

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 (Sub-No. 93)

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
(Buffalo Area Infrastructure)

Decided: February 1, 2001

Consistent with our oversight of the acquisition of Conrail,¹ we instituted this proceeding to examine railroad infrastructure issues in the Buffalo, NY area.² In our June 9, 2000 decision, we directed CSX and NS to meet with shippers, involved railroads, and governmental and local interests to further assess existing rail infrastructure and to more fully develop proposals for related improvements for the Buffalo area. CSX and NS submitted their joint Buffalo infrastructure report on September 7, 2000. See CSX/NS-1. Comments on the report were

¹ Conrail Inc. and Consolidated Rail Corporation are collectively referred to as Conrail. In 1998, we approved the acquisition of control of Conrail and division of its assets by CSX Corporation and CSX Transportation, Inc. (collectively CSX) and by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS). Among the conditions we imposed on the transaction were a general 5-year oversight condition and a condition calling for a 3-year study of rail rates in the Buffalo area (the Buffalo Rate Study) following the division of Conrail's assets, which occurred on June 1, 1999 (referred to as the Split Date). See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Lease/Agreements—Conrail Inc. and Consolidated Rail Corporation (General Oversight), STB Finance Docket No. 33388 (Sub-No. 91) (Conrail General Oversight); and CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Lease/Agreements—Conrail Inc. and Consolidated Rail Corporation (Buffalo Rate Study), STB Finance Docket No. 33388 (Sub-No. 90).

² See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Lease/Agreements—Conrail Inc. and Consolidated Rail Corporation (Buffalo Area Infrastructure), STB Finance Docket No. 33388 (Sub-No. 93) (STB served June 9, 2000).

submitted by Canadian National Railway Company (undesignated), Erie-Niagara Rail Steering Committee (ENRS-1), and South Buffalo Railway Company (SB-2). NS replied to the comments on October 31, 2000 (NS-1), and CSX replied on November 1, 2000 (CSX-1).

Report of CSX and NS on Buffalo Area Infrastructure. Pursuant to our June 9, 2000 decision in this proceeding, NS and CSX submitted a joint report addressing infrastructure issues in the Buffalo, NY area. According to the carriers, the division between CSX and NS of Conrail's properties in the greater Buffalo area cannot be properly understood without a review of the basic plan for allocating Conrail's overall route structure between CSX and NS. CSX and NS indicate that the transaction resulted in CSX operating Conrail's route from New York City and Boston through Albany and Buffalo to Cleveland, as well as Conrail's southwestern route from Cleveland to St. Louis. With respect to NS, the transaction resulted in NS operating Conrail's Pennsylvania routes from New York City across central Pennsylvania to Pittsburgh and Cleveland, as well as the northwestern part of Conrail's system from Cleveland west to Chicago.

CSX and NS state that the division of Conrail thus gave CSX the premier Conrail line westward from New York City that went through Buffalo, while it gave NS the premier Conrail line going west from New York City that went through central Pennsylvania and Pittsburgh. The carriers explain that they also obtained the use of secondary, alternative routes westward from New York City and that, while NS' primary new Conrail route between New York and Chicago does not pass through Buffalo, its secondary new Conrail route does pass through it, via the combination of the Southern Tier Line and the Nickel Plate Line, which in turn connects with NS' premier Conrail line westward from Cleveland to Chicago.

CSX and NS note that, because the allocation of Conrail's railroad properties in the Buffalo area followed the basic allocation of Conrail's routes, CSX has access to more customers at Buffalo than does NS and that, although both carriers provide through services in the area, CSX's service is that of a primary east-west route while NS' service is that of a secondary through route. CSX and NS assert that Buffalo has a different standing in the plans and operations of CSX as compared with NS and that, reflecting the use that Conrail made of the respective routes, the Buffalo assets allocated to the two carriers are fundamentally different in nature, capacity, and maintenance requirements.

CSX and NS state that, although they both suffered service difficulties in the area following the June 1, 1999 implementation of the transaction, operations since the Split Date have improved as adjustments were made in operations and service and that, today, both the CSX and NS systems are generally fluid. Applicants indicate that CSX is the largest operator of through freight movements in the Buffalo area and that almost all of CSX's trains through the

Buffalo area – an average of 70 per day – traverse CP Draw.³ CSX and NS state that a substantial amount of CSX’s interline traffic with Canadian carriers is exchanged in the Buffalo area and that CSX is required privately to maintain over 200 bridges and structures in the area. In contrast, applicants state that Buffalo is not part of NS’ primary east-west line to and from greater New York, as it is for CSX, and that NS’ share of the local Buffalo market is considerably smaller than CSX’s share (NS traffic represents about 33% of the units in the Buffalo area market, while CSX traffic represents about 46% of such units).⁴

