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SERVICE DATE - JANUARY 21, 2004

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388 (Sub-No. 91)

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

[GENERAL OVERSIGHT]

Decision No. 11

Decided: January 16, 2004

This decision discusses the issues raised and the Board's conclusions regarding those issues in the fourth annual round of the Conrail "general oversight" proceeding.

BACKGROUND

Merger Dec. No. 89. In a decision served July 23, 1998,¹ the Board approved, subject to various conditions, including a 5-year general oversight condition: (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. The acquisition of control of Conrail by CSX and NS took place on August 22, 1998. The division of the assets of Conrail by and between CSX and NS took place on June 1, 1999 (the Split Date).

The General Oversight Condition. In Merger Dec. No. 89, the Board established general oversight for 5 years so that it might assess the progress of implementing the Conrail transaction and the workings of the various conditions imposed on the transaction, and the Board retained jurisdiction to impose additional conditions or take other action if, and to the extent, it determined that such conditions or action were necessary to address harms caused by the Conrail transaction. See Merger Dec. No. 89, 3 S.T.B. at 217 (item 38), 365-66, 385 (ordering paragraph 1).

¹ CSX Corp. et al. — Control — Conrail Inc. et al., 3 S.T.B. 196 (1998) (Merger Dec. No. 89), aff'd sub nom. Erie-Niagara Rail Steering Committee v. STB, 247 F.3d 437 (2d Cir. 2001).

First And Second Annual Rounds Of General Oversight Proceeding. In decisions served February 2, 2001,² and December 13, 2001,³ respectively, the Board addressed the issues that had been raised in the first and second annual rounds of the Conrail “general oversight” proceeding. In both decisions, the Board concluded that the conditions imposed were working as intended, that no competitive or market power problems stemming from the merger had been demonstrated, and that CSX and NS continued to make significant progress in implementing the environmental conditions and settlement agreements imposed on the transaction. While in the Board’s first annual round decision CSX and NS were found to have made progress in resolving their transitional service problems, the second annual round decision found that CSX and NS had resolved the service problems resulting from the implementation of the Conrail transaction.

By decision served June 11, 2002, the Board advised interested parties that, as in the past, they could address all aspects of applicants’ progress in implementing the Conrail transaction, including whether oversight should be continued or discontinued. See 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 [General Oversight], STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 7 (STB served June 11, 2002) (Oversight Dec. No. 7).

Third Annual Round Of General Oversight Proceeding. In a decision served November 5, 2002, the Board considered the issues raised in the third annual round of the Conrail “general oversight” proceeding. The Board found that significant service or other issues had not been raised by the parties and that the implementation of the Conrail transaction was largely complete. In view of the satisfactory record, while maintaining a sense of caution, the Board concluded that some form of modified or reduced oversight should continue. The Board agreed with DOT that it would no longer be necessary that CSX and NS file formal annual reports. The Board continued, however, to allow interested parties to file comments and to provide CSX and NS the opportunity to respond. In addition, the Board discontinued the carriers’ requirement that they monitor any merger-related increase in truck traffic over the George Washington Bridge and, because no party had made use of the

² 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 [General Oversight], STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 5 (STB served Feb. 2, 2001) (Oversight Dec. No. 5).

³ 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 [General Oversight], STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 6 (STB served Dec. 13, 2001) (Oversight Dec. No. 6).

carriers' 100% traffic waybill data during the general oversight proceeding, that data access requirement was also eliminated.⁴

Fourth Annual Round Of General Oversight Proceeding. The Board has considered, in this decision, the issues raised in the following pleadings that were filed in the fourth annual round of the Conrail general oversight proceeding: the comments filed on or about July 14, 2003, by the Susquehanna Economic Development Agency—Council of Governments Joint Rail Authority (SEDA-COG), National Lime and Stone Company (NLS), the Lackawanna Coalition (Coalition),⁵ New Jersey Department of Transportation (NJDOT), North Jersey Transportation Planning Authority (NJTPA); and the CSX-13, NS-1, and DOT-7 replies filed August 4, 2003, by CSX, NS, and the United States Department of Transportation (DOT), respectively.⁶

