" (slip op. at 395-96).

As summarized in Decision No. 129, the Agreement provided that one crossing listed in Environmental Condition No. 8(A) that is presently equipped with flashing lights and gates (the West Boundary Street crossing (155821J) in Perrysburg) would be evaluated to determine whether further upgrading is warranted. Environmental Condition No. 8(A) specified upgrading

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[1] In Decision No. 89, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail) and the division of Conrail's assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as applicants.

[2] The original deadline to complete negotiations was within 120 days of the effective date of our decision or by December 20, 1998. At the request of CSX and the State of Ohio, this date has been extended several times.

to "4-Quadrant Gates, or Alternative Mitigation such as Median Barriers." As explained in Section 1(B) of the Agreement, however, these devices are not currently used in Ohio. Therefore, further evaluation was anticipated, and the Agreement provided that CSX would assist PUCO/ORDC and the local community in the evaluation.

By letter filed September 18, 2001, CSX advises that, pursuant to the Agreement, it has assisted ORDC and the City of Perrysburg in their evaluation of the West Boundary Street crossing, and that the parties have concluded that the warning system at the West Boundary Street crossing should not be changed. CSX further states that, in lieu of upgrading the West Boundary Street crossing, ORDC and the City of Perrysburg would like to upgrade the warning systems at two other crossings in Perrysburg, one at Mulberry Street (155822R) and one at Maple Street (155832N), by installing flashing lights and gates.[3] CSX indicates that it does not object to this proposal and that ORDC, the City of Perrysburg, and CSX agree that upgrading the Mulberry Street and Maple Street crossings to flashing lights and gates in lieu of upgrading the West Boundary Street crossing will satisfy CSX's obligations under the Agreement, and thus under Environmental Condition No. 51.

In view of the parties' development of mutually satisfactory alternate safety improvements in the City of Perrysburg, we agree that upgrading the Mulberry Street and Maple Street crossings to flashing lights and gates in lieu of upgrading the West Boundary Street crossing will satisfy CSX's obligations under the Agreement and under Environmental Condition No. 51.

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

It is ordered:

1. In accordance with the parties' development of mutually satisfactory alternate safety improvements in the City of Perrysburg, OH, CSX's upgrade of the Mulberry Street (155822R) and Maple Street (155832N) crossings to flashing lights and gates, in lieu of upgrading the West Boundary Street crossing (155821J), will satisfy CSX's obligations under the Railroad Corridor Agreement, dated May 17, 1999, and therefore under Environmental Condition No. 51 of Appendix Q of Decision No. 89.

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[3] In its September 18, 2001 filing, CSX enclosed a letter from James M. Bagdonas, City Administrator, City of Perrysburg, to Susan J. Kirkland (ORDC), dated August 8, 2001, and a letter from Ms. Kirkland to Dale Ophart (CSX), dated August 20, 2001, discussing this issue.

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

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

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Records: 333

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Surface Transportation Board

Washington, DC

October 4, 2001

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. 198]

NOTICE

A court action, entitled as shown below,

was instituted on or about September 28, 2001,

involving the above-titled proceeding:

No. 01-3685

The Commonwealth of Pennsylvania and Senator Arlen Specter

v.

Surface Transportation Board and United States of America

before the
United States Court of Appeals for the Third Circuit

Vernon Williams

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SERVICE DATE - LATE RELEASE OCTOBER 11, 2001

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. 201

Decided: October 11, 2001

In Decision No. 198 (served September 19, 2001), the Board determined that it would not order Norfolk Southern Corporation and Norfolk Southern Railway Company (referred to collectively as NS) to keep open the Hollidaysburg Car Shops (HCS) located near Altoona, PA, beyond October 1, 2001, but it imposed conditions, including enhanced labor protection for HCS employees, should NS proceed to close the shops.

By petition filed September 24, 2001, the Transportation•Communications International Union (TCU) asked the Board to clarify certain details respecting the enhanced labor protection that the Board had imposed.

By a pleading filed October 5, 2001, TCU has advised that it wishes to withdraw its petition for clarification because the parties have resolved, on their own, the matters raised in that petition. Consistent with the Board's policy favoring private-sector resolutions, withdrawal of the petition will be permitted and the petition will be dismissed.