CSX and NS indicate that the Board’s decision approving their application for control of Conrail also had a significant impact on the Buffalo area. A number of Buffalo shippers were subject to reciprocal switching, and the carriers indicate that the Board gave those shippers access to both CSX and NS and that the settlement reached with the National Industrial Transportation League (NITL) during the course of the proceeding, which was imposed by the Board as a condition to the transaction, reduced the level of switching charges previously imposed by Conrail. In addition, CSX and NS contend that settlement agreements (also imposed by the Board as conditions) with the two major Canadian railroads – Canadian National Railway Company (CN) and Canadian Pacific Railway Company (CP) – benefitted Buffalo shippers both by reducing switching fees and by other competitive enhancements for those carriers and their patrons. Applicants note that the Board also ordered that the favorable switching charges provided in the general settlement with NITL be applied to certain Conrail movements that Conrail had reclassified from switching movements to line-haul movements and that the Board said that this would broaden the “procompetitive and beneficial terms of the NITL agreement.” They state that CSX also was ordered to establish a committee to promote the growth of rail traffic to and from the greater Buffalo area.

Applicants indicate that, despite its smaller presence, NS has undertaken significant infrastructure improvements in Buffalo, costing \$15 million, including expansion of NS’ Bison Yard, rehabilitation of the BP Yard subleased from the Buffalo & Pittsburgh Railroad, and replacing the bridge over Clinton Street, a project performed with the approval of CP, whose access to SK Yard will be affected. They state that NS has also initiated or completed a number of projects, not located in Buffalo itself, costing more than \$40 million, that will improve operations on its east-west routes through Buffalo. According to NS, the construction of a

³ CP Draw is one of four active rail bridges spanning the Buffalo River. It is a heavily used, double tracked drawbridge controlled by CSX that handles approximately 70 CSX and 30 NS trains each day. CSX and NS inter-yard movements and Amtrak trains also use CP Draw. NS states that, to relieve congestion over the bridge, the construction of a second bridge adjacent to CP Draw as a replacement for its Nickel Plate Bridge, which is discussed later in this decision, is its most important infrastructure proposal for the Buffalo area.

⁴ As used here by CSX and NS, units are measures of traffic, including containers, trailers, and individual carloads.

second bridge at CP Draw, so that CSX and NS would each have their own bridge, is its primary infrastructure priority in Buffalo. In this regard, NS states that it is seeking public funding for the CP Draw project, estimated to cost approximately \$35 million. CSX states that it supports NS' proposal for a second drawbridge at CP Draw and is cooperating with NS and public authorities, notwithstanding CSX's belief that the benefits from the project will be solely to NS.

CSX believes that there is no need for it to invest in major capacity-increasing rail infrastructure in the Buffalo area now and that its spending in the area should be directed at increasing demand for rail services. CSX states that it has made direct capital expenditures of about \$2.3 million in the Buffalo area in 1999 and that it spent about \$15.9 million between Buffalo and Philadelphia to improve the capacity and speed of its rail lines linking Buffalo to the metropolitan centers of the East Coast. The carrier also indicates that it has made operating changes to increase fluidity on its main line route through Buffalo east and west.

According to CSX and NS, they have actively worked, together as appropriate, with customers, government officials and other rail carriers in the Buffalo area to address service difficulties and to develop new business. In November 1999, at the Board's suggestion, both carriers established customer hot lines to monitor service complaints in the Buffalo area. Since that time, they state that complaint calls, which were averaging several per week, have declined to almost zero, indicating that service is no longer a problem. Following our issuance of Decision No. 1, CSX and NS organized a meeting with "shippers, railroads and other interested parties for the express purpose of discussing more fully plans to improve the Buffalo area rail infrastructure." Decision No. 1 at 3. The carriers state that they extended 298 invitations to members of the Buffalo Common Council, Erie County Industrial Development Agency, other civic groups, representatives of all railroads and rail customers in the greater Buffalo area, and other county, state and federal agencies and legislative bodies. They indicate that almost 100 people attended a July 27, 2000 meeting in Buffalo and that, while the purpose of the meeting was to hear the public's views on needed additional rail infrastructure in the Buffalo area, most of the discussion concerned service issues that have already been resolved or such projects as grade crossings, pedestrian bridges, and rail bridges over streets that, while they might be desirable, would not increase rail capacity in the area. Despite the relatively limited discussion of infrastructure improvements to increase capacity, the carriers believe the meeting was a success because it provided a further general community contact between the two railroads and interested parties in the greater Buffalo area.

Comments of Erie-Niagara Rail Steering Committee (ENRSC). ENRSC maintains that, to relieve congestion on the existing CP Draw bridge, NS should be required to spend the \$6 million estimated cost of constructing two connections near Buffalo for which NS sought and obtained Board authority in proceedings directly related to the Conrail transaction. ENRSC contends that, although NS has decided to forgo the projects, we should require NS to spend a comparable amount because relieving congestion at CP Draw was the carrier's stated purpose for seeking the approvals. In addition, ENRSC argues that we should direct: (1) NS to explain the basis for its discontinuance of operations over the adjacent Nickel Plate bridge; and (2) CSX and

NS to enter into meaningful discussions with CP and CN to improve the movement of international traffic through the greater Buffalo area.

