EPA regulation concerning dispensing pumps, and the use of automatic shut-off nozzles on these pumps ensures a level of safety that is equivalent to the level of safety that would be obtained by complying with § 393.67(c)(7)(ii).

The OMCS believes any operational problems experienced by motor carriers using certain fuel pumps to refill GM vehicles have already been resolved. The vehicles in questions have been in use for a number of years and are still being produced. Therefore, motor carriers using these vehicles have experience refueling them. The OMCS is not aware of any safety problems associated with the fill-pipe capacity for the fuel tanks on GM G and C/K vehicles. The agency requests comments on this issue.

The OMCS also reviewed available information on the origin of the fill-pipe rule. The 20-gallon per minute rate in § 393.67(c)(7)(ii) is based on the Society of Automotive Engineers' (SAE) recommended practice ''Side Mounted Gasoline Tanks'' as revised in 1949. The SAE later published fuel tank manufacturing practices in SAE J703, ''Fuel Systems,'' an information report which consisted of the former Interstate Commerce Commission's requirements for fuel systems and tanks (codified at 49 CFR 193.65 in the 1953 edition of the Code of Federal Regulations). The information report retained the 20-gallon-per-minute rate. The SAE currently covers this subject under recommended practice SAE J703 ''Fuel Systems—Truck and Truck Tractors.'' The 1995 version of the recommended practice continues to use the 20-gallon-per-minute criterion for fill pipes.

The OMCS does not have technical documentation explaining the rationale for the SAE's original use of the 20-gallon-per-minute rate in 1949 and believes the adoption of the criterion in Federal regulations may have resulted in its continued use in the current SAE recommended practice which references §§ 393.65 and 393.67. As stated by the SAE, ''[t]he intent of this document is not only to clarify the procedures and reflect the best currently known practices, but also to prescribe requirements * * * that meet or exceed all corresponding performance requirements of FMCSR 393.65 and 393.67 that were in effect at the time of issue.''

The OMCS believes the current requirement may need to be reconsidered in light of the EPA requirements. While the agency reviews this issue, motor carriers should not be penalized for operating vehicles with non-compliant fill pipes that they had no practical means of identifying. The agency has made a preliminary determination that it is appropriate to grant an exemption to § 393.67(c)(7)(ii) for interstate motor carriers operating certain GM vehicles and requests public comment on GM's application.

With regard to an exemption from the fuel tank marking and certification requirements (§§ 393.67(f)(2) and (f)(3)(ii)), the OMCS does not believe there would be a readily apparent adverse impact on safety associated with the absence of the required markings. Although the OMCS considers marking and certification important for helping enforcement officials and motor carriers quickly distinguish between fuel tanks that are certified as meeting the agency's requirements and those that are not, the OMCS does not believe the operators of the GM vehicles should be penalized because the fuel tanks are not marked and certified in accordance with § 393.67.

As a vehicle manufacturer, GM is fully aware of all applicable Federal Motor Vehicle Safety Standards issued and enforced by the National Highway Traffic Safety Administration, the agency in the U.S. Department of Transportation responsible for regulating motor vehicle and equipment manufacturers. GM is less familiar with the equipment requirements of the OMCS, the agency responsible for regulating motor carriers.

GM has indicated that its tanks do not meet the fill pipe requirements, and do not have the necessary certification. An exemption to the certification is needed because GM cannot misrepresent its product by certifying compliance with all applicable provisions in § 393.67 while its fill pipe designs allow approximately 10 gallons of gasoline fuel per minute to flow into the fuel tank. The agency believes granting exemptions for the affected motor carriers is the most effective way to resolve the problem while ensuring highway safety.

Terms and Conditions for the Exemption

The OMCS would provide an exemption to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating certain GM vehicles. The exemption would be valid for two years from the date of approval, unless revoked earlier by the OMCS. GM, or any of the affected motor carriers, may apply to the OMCS for a renewal. The exemption would preempt inconsistent State or local requirements applicable to interstate commerce.

