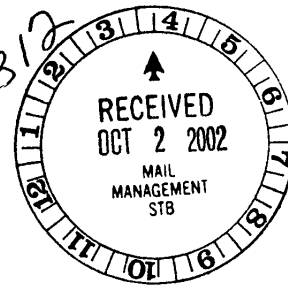


PUBLIC VERSION

**Before the
Surface Transportation Board
Washington, D.C.**



CSX Corp. and CSX Transportation, Inc.,)
Norfolk Southern Corp. and Norfolk Southern)
Railway Co., -- Control and Operating)
Leases/Agreements -- Conrail, Inc. and)
Consolidated Rail Corp.)
(BUFFALO RATE STUDY))

F.D. No. 33388 (Sub-No. 90)

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**Reply Comments of the
United States Department of Transportation**

**Part of
Public Record**

Introduction

The Surface Transportation Board ("STB" or "Board") in 1998 approved the acquisition and division of Conrail by the Norfolk Southern Railway Co. ("NS") and CSX Transportation, Inc. ("CSX"), subject to certain conditions. 3 S.T.B. 196 (1998). Through the instant proceeding the Board has implemented one such condition: a three-year study of the effects of this transaction on rail rates in the geographic region in and around Buffalo, New York. STB Finance Docket No. 33388 (Sub-No. 90), Decision No. 1 (served December 15, 1999).

The initial phase of the Buffalo Rate Study covered the period from two years before to six months after the June 1, 1999, integration of Conrail into CSX and NS (the "Split Date"). The STB found that average rail rates had declined over this time frame. Decision No. 4 (served July 7, 2000). The second phase compared rail rates during the

one year prior to the Split Date with those in the twelve-month period from the Split Date to May 31, 2000, representing the first complete year in which Conrail operations had been assimilated by CSX and NS. The Board found that rates on the whole had declined relative to rates for comparable movements in the prior year. Decision No. 6 (served February 2, 2001). The third phase of the proceeding focused on rail rates in the Buffalo region from June 1, 2000 to May 31, 2001, the second twelve-month period after the Split Date. The STB determined that rates during this period had not changed significantly and were in fact “generally somewhat lower” than those in effect prior to the Split Date. Decision No. 7 (served December 17, 2001) at 1.

This phase of the Buffalo Rate Study focuses on rail rates in the Buffalo region from June 1, 2001 to May 31, 2002, the third twelve-month period after the Split Date. Because this is the final scheduled examination of rates, it encompasses as well a “full overview” of the entire time frame of the Study by comparing rates on traffic movements from the pre-Split Date period to the current period (*i.e.*, from May 31, 1998 to June 1, 2002). *Id.* CSX and NS have each filed their reports. CSX-8; NS-6. CSX indicates that its rates during the current period were only marginally higher than in the previous period, and that they actually declined overall on a weighted average basis since the Split Date. CSX-8 at 6. NS indicates that for the current period rates for percent of its traffic either declined, were static, or increased by less than percent compared to the prior twelve-month period. NS-6, Verified Statement (“VS”) of John H. Williams at 6. Since the Split Date, NS reports that rates for percent of its traffic either declined, were static, or increased by less than percent. *Id.* at 8.

The United States Department of Transportation ("DOT" or "Department") examined the CSX and NS reports and the carriers' 100% waybill data for (1) the current twelve-month period at issue (June 1, 2001 - May 31, 2002), and (2) the twelve-month period immediately preceding the current period (June 1, 2000 - May 31, 2001). Pursuant to the Board's desire for a "full overview" of this proceeding, DOT also examined the current period and the twelve months immediately preceding the Split Date (June 1, 1998 - May 31, 1999).¹ All traffic studied by both DOT and the carriers in the current period had a corresponding move during each of the prior periods under study in order to ensure the comparisons were valid.²

The Carriers' Submissions

The NS and CSX reports employ the same methodology approved in the past by the STB. *See* Decision No. 7, *supra*, at 7. Both carriers identified major rail moves of a particular commodity (identified at the Standard Transportation Commodity Code ("STCC") -4 level) between origination city/destination city pairs (NS used Freight Station Accounting Codes) that generated annual line haul revenues greater than or equal to \$20,000. CSX identified such moves representing percent of total CSX revenues on movements to and from the Buffalo Area. CSX-8, Verified Statement ("VS") of Michael J. Boyles at 2 and 7. Using the two most recent periods for rate analysis (June 1, 2001 - May 31, 2002, and June 1, 2000 - May 31, 2001), CSX found

1/ DOT submitted neutral preliminary comments in anticipation that other interested parties might submit substantive views in their initial comments.

2/ Because a railroad's traffic changes every year, even year-to-year comparisons can never include all of a carrier's movements from any preceding year.

moves that had a corresponding move in the prior period.³ Id. at 3 and 9. After adjustments for data anomalies, the carrier reported that overall rates in and out of Buffalo increased by percent. Id. at 15. Using the same methodology, CSX compared current year rates to pre-Split Date rates. The carrier identified third year moves that had a corresponding move in the pre-Split Date period. These moves accounted for percent of the revenues generated by its traffic in and out of Buffalo. Overall, CSX found that since the twelve months prior to the Split Date its rates had declined by percent on a weighted average basis. Id. at 16.