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

It is ordered:

1. Withdrawal of TCU's petition is permitted, and the petition is dismissed.

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SERVICE DATE - LATE RELEASE OCTOBER 9, 2001

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STB Finance Docket No. 33388

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

Decision No. 200

Dated: October 9, 2001

NOTICE TO THE PARTIES:

A decision served as a late release on October 4, 2001, inadvertently omitted Vice Chairman Clyburn's name. Please correct your copies to read as follows: Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

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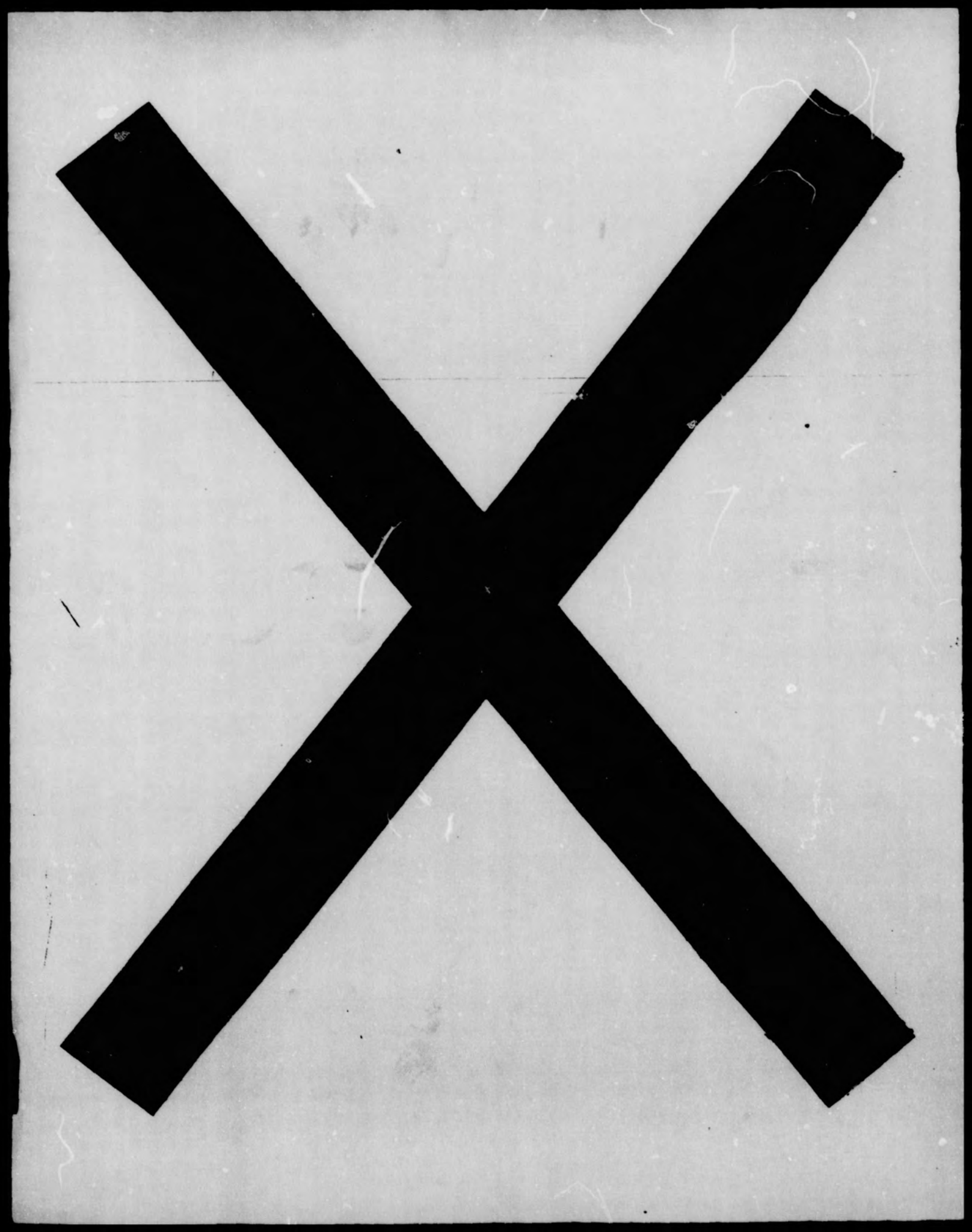