The motor carriers operating these vehicles would not be required to maintain documentation concerning the exemption because the vehicles have markings that would enable enforcement officials to identify them. The vehicles covered by the exemptions can be identified by their vehicle identification numbers (VINs). The VINs contain ''J'' or ''K'' in the fourth position and a ''1'' in the seventh position. The OMCS believes this information is sufficient and requests public comment.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the OMCS is requesting public comment from all interested persons on the exemption applications from GM. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the OMCS may grant the exemptions at any time after the close of the comment period. In addition to late comments, the OMCS will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: December 14, 1999.

Julie Anna Cirillo,

Acting Director, Office of Motor Carrier Safety.

[FR Doc. 99–32913 Filed 12–17–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub–No. 90)] [1]

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 Rate Study)

AGENCY: Surface Transportation Board, DOT.

[1] A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33388.

ACTION: Decision No. 1; Notice of Buffalo Rate Study Proceeding and Request for Comments

SUMMARY: In 1998, the Board approved, subject to certain conditions: (1) The acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail) by (a) CSX Corporation and CSX Transportation, Inc. (collectively, CSX) and (b) Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS); and (2) the division of the assets of Conrail by and between CSX and NS. One of the conditions imposed called for a 3-year study of rail rates in the State of New York's Buffalo area (the Buffalo Rate Study or the Study) following the division of Conrail's assets, which occurred on June 1, 1999. Through this decision, we are initiating our Buffalo Rate Study to examine linehaul and switching rates for rail movements into and out of the Buffalo area. We are requiring certain information to be submitted by CSX and NS, and are requesting public comments to develop a more complete record. We are also setting the timetable for the submission of additional information and comments as the Study progresses.

DATES: For the initial 6-month review, the carriers' rail 100% waybill files for the period beginning June 1, 1997, and ending November 30, 1999, should be made available to all interested parties and to Board staff by December 30, 1999. CSX and NS comprehensive filings are due by January 14, 2000; comments from other parties are due by February 14, 2000; and CSX and NS replies to comments are due by February 29, 2000.

For the first full-year review, the carriers' rail 100% waybill files for the period ending May 31, 2000, should be made available to all interested parties and to Board staff by June 30, 2000. CSX and NS comprehensive filings are due by July 14, 2000; comments from all interested parties are due by August 14, 2000; and CSX and NS replies to comments are due by August 29, 2000.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33388 (Sub-No. 90) and must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Finance Docket No. 33388 (Sub-No. 90), 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of all documents in this proceeding must be sent to each representative: (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004–1202; and (2) Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, L.L.P., 888 Seventeenth Street, N.W., Washington, DC 20006–3939.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all pleadings and attachments (e.g., textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence) and clearly label pleadings and attachments and corresponding computer diskettes with an identification acronym and pleading number. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1–2–3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. Parties may individually seek a waiver from the disk-CD requirement. The computer data contained on the computer diskettes and CDs submitted will be subject to the protective order discussed below.

FOR FURTHER INFORMATION CONTACT: Michael A. Redisch, (202) 565-1544. [TDD for the hearing impaired: (202) 565–1695.]

Background

In Decision No. 89, served on July 23, 1998, in STB Finance Docket No. 33388 (*Conrail*), we approved, subject to certain conditions, the acquisition of control of Conrail by CSX and NS and the division of the assets of Conrail by and between CSX and NS. That division occurred on June 1, 1999. Prior to this, rail service in the Buffalo area [2] was dominated by Conrail. The Greater Buffalo interests were particularly critical of Conrail's pre-transaction market power in the area.

We determined that, while the method we approved for the division of Conrail's Buffalo-area assets—with the largest share going to CSX—would not create direct two-railroad service for all shippers in the Buffalo area, it would improve local competition significantly.[3]

As a precautionary measure, we also imposed a condition that called for a 3-year study of rail rates in the Buffalo area following the division of Conrail's assets and the integration of those assets into CSX and NS, which occurred on June 1, 1999. We will begin our Buffalo Rate Study with an initial review of the first 6 months (June 1, 1999, through November 30, 1999), which will be followed by a review of the first year (June 1, 1999, through May 31, 2000).