For the current period NS identified major moves having corresponding moves in the prior twelve months. NS reports that these moves accounted for units of traffic out of a total units.⁴ NS-6, VS of John H. Williams at 6 and Attachment JHW-4 at 8. In its comparison of the two most recent twelve month periods, NS reported that rates on about percent of the traffic either declined, were unchanged, or increased by less than percent. Id. In its comparison of rates in the most recent year to pre-Split Date rates, NS identified major movements that took place in both periods. These moves accounted for a total of units. Id. at 7. NS found that rates on percent of this traffic either declined, remained constant, or increased by less than percent. Id. at 8.

³/ CSX, in its initial identification of moves, restricted the commodity description to the STCC-4 level of accuracy. In a second phase, it expanded the commodity description to the STCC-7 level which resulted in further segregation of moves.

⁴/ A "unit" as used here is a carload, or, when the move is intermodal traffic, the equivalent to a trailer or container. Id.

The Department's Analysis

A. Background

Before reviewing rate changes for each carrier, the Department believes that it is important at the outset to summarize the traffic and revenues for all NS and CSX moves in and out of Buffalo. As noted in our past comments, combined CSX/NS/Conrail waybill data for the year preceding the Split Date showed that there were approximately units originated or terminated in the Buffalo area, generating nearly \$ million in revenues. NS's share of this traffic was roughly units and \$ million in revenue, and that CSX's share was some units and \$ million in revenue. See DOT Reply Comments (filed October 12, 2001) at 3.

During the current twelve-month period NS traffic volumes again declined, just as they have in each year since the Split Date; they now stand at nearly units and generate \$ million in revenues. Although DOT commented last year that CSX had regained essentially all of the traffic that its "portion" of Conrail had carried prior to the Split Date, this year its traffic levels declined again. CSX total traffic in and out of Buffalo is now slightly over cars and generates roughly \$ million in revenues.

DOT in this proceeding has used revenue per car as a surrogate for rates; for the current twelve-month period NS received about \$ per car while CSX received \$ per car. For the period preceding the Split Date, revenue per car for NS/CR was \$ while CSX/CR stood at \$. Thus, NS revenue per car is down over percent while CSX's is down over percent.⁵ We now turn to an explanation of our methodology.

^{5/} It may be argued that this juxtaposition of revenues generated approximately four years apart does not

B. DOT's Methodology

In order to assess the general trend in rail rates for the Buffalo area, the Department extracted its study set from the 100 percent waybill data submitted by CSX and NS. DOT employed the same basic analytical approach used by CSX and NS and accepted by the STB in the prior phases of this proceeding. Decision No. 4 (served July 7, 2000) at 7-8 and Decision No. 6 (served February 2, 2001) at 11. That is, we examined changes in rail rates for major movements (identified as having generated revenues greater than or equal to \$20,000) grouped by origin city/destination city pairs and by commodity identified at the STCC-4 level. The method used to assess rate changes is based upon changes in revenue per car from one period to another, carrier revenue serving as a surrogate for customer rates.⁶ Finally, to be included in the study set, traffic had to have a corresponding move in the preceding period under examination,

accurately portray what has happened to traffic and revenues over the entire period since the Split Date. Moreover, changes in general economic activity can affect traffic levels, traffic mix, and revenue levels from any one year to another. We have therefore attempted to provide a more complete picture of relevant traffic and rate changes by including herein the averages for traffic and revenues over the three years following the Split Date.

The three year average for traffic in and out of Buffalo following the Split Date for NS was slightly over units per year; for CSX traffic averaged nearly units annually. For NS, this level is significantly below the traffic carried by its "portion" of Conrail prior to the Split Date -- units. CSX's "portion" of Conrail transported units prior to the Split Date. Average revenues for NS over this period were \$ million while CSX averaged \$ million in revenue. As noted in the text above, prior to the Split Date the NS portion of Conrail earned revenue on this traffic of \$ million, the CSX portion earned \$ million. Revenue per car for the three-year period for NS thus averaged around \$; for CSX around \$. Pre-Split Date revenue per car for NS's portion of Conrail was \$ and for CSX's portion \$. Thus, when examining all of each carrier's respective traffic in and out of Buffalo, both have experienced reduced revenue per car since the Split Date. For NS this amounts to a percent decrease, for CSX a percent decline.

^{6/} We note that, as in the past, our examination of rail rates does not adjust any data for inflation to reflect changes in railroad expenses of providing service. If this factor were to be taken under consideration, the Railroad Cost Recovery Index for the Eastern Territory rose by 11.0 percent from the 2nd quarter of 1999 through the 1st quarter of 2002 (most recent quarter available). Source: Association of American Railroads, "AAR Railroad Cost Indexes," Table C, page 13; June 2001 and June 2002 editions.

so that we could directly examine the effects of the Conrail acquisition on rates for shipments in the region.