COMMENTS OF THE PARTIES

United States Department Of Transportation (DOT). DOT asserts that the core issue in this year's oversight proceeding remains essentially what it was last year: whether CSX and NS have fulfilled their various conditions, settlement agreements, and other binding commitments. DOT observes that almost all of the parties who have taken issue with the carriers' performance to date have also expressed a willingness to continue discussions. As in last year's oversight decision where the Board found that no immediate action was warranted and that it retained the power to redress non-compliance, DOT believes that a similar result is appropriate this year. Noting that only the Coalition seeks immediate action from the Board, DOT does not support granting the Coalition's requested relief. DOT maintains that, not only is the transfer of control of rail lines extraordinary in its own right, but the Coalition also does not ground its request in any specific condition imposed on, or commitment made by, CSX or NS. According to DOT, generalized challenges to railroad operational decisions based upon a preference for passenger rail transportation, such as the Coalition's, do not meet the Board's standard for relief.

⁴ 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 [General Oversight], STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 10 (STB served Nov. 5, 2002) (Oversight Dec. No. 10).

⁵ On September 22, 2003, Coalition filed a reply to the replies of CSX and NS. Because the Coalition's reply is not permitted by the Board's rules, it will not be considered. 49 CFR 1104.13(c).

⁶ The Board will address, in a separate decision, an issue respecting a rail-served facility at Sidney, OH, that was discussed in the CARG-8 pleading (filed September 25, 2003, by Cargill, Incorporated) and in the NS-12 and CSX-14 replies thereto (filed October 2, 2003, and October 6, 2003).

In its comments, DOT cites with approval the Board's preference for private negotiations to address controversies among parties. To the extent that parties cannot resolve their differences, DOT maintains that the Board remains available to address merger-related conduct inimical to the public interest, regardless of whether it was specifically addressed at the time of initial approval. DOT believes that, because this year's oversight presents many of the same issues as last year, a similar response is warranted in the current oversight round: encouragement of ongoing discussions and confirmation of the Board's readiness to enforce conditions and other obligations should that eventually prove necessary.

Susquehanna Economic Development Agency—Council of Governments Joint Rail Authority (SEDA-COG). SEDA-COG is a municipal authority formed by seven Central Pennsylvania counties⁷ to preserve rail freight service on lines slated for abandonment. SEDA-COG states that it owns five short line railroads⁸ that now connect with NS and together handle approximately 30,000 carloads of traffic annually. Although it continues to have serious concerns about certain interchange commitments made by NS in connection with the Conrail transaction, SEDA-COG maintains that it is hopeful that on-going discussions with NS will produce a satisfactory long-term solution.

Accompanying SEDA-COG's comments are a "Joint Statement of Shippers" signed by six shippers located on lines operated by the North Shore affiliates and a "Statement of Rail Line Owner" signed by the owner of a rail line operated by one of the North Shore affiliates.⁹ The SEDA-COG shippers' statement is similar to last year's statement which objected to the terms of a September 1, 2001 trackage rights agreement between the North Shore affiliates and NS, as not consistent with a 1997 commitment by NS to the owner of the North Shore affiliates. The SEDA-COG shippers maintain that the trackage rights matter has not yet been satisfactorily resolved, and that NS and the North Shore affiliates have agreed to provisions that will attempt to implement the terms of the trackage rights agreement. The SEDA-COG shippers also assert that, although they do not know the effect the agreement will have on their traffic developed since the Split Date, they nevertheless object to NS and the North Shore affiliates taking any steps to implement the agreement that they contend is not consistent with NS' 1997 commitment to the owner of the North Shore affiliates.

⁷ Centre, Clinton, Lycoming, Northumberland, Montour, Columbia, and Union Counties, PA.

⁸ North Shore Railroad Company, Juniata Valley Railroad Company, Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company, and Shamokin Valley Railroad Company (collectively, the North Shore affiliates).