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SERVICE DATE - LATE RELEASE OCTOBER 4, 2001

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. 200

Decided: October 4, 2001

In Decision No. 198, served September 19, 2001, we determined that we would not order Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) to keep open the Hollidaysburg Car Shops (HCS) located near Altoona, PA beyond October 1, 2001, but we imposed conditions, including enhanced labor protection for HCS employees, should NS proceed to close the shops. The Commonwealth of Pennsylvania and the rail labor interests[1] that were parties to the proceeding (collectively movants) jointly filed a motion on September 27, 2001, as amended on October 2, 2001, asking that we stay that decision pending judicial review.[2] NS has replied. We deny the motion.

BACKGROUND

In Decision No. 89, served July 23, 1998, we authorized the joint acquisition of control of Consolidated Rail Corporation (Conrail) by NS and CSX Corporation and CSX Transportation, Inc. (collectively CSX) and the division by CSX and NS of Conrail's assets. In authorizing that transaction, we imposed on NS and CSX, as we have imposed on rail carrier applicants in other major rail consolidations, a condition requiring the carriers to adhere to the representations they made during the course of the consolidation proceeding. Decision No. 89, at 176, ¶ 19.

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[1] The Transport Workers of America, National Council of Firemen and Oilers/SEIU, International Association of Machinists and Aerospace Workers, International Brotherhood of Boilerworkers and Blacksmiths, International Brotherhood of Electrical Workers, Sheet Metal Workers' International Association, and the Transportation Communications International Union.

[2] A petition for review was filed on September 28, 2001, with the United States Court of Appeals for the Third Circuit in No. 01-3685, Pennsylvania v. STB.

By petition filed March 28, 2001, movants asserted that NS' announced shut-down of the HCS (initially announced for September 1, 2001, but later set to occur on or after October 1, 2001) would violate representations made by the carrier that it would continue operations at the HCS and invest and increase their utilization, and they requested that we order NS to keep the shops open after the announced closure date. We directed NS to show why we should not do so, in Decision No. 186 (served May 21, 2001).

After considering the record before us, we determined that NS had indeed made commitments to the Altoona/Hollidaysburg area and to HCS employees—which were relied upon by various local and statewide interests in determining how they would participate in the merger process—that NS would make the HCS and the nearby Juniata Locomotive Shop (JLS) important parts of its post-transaction operations. We also noted that NS kept that commitment for more than 2 years after it acquired the HCS (on June 1, 1999). Decision No. 198, at 6.

However, we further determined that NS did not represent that it would keep the HCS open indefinitely, without regard to business and economic conditions. We observed that NS' business prospects have worsened considerably, forcing the carrier to make numerous operational, personnel, and financial adjustments. Because, in the current business climate, there appeared little reason to believe that NS could operate at the capacity levels needed to make the shops viable, and because the car repair work at HCS could be absorbed (along with transferred HCS employees) at other NS facilities, we concluded that NS should not be required to continue operations at the HCS, particularly when requiring it to do so here might simply work to disfavor other NS car shops and employees, and, in turn, other local communities. Decision No. 198, at 6-7.

In view of NS' more general commitments to the HCS employees and the Altoona/Hollidaysburg area, however, we provided HCS employees with important added labor protection, should NS proceed to close the shops. Specifically, we required NS in that circumstance to (1) extend the automatic certification for New York Dock[3] economic benefits that it had agreed to provide to transferring HCS employees represented by certain unions to transferring employees represented by other unions; and (2) provide the HCS employees who are not afforded the opportunity to follow their work (or who cannot exercise their seniority to do so) immediate eligibility upon dismissal to New York Dock benefits. Decision No. 198, at 7-8. We also required NS, beginning on January 2, 2002, to report quarterly on its efforts to keep open the JLS and to work with the Altoona/Hollidaysburg area on alternative economic development projects. Id. at 8.