C. CSX Rates

(1) Rate Changes for 2nd and 3rd Period After Split Date (June 2001 - May 2002 vs. June 2000 - May 2001)

Employing the above methodology, the Department identified CSX traffic that moved during the most recent twelve-month period (June 2001 through May 2002) with corresponding moves in second year following Split Date (*i.e.*, from June 2000 through May 2001). We found over cars generating revenues of over \$ million. This subject traffic represented about percent of total CSX Buffalo traffic and revenues. DOT found that nearly percent of this subject traffic had a rate decrease while rates increased for the remaining percent. DOT further found that average revenue per car rose from \$ to \$ between these two periods -- an increase of percent. Attachment 1 shows that percent of subject traffic experienced rate increases of up to percent. However, we then undertook a closer examination of this segment and found that nearly percent of this subject traffic had an increase not exceeding percent.

(2) Rate Changes Before and After Split Date (June 2001 - May 2002 vs. June 1998 - May 1999)

The Department also compared the rate changes during this most recent period with Conrail rates prior to the Split Date, in order, to provide the "full overview" desired by the Board. DOT identified units generating nearly \$ million in revenue for CSX in the most recent period that had a corresponding move in the pre-Split Date

period. Attachment 2 shows the distribution of traffic according to ranges of rate changes. We found that over percent of this traffic experienced rate decreases over this four-year period. Average revenue per car for CSX fell from \$ in the pre-Split Date period to \$ in the most recent period, indicating a percent decrease in overall rail rates.

D. NS Rates

(1) Rate Changes for 2nd and 3rd Period After Split Date (June 2001 - May 2002 vs. June 2000 - May 2001)

To assess NS rate changes between the current period and the second twelve-months after the Split Date, the Department identified traffic that appeared in both periods. We found over cars in this period that had a corresponding move on NS in the prior period, which traffic generated revenues of slightly more than \$ million. This comprised over percent of traffic and revenues that NS originated/terminated in the Buffalo area for the current period.

DOT found that nearly percent of this traffic experienced rate decreases, while the remaining percent experienced rate increases between these two periods. Attachment 3 illustrates that percent of the traffic overall had increases of up to percent, but a closer examination revealed that percent of the traffic overall experienced increases of five percent or less. Generally, NS's average revenue per car for Buffalo traffic rose from \$ to \$ between these two periods -- an overall increase in rates of percent.

(2) Rate Changes Before and After Split Date
(June 2001 - May 2002 vs. June 1998 - May 1999)

Again, the Department undertook an examination of the cumulative changes in rail rates, comparing rates from this most recent period to Conrail rates prior to the Split Date. The Department identified units generating \$ million in revenue in the most recent period that had a corresponding move in the pre-Split Date period. This represented around percent of the traffic and revenues that NS moved in and out of the Buffalo over the past year. Attachment 4 illustrates the Department's findings: nearly percent of this traffic experienced rate decreases while the remaining percent had rate increases. Nonetheless, overall average revenue per car rose from \$ to \$, an increase of percent over four years.

E. CSX and NS Combined

(1) Rate Changes for 2nd and 3rd Period After Split Date
(June 2001 - May 2002 vs. June 2000 - May 2001)

Consistent with the Board's most recent decision in this proceeding, the Department developed a weighted average of the results for both carriers for the periods at issue. Decision No. 7, *supra*, at note 17. Attachment 5 shows that on a combined basis slightly over percent of the traffic in and out of Buffalo experienced rate decreases from the second year after the Split Date to the most recent twelve-month period. The nearly percent remaining traffic experienced rate increases. Even though percent of the traffic overall experienced rate increases of percent or less, closer examination again revealed that nearly percent of the traffic overall

actually experienced increases of percent or less. Average revenue per car rose from \$ to \$, an increase of percent.

(2) Rate Changes Before and After Split Date
(June 2001 - May 2002 vs. June 1998 - May 1999)

Similarly, the Department developed a weighted average for both carriers, comparing changes in their combined rates for the most recent period to Conrail rates prior to the Split Date. Attachment 6 illustrates that nearly percent of the traffic experienced rate decreases over this four-year period, while the remaining percent saw increases; over percent experienced rate increases of percent or less. Average revenue per car rose from \$ to \$, an increase of percent.

Conclusion

As the Board has already recognized in this proceeding, a weighted average of CSX and NS results gives a more accurate overall picture of their rail rates. The Department found that on average, over the period embraced by this Study, and without adjustment for inflation, these carriers' rates were up nearly percent from the period prior to the Split Date to June of this year. If inflation is considered, overall rate levels in Buffalo have actually declined. Based upon our analysis of the rates and the fact that Buffalo area shippers have not filed any contrary information or evidence, the

Department concludes that there is no indication in the record that the acquisition and division of Conrail by CSX and NS have reduced rail competition in the Buffalo area.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rosalind Knapp", written in a cursive style.

ROSALIND A. KNAPP
Deputy General Counsel