⁹ The shippers are Brandt Mill Inc., Agway, Inc., Ag Resources, Inc., Clark's Feed Mill, Inc., Cooperative Feed Dealers, and PA Distribution (collectively, the SEDA-COG shippers). Jointly with the West Shore Railroad, these parties will be referred to collectively as the SEDA-COG interests.

The “Statement of Rail Line Owner” (similar to last year’s statement) notes that the West Shore Railroad, the owner of a rail line operated by one of the North Shore affiliates, has the same concerns as the SEDA-COG shippers about the proposed settlement between NS and the North Shore affiliates and supports the changes the SEDA-COG shippers believe are necessary to fulfill the terms of NS’ 1997 settlement.

NS’ Reply To SEDA-COG. With respect to the specific issue of NS’ recent trackage rights agreement with the North Shore affiliates, NS contends that the real parties in interest, along with NS, are the North Shore affiliates themselves and not the SEDA-COG interests. NS maintains that it did not enter into a settlement with any of the SEDA-COG interests and that none of them filed statements of support for the transaction, whether based on its 1997 letter to the North Shore affiliates, or in exchange for any commitments to them by NS. NS indicates that the real parties in interest, the North Shore affiliates, have expressed no concern or dissatisfaction with the 2001 trackage rights agreement between them and NS and, in fact, fully agree with NS that the terms of the 2001 trackage rights agreement are consistent with the 1997 letter.

NS notes that last year, the Board concluded that no intervention was necessary because the SEDA-COG interests asked for none and the parties indicated a continued willingness to discuss issues of concern. See Oversight Dec. No.10, at 5. The same, NS contends, is true this year because the SEDA-COG interests again do not seek any Board action, and NS remains willing to discuss issues of concern to the SEDA-COG interests. In any event, NS argues that the Board should not involve itself with the privately-negotiated 2001 trackage rights agreement, given that: (1) none of the SEDA-COG interests are parties to the prior settlement agreement; (2) none of the SEDA-COG interests are parties to the trackage rights agreement implementing it; and (3) the real parties in interest, the North Shore affiliates, believe that the trackage rights agreement they entered into with NS properly reflects and implements the terms of their settlement with NS.

National Lime And Stone Company (NLS). In Decision No. 89 approving the Conrail transaction, the Board imposed a condition affecting NLS and another Ohio aggregate shipper, Wyandot Dolomite. Ordering Paragraph No. 43 provides that, with respect to those two shippers, NS and CSX “must adhere to their offer to provide single-line service for all existing movements of aggregates, provided they are tendered in unit trains or blocks of 40 or more cars; and in other circumstances including new movements, for shipments moving at least 75 miles, must arrange run-through operations (for shipments of 60 cars or more) and pre-blocking arrangements (for shipments of 10 to 60 cars).” Merger Dec. No. 89, 3 S.T.B. at 390.

In Decision No. 96, the STB clarified that this condition was limited to a 5-year term beginning on Split Date (June 1, 1999), and expiring on May 31, 2004. CSX Corp. et al. — Control — Conrail Inc. et al., 3 S.T.B. 764, 772, 789 (1998) (Merger Dec. No. 96), aff’d sub nom. Erie-Niagara Rail Steering Committee v. Surface Transportation Board, 247 F.3d 437, 447-48 (2d Cir. 2001).

In its comments, NLS notes that it is negotiating a new service agreement with CSX to replace the service NLS presently receives under the auspices of Condition No. 43. While not seeking immediate relief from the Board, NLS asserts that to the extent that no such agreement can be reached prior to the expiration of Condition No. 43, it intends to ask the Board for a supplemental order pursuant to 49 U.S.C. 11327 to continue Condition No. 43 beyond its 5-year term.

CSX's Reply To NLS. Responding to NLS' comment that it may ask the Board to extend Condition No. 43 beyond its 5-year limit, CSX emphasizes that the Board in Decision No. 89 has previously concluded that relief of this nature would be unnecessary, contrary to the public interest, and inconsistent with applicants' proffer. CSX also indicates that NLS' appeal of the Board's decision in this regard was denied by the Second Circuit Court of Appeals. Although noting that NLS is in the process of negotiating a new transportation contract with CSX, which would also require NS' agreement, and that NLS does not ask for any relief at this time, CSX maintains that the single-line service sought by NLS will continue after the 5-year term if it is in the economic and operational interests of all of the parties involved. If, however, there is no economic benefit for one of the three parties and two-carrier service results, CSX contends that, absent a showing of competitive abuse by the carriers, the Board should leave the matter in the hands of the parties.

