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SERVICE DATE - MAY 13, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 80

Decided: May 12, 1998

Oral argument in this proceeding will be held on Wednesday and Thursday, June 3 and June 4, 1998, respectively, at 10:00 a.m., in the Surface Transportation Board Hearing Room (Suite 760) at 1925 K Street, N.W., in Washington, D.C.<sup>1</sup> In Decision No. 70, served March 12, 1998, we required parties wishing to participate in the oral argument to notify the Secretary of the Board by April 10, 1998. We received over 65 requests from parties of record wishing to participate in the oral argument. To accommodate the numerous parties, we are extending the oral argument in this proceeding to 2 days. The schedule of appearances and the time provided for each party are set forth in the Appendix to this decision.

On April 9, 1998, Frederic L. Wood of Donelan, Cleary, Wood & Maser, P.C., notified the Board regarding his plan to conduct a meeting among parties opposing or seeking conditions to the proposed transaction where he would attempt to develop an agreed structure and allocation of time for oral argument. By letter dated April 24, 1998, Mr. Wood, on behalf of the various parties opposing or seeking conditions to the proposed transaction, submitted a proposed schedule that would allocate to opposition parties over approximately 6 hours (370 minutes), instead of the 3 hours contemplated by the Board in Decision No. 70. According to Mr. Wood, the parties to this joint proposal recommend that the 370 minutes be divided among 12 different groups of parties, which they developed among themselves by grouping together issues that are common or similar. They request that we issue a decision specifying the groups and amount of time allotted to each group, and that we direct the members of each group to agree on the allocation of time among the group members and the order of appearance. Mr. Wood's letter also suggests that a second day for oral argument might be obtained by using June 3, 1998, or June 5, 1998.

By letter dated April 29, 1998, counsel on behalf of applicants stated that applicants neither support nor oppose an allotment of 370 minutes to the parties other than primary applicants, but that applicants should receive a proportionate increase in their allotment so that they may have 2/5ths of the total time allotted. If the oral argument extends for 2 days, applicants indicate that June 3, 1998,

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<sup>1</sup> The voting conference in this proceeding will remain on Monday, June 8, 1998, in the Surface Transportation Board Hearing Room (Suite 760).

would be acceptable to them, and that they would oppose any postponement of the date of the voting conference or date for issuance of the Board's written decision.

Following the suggestion of the parties, we have scheduled a 2-day oral argument beginning one day earlier on June 3, 1998. As much as possible, we have attempted to allot to parties and groups of parties the amount of time as suggested in the joint proposal.<sup>2</sup> Although the joint proposal would allocate 20 minutes to the federal parties, we will grant the U.S. Department of Justice's original request for 10 minutes and the U.S. Department of Transportation's original request for 15 minutes for a total of 25 minutes (and we note that neither federal party appears to be a signatory to the joint proposal). In some cases, the time provided for argument has been reduced from the time allotment requested. The time allocations for the oral argument totals 540 minutes (9 hours), of which 150 minutes (2 hours 30 minutes) are being allocated to primary applicants, and 390 minutes (6 hours and 30 minutes) are being allocated to other parties (most of whom are opposed in some form to the application but some of whom are supporting parties).<sup>3</sup> Because the purpose of the oral argument is not to restate the written arguments previously made, but rather, as noted in Decision No. 70, to summarize and emphasize the key points of each party's case and to provide an opportunity for questions from Members of the Board, we believe that the time allocations set forth in the Appendix are sufficient for these purposes.

#### Oral Argument Procedures.

Participants planning to use visual aids, such as maps, are advised to inform the Office of the Secretary at (202) 565-1674, no later than close of business Tuesday, May 26, 1998. Participants are limited to projector-adaptable visual displays or handouts. The Board will provide space for handouts participants wish to bring to the oral argument for dissemination to the public. The Board staff will be available in the Board's Hearing Room--Suite 760, from 2:00 p.m. to 4:00 p.m. on Monday, June 1, 1998,<sup>4</sup> to demonstrate the Board's projection system. Please call (202) 565-1674 to make arrangements.

### **RELATED MATTERS**

Motion for Leave to Late File Oral Argument Participation Notice. On April 14, 1998, Harry C. Barbin, Esq., attorney for the Former Employees of Consolidated Rail Corporation (Retirees), filed a motion for leave to late file a notice to participate in the oral argument (RETR-11). Mr. Barbin is a party of record and stated that he either did not receive the mailed copy of

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<sup>2</sup> We note that the joint proposal did not purport to speak for all parties covered in its proposed time allotments and several parties have submitted comments responsive to and differing from the joint proposal.

<sup>3</sup> A number of United States Senators and Congressmen have requested to be included in the schedule to speak at the oral argument. Time will be allocated at the beginning of each day or otherwise as needed to accommodate these Members of Congress.

<sup>4</sup> The previous date for the demonstration was June 3, 1998, shown in Decision No. 70.

Decision No. 70 or it was misplaced in his office. Mr. Barbin states that, as soon as he received a copy of Decision No. 70, he filed his motion which was received at the Board on April 15, 1998. No objection to Mr. Barbin's motion has been received. Because the late service of the notice of intent to participate in the oral argument will not unduly complicate or delay this proceeding or its procedural schedule, Mr. Barbin's motion will be granted, and he will be permitted to participate in the oral argument on behalf of the Retirees.

Oral Argument Request from the Wellington, Ohio Village Council. On April 8, 1998, Fred Alspach, Councilman of the Wellington, Ohio Village Council (Wellington), filed a request to be heard at the oral argument in conjunction with the 5th Congressional District Representative, Congressman Paul E. Gillmor. Wellington is not a party of record in this proceeding but has been an active participant in the environmental process. Both Wellington and Congressman Gillmor have submitted comments on the draft Environmental Impact Statement. We will permit Wellington to participate in the oral argument.

Non-Party of Record Requests to Participate in the Oral Argument. We also received requests from the following non-parties of record or their representatives to participate in the oral argument: (1) Edward G. Banks, Jr., Maryland and Delaware Railroad (M&D RR); (2) Nona J. Cunane, President, Guardian Construction Company (Guardian); (3) Wendell H. Gauthier, attorney for Plaintiffs (Gauthier), In Re: New Orleans Tank Car Leakage Fire Litigation, No. 87-16374, Civil District Court for the Parish of Orleans;<sup>5</sup> (4) Kristopher Michael Klemick, Jersey Shore, PA (Klemick); (5) Thomas J. Moraghan, Toms River, NJ (Moraghan); and (6) CONSOL Inc. (CONSOL),<sup>6</sup> Fritz R. Kahn, attorney. These requests to participate in the oral argument are denied. We will limit participation in the oral argument to parties of record,<sup>7</sup> or to parties that have submitted environmental comments.<sup>8</sup>

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<sup>5</sup> In Decision No. 76, served April 17, 1998, we denied the motion to intervene in this proceeding filed by Richard and Judith Bell and George Rigamer. Movants requested to intervene and to participate individually and as representatives of a class of approximately 8,000 plaintiffs in the cited court proceeding.

<sup>6</sup> CONSOL's statement as to oral argument participation was filed as CONS-3. In Decision No. 77, served April 24, 1998, the Board denied CONSOL's petition to intervene (CONS-1), and rejected its petition to file comments (CONS-2).

<sup>7</sup> Under the procedural schedule established in Decision No. 6, served May 30, 1997, and published that day in the Federal Register at 62 FR 29387, entities seeking to participate in this proceeding were required to enter their appearances by August 7, 1997, and file responsive applications, comments, protests, and requests for conditions by October 21, 1997.

<sup>8</sup> By notice served on July 3, 1997, in STB Finance Docket No. 33388, and published on July 7, 1997, in the Federal Register at 62 FR 36332-36336, a Projected Schedule in the environmental review process was established that provided, among other things, comment due dates concerning the draft Environmental Impact Statement.

It is ordered:

1. The Retirees' motion for leave to late file an oral argument participation notice in this proceeding is granted.
2. Wellington's request to participate in the oral argument is granted.
3. The requests of non-parties of record (M&D RR, Guardian, Gauthier, Klemick, Moraghan, and CONSOL) to participate in the oral argument are denied.
4. Time for oral argument is allotted as reflected in the Appendix to the decision.
5. This decision is effective on May 13, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary

**APPENDIX**

Time will be allocated to Members of Congress at the beginning of each day or otherwise as needed. Members of Congress will have the option of appearing on either Wednesday, June 3, 1998, or Thursday, June 4, 1998.

**MEMBERS OF CONGRESS**

New York:

Senator Alfonse M. D'Amato  
Senator Daniel Patrick Moynihan  
Congressman Jerrold Nadler  
Congressman Jack Quinn  
Congressman John J. LaFalce

Ohio:

Congressman Sherrod Brown  
Congressman Dennis Kucinich  
Congressman Ralph Regula

Pennsylvania:

Senator Arlen Specter  
Congressman Ron Klink

Rhode Island:

Senator Jack Reed

**SCHEDULE OF APPEARANCES**

**Wednesday, June 3, 1998:**

**MEMBERS OF CONGRESS**

**PRIMARY APPLICANTS**

CSX Corporation, CSX Transportation, Inc.,  
Norfolk Southern Corporation, Norfolk Southern  
Railway Company, Conrail Inc. and Consolidated  
Rail Corporation

**TIME  
ALLOTTED**

**60 minutes**  
(Primary Applicants  
will have a total of  
of 150 minutes, but will reserve  
90 minutes for rebuttal)

**FEDERAL GOVERNMENT PARTIES**

U.S. Department of Justice  
U.S. Department of Transportation

10 minutes  
15 minutes  
**25 minutes**

**Total**

**BROAD SHIPPER INTERESTS**

The National Industrial Transportation League	5 minutes
The Fertilizer Institute	5 minutes
Chemical Manufacturers Association	5 minutes
Society of the Plastics Industry, Inc.	5 minutes
<b>Total</b>	<b>20 minutes</b>