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[3] New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

DISCUSSION AND CONCLUSIONS

To obtain a stay, movants must show: (1) that they are likely to prevail on judicial review; (2) that, without a stay, they will suffer irreparable injury; (3) that a stay would not harm other interested parties; and (4) that the public interest supports granting a stay. Washington Metropolitan Area Transit Comm'n v. Holiday Tours, 559 F.2d 841 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921 (D.C. Cir. 1958); Hilton v. Braunskill, 481 U.S. 770 (1987). We find that movants have not satisfied these criteria.

Most significantly, movants have not demonstrated that they are likely to prevail on the merits of their petition for judicial review. Movants argue that Decision No. 198 is "standardless." Motion, at 3. But the sole issue before us was whether NS violated our condition that the carrier adhere to its representations, and we found no indication in the record of the Conrail proceeding, or elsewhere, that NS had represented that it would continue HCS operations irrespective of changing business conditions. As we pointed out, worsening economic circumstances led NS to implement a series of significant, system-wide adjustments that, along with its planned closure of the HCS and adjustments at other car shops and facilities, included a 25% reduction in its management workforce and a reduction of shareholder dividends for the first time in its history. Decision No. 198, at 2 & n.4. And as we further observed, NS' plans to make the HCS viable (by increasing their utilization) depended on an anticipated increase in its own car fleet and on "insourcing" for repair the cars of other rail carriers—plans that, in the current business environment, are simply not likely to occur. Id. at 2-3, 6. Our determination that NS did not violate the "representations" condition here was thus reasonable and amply supported in the record.

Further, we clearly recognized and enforced NS' more general representations to the community by providing affected HCS employees with important, enhanced labor protection for both transferring and dismissed employees, should NS proceed to close the shops. As we observed, certifying all transferring HCS employees for New York Dock benefits now relieves the employees from having to demonstrate that a subsequent dismissal or displacement to a lower-paying job has the requisite nexus to the Conrail transaction, thus immediately qualifying them for New York Dock benefits should such an event occur. Decision No. 198, at 3 n.5; see New York Dock, Article I, § 11(e), 360 I.C.C. at 88. Moreover, dismissed HCS employees, who by our decision will become immediately eligible to collect New York Dock benefits, may decline, without forfeiting their benefits, a subsequent recall to a work location that would require moving from their place of residence. Id. at 8; see New York Dock, Article I, § 6(d), 360 I.C.C. at 87. The New York Dock conditions entitle affected employees to up to 6 years of salary protection, as Congress directed in 49 U.S.C. 11326. The added protection for HCS employees that we have provided here makes more certain that the employees will receive these significant benefits.

Movants argue, however, that transferring employees will be irreparably injured by having "to move when they do not want to." Motion, at 6. We are sensitive to these concerns but, as we observed, permitting rail carriers to transfer work and employees in carrying out a consolidation in exchange for providing income protection and other benefits has been a "basic part of the bargain embodied" in the New York Dock conditions, as well as its antecedents as far back as the Washington Job Protection Agreement of 1936. Decision No. 198, at 7 n.10, citing Decision No. 89 at 128. We also are sensitive to the potential economic impact in the Altoona/Hollidaysburg area should NS close the HCS, and to help ensure that NS will fulfill its general commitment to the economic well-being of the community, we also have required NS to report quarterly on its efforts to keep the JLS open and its ongoing work with the community on alternative economic development projects that will help to mitigate this loss.

Finally, contrary to movants' arguments (Motion, at 5), we have broader public interest obligations that must be considered here. As we observed, given the size of the HCS and the degree of its unused capacity, ordering continued operations there, especially in light of the current business climate, could well mean idling other car repair facilities and shifting NS employees at those facilities to Hollidaysburg or elsewhere. Decision No. 198, at 7. Having determined that NS did not represent that it would operate the HCS indefinitely without regard to business conditions, it is clearly appropriate for us to weigh the impact of continuing HCS operations on the rest of the NS network and its employees and to decline to favor employees on one part of the NS system at the expense of employees on other parts.

For all of these reasons, we find that movants have not satisfied the prerequisites necessary to obtain a stay, and we deny their motion.

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

It is ordered:

1. The motion for stay pending judicial review is denied.

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

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

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