Comments and Information Requested

In this initial stage of the Buffalo Rate Study, we will require that CSX and NS file information sufficient for us to determine that they are in compliance with all the conditions related to switching that we have imposed in the Buffalo area. [4] We will also require CSX and NS to submit information sufficient for us to determine the trend in rates for rail movements into and out of the Buffalo area for the period beginning June 1, 1997, which is before the parties submitted the Conrail application subsequently approved by us, until November 30, 1999. And we will require that CSX and NS make available to interested parties and to Board staff the Conrail, CSX, and NS rail 100% waybill files for rail movements into and out of the Buffalo area (subject to the protective order discussed below) for the period of June 1, 1997, through November 30, 1999, so that we may obtain an independent determination of

[2] The Erie-Niagara Rail Steering Committee (ENRSC), an ad hoc committee representing businesses located in the New York State counties of Erie and Niagara, and in those parts of Chautauqua County that lie north or east of CP 58 near Westfield, referred to this area as the Niagara Frontier region. We will use this term, as well as the Greater Buffalo area or the Buffalo area, interchangeably. *See Conrail*, Decision No. 89, slip op. at 305–06, n.505.

[3] We found that the transaction would result in a much stronger ''second railroad'' presence in the Buffalo area than had been the case previously, especially given the enhancements we imposed. For example, in a settlement reached with the National Industrial Transportation League (NITL), CSX and NS agreed to mitigate the market power they would otherwise inherit from Conrail at exclusively served points where Conrail performed switching services, and we expanded those terms in approving the transaction and imposed that agreement as expanded and other settlement agreements pertaining to the Buffalo area, as discussed below, including certain representations made by CSX beneficial to that area.

[4] Conrail's switching fees had been $450 within its Buffalo switching district and $390 at other points in the Niagara frontier area. The NITL agreement retains switching for 10 years by CSX and NS for all facilities that received switching by Conrail to either of those carriers, and at an inflation-adjusted fee no higher than $250 for the first 5 years. We extended the switching component of the NITL agreement to situations where shortlines paid switching charges to Conrail and where Conrail received switching services from NS or CSX (*Conrail*, Decision No. 89, slip op. at 57). We also extended the NITL agreement to certain international rail movements into and out of Niagara Falls (*id.*, slip op. at 86–87).

While the NITL agreement covered only post-integration switching by CSX for NS and NS for CSX, CSX explained that it had also negotiated voluntary agreements with both Canadian National Railway Company and its affiliates (collectively, CN) and Canadian Pacific Railway Company and its affiliates (collectively, CP) that provide lower switching fees for enlarged volumes than formerly available to CN and CP from Conrail in the Greater Buffalo area. In addition, the agreements provide increased access to CN and CP for cross-border truck competitive traffic. We imposed these CN and CP settlements as conditions to our approval of the transaction.

the trends in rail rates into and out of the Buffalo area during this period.[5] Comprehensive filings addressing the matters discussed above are due from CSX and NS by January 14, 2000.

We are also requesting comments from shippers and their representatives, from other railroads serving the Buffalo area, and from other interested parties, seeking their views and evidence concerning trends in Buffalo-area rail rates and information to help us determine if local businesses and other railroads have available the switching rates to which they are entitled. Comments from all interested parties are due by February 14, 2000; and CSX and NS replies to comments are due by February 29, 2000.

Later next year, consistent with the June 1, 1999 division date, we will rebase this Buffalo Rate Study on a fiscal year ending May 31st of each year. Updates of the carriers' rail 100% waybill files for rail movements into and out of the Buffalo area for the period ending May 31, 2000, should be made available, subject to the protective order discussed below, to all interested parties and to Board staff by June 30, 2000. CSX and NS comprehensive filings are due by July 14, 2000; comments from other parties are due by August 14, 2000; and CSX and NS replies to comments are due by August 29, 2000.