**SPECIFIC SHIPPER INTERESTS**

AK Steel Corporation	5 minutes
APL Limited	5 minutes
ARCO Chemical Company	5 minutes
ASHTA Chemicals Inc.	5 minutes
Eastman Kodak Company	5 minutes
Joseph Smith & Sons, Inc.	5 minutes
Millennium Petrochemicals Inc.	4 minutes
Citizens Gas & Coke Utility	3 minutes
<b>Total</b>	<b>37 minutes</b>

**COAL**

Centerior Energy Corporation [First Energy Corp.]	5 minutes
Consumers Energy Company	5 minutes
Eighty-Four Mining Company	5 minutes
Niagara Mohawk Power Corporation	5 minutes
Orange and Rockland Utilities, Inc.	5 minutes
Potomac Electric Power Company	5 minutes
American Electric Power Service Corporation	3 minutes
<b>Total</b>	<b>33 minutes</b>

**PASSENGER AND COMMUTER INTERESTS**

AMTRAK (National Railroad Passenger Corporation)	10 minutes
American Public Transit Association	5 minutes
Metro-North Commuter Railroad	5 minutes
Northern Virginia Transportation Commission & Potomac and Rappahannock Transportation Commission (VRE)	5 minutes
Southeastern Pennsylvania Transportation Authority	5 minutes
<b>Total</b>	<b>30 minutes</b>

**OTHER RAILROADS**

Illinois Central Railroad Company	7 minutes
Ann Arbor Railroad	5 minutes
New England Central Railroad, Inc.	5 minutes
Bessemer & Lake Erie Railroad Company	5 minutes
Housatonic Railroad Company	5 minutes
Livonia, Avon & Lakeville Railroad Corporation	5 minutes
Philadelphia Belt Line Railroad Company	5 minutes
Reading, Blue Mountain & Northern Railroad Company	5 minutes
New York & Atlantic Railway	5 minutes
Gateway Western Railway Company	3 minutes
<b>Total</b>	<b>50 minutes</b>

**NEW YORK/NEW JERSEY**

State of New York	10 minutes
New York City Economic Development Corporation	5 minutes
Erie-Niagara Rail Steering Committee	5 minutes
Genesee Transportation Council	4 minutes
Southern Tier West Regional Planning and Development Board	2 minutes
The Port Authority of New York and New Jersey	5 minutes
<b>Total</b>	<b>31 minutes</b>

**CHICAGO**

Wisconsin Central, Ltd.	5 minutes
Elgin, Joliet & Eastern Railway Company, Transtar, Inc., and I&M Rail Link	5 minutes
Illinois International Port District	5 minutes
<b>Total</b>	<b>15 minutes</b>

**Thursday, June 4, 1998:**

**MEMBERS OF CONGRESS**

	<b><u>TIME ALLOTTED</u></b>
<b><u>INDIANAPOLIS</u></b>	
City of Indianapolis, Indiana	5 minutes
Indiana Southern Railroad	5 minutes
Indianapolis Power & Light Company	5 minutes
<b>Total</b>	<b>15 minutes</b>

**OHIO**

The Attorney General, State of Ohio, The Ohio Rail Development Commission, and The Public Utilities Commission of Ohio	10 minutes
Wheeling & Lake Erie Railway Company	5 minutes
Wyandot Dolomite, Inc.	4 minutes
Stark Development Board	4 minutes
Martin Marietta Materials, Inc.	4 minutes
National Lime & Stone Company	4 minutes
<b>Total</b>	<b>31 minutes</b>

**OTHER STATE GOVERNMENTS**

Delaware Department of Transportation	5 minutes
State of Vermont	5 minutes
<b>Total</b>	<b>10 minutes</b>

**ENVIRONMENTAL AND SAFETY ISSUES**

Four City Consortium--(The Cities of East Chicago, IN; Hammond, IN; Gary, IN; and Whiting, IN	10 minutes
City of Cleveland, Ohio	10 minutes
The Cities of Bay Village, Rocky River and Lakewood, Ohio	5 minutes
Wellington, Ohio Village Council	4 minutes
Tri-State Transportation Campaign	3 minutes
American Trucking Associations	3 minutes
<b>Total</b>	<b>35 minutes</b>

**LABOR**

Allied Rail Unions, Transportation Communications International Union, International Association of Machinists and Aerospace Workers, and United Railway Supervisors Assn.	25 minutes
United Transportation Union	15 minutes
Brotherhood of Locomotive Engineers--Consolidated Rail Corporation--General Committee of Adjustment	5 minutes
Brotherhood of Locomotive Engineers, Division 227	5 minutes
New York State Legislative Board, United Transportation Union Union	5 minutes
Retirees--Former Employees of Conrail	3 minutes
<b>Total</b>	<b>58 minutes</b>

**PRIMARY APPLICANTS**

**90 minutes (rebuttal)**

**Total Time Allocated                      540 minutes**