NS' Reply To NLS. Although NS is willing to discuss with NLS and explore the possibilities of a commercial agreement, NS contends that NLS is incorrect in its belief that a failure in negotiations would entitle the shipper to a future extension of Condition No. 43. According to NS, NLS' view that the condition is, in effect, a permanent safety net that would guarantee single-line service in perpetuity has been rejected by the Board and upheld on court appeal, citing Merger Dec. No. 96, 3 S.T.B. at 772 and Oversight Dec. No. 5, at 16 (the condition "was not designed to guarantee that these aggregate shippers losing single-line service would be insulated from all effects of the merger or from changing markets," but rather to "permit these shippers to adjust their businesses to these new circumstances"). Although NS remains willing to discuss these matters with NLS through normal commercial channels, NS indicates that NLS does not now ask the Board to extend Condition No. 43 and provides no evidence that would support such a request. Even if the parties are unable to reach a commercial agreement to extend NLS' current single-line service into the future, NS insists that such an impasse would not justify extending Condition No. 43 at a future date.

The Lackawanna Coalition (Coalition). The Coalition states that it is an independent association that advocates on behalf of rail passengers on the Morris & Essex and Montclair-Boonton Lines operated by New Jersey Transit (NJT). The Coalition raises issues regarding two rail lines: the Boonton Line, a line owned by Pennsylvania Lines LLC (PRR)¹⁰ and operated by NS between Hoboken and Dover, NJ, and the Lackawanna Cutoff Line, an abandoned former Conrail line between Morris Junction and the Pennsylvania/New Jersey State line near the Delaware Water Gap.

¹⁰ As part of the Conrail transaction, PRR was formed to acquire the Conrail assets (primarily rail lines) to be allocated to and operated by NS.

The Coalition in its comments supports a proposal by the New York & Greenwood Lake Railway Company to operate commuter passenger service on the Boonton Line, following cessation of service by NJT on September 20, 2002. According to the Coalition, NS has recently removed one of the tracks on the formerly double-tracked line and NS' action has reduced the likelihood of restoring passenger service on the line. The Coalition contends, moreover, that NS could decide to discontinue operations on the DB drawbridge, thereby making restoration of commuter service impossible. The Coalition argues that, because a portion of the line is within the NJSAA, the Board should give operation and control of the Boonton Line to some local, New Jersey-oriented entity. The Coalition further suggests that such an entity could be either an independent railroad company established to operate the line, or a consortium of existing short line railroads currently operating in the region, such as the Morristown & Erie Railroad.

The Coalition also endorses the rebuilding of the Lackawanna Cutoff Line between Morris Junction and the Pennsylvania side of the Delaware Water Gap for the restoration of passenger rail service. It asserts that the rebuilding could allow access to the New York area by the Delaware and Hudson Railway Company (D&H), an affiliate of Canadian Pacific Railway (CP), via the Boonton Line. The Coalition, however, expresses concern that NS could engage in unspecified practices that may hinder competition from CP/D&H. The Coalition further complains that NS has attempted to entice shippers to move away from the Boonton Line in favor of other Pennsylvania locations, and that NS does not want to compete with CSX in New Jersey.

CSX's Reply To Coalition. Although indicating that it does not have a direct interest in commuter operations on NS' rail line, CSX opposes in principle the Coalition's proposal to grant competing railroads rights to use private rail assets for which they have not paid. CSX maintains that the Coalition impermissibly proposes to confiscate private freight rail assets and misunderstands the relationship between commuter operations over lines owned by freight railroads and the freight railroad hosts. According to CSX, if and when a concrete plan is formed for financing and operating a new service to replace the terminated local service, the Coalition is free to negotiate with NS, the allocated operator of the line, for rights to use the line. CSX contends that, in any event, there is no basis for the Board to involve itself in this matter.

NS' Reply To Coalition. NS asserts that the Coalition's request that the Board step in and confiscate privately held property, namely NS' Boonton Line, in pursuit of speculative future commuter operation, is unfounded and should be rejected. According to NS, the forced line divestiture sought by the Coalition has nothing whatsoever to do with any purported harm arising from the Conrail transaction. With respect to the Boonton Line, NS indicates that the Coalition itself admits that the problem it seeks to address, the loss of certain passenger service on the line, arose from a decision by NJT to make certain changes in its operations and has nothing to do with remedying a harm caused by the Conrail transaction. NS contends, moreover, that the Coalition is incorrect in its assertions that the Boonton Line is within the NJSAA, that there is a viable proposal by a commuter railroad to operate passenger service over the line, or that NS intends to abandon the line.

According to NS, the Board should summarily reject the Coalition's further argument that restoring the Lackawanna Cutoff could enhance competition by allowing access to the New York area by CP/D&H, via the Boonton Line. NS asserts that the Conrail transaction created new, two-carrier competition in numerous markets where Conrail did not face competition, including Northern New Jersey and that, far from being a harm that must be remedied, the resulting competitive restructuring is one of the central public benefits of the Conrail transaction. There is no basis in fact or in law, according to NS, for the Coalition's position which amounts to nothing more than speculation that NS might do something in the future that the Coalition would view as anticompetitive.

New Jersey Department Of Transportation (NJDOT) and North Jersey Transportation Planning Authority (NJTPA). Comments by NJDOT and NJTPA discuss issues pertaining to the North Jersey Shared Assets Area (NJSAA). While neither NJDOT nor NJTPA seek Board intervention, both support continued discussions among the parties to address issues of concern. NJDOT further notes that NS and CSX have agreed to confer regarding these matters over the next several months.

NJDOT generally complains that NS is not actively competing in the NJSAA and that CSX and NS have not yet developed and implemented economic development plans within the port district of the Port Authority of New York and New Jersey (PANYNJ). NJTPA concurs with NJDOT's comments. According to NJTPA, if discussions among the parties do not sufficiently address its concerns, some future reorganization of Conrail's corporate structure and a change in the conditions under which Conrail operates in northern New Jersey might be warranted. NJDOT similarly refers to the possibility of a future request for Board-imposed changes with respect to the NJSAA.

CSX's Reply To NJDOT And NJTPA. CSX indicates that, shortly before the Board served its decision in Merger Dec. No. 89, NS and CSX entered in a settlement agreement with the PANYNJ to provide and implement economic development programs promoting the development of rail traffic within the port district. CSX maintains that both carriers have consulted with PANYNJ on an ongoing basis with respect to economic development opportunities and other issues of common interest and that, in view of PANYNJ's previous positive comments and lack of complaints, CSX does not understand its current assertion that cooperation has been lacking.

CSX states that, during the past year, the involved carriers, CSX, NS and Conrail, have continued their discussions with PANYNJ, NJDOT and NJT regarding the need for additional rail infrastructure in the NJSAA and have developed a prioritized list of potential projects. CSX is optimistic that the priority rail projects will be completed in timely fashion. In addition to these capital projects, CSX asserts that the three railroads have actively contributed to various studies and capital planning efforts of PANYNJ and NJDOT.

CSX indicates that it has made many capital improvements in the NJSAA following the Conrail Transaction, as set forth in detail in its previous submissions in the Board's general oversight proceedings. CSX lists specific capital projects it completed between North Bergen and Ridgefield

Park, NJ, and within the NJSAA, during the past year. According to CSX, a number of business expansions and start-ups are expected in the NJSAA in the near future and many of these were facilitated through its involvement and cooperation with State and local economic development officials in the Northern New Jersey area.