Comments of Canadian National Railway Company. CN contends that the CSX/NS joint report inaccurately describes it as unwilling to incur costs to improve rail service in the Buffalo area. According to CN, it is willing to consider operating changes in the Buffalo terminal area and it looks forward to discussing new infrastructure investments in concert with the other railroads operating in the area. CN states that its operating efficiencies in the Buffalo terminal area benefit both itself and CSX and that it disagrees with the joint report's assertion that CSX is disproportionately burdened. CN indicates that it is very interested in participating with NS in a rail solution that would permit the construction of a less expensive fixed bridge at CP Draw.

Comments of South Buffalo Railway Company (SB). SB contends that we should authorize a regional switching and terminal railroad, such as itself, to serve as the neutral pick-up and delivery carrier operating on behalf of all major railroads in the greater Buffalo area. SB states that operations by a single carrier throughout Buffalo would relieve congestion and simplify interchanges. According to SB, it has the experience and operating and financial resources to provide such a service in the public interest.

DISCUSSION AND CONCLUSIONS

CSX and NS have filed a comprehensive report on their completed and projected capital improvements in the Buffalo area. Both carriers demonstrate that they have invested substantial amounts on infrastructure to improve rail service in the immediate Buffalo area and in the rail network connected to it. CSX and NS have also worked closely with local groups and business interests to identify additional projects involving upgrades in capital improvements and to take appropriate actions. We commend CSX and NS for their cooperative actions in this regard and urge them to continue these efforts in the future.

ENRSC asks us to require CSX and NS to enter into substantive discussions with CP and CN to improve the movement of international traffic through the greater Buffalo area. In addition, CN states that it wants to participate with NS in finding a rail solution that would permit the construction of a less costly fixed bridge at CP Draw. Neither CSX nor NS opposes such discussions. Because these discussions, if successful, would significantly improve rail service in Buffalo, we urge CSX and NS to continue cooperating with CP and CN to improve the movement of international traffic through Buffalo and with CN in finding an alternative to the current congestion at CP Draw.

We will deny ENRSC's request that we require NS to spend at least an additional \$6 million in capital improvements in the Buffalo area. Although we exempted NS' construction proposals at Blasdell and Gardenville Junction, those exemptions, as is the case with all our exemptions, are permissive. We did not make those construction proposals conditions to our

approval of the Conrail transaction. ENRSC has cited no Board or other precedent for its novel request that NS be forced to spend a comparable amount as it originally projected for those constructions. In any event, NS indicates that it has spent far more on capital projects in Buffalo than was originally contemplated in the application and more than twice the estimated \$6 million cost of the Blasdell and Gardenville Junction connections.

As regards ENRSC's request that NS explain its discontinuance of operations over the Nickel Plate bridge, NS indicates that, on March 20, 1984, NS' predecessor, Norfolk and Western Railway Company (N&W), filed with the Interstate Commerce Commission (ICC) a notice of exemption for the relocation of its line from the N&W (Nickel Plate) bridge to the parallel Conrail bridge over which NS now operates at CP Draw. In a decision served April 10, 1984, the ICC found that the relocation was specifically exempt from prior approval under 49 CFR 1180.2(d)(5), the class exemption for joint projects involving the relocation of a rail line which does not disrupt service to shippers. See Finance Docket No. 30442 (ICC served Apr. 10, 1984). According to the CSX/NS joint report, the old N&W bridge is in poor condition and in need of substantial repairs, and vandalism has destroyed the bridge operator's house and the operating machinery. NS states that restoration is not economically feasible. CSX/NS-1 at 18. Thus, NS has satisfactorily explained why it is not operating over the Nickel Plate bridge.

SB's neutral switching proposal for the Buffalo area lacks specific operating details. And it goes well beyond the scope of this proceeding, amounting to a fundamental restructuring of the approved transaction. SB has fallen far short of justifying such an extraordinary request. Accordingly, we will deny SB's request.

Given the record, we are discontinuing this proceeding as a separate proceeding, but we will continue monitoring CSX's and NS' capital improvements and investments for improving rail service in the Buffalo area. CSX and NS shall continue to provide updates on the Buffalo area infrastructure, as well as related cooperative actions with other entities in the Buffalo area, as part of their respective annual progress reports to be filed in the Conrail General Oversight proceeding.⁵

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

⁵ See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Lease/Agreements—Conrail Inc. and Consolidated Rail Corporation (General Oversight), STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 5 (STB served Feb. 2, 2001).

It is ordered:

1. Requests for relief sought by ENRSC and SB are denied for the reasons discussed above. This proceeding is discontinued.
2. CSX and NS shall provide updates on the Buffalo area infrastructure, as well as related cooperative actions with other entities in the Buffalo area, as part of their respective annual progress reports due on June 1, 2001, and thereafter, in STB Finance Docket No. 33388 (Sub-No. 91).
3. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary