

**SURFACE TRANSPORTATION BOARD WITHHOLDS ACTION, AT PARTIES' REQUEST, ON PETITION ASKING BOARD TO REVISIT CONDITIONS GRANTING TRackage RIGHTS TO "CANADIAN PACIFIC" IN DECISIONS APPROVING "CSX-NS-CONRAIL" TRANSACTION**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced that the Board has today issued a decision indicating that it will withhold action, at the parties' request, on a petition asking that it revisit the conditions imposed earlier by the Board that grant trackage rights permitting Canadian Pacific Railway Company and its affiliates (collectively, CP) to operate over certain lines now owned by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), in order to serve shippers in the New York City area. The Board's decision indicated that action on CP's petition would be withheld until at least November 1, 1999, in order to facilitate private negotiations to resolve the matter.

Last spring, the Board approved a proposal under which the rail assets of Consolidated Rail Corporation (Conrail) were taken over by CSX and by Norfolk Southern Corporation and Norfolk Southern Railway Company. The original proposal that the private parties negotiated among themselves divided Conrail's assets in a way that enhanced competition in several respects. Additionally, in approving the transaction, the Board imposed conditions that mitigated potential competitive harm and provided other public benefits.

One of these conditions made possible new competitive service for many New York City shippers and receivers that could formerly receive rail service only from Conrail. To permit that new competitive service, the Board granted CP trackage rights over the lines of CSX from Albany, NY, to Oak Point Yard in Queens, NY. These Board-imposed trackage rights made competitive rail service available to these shippers for the first time since the creation of Conrail more than two decades ago. To ensure that its conditions did not contribute to an unsafe, inefficient, or operationally infeasible railroad operating environment in the congested New York City area, the Board required CP to serve its new shippers through a cost-based switching service performed by CSX into and out of Oak Point Yard, rather than having CP itself also operate trains throughout this area. [FOOTNOTE 1: "Switching" is a practice whereby Railroad A, which does not physically serve a particular point, can obtain access to traffic there by using Railroad B, which does serve that point. Railroad B, which physically provides the service, then "switches," or transfers, the traffic to Railroad A at a point where both interchange.]

In a petition filed on July 27, 1999, CP asked the Board to direct CSX to permit CP to exercise two rights that, CP stated, derive from the conditions that the Board imposed in approving the transaction. First, arguing that the Oak Point Yard switching operations using CSX are inefficient for certain movements, CP asked that the Board direct CSX to permit CP to handle traffic to or from Harlem River Yard directly. Second, CP asked that the cost-based switching service that CSX was required to provide for CP at Oak Point Yard be construed as including certain traffic that moves through a CSX transload facility located at Hunts Point Terminal.

In its reply statement filed on August 16, 1999, CSX stated that CP's petition is in substance one to expand the rights that the Board previously gave to CP, rather than one to enforce existing rights. CSX also argued that the new Harlem River Yard operations that CP seeks to conduct could produce operational problems, and that the Hunts Point Terminal operations in which CP wants to participate are not the type of operations that were contemplated by the conditions giving CP access to shippers located within Hunts Point Terminal.

In its decision, the Board pointed out that it is prepared to decide this matter promptly if necessary. In letters dated September 17, 1999, and September 20, 1999, however, counsel indicated that CP and CSX are engaging in negotiations in an effort to resolve the issues privately, and asked that Board action be withheld until November 1, 1999. In today's decision, the Board indicated that, because it generally supports private resolution of disputes, and because cooperation

among carriers is particularly critical to any venture, such as this one, in which track and terminal facilities are shared, the request to withhold action would be granted. Thus, the Board stated that it would not act on CP's petition until at least November 1, 1999, in order to facilitate private negotiations to resolve the matter.

The Board's decision was issued today in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (Sub-No. 69) (Decision No. 132). It is available on the Board's web site at **[www.stb.dot.gov](http://www.stb.dot.gov)**.

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