CSX urges the Board to reject at the outset NJTPA's suggestion that, if discussions are not fruitful, changes may be required in Conrail's operational and corporate status. CSX insists that NJTPA's position is contrary to a fundamental premise of the Board's approval of the Conrail Transaction: that the Shared Assets Areas covering North Jersey, South Jersey/Philadelphia and Detroit should be operated neutrally by an entity owned by both carriers, and used by its joint owners for the pickup and delivery of their line-haul freight. CSX maintains that there is no basis, 5 years after the Board's approval of the Conrail transaction and 4 years after Split Date, for the Board even to contemplate such a radical restructuring of the transaction that no shipper supports.

NS' Reply To NJDOT And NJTPA. NS disputes NJDOT's assertions that NS is not actively competing in the NJSAA and that CSX and NS have not yet developed and implemented economic development plans within the PANYNJ. NS states that, as a rail system that spans the eastern United States, it has an interest in marketing and developing all of its intermodal, bulk transload and carload facilities, including those in New Jersey and many others outside it.

NS asserts that it has effectively shaped its rail facilities and service offerings to respond to changes in the transportation market resulting from myriad business and economic factors that have nothing whatsoever to do with the Conrail transaction, that were not anticipated in the planning for the Conrail transaction, and over which the railroads have no control. As an example, NS cites the successful efforts by PANYNJ to capture trans-Pacific traffic that formerly would have moved through West Coast ports and then on to eastern destinations by rail or truck. NS states that, responding to this fundamental change in traffic patterns, it has established new intermodal rail service operations to accommodate this traffic.

Rather than opting out of rail service in the NJSAA, as alleged by NJDOT, NS maintains that it has aggressively marketed its services in the NJSAA, including: (1) NS' expedited service, in conjunction with CP, between Montreal and Toronto and the intermodal facility at Docksides, NJ; (2) NS' "Blue Steak" service, in conjunction with Union Pacific Railroad Company (UP), between points in California and Nevada and points in the east and south, including ERail, NJ;¹¹ (3) NS' intermodal service, in conjunction with UP, between Laredo, TX, and points in the Southeast and Northeast, including ERail, NJ; (4) NS' intermodal service, in conjunction with The Burlington Northern and Santa Fe Railway Company, between points in California and points on the East Coast including ERail, Docksides and Croxton, NJ; and (5) NS' substantial capital investments in its ERail and Croxton

¹¹ ERail, NJ, is an intermodal facility operated by NS in the NJSAA.

facilities in the NJSAA. According to NS, it is a vigorous competitor in New Jersey and there is no basis for any conclusion to the contrary.

With respect to its settlement agreement with PANYNJ, NS maintains that it has regularly consulted with PANYNJ since the Split Date on issues of mutual interest, including economic development matters. NS asserts that PANYNJ, the party to the settlement agreement, has not expressed to NS any concern about NS' cooperation on economic development matters, nor does PANYNJ itself raise this issue with the Board. NS believes that its dialogue with PANYNJ has been useful, and NS intends to continue those consultations. As regards NJTPA's assertion that it might seek Board intervention to change Conrail's operating conditions, NS argues that NJTPA's suggested relief would be a radical and unwarranted restructuring of a fundamental underpinning of the Conrail transaction and the mechanism through which NS and CSX have introduced two-carrier competition in Northern New Jersey and elsewhere.

DISCUSSION AND CONCLUSIONS

The comments and replies filed in this fourth annual round of the Conrail "general oversight" proceeding demonstrate that the conditions the Board imposed on the Conrail transaction are working as intended, that the Conrail transaction has not resulted in any competitive or market power problems, and that the service problems that occurred immediately after the Split Date have not recurred. The comments and replies further demonstrate that the implementation of the Conrail transaction is nearing completion.

In last year's decision, the Board similarly found that its conditions are working as intended, that the Conrail transaction has not resulted in any competitive or market power problems, and that implementation of the Conrail transaction was largely complete. Oversight Dec. No. 10, at 3. None of the comments filed this year provide any basis for the Board to alter its views. Only one of the six commenting parties requests any Board intervention; the others believe that any concerns can be worked out among the parties through further discussion. The one request for active Board intervention, the Coalition's request for forced divestiture of an NS-operated line, is without factual foundation or Board precedent. The Coalition's request will be denied.