Protective Order. Parties may submit filings (including waybill data and computer data), as appropriate, under seal marked Confidential or Highly Confidential pursuant to the Protective Order entered in STB Finance Docket No. 33388 in Decision No. 1 (served April 16, 1997), as modified in various respects in Decision No. 4 (served May 2, 1997), Decision No. 15 (served August 1, 1997), Decision No. 22 (served August 21, 1997), Decision No. 46 (served October 17, 1997), and Decision No. 87 (served June 11, 1998). Waybill files being made available to interested parties shall be subject to this Protective Order.

Service List. A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33388. This decision will serve as a notice that persons who were parties of record in STB Finance Docket No. 33388 will not automatically be placed on the service list as parties of record for this Buffalo Rate Study proceeding. Any persons interested in being on the STB Finance Docket No. 33388 (Sub-No. 90) service list and receiving copies of CSX and NS filings relating to the Buffalo Rate Study must send us written notification with copies to the railroads' representatives.

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

Decided: December 10, 1999.

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

Vernon A. Williams,

Secretary.

[FR Doc. 99–32902 Filed 12–17–99; 8:45 am]

BILLING CODE 4915–00–P

[5] Our understanding is that information contained in the rail 100% waybill files for the period ending November 30, 1999, should be available by December 30, 1999. Proper documentation for these files, including a way to translate from Conrail's (old) freight station codes to CSX's and NS' (new) freight station codes, should also be made available at that time. Further, to facilitate the continued use of waybill data in this proceeding, CSX and NS should be prepared to provide updates to their original waybill submissions on a quarterly basis.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33829]

Green Mountain Railroad Corporation—Acquisition and Operation Exemption—Certain Rights of Boston and Maine Corporation

Green Mountain Railroad Corporation (GMRC), a Class III common carrier by rail, has filed a verified notice of exemption under 49 CFR 1150, Subpart D—*Exempt Transactions,* to acquire from Boston and Maine Corporation (B&M) an exclusive freight railroad operations easement (Freight Easement) over a line of railroad extending between approximately milepost 123 in White River Junction, VT, and approximately milepost 163 in Wells River, VT, a total distance of approximately 40 rail miles, in Windsor and Orange Counties, VT (Subject Line).

This transaction is related to a concurrently filed verified notice of exemption filed in STB Finance Docket No. 33830, *State of Vermont—Acquisition Exemption—Certain Assets of Boston and Maine Corporation and Springfield Terminal Railway Company.*[1]

Pursuant to a Purchase and Sale Agreement to be entered into by and between Vermont, B&M, and Springfield Terminal Railway Company (STR), Vermont will acquire B&M's right, title, and ownership interest, and STR's leasehold interest, in the right-of-way, trackage, and other physical assets associated with the Subject Line. GMRC will acquire the freight operating easement retained by B&M and provide freight service over the Subject Line.

Consummation of this transaction is expected to occur on or after December 10, 1999, the effective date of the exemption.

This notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33829, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Andrew P. Goldstein, McCarthy Sweeney & Harkaway PC, 1750 Pennsylvania Avenue NW, Suite 1105, Washington, DC 20006.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 10, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–32901 Filed 12–17–99; 8:45 am]

BILLING CODE 4915–00–P

[1] The State of Vermont (Vermont) simultaneously filed a motion to dismiss the notice of exemption. The Board will address the jurisdictional issue raised by the motion to dismiss in a separate decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33821]

Union Pacific Railroad Company—Trackage Rights Exemption—Elgin, Joliet and Eastern Railway Company

Elgin, Joliet and Eastern Railway Company (EJ&E) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) from Joliet, IL (milepost 1.8), through West Chicago, IL (milepost 29), to the end of EJ&E's ownership at Waukegan, IL (milepost 75), a distance of approximately 76 miles.[1]

[1] A redacted version of the trackage rights agreement between EJ&E and UP was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for a protective order [which was granted in a decision served December 14, 1999.]