The Board will therefore conduct the fifth and final annual round of the "general oversight" proceeding in accordance with the following schedule: comments of interested parties concerning oversight will be due on July 1, 2004; and replies will be due on August 2, 2004. As stated previously, however, see Oversight Dec. No. 6, slip op. at 10, the Board reserves the right to alter this schedule and/or to reinstate reporting or other requirements if (and to the extent that) circumstances warrant. As part of this fifth annual round of oversight, the Board intends to hold at least one hearing prior to the end of the 5-year oversight period on June 1, 2004, for interested parties to express their views for the Board's consideration.

Issues Raised By Commenting Parties. The specific issues raised by the parties that filed comments in the fourth annual round of the “general oversight” proceeding are discussed as follows.

The SEDA-COG Interests. The SEDA-COG interests claim that NS’ 2001 trackage rights agreement with the North Shore affiliates does not fully implement NS’ 1997 settlement agreement. NS maintains, however, that the real parties in interest are the North Shore affiliates, not the SEDA-COG interests, that NS did not enter into a settlement with any of the SEDA-COG interests, and that the North Shore affiliates believe that their trackage rights agreement with NS is consistent with the 1997 settlement. Board action is not required at this time because the SEDA-COG interests do not seek specific relief and the parties are willing to continue discussions with the goal of resolving their differences. In last year’s decision the Board made a similar finding.

National Lime And Stone Company. NLS indicates that it is in the process of negotiating a new service agreement with CSX to replace the service NLS currently receives under the auspices of Condition No. 43. NLS further states that, if it cannot reach such an agreement prior to the expiration of the condition, it may ask the Board to extend the condition beyond its 5-year term. Because NLS does not seek immediate relief, no action by the Board is required.

The Lackawanna Coalition. Supporting rail passenger operations in Northern New Jersey, the Coalition urges the Board to give operation and control of NS’ Boonton Line between Hoboken and Dover, NJ, to a local, New Jersey-based railroad. The Coalition also supports the restoration of freight and passenger service on the Lackawanna Cutoff Line, an abandoned former Conrail line between Morris Junction and the Pennsylvania/New Jersey State line near the Delaware Water Gap. The relief sought cannot be granted because the Coalition has failed to show that the divestiture of NS’ Boonton Line or restoring the Lackawanna Cutoff Line have anything to do with any purported harm arising from the Conrail transaction. There is no Board precedent for granting any of the Coalition’s requested measures. As in other commuter rail proposals, the Coalition is free to negotiate with NS, the allocated operator of the Boonton Line, for rights to use the line for passenger service.

New Jersey Department Of Transportation and North Jersey Transportation Planning Authority. NJDOT and NJTPA assert that NS is not actively competing in the NJSAA and that neither carrier has fully developed and implemented economic development plans within the port district. They further contend that some future reorganization of Conrail’s corporate structure and operations within the NJSAA may be warranted if future discussions do not sufficiently address their concerns. In their replies to NJDOT and NJTPA, CSX and NS have detailed a number of capital, service and other improvements each carrier has undertaken in the NJSAA. The carriers’ description of rail projects and improvements is extensive and should provide a basis for further discussion and eventual agreement. In any event, because the parties are willing to continue discussing their areas of concern, no action by the Board is required at this time.

Summary. Oversight will continue as set forth in this decision. The concerns raised by the commenting parties require no formal action by the Board at this time.

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

It is ordered:

1. The divestiture and other relief sought by the Lackawanna Coalition is denied.
2. As respects the fifth and final annual round of the Conrail “general oversight” proceeding: Comments from interested parties concerning oversight will be due on July 1, 2004; replies will be due on August 2, 2004. At least one hearing will also be held prior to June 1, 2004, for interested parties to express their views for the Board’s consideration.
3. As indicated in Oversight Dec. No. 6, slip op. at 11 (ordering paragraph 5), CSX and NS must continue to file quarterly environmental status reports for the duration of the oversight period.
4. This decision is effective on the date of service.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary