

STB FD 33398 (Sub 75) 12-21-98 D 192776

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December 21, 1998

ENTERED
Office of the Secretary

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Part of
Public Record

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423-0001

Re: 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

Finance Docket No. 33388 (Sub-No. 75): New England Central Railroad,
Inc. – Trackage Rights – CSX Transportation, Inc.

Report on Status of Trackage Rights Agreement in Sub-No. 75

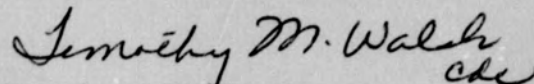
Dear Secretary Williams:

Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") hereby submit this report on the status of negotiations with New England Central Railroad, Inc. ("NECR") pursuant to Decision No. 89 in this proceeding. Decision No. 89 granted NECR's responsive application in Sub-No. 75 "insofar as it seeks to require CSX to grant NECR trackage rights between Palmer, MA and West Springfield, MA" and directed CSX and NECR to "attempt to negotiate the details of such trackage rights" and report to the Board on their progress. In Decision No. 105, the Board extended until today the deadline for completing negotiations on the terms of the trackage rights agreement.

The Honorable Vernon A. Williams
December 21, 1998
Page 2

CSX and NTCR have completed their negotiations and have executed the trackage rights agreement. The requirements established in Ordering Paragraph 64 of Decision No. 89 have now been satisfied, and no further status reports are necessary.

Respectfully submitted,

A handwritten signature in cursive script that reads "Timothy M. Walsh". To the right of the signature, the letters "che" are written in a smaller, more casual cursive.

Timothy M. Walsh
Counsel for CSX Corporation
and CSX Transportation, Inc.

cc: Karl Morell, Esquire

STB FD 33388 (Sub 75) 12-15-97 D 184847

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December 15, 1997

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
ATTN: STB Finance Docket 33388
1925 K Street, N.W.
Washington, D.C. 20423-0001



Sub 75

Re: 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

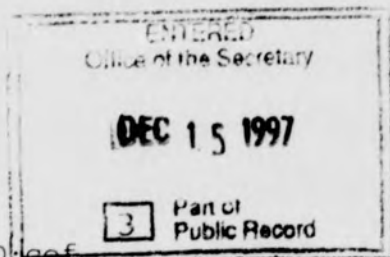
Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding,
please find the original and twenty-five (25) copies of the
**"Comments of the State of New York on the Responsive Application
of New England Central Railroad, Inc." (NYS-19)**. In accordance
with the Board's prior order, we have enclosed a Wordperfect 5.1
diskette containing this filing.

We have included an extra copy of the filing. Kindly
indicate receipt by time-stamping the copy and returning it with
our messenger.

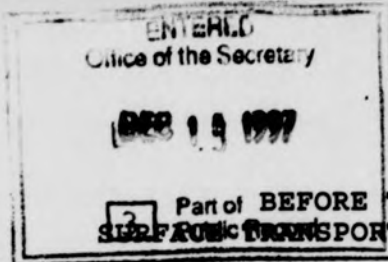
Sincerely,

Kelvin J. Dowd
An Attorney for
the State of New York

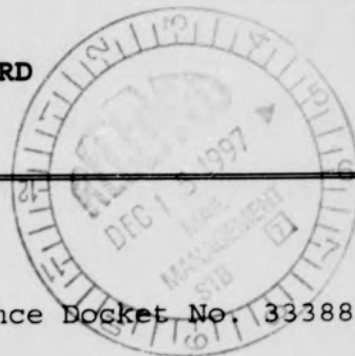


KJD:ecf
Enclosures

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NYS-19



CSX CORPORATION AND CSX
TRANSPORTATION, INC. AND NORFOLK
SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY
COMPANY -- CONTROL AND OPERATING
LEASES/AGREEMENTS -- CONRAIL INC.
AND CONSOLIDATED RAIL CORPORATION

Finance Docket No. 33388

NEW ENGLAND CENTRAL
RAILROAD, INC. -- TRACKAGE
RIGHTS -- CSX TRANSPORTATION, INC.

Finance Docket No. 33388
(Sub-No. 75)

**COMMENTS OF THE STATE OF NEW YORK
ON THE RESPONSIVE APPLICATION OF
NEW ENGLAND CENTRAL RAILROAD, INC.**

THE STATE OF NEW YORK BY AND
THROUGH ITS DEPARTMENT OF
TRANSPORTATION

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Dated: December 15, 1997

Attorneys and Practitioners

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CSX CORPORATION AND CSX)	
TRANSPORTATION, INC. AND NORFOLK)	
SOUTHERN CORPORATION AND)	
NORFOLK SOUTHERN RAILWAY)	Finance Docket No. 33388
COMPANY -- CONTROL AND OPERATING)	
LEASES/AGREEMENTS -- CONRAIL INC.)	
AND CONSOLIDATED RAIL CORPORATION)	
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NEW ENGLAND CENTRAL)	
RAILROAD, INC. -- TRACKAGE)	Finance Docket No. 33388
RIGHTS -- CSX TRANSPORTATION, INC.)	(Sub-No. 75)
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**COMMENTS OF THE STATE OF NEW YORK
ON THE RESPONSIVE APPLICATION OF
NEW ENGLAND CENTRAL RAILROAD, INC.**

The State of New York, acting by and through its Department of Transportation ("New York"), in accordance with the procedural schedule set forth in Decision No. 12 served July 23, 1997, hereby submits its Comments on the Responsive Application filed by New England Central Railroad, Inc. ("NECR") on October 21, 1997 (NECR-4).

IDENTITY AND INTEREST

New York is a sovereign state, and a full party of record to the captioned proceeding. The New York State Department of Transportation is the executive department charged

with responsibility for the supervision and administration of State policies and interests with respect to rail transportation through, within or affecting New York.

On October 21, 1997, New York filed Comments in response to the Primary Application in Finance Docket No. 33388 (NYS-10). Among the issues addressed by New York was the adverse impact on competition that would result from the Primary Applicants' proposal to establish CSX¹ as the sole operator of Conrail lines and trackage rights south of Albany and east of the Hudson River, in New York. See NYS-10 at 5, Argument at 13-20. To ameliorate these anti-competitive effects, New York requested Board approval of the Joint Responsive Application submitted by New York and the New York City Economic Development Corporation ("NYCEDC") (NYS-11/NYC-10). As herein relevant, the Joint Responsive Application seeks unrestricted trackage rights in favor of a rail carrier (other than CSX or Conrail) designated by New York and NYCEDC, over Conrail's lines (i) between the point of connection with the Delaware & Hudson Railway ("D&H") at CP-160 near Schenectady, NY and CP-75 near Poughkeepsie, NY; (ii) between the point of connection with D&H at Selkirk Yard and CP-75 near Poughkeepsie, NY; and (iii) between Mott Haven Junction

¹As used herein, "CSX" refers to CSX Corporation and CSX Transportation Inc. "NS" refers to Norfolk Southern Corporation and Norfolk Southern Railway Company. "Conrail" refers to Conrail Inc. and Consolidated Rail Corporation.

("MO"), NY and the point of connection with the lines of the Long Island Railroad near Fresh Pond ("MONT"), NY via Harlem River Yard. See NYS-11/NYC-10 at 1-2.

As further discussed below, NECR's Responsive Application proposes that the Board grant NECR trackage rights over approximately 256 miles of Conrail lines in Massachusetts, New York and New Jersey, including trackage used for the interchange of traffic between D&H and Conrail at Selkirk Yard. Inasmuch as the largest share of the rail mileage over which NECR seeks operating rights is in New York, and specifically includes some of the same Conrail trackage that is the subject of the New York/NYCEDC Joint Responsive Application, New York has a direct interest in NECR's Responsive Application.

THE NECR RESPONSIVE APPLICATION

As summarized by NECR, the trackage rights requested by that carrier are necessitated by two (2) somewhat related, claimed effects of the proposed division of Conrail between CSX and NS: (1) revenue losses and associated threats to essential NECR services resulting from the diversion of traffic from NECR to CSX and NS; and (2) economic disadvantages to be suffered by New England shippers and shortlines, who would be served solely by CSX while their competitors west of the Hudson River enjoy access to both CSX and NS. See NECR-4 at 4-5. NECR also claims that the requested trackage rights would "improve the operating

economies and efficiencies of NECR and other shortlines in the area." Id. at 4.

NECR estimates that the subject rights, if granted by the Board, would generate approximately \$7 million in new annual revenues for NECR, most of which would be earned on overhead traffic moving from Canada to New York -- presumably via Albany/Selkirk. Id. at 8. NECR proposes to operate over each of three (3) trackage rights segments (West Springfield to Palmer, MA; Palmer to Albany, NY; and Albany to the North Jersey Shared Assets Area) seven days per week, at an average frequency of two (2) trains per day (one each way). See NECR-4, Operating Plan (Exh. 15) at 1. By and large, the trackage rights that NECR proposes to obtain and exercise do not implicate Conrail line segments that are the subject of New York and NYCEDC's Joint Responsive Application. A portion of the line over which NECR would operate, however -- roughly from CP-187 just east of the Hudson River to Selkirk on the west side -- is common to both NYS-11/NYC-10 and NECR-4.

COMMENTS OF
THE STATE OF NEW YORK

New York concurs in NECR's evaluation of the adverse competitive impacts that would result from the establishment of an effective CSX rail monopoly east of the Hudson River, and the trackage rights proposed to be exercised by NECR appear to be compatible with those described by New York and NYCEDC in their Responsive Application. New York therefore supports the granting

of NECR-4, provided that NECR formally agrees that all future access to Conrail lines over which both NECR and New York/NYCEDC's trackage rights carrier would operate -- including the segment from CP-187 to Selkirk Yard -- must be on an equal and non-discriminatory basis.

In both its Comments and NYS-11/NYC-10, New York explained how the Primary Applicants' plan to allow rail competition to develop west of the Hudson River (inter alia, through the North Jersey Shared Assets Area), while leaving New York City, Long Island, and the Hudson Valley counties east of the River beholden to CSX, would place shippers and receivers in those areas at a severe competitive disadvantage vis-a-vis their west side counterparts. See NYS-10, Argument at 13-20; V.S. D'Arrigo at 2-3; V.S. Christie at 4; V.S. Firestone at 2-3; NYS-11/NYC-10 at 7-10. While the focus of NECR's Responsive Application is shippers and receivers in the New England states that it serves (e.g., Vermont and Massachusetts), the case for relief made by NECR mirrors New York's own.² New York certainly would agree that entitlement to competitive rail service should no more stop at its eastern border than it should at the west bank of the Hudson River, as CSX and NS propose. As New York's Comments and the New York/NYCEDC Joint Responsive Application demonstrate, independent third party trackage rights are the most

²It goes without saying that whatever its merits, the relief sought by the NECR Responsive Application in no sense replicates or diminishes the need for that which is the subject of the New York/NYCEDC Joint Responsive Application. Whatever the disposition of NECR-4, NYS-11/NYC-10 should be granted in its entirety.

effective and efficient means to remediate these shortcomings of the Primary Application.

As noted supra, NECR estimates that if its Responsive Application is granted, it would envision running two (2) trains per day over the Palmer-Albany line segment, which apparently includes the track between CP-187 and Selkirk Yard that also is a subject of the New York/NYCEDC Joint Responsive Application. New York likewise estimates up to two (2) trains per day moving over that segment under its trackage rights plan, most likely through diversions from motor carriage. See NYS-11/NYC-10 at 9. As New York's witness Walter Schuchmann explained, however, the Conrail branch that includes the segment is double-tracked for much of its length, and is covered by an automatic traffic control system. Id. V.S. Schuchmann at 4. Current traffic amounts to only four (4) trains each day over the single-track portion and one (1) train every ninety minutes over the double-tracked portion. Id. at 8-9. The addition of four (4) more trains each day (two (2) operated by NECR and two (2) by the New York/NYCEDC trackage rights carrier) is a negligible change that should be accommodated easily.³

³For example, Conrail's single-track Chicago Line between Rensselaer and Schenectady currently handles 17-18 trains per day. NYS-11/NYC-10, V.S. Schuchmann at 8. Adding four (4) trains to the CP-187 to Selkirk segment would result in only eight (8) trains per day over the single line track, and one (1) train every 84 minutes over the double tracks.

Based upon the evidence of record to date, the trackage rights sought by NECR appear to be operationally compatible with those requested by New York, particularly over the line segment that is common to both. As the relief sought by NECR -- like that proposed by New York in NYS-11/NYC-10 -- is an appropriate and measured response to the problem created by the Primary Applicants' ceding to CSX dominance over rail service east of the Hudson River, New York endorses the NECR Responsive Application. To ensure against unforeseen operational conflicts that might alter the foregoing conclusions regarding trackage rights compatibility, however, New York must condition its endorsement on NECR's agreement that if both NYS-11/NYC-10 and NECR-4 are granted, all arrangements (negotiated or otherwise) governing access to the line between and including CP-187 and Selkirk Yard must provide for such access on an equal and non-discriminatory basis for all trackage rights holders and operators.

CONCLUSION

For the reasons set forth herein, and subject to the condition described immediately above, New York supports the

Responsive Application of NECR.

Respectfully submitted,

THE STATE OF NEW YORK BY AND
THROUGH ITS DEPARTMENT OF
TRANSPORTATION

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Dated: December 15, 1997

Attorneys and Practitioners

. . . .

CERTIFICATE OF SERVICE

I certify that I have this 15th day of December, 1997, served copies of the foregoing Comments of the State of New York on the Responsive Application of New England Central Railroad, Inc. (NYS-19) to be served by hand upon:

The Honorable Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, N.E.
Suite 11F
Washington, D.C. 20426

Dennis G. Lyons, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004

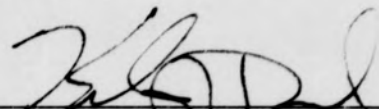
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and upon all other parties of record in this proceeding by first class United States mail, postage prepaid.



Kelvin J. Dowd

STB FD 33388 (Sub 75) 12-15-97 D 184807

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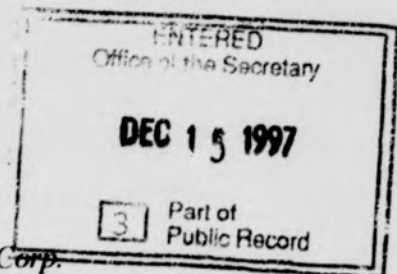
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December 12, 1997

Honorable Vernon A. Williams, Secretary
Surface Transportation Board (Case Control Unit)
1925 K Street, N.W.
Washington, D.C. 20423-0001



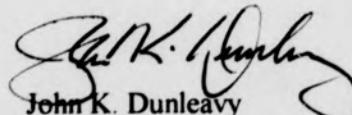
Re: *CSX Corp. and CSX Transportation, Inc., Norfolk Southern Corp.
and Norfolk Southern Railway Co. -- Control and Operating
Leases/Agreements -- Conrail, Inc. and Consolidated Rail Corp.
Finance Docket No. 33388*

*New England Central Railroad, Inc. -- Trackage Rights -- CSX
Transportation, Inc.
Finance Docket No. 33388 (Sub-No. 75)*

Dear Mr. Williams:

Enclosed for filing in the above matter are the original and 25 copies of the "State of Vermont's Response to Responsive Application of New England Central Railroad, Inc.," together with a 3.5" diskette, formatted for WordPerfect 6.1.

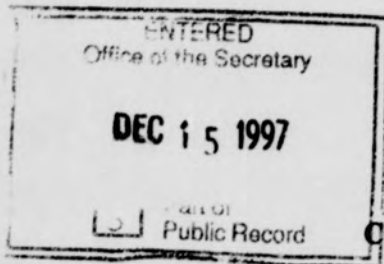
Sincerely,


John K. Dunleavy
Assistant Attorney General

jkd/bem
Enclosures
cc: Parties of Record

(184807)

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION

STB FINANCE DOCKET NO. 33388 (SUB-NO. 75)

NEW ENGLAND CENTRAL RAILROAD, INC.
-- TRACKAGE RIGHTS --
CSX TRANSPORTATION, INC.

STATE OF VERMONT'S
RESPONSE TO RESPONSIVE APPLICATION OF
NEW ENGLAND CENTRAL RAILROAD, INC.

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Attorneys for the State of Vermont

December 12, 1997

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 33388

**CSX CORPORATION AND CSX TRANSPORTATION,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION**

STB FINANCE DOCKET NO. 33388 (SUB-NO. 75)

**NEW ENGLAND CENTRAL RAILROAD, INC.
-- TRACKAGE RIGHTS --
CSX TRANSPORTATION, INC.**

**STATE OF VERMONT'S
RESPONSE TO RESPONSIVE APPLICATION OF
NEW ENGLAND CENTRAL RAILROAD, INC.**

A. Introduction

On October 21, 1997, New England Central Railroad, Inc. (NECR) filed with the Surface Transportation Board (Board) a Responsive Application pursuant to Decision No. 12 in this proceeding, 49 U.S.C. §§ 11321-25, and the Board's Railroad Consolidation Procedures, 49 C.F.R. Part 1180. In its Responsive Application, NECR requests the Board to impose a trackage rights condition upon the transaction proposed by CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail, Inc. (CRR), and Consolidated Rail Corporation (CRC) (collectively

referred to as the "Primary Applicants").¹ More specifically, to mitigate certain anti-competitive consequences of the Primary Transaction and to prevent loss of essential rail services on the NECR rail system, NECR has requested the Board to condition approval of the Primary Applicants' proposed transaction on NECR's receiving limited trackage rights between Palmer, MA and the New Jersey/New York Shared Assets Area, over Conrail trackage that is proposed to be conveyed to CSX.

B. The State of Vermont's Interests in the NECR Rail System

For almost a decade the State of Vermont (Vermont) has been closely involved in fostering the continuation of rail freight and passenger service along much of the trackage that now constitutes the NECR rail system. In 1988, Vermont provided financial support for Amtrak's condemnation of and subsequent rehabilitation of the former Boston & Maine Connecticut River Line between Brattleboro and Windsor, VT,² thereby allowing Amtrak to restore its daily *Montrealer* passenger train service between Washington, DC and Montreal, Quebec and facilitating revitalization of freight service by the former Central Vermont Railway (CV) between New London, CT and the Canadian border at East Alburgh, VT.³ In 1994, when NECR was organized to acquire CV's operating assets, the former Interstate Commerce

¹CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as Conrail.

²*National R.R. Passenger Corp. -- Conveyance of Boston & Maine Corp. Interests in Connecticut River Line in Vermont and New Hampshire*, 4 I.C.C.2d 761 (1988), *rev'd sub nom. Boston & Maine Corp. v. ICC*, 911 F.2d 743 (D.C. Cir. 1990), *rev'd sub nom. National R.R. Passenger Corp. v. Boston & Maine Corp.*, 503 U.S. 407 (1992).

³The freight service formerly operated by CV along the New London - East Alburgh route and the Essex Junction - Burlington, VT branch line has been operated by NECR, a subsidiary of RailTex, Inc., since February 1995.

Commission (ICC), at Vermont's request, imposed a condition requiring NECR to assume the Amtrak trackage rights obligations previously assumed by CV when it acquired the Brattleboro-Windsor track segment that Amtrak had condemned from B&M.⁴ Since April 1, 1995, Vermont has provided financial operating support to Amtrak for its *Vermont* passenger train service between Washington, DC and St. Albans, VT (which operates over NECR trackage between Palmer, MA and St. Albans, VT), thereby preserving daily service over the bulk of the route formerly served by the *Montrealer*.

As explained in more detail in the attached Verified Statement of Karen E. Songhurst, Transportation Rail Program Administrator for the State of Vermont's Agency of Transportation (VAOT), Vermont believes that the issues raised in NECR's Responsive Application transcend the immediate pecuniary interests of NECR and its employees, implicating points of much broader public interest. These public interest concerns are: (1) the possibility that NECR may no longer be able to make available to Amtrak at reasonable cost FRA class 3 track between Palmer, MA and St. Albans, VT for passenger train service; (2) the possibility that NECR may no longer be able to provide interchange access to Vermont short line railroads at Bellows Falls, Montpelier Junction and Burlington, VT; (3) increased highway maintenance costs to Vermont should NECR rail freight traffic be diverted to the Vermont highways (Interstates 91 and 89) that parallel much of the NECR main line; and (4) erosion of the competitive position of Vermont businesses that would lose access to quality rail freight service should NECR fail.

⁴*New England Central R.R., Inc. -- Acquisition and Operation Exemption -- Lines Between East Alburgh, VT and New London, CT*, Finance Docket No. 32432 (ICC served Dec. 9, 1994) slip op. at 30.

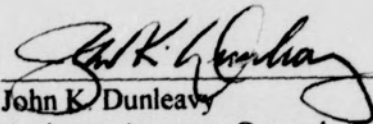
C. Conclusion

For the reasons stated above, the State of Vermont urges the Board to carefully scrutinize the impact of the Primary Applicants' proposed transaction on NECR, including the broader public interests that are intertwined with the fate of NECR. To mitigate the anti-competitive consequences of the Primary Applicants' proposed transaction and to prevent the loss of essential rail services on the NECR rail system, including rail passenger services operated by Amtrak over the NECR rail system, the Board should grant the condition requested in NECR's Responsive Application.

Respectfully submitted,

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By:


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December 12, 1997

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 33388

**CSX CORPORATION AND CSX TRANSPORTATION,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION**

STB FINANCE DOCKET NO. 33388 (SUB-NO. 75)

**NEW ENGLAND CENTRAL RAILROAD, INC.
-- TRACKAGE RIGHTS --
CSX TRANSPORTATION, INC.**

**VERIFIED STATEMENT
OF
KAREN E. SONGHURST**

My name is Karen E. Songhurst. I am Transportation Rail Program Administrator for the State of Vermont's Agency of Transportation (VAOT). I am submitting this statement in support of the State of Vermont's Response to the Responsive Application of New England Central Railroad, Inc.

My duties as Transportation Rail Program Administrator for VAOT involve oversight of the the State of Vermont's rail programs. The State of Vermont has a long-standing commitment to encourage, through preservation and modernization, continued service by rail lines that directly affect the economy of Vermont. As part of this commitment, Vermont has since 1965 acquired significant line segments throughout the State (and extending into the adjacent State of New

York) and leased those segments to operating railroads for continuance of freight service.¹ In 1988, Vermont provided direct state financial support for Amtrak's condemnation of and subsequent rehabilitation of the former Boston & Maine Connecticut River Line between Brattleboro and Windsor, VT and cooperated with its congressional delegation to obtain federal funding for this project,² thereby allowing Amtrak to restore its daily *Montrealer* passenger train service between Washington, DC and Montreal, Quebec and facilitating revitalization of freight service by the former Central Vermont Railway (CV) between New London, CT and the Canadian border at East Alburgh, VT.³ Since April 1, 1995, Vermont has provided state financial operating support to Amtrak for its *Vermont* passenger train service between Washington, DC and St. Albans, VT, preserving daily service over the bulk of the route formerly served by the *Montrealer*. More recently, Vermont has provided state financial assistance for the rehabilitation of the Clarendon & Pittsford Railroad between the Canadian Pacific/Delaware & Hudson junction at Whitehall, NY and Rutland, VT and cooperated with its congressional delegation to obtain

¹State-owned lines presently in operation include: (1) Bennington - Burlington, VT (leased to and operated by Vermont Railway); (2) Bellows Falls - Rutland, VT (leased to and operated by Green Mountain Railroad); and Graniteville - Montpelier Junction, VT (leased to and operated by Washington County Railroad). The State-owned line between Hoosick Junction, NY and Bennington, VT, leased to Vermont Railway, presently is inactive, as is the State-owned line between Swanton and St. Johnsbury, VT, leased to Lamoille Valley Railroad.

²*National R.R. Passenger Corp. -- Conveyance of Boston & Maine Corp. Interests in Connecticut River Line in Vermont and New Hampshire*, 4 I.C.C.2d 761 (1988), *rev'd sub nom. Boston & Maine Corp. v. ICC*, 911 F.2d 743 (D.C. Cir. 1990), *rev'd sub nom. National R.R. Passenger Corp. v. Boston & Maine Corp.*, 503 U.S. 407 (1992).

³Since February 1995, freight service along the former CV has been operated by New England Central Railroad, Inc. (NECR), a subsidiary of RailTex, Inc. *New England Central R.R., Inc. -- Acquisition and Operation Exemption -- Lines Between East Alburgh, VT and New London, CT*, Finance Docket No. 32432 (ICC served Dec. 9, 1994).

additional federal funding for the rehabilitation project, making it possible for Amtrak, with financial operating assistance from Vermont, to inaugurate its new daily *Ethan Allen Express* service between New York, NY and Rutland, VT, beginning on December 2, 1996. The public's response to both these Amtrak services has been encouraging; ridership on the *Vermont* during federal FY 1996 was 75,188 and increased to 84,622 during federal FY 1997, while ridership on the new *Ethan Allen Express* during its first 10 months of operation was 29,000.

I have read the October 16, 1997 Verified Statement of Dale W. Carlstrom, submitted by NECR in support of its Responsive Application seeking trackage rights between Palmer, MA and the New Jersey/New York Shared Assets Area over rail lines currently owned by Conrail and to be acquired by CSX. I will let Mr. Carlstrom's statement speak for itself. However, I think it important for the Board to understand that the significant revenue losses to NECR predicted by Mr. Carlstrom as a result of the Primary Applicants' proposed transaction would have significant adverse impacts on the public interest, extending beyond the immediate adverse impacts to NECR and its employees that are described by Mr. Carlstrom.

One such impact is the effect on NECR's continued ability to make quality trackage between Palmer, MA and St. Albans, VT available to Amtrak for passenger train service at reasonable cost.⁴ To provide competitive passenger service, Amtrak requires FRA class 3 track conditions (40 m.p.h. freight/60 m.p.h. passenger) or better.⁵ If NECR were to suffer significant

⁴Amtrak pays the freight railroads over which the *Vermont* operates between Springfield, MA and St. Albans, VT \$1,242,180 annually for track rent. While approximately 17 miles of this route (Springfield - Palmer, MA) involves Conrail trackage, the remaining 234 miles (Palmer, MA - St. Albans, VT) involves NECR trackage.

⁵See Federal Railroad Administration regulations, 49 C.F.R. § 213.9(a).

erosion to its freight traffic base as the result of the Primary Applicants' proposed transaction, NECR almost certainly would be unable to continue making class 3 track available to Amtrak at present rates. Because the *Vermont* is a state-supported service, Amtrak, in turn, would seek to pass along the additional cost to VAOT. While rail passenger service enjoys broad support in the Vermont legislature, it is only one of many competing demands on limited state resources. It is unlikely that Vermont's budget could sustain any drastic increase in the amount of financial support required by Amtrak to continue rail passenger service along the NECR rail system.

A second impact is the risk that Vermont short line railroads would lose the access to the national rail network that they now enjoy through interchange with NECR. Three of the short line operators that lease trackage from VAOT interchange with NECR: (1) Vermont Railway, Inc. at Burlington, VT; (2) Green Mountain Railroad Corporation at Bellows Falls, VT and North Walpole, NH; and (3) Washington County Railroad Company at Montpelier Junction, VT. In the case of the Washington County Railroad, the NECR interchange is its sole connection with the national rail network -- a fact of special concern since the Washington County Railroad's major customer is the Bombardier rail passenger car assembly plant in Barre, VT, a significant source of manufacturing employment in the central Vermont area.

A third impact -- alluded to by Mr. Carlstrom -- is the possibility of diversion of rail freight traffic to the highway system, either as the result of NECR's being forced to distribute its fixed costs among fewer freight customers or as the result of complete collapse of the NECR rail system. VAOT is responsible for maintenance of the greater part of the highway mileage paralleling NECR's main line (Interstates 91 and 89). Because these segments of Interstates 91 and 89 were constructed in the late 1950s and in the 1960s, VAOT already is facing the need for

many expensive rehabilitation projects along these corridors (particularly for culverts and bridges). The diversion of additional heavy freight traffic from the rail network to trucks would only accelerate deterioration of these aging highway facilities and place further strain on Vermont's limited public resources.

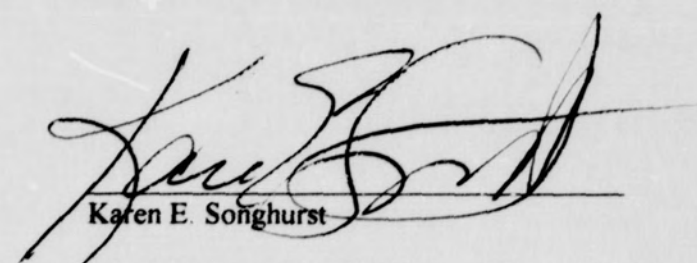
A fourth impact is the risk that the competitive position of Vermont businesses will be eroded by the loss of access to quality rail freight service. Because of Vermont's geographical position in the northeastern corner of the United States, transportation costs are more burdensome to many Vermont businesses than to competitors located in more central locations. Historically, Vermont rail users have benefited from the fact that NECR and its predecessors were largely supported by traffic moving between Canada and points in southern New England and the Mid-Atlantic states. If, as Mr. Carlstrom predicts, a significant amount of this traffic is lost to NECR as the result of the Primary Applicants' proposed transaction, NECR may be unable to sustain the critical mass of traffic necessary to support its operations through Vermont. The loss of rail freight service along this corridor would be harmful to the public interest not only because of the diversion of truck traffic to the highway system (as explained above) but also because many Vermont businesses would lose access to the competitive rail freight service enjoyed by their competitors in other parts of the nation.

VERIFICATION

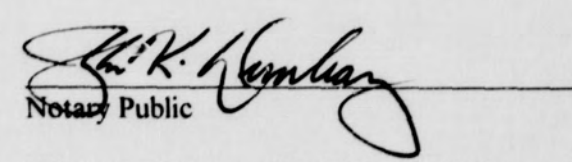
STATE OF VERMONT)

WASHINGTON COUNTY, ss.)

I, Karen E. Songhurst, being first duly sworn, do solemnly swear (or affirm) that I have read the foregoing statement, that I know the contents thereof, and that the facts therein are true as stated.


Karen E. Songhurst

Subscribed and sworn to before me at Montpelier, Vermont, this 12th day of December, 1997.

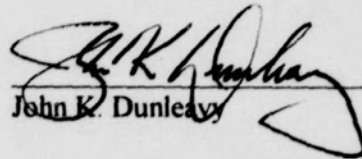

Notary Public

(My commission expires Feb. 10, 1999)

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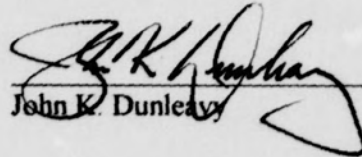
CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 1997, I served by first-class mail, postage pre-paid, or Federal Express overnight delivery, copies of the "State of Vermont's Response to Responsive Application of New England Central Railroad, Inc." upon the Parties of Record listed on the service list compiled by the Board and included in Decision No. 21 dated August 19, 1997, as amended by Decision No. 43 dated October 7, 1997 and Decision No. 57 dated December 3, 1997 and upon Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426.


John K. Dunleavy

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 1997, I served by first-class mail, postage pre-paid, or Federal Express overnight delivery, copies of the "State of Vermont's Response to Responsive Application of New England Central Railroad, Inc." upon the Parties of Record listed on the service list compiled by the Board and included in Decision No. 21 dated August 19, 1997, as amended by Decision No. 43 dated October 7, 1997 and Decision No. 57 dated December 3, 1997 and upon Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426.


John K. Dunleavy

184807



STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
TRANSPORTATION DIVISION
133 STATE STREET
MONTPELIER, VERMONT 05633-5001

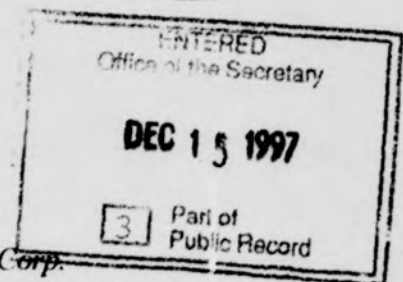
TELEPHONE:
(802) 828-2831

FAX:
(802) 828-2817



December 12, 1997

Honorable Vernon A. Williams, Secretary
Surface Transportation Board (Case Control Unit)
1925 K Street, N.W.
Washington, D.C. 20423-0001



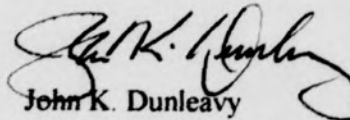
Re: *CSX Corp. and CSX Transportation, Inc., Norfolk Southern Corp.
and Norfolk Southern Railway Co. -- Control and Operating
Leases/Agreements -- Conrail, Inc. and Consolidated Rail Corp.
Finance Docket No. 33388*

*New England Central Railroad, Inc. -- Trackage Rights -- CSX
Transportation, Inc.
Finance Docket No. 33388 (Sub-No. 75)*

Dear Mr. Williams:

Enclosed for filing in the above matter are the original and 25 copies of the "State of Vermont's Response to Responsive Application of New England Central Railroad, Inc.," together with a 3.5" diskette, formatted for WordPerfect 6.1.

Sincerely,


John K. Dunleavy
Assistant Attorney General

jkd/bem

Enclosures

cc: Parties of Record

STB

FD

33388 (Sub 75)

12-15-97

D

184805

184805

EDWARD J. RODRIGUEZ
ATTORNEY AT LAW
67 MAIN STREET
POST OFFICE BOX 298
CENTERBROOK, CONNECTICUT 06409

D

December 12, 1997

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Sub 75

Re: STB Finance Docket No. 33388
CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Railroad Company
Control and Operating Leases/Agreements
Conrail, Inc., and Consolidated Rail Corporation

Dear Secretary Williams:

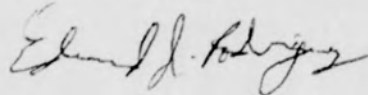
Enclosed is an original and 25 copies of HRRC-12, being Housatonic Railroad's response to NECR's Responsive Application designated NECR-4.

Also enclosed is a copy of this filing on Disk in Word Perfect Format.

Please stamp a copy of this letter to indicate receipt and return it to me in the enclosed envelope.

Thank you.

Very truly yours,



Edward J. Rodriguez

EJR/swf



EDWARD J. RODRIGUEZ
ATTORNEY AT LAW
67 MAIN STREET
POST OFFICE BOX 298
CENTERBROOK, CONNECTICUT 06409

TEL: (860) 767-9629
(860) 388-9629
FAX: (860) 767-7419



December 12, 1997

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Re: STB Finance Docket No. 33388
CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Railroad Company
Control and Operating Leases/Agreements
Conrail, Inc., and Consolidated Rail Corporation

Dear Secretary Williams:

Enclosed is an original and 25 copies of HRRC-12, being Housatonic Railroad's response to NECR's Responsive Application designated NECR-4.

Also enclosed is a copy of this filing on Disk in Word Perfect Format.

Please stamp a copy of this letter to indicate receipt and return it to me in the enclosed envelope.

Thank you.

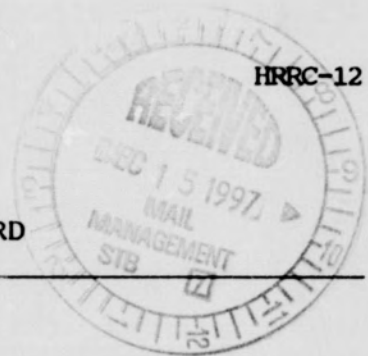
Very truly yours,

Edward J. Rodriguez

EJR/swf

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD



HRRC-12

FINANCE DOCKET NO. 33388
Sub. No. 75

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

HOUSATONIC RAILROAD'S RESPONSE TO
NEW ENGLAND CENTRAL RAILROAD, INC.
RESPONSIVE APPLICATION - TRACKAGE RIGHTS - [NECR-4]
HRRC-12

December 15, 1997

Atty. Edward J. Rodriguez
P.O. Box 298
Centerbrook, Conn. 06409
(860) 767-9629

Attorney for:
Housatonic Railroad Company, Inc.

INTRODUCTION

In a Decision served July 23, 1997, the Surface Transportation Board accepted for consideration the primary application (hereinafter, the "Application") and related filings submitted by Applicants CSX Corporation and CSX Transportation, Inc. (hereinafter "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (hereinafter "NS"), Conrail, Inc. and Consolidated Rail Corporation (hereinafter "Conrail" or "CR") for Board approval and authorization under 49 U.S.C. 11321-25 for, as is relevant here, (1) the acquisition by CSX and NS of control of CR, and (2) the division of assets owned by CR by and between CSX and NS.¹

In a Decision issued July 23, 1997, the Board confirmed the procedural schedule previously prescribed for this proceeding. As pertinent here, the Board required that all parties wishing to file a responsive application or to offer comments, protests, and requests for protective conditions, must make such filing(s) by October 21, 1997. In keeping with the Board's procedural schedule, Housatonic Railroad Company, Inc. ("HRRRC") filed its comments and requests for protective conditions (HRRRC-10, hereinafter "HRRRC Comments and Requests") and New England Central Railroad, Inc. ("NECR") filed a responsive application seeking certain Trackage Rights (NECR-4, hereinafter "NECR Application").

¹ Hereinafter CSX, NS and CR collectively will be referred to as "Applicants" and the series of transactions proposed in Applicants' primary application and related supplements shall be referred to as the "Transaction".

The NECR Application seeks, among other relief, limited trackage rights between Palmer, Massachusetts and West Springfield, Massachusetts and between West Springfield, Massachusetts and Albany, New York over the Boston & Albany Main Line now operated by CR and proposed to be acquired and operated by CSX.

In support of the NECR Application, NECR outlined various public interest justifications. The NECR Application states that:

[T]he requested trackage rights would ameliorate certain of the anticompetitive effects of the Primary Transaction in the New England area. NECR would be able to increase the competitive options otherwise available to shippers and shortlines in New England by offering a direct, efficient and competitive alternative to CSXT.²

The NECR Application goes on to identify HRRRC as one of the shortline carriers with whom NECR would have a connection because of the trackage rights. The NECR Application states:

The new connections with CSO and HRRRC would provide new joint marketing opportunities with NECR for traffic that moves today by truck. NECR would also be able to provide the other shortline connections with more efficient routings, access to additional markets and increased rail options.³

The relief requested in the NECR Application will, if granted, specifically affect HRRRC. Accordingly, HRRRC hereby submits its Response to the NECR Application.

² NECR Application at page 7.

³ NECR Application at page 8.

For the reasons set forth herein, HRRC supports the NECR Application to the extent that it requests trackage rights for NECR between Palmer, Massachusetts and West Springfield, Massachusetts and between West Springfield, Massachusetts and Albany, New York.⁴

REASONS FOR HRRC SUPPORT OF NECR APPLICATION

HRRC supports the NECR Application because it would benefit HRRC and serve to ameliorate some of the harm to HRRC which will result from the Transaction if implemented as proposed by the Applicants. The reasons for HRRC's support of the NECR Application are essentially the same as the reasons for HRRC's request for haulage conditions as set forth in HRRC Comments and Requests. HRRC regards the trackage rights requested in the NECR Application as an alternative remedy to the haulage conditions requested by HRRC. By supporting the NECR Application, HRRC does not withdraw or abandon its own request for protective haulage conditions.

HRRC interchanges all of its interline traffic with Conrail at Pittsfield, Massachusetts. Currently, Conrail serves as a neutral intermediate carrier between HRRC and other class 1 rail carriers including CSX, NS, and CP Rail and to regional carriers including Springfield Terminal Railroad ("ST"). If the Transaction is

⁴ HRRC takes no position with respect to the other trackage rights relief requested by NECR but supports the request that the Surface Transportation Board retain jurisdiction to establish the level of compensation and other terms in the event that NECR and CSX are not able to resolve those matters through negotiation.

approved as proposed by Applicants, CSX will replace CR, and HRRC will interchange its interline traffic with CSX at Pittsfield, Mass. However, CSX will no longer serve as a neutral intermediate carrier since it directly competes with NS and other carriers. CSX will naturally favor traffic movements to and from CSX stations over traffic movements to stations of other carriers. As a result, HRRC and its shippers will be harmed by a reduction in competitive alternatives.

These conclusions are echoed by Andrew C. Robertson, a distinguished railroad expert, in his Verified Statement filed in support of the joint responsive application of the State of New York and the New York City Economic Development Commission (NYC-10, NYS-11) in which he states:

Conrail now serves as the terminal railroad for the Northeastern United States where it terminates much more traffic than it originates. Because so much traffic originates outside its territory, Conrail can be neutral towards its interchange railroads (and their shippers) from ... New England. Unlike Conrail, CSX originates many of the commodities consumed by rail users in the Northeast.... Following industry practice and consistent with their desire to maximize single system routing, CSX can be expected to favor its system longhaul when it acquires its portion of Conrail. New York receivers who can now choose from a variety of off-line carriers will likely be "encouraged" to use only CSX where CSX can provide singleline service. This single line service, touted as one of the major benefits of the merger, will have obvious and immediate negative effects on those New England ...shippers....⁵

If NECR is granted trackage rights as requested in its application, NECR will become the neutral intermediate carrier in place of Conrail and will be able to bridge traffic between HRRC

⁵ Verified Statement of Andrew C. Robertson at page 4.

and other connecting carriers. As indicated in the Verified Statement of NECR Vice President Dale Carlstrom, the role of a neutral intermediate or "bridge" carrier is one which NECR is familiar with and performs efficiently.

Of course, CSX will be able to compete with NECR for HRRC's overhead interline traffic and, in any event, will be compensated for the use of its property by reasonable trackage rights fees. CSX will not be harmed except to the extent that it is unable to extract monopoly profits by blocking competitive access of HRRC and its customers to other class 1 and regional railroad connections.

In addition to losing Conrail as a neutral intermediate carrier and the consequent reduction in long haul rail competition available to HRRC and its customers, HRRC and its customers will be harmed by the introduction of rail competition a few miles away on the west side of the Hudson River, where it has not existed since the creation of Conrail.

Applicants have agreed to divide the assets and markets of Conrail in a way which would be a clear per se violation of the Sherman Act if this were not an S.T.B. regulated transaction.⁶ The effects of the division of Conrail assets and markets include the creation of Rail Competitive Zones in immediate proximity to the HRRC market area while at the same time reducing rail competition to the HRRC market area.

⁶ A thoughtful and concise discussion of the antitrust implications of the proposed transaction appears in the Comments of the New York City Economic Development Corporation [NYC-9] at pages 7-11 and in the Comments of the State of New York, [NYS-10], Argument of counsel, pages 4-6.

Applicants have essentially erected a competitive wall at the Hudson River.⁷ HRRC is uniquely situated just east of that competitive wall. HRRC's interline interchange at Pittsfield, Massachusetts is only 43 miles from Albany, New York. HRRC's western terminus at Beacon, New York is only 20 miles from Maybrook, New York. CSXT and NS will both serve Albany and NS will acquire a line through Maybrook.

As indicated in the shipper letters attached to HRRC Comments and Requests, many HRRC customers compete directly with firms in the Rail Competitive Zone, including the North Jersey Shared Asset Area. Applicants agree that the increased competition in the competitive zones will cause shippers located there to experience decreased rail rates and therefore decreased transportation costs. Shippers served by HRRC will not benefit from the lower rates created by the new competition and will thereby be put at a competitive disadvantage.

As a result of higher costs, shippers served by HRRC, and Housatonic Railroad itself, will lose business. The loss of business will naturally lead to decreased employment, decreased capital investment and decreased tax revenue for state and local government. A letter from Senator Christopher Dodd expressing

⁷ NS will apparently have an interchange with ST in Albany via haulage service by CP Rail from Sudbury, Pennsylvania. This will undoubtedly benefit ST and its New England customers but will not help HRRC because HRRC has no interchange with ST. The arrangement will actually harm HRRC by introducing NS competition to ST customers who compete with HRRC and its customers. For example, an HRRC lumber reload facility in Hawleyville, Connecticut competes directly with a ST served lumber reload facility in Waterbury, Conn. only 20 miles away.

concern about this problem is attached hereto as Exhibit A. A verified statement of John R. Hanlon, Jr. is attached as Exhibit B.

The Coalition of Northeastern Governors, in its Comments and Requests for Conditions, referred to these effects, stating:

With the anticipated discrepancy in rail transportation rates between the non-competitive areas and the competitive areas, shippers in the noncompetitive areas will be handicapped in their attempts to compete with shippers in the competitive areas. To the extent that transportation costs are a factor in a shipper's ability to deliver goods to its customers, shippers located east of the Hudson River or in other areas without competition will be at a severe disadvantage.⁸

HRRC owns and operates a lumber reloading facility in Hawleyville, Conn.⁹ From that location, HRRC arranges trucking for reload customers to many areas including to lumber retailers in eastern New York and New Jersey.¹⁰ HRRC competes with and post-transaction expects to compete with reload facilities in Conn., New York and New Jersey, many of whom will have the benefit of new increased competition.¹¹ HRRC, in its capacity as reload operator

⁸ Comments and Requests for Conditions by Coalition of Northeastern Governors, CNEG-5, at pages 11-12.

⁹ Hawleyville is situated on interstate Route 84 just east of Danbury and approximately 10 miles from the New York/Connecticut state line.

¹⁰ HRRC estimates that approximately 36% of truck deliveries are to destinations in New York and approximately 22% are to destinations in New Jersey. The other 42% are primarily to Connecticut destinations with some traffic to Massachusetts destinations. See verified statement of John R. Hanlon, Jr.

¹¹ The competing reload facilities include: Saratoga Warehouse Associates, Mechanicville, NY, Portanova Warehouse, Waterbury, CT, J & J Warehouse, Pittsfield, MA, Eastwood Carriers, Westfield, MA., Distributors Unlimited, Guilderland Ctr., NY, Anastasio and Sons, New Haven, CT, and Poiner Street, LTD, Newark, NJ. To the best of HRRC's knowledge and belief, each of the above

and therefore a rail customer, and HRRRC's reload customers, will be placed at a competitive disadvantage as a result of the Transaction unless HRRRC has the opportunity for competitive economic access to other connections.

The granting of trackage rights to NECR between Palmer, Mass. and Albany, New York will not cure the competitive imbalance created by the proposed Transaction, but it will offer HRRRC some opportunity to address the harm created by the proposed division of Conrail assets. In fact, such trackage rights were the remedy proposed by the Coalition of Northeastern Governors in their Comments and Requests for Conditions. The Coalition specifically noted that NECR and HRRRC had filed notices of intent to seek such trackage rights and specifically endorsed the award of such rights to a neutral operator.¹²

Finally, HRRRC is sure that the Applicants will try to avoid the type of operational problems encountered by the Union Pacific following the UP/SP merger. However, the Conrail transaction is different from the UP/SP merger in that it involves a carving up of Conrail with distribution of assets to two competitors and may therefore be more complicated to implement than the UP/SP merger. While one can hope that traffic will flow smoothly after the implementation of this Transaction, one can not be sure that will

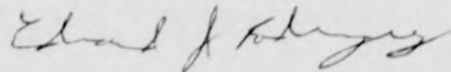
competitors will either be directly served by CSX or will have competitive access to CSX and NS either directly or indirectly by CP Rail and/or ST Rail. See verified statement of John R. Hanlon, Jr.

¹² Comments and Requests for Conditions by Coalition of Northeastern Governors, CNEG-5 at page 14.

be the case. In the event that traffic is crippled as it was after the UP/SP implementation, the existence of NECR trackage rights would offer some measure of protection to New England shippers in general and HRRC shippers in particular.

In conclusion, HRRC requests that the Board grant NECR's Application for trackage rights between Palmer, Mass. and Albany, N.Y. There is no reason not to do so. The trackage rights are operationally feasible. HRRC and NECR and their shippers, employees and the employees of their shippers will be benefitted by the trackage rights. The goals of the Final System Plan will finally be closer to realization, and CSX will not suffer any loss deserving of protection.

Respectfully submitted,

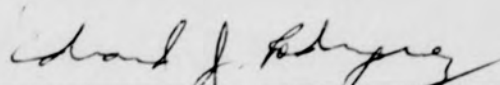


Atty. Edward J. Rodriguez
P.O. Box 298
Centerbrook, Conn. 06409
(860) 767-9629

Attorney for:
Housatonic Railroad Company, Inc.

Certificate of Service

I hereby certify that a copy of the foregoing Request for Conditions and Comments has been served upon all parties of record, as amended, by U.S. mail, postage prepaid, this 15th day of December, 1997.



Edward J. Rodriguez

CHRISTOPHER J. DODD
CONNECTICUT

COMMITTEES

BANKING, HOUSING, AND
URBAN AFFAIRS

BUDGET

FOREIGN RELATIONS

LABOR AND HUMAN RESOURCES

United States Senate

WASHINGTON, DC 20510-0702

WASHINGTON OFFICE:
444 RUSSELL SENATE OFFICE BUILDING
(202) 224-2823
TDD (202) 224-5464

STATE OFFICE:
100 GREAT MEADOW ROAD
WETHERSFIELD, CT 06109
(860) 258-6940
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EMAIL: SEN. DODD@DODD.SENATE.GOV
Home Page: www.senate.gov/~dodd

December 9, 1997

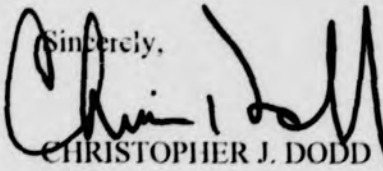
Mr. Vernon A. Williams
Secretary, Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Dear Mr. Williams:

I have been contacted by Edward Rodriguez, Vice-President and General Counsel of the Housatonic Railroad Company, Inc. ("HRRC"), regarding STB Finance Docket No. 333388, the acquisition of Consolidated Rail Company ("Conrail") lines by CSX Corporation and Norfolk Southern Railroad. HRRC is specifically concerned that after this transaction is consummated, some areas west of the Hudson River will have new and vigorous rail freight competition, while other areas east of the Hudson River will not have such competition. As a result, shippers in Connecticut, served by short lines like HRRC, may not benefit from the lower rates created by increased competition. In fact, they may actually suffer serious economic harm.

HCCR is specifically concerned that any acquisition approved by the Surface Transportation Board contain provisions that allow HRRC and its shippers the opportunity to compete on a level playing field. HRRC is an important company to our state's economy. If HRRC and its shippers are at a competitive disadvantage, the company and its shippers stand to lose business, leading to decreased employment, decreased capital investment and decreased tax revenue for Connecticut. Many Connecticut residents and businesses depend on HRRC for their economic livelihood. It is critically important that HRRC's ability to compete not be adversely impacted by the acquisition of Conrail lines by CRX and Norfolk Southern Railroad.

Accordingly, I request that the Board give serious consideration to HRRC's request for protective conditions.

Sincerely,

CHRISTOPHER J. DODD
United States Senator

CJD:kms

EXHIBIT B

Re: FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILROAD COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION

VERIFIED STATEMENT OF JOHN R. HANLON, JR.

My name is John R. Hanlon, Jr., and I serve as President of Housatonic Railroad Company, Inc. I have held that position since Housatonic Railroad was formed pursuant to a Special Act of the Connecticut General Assembly in 1982. In such capacity, I am familiar with all aspects of the general operation and administration of Housatonic Railroad.

Housatonic Railroad Company, Inc., is a Class III rail carrier which interchanges all of its interline freight with Conrail at Pittsfield, Massachusetts. HRRC operates two connecting lines over approximately 161.3 miles in Massachusetts, Connecticut and New York. The so-called Berkshire Line is a predominately north/south line between Pittsfield, Massachusetts and Danbury, Connecticut. The so-called Maybrook Line is a predominately east/west line from Derby, Connecticut through Danbury where it connects with the Berkshire Line, to Beacon, New York.

During 1997, HRRC expects to handle approximately 6,000 cars of freight. The preponderance of the traffic is inbound forest products with outbound limestone traffic accounting for approximately 11.3% of the business. The breakdown of traffic by commodity is as follows:

INBOUND 87% of Total

Lumber/Ply	35.17%
Woodpulp	33.08%
Pulpboard	7.52%
Food Oil	7.37%
Plastic	6.52%
Chemicals	5.26%
Other Commodities	5.08%
	=====
Total Inbound	100.00%

OUTBOUND 13% of Total

Limestone	87.8%
Fibre	6.9%
Other	5.3%
	=====
Total Outbound	100.00%

Housatonic Railroad also owns and operates a lumber reload facility at Hawleyville, Connecticut. This facility is known as Shepaug Reload Center and is situated directly off Interstate 84 approximately 10 miles from the Connecticut/New York state line. During 1997, Shepaug Reload is expected to receive approximately 850 Cars of freight. The traffic to Shepaug consists entirely of lumber and plywood. The traffic to Shepaug Reload materially and substantially contributes to the profitability and viability of Housatonic Railroad.

Lumber and plywood which is shipped into Shepaug Reload by rail is shipped out by truck to lumber retailers in the States of Connecticut, New York, New Jersey and Massachusetts. A percentage breakdown by volume is as follows:

Connecticut:	37.4%
New York:	36.3%
New Jersey:	21.7%
Massachusetts:	4.0%
Other	.6%

[Statistics derived from trucking records for Sept., Oct., and Nov., 1997 excluding pick ups by Saxonville with its own trucks.]

A very large portion of HRRC traffic is very highly rate competitive. Inbound traffic, in most cases, faces acute competition from truck. It also faces serious competition from other rail served destinations. Outbound limestone traffic also faces serious truck competition and also competes with limestone traffic from competing origins. A more detailed discussion of competitive forces appears below. Housatonic Railroad requires competitive rates and service in order to maintain its traffic base.

Inbound Lumber Traffic.

As indicated above, HRRC largest lumber customer is the HRRC owned and operated Shepaug Reload Center. Reload customers include, but are not limited to, Weyerhaeuser Corporation, Saxonville U.S.A., ENAP, Interstate Lumber, Lakeland Lumber and King Lumber Company. In each case, maintaining the business requires competitive rates and service. The business of each customer is extremely portable and can easily be relocated to another lumber reloading facility. King Lumber Company, Interstate Lumber, ENAP, and Lakeland Lumber ship virtually 100% of lumber received for their account at Shepaug to customers in New York state. Weyerhaeuser Canada, the single largest reload customer, ships a significant percentage of its traffic to New Jersey and New York.

The natural competitors for Shepaug Reload include other lumber distribution facilities in Connecticut, New York and New Jersey. In order to compete effectively, Housatonic Railroad must have through freight rates to Shepaug which are competitive

with through freight rates to the competing destinations.

If the transaction is approved and consummated as proposed, HRRC believes that each of the following reload facilities will achieve a competitive advantage over Shepaug:

1. Saratoga Warehouse Associates, Mechanicsville, New York. HRRC believes that this operator will have competitive access to NS, CP, ST, and CSX.
2. Portonova Warehouse, Waterbury, Connecticut. This competitor is served by ST. ST will have direct connections to CSX, NS, CP and other regional carriers.
3. Poiner Street, Ltd., Newark, New Jersey. This competitor will be located within the shared asset area with competitive connections to CSX and NS.
4. Eastwood Carriers, Westfield, Massachusetts; Anastasio and Sons, New Haven, Connecticut; J & J Warehouse, Pittsfield, Massachusetts. Each of these competitors will be directly served by CSX. Unless CSX continues the Conrail policy of rate equalization between HRRC stations and CSX stations, these competitors will be placed at a competitive advantage which does not now exist.

Unless HRRC obtains competitive access to other connections, freight rates to HRRC destinations, particularly to its lumber reload facility, can be expected to be higher than rates to competitors located in the North Jersey Shared Asset Area or in the Albany area. As a result, HRRC is in danger of losing a substantial portion of its lumber traffic. The considerations which affect HRRC lumber traffic to Shepaug Reload also affect lumber traffic to HRRC direct served lumber customers including Georgia Pacific Corporation, Wickes Lumber Company, and Stevenson Lumber Company.

Other Inbound Traffic.

A large portion of HRRC's other inbound traffic, including woodpulp, pulpboard, food oil and plastic is extremely truck

competitive. Maintenance of the traffic flow requires constant HRRC vigilance and competitive freight rates in cooperation with Conrail. However, competition for this traffic is not only by direct truck shipment from the origin, but also competition from distribution centers. For example, certain woodpulp traffic to HRRC direct rail served customers is now believed to move through rail served off-line distribution centers. HRRC continues to compete for 100% market share for woodpulp, plastic and pulpboard to its direct rail served customers.

Success at maintaining current levels of traffic requires that rail rates to HRRC stations be competitive to rail rates to competing stations. Much of the woodpulp, pulpboard, plastic and lumber which terminates on HRRC stations originates, or can originate, at southern origins. NS will have a market presence in the Albany area, 43 miles distant from Pittsfield, and in the Maybrook, New York area, 20 mile distant from HRRC's western terminus at Beacon, New York.

Currently, Conrail serves as a neutral overhead carrier for traffic originating in the south and west. Conrail is largely indifferent as to whether HRRC traffic originates on CSX or NS and CSX and NS must now compete with each other on equal footing for HRRC business. If the transaction is approved as proposed, HRRC believes that NS will compete for HRRC carload business through distribution facilities located immediately west of the Hudson River. In order to meet that new competition, HRRC must have competitive access to other connections.

Furthermore, as outlined in HRRC's Comments and Request for

Protective Conditions, HRRC customers, including Shepaug Reload, Will be disadvantaged compared to businesses with which they compete in the rail competitive zone west of the Hudson River, particularly in the North Jersey Shared Asset Area.

OUTBOUND LIMESTONE TRAFFIC.

HRRC currently ships dolomitic limestone from a customer in Canaan, Connecticut to U.S. Gypsum Corporation in Gypsum, Ohio. HRRC is concerned that if the transaction is approved without conditions, that this important movement of traffic will be lost. HRRC believes that it will lose the Gypsum Ohio traffic because (1) the traffic will change from a two carrier movement to a three carrier movement involving two Class 1 carriers, (2) a three carrier traffic movement involving two Class 1 carriers is less efficient and more expensive than a two carrier movement involving one Class 1 carrier, (3) traffic from competing southern origins will in some cases change from a movement involving two Class 1 carriers to a movement involving one Class 1 carrier, (4) freight rates from Canaan to Gypsum, Ohio are likely to increase over present levels because of the introduction of an additional Class 1 carrier in the route, (5) freight rates from some competing southern origins are likely to decrease over current rates because of the elimination of a Class 1 carrier from the route, (6) rail freight costs constitute a large percentage of commodity costs in the case of limestone, (7) limestone business is generally highly price elastic, (8) NS will have market incentive to divert or cooperate in diverting limestone traffic to Gypsum, from HRRC to southern origins on

which movement NS will realize a longer haul and greater revenue and contribution, and (9) Applicants have refused to give HRRC any long term assurances of rate competitiveness. The HRRC limestone company competes with a variety of southern limestone producers including Georgia Marble, J.M. Huber, English China Chase and Silacoga.

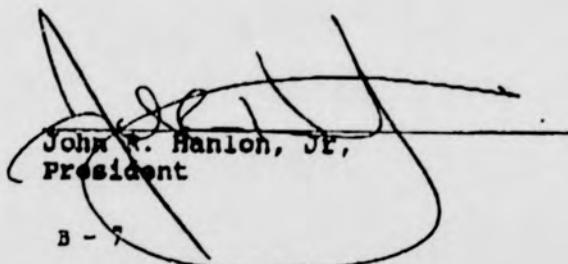
CONCLUSION

In conclusion, I believe that the transaction as proposed, if approved without protective conditions or trackage rights, will place HRRC and its customers at a competitive disadvantage compared to the position it is now in. While the granting of trackage rights to NECR between Palmer, Massachusetts and Albany, New York and the imposition of the protective conditions requested by HRRC in its filing will not entirely alleviate the burdens placed upon HRRC and its shippers by this transaction, they all constitute reasonable and remedial steps which will assist HRRC and its customers in competing in an effective way under the new rail environment which will exist.

VERIFICATION

I, John R. Hanlon, Jr., declare under penalties of perjury, that the foregoing is true and correct. Furthermore, I certify that I am qualified and authorized to file this Verified Statement.

Executed on the 12th day of December, 1997.


John R. Hanlon, Jr.,
President

STB FD 33338 (Sub 75) 11-20-98 D 192329

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November 20, 1998

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423-0001

Re: 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

Finance Docket No. 33388 (Sub-No. 75): New England Central Railroad,
Inc. ~~Trackage Rights – CSX Transportation, Inc.~~

Report on Status of Trackage Rights Agreement in Sub-No. 75

Dear Secretary Williams:

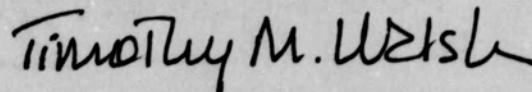
Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") hereby submit this report on the status of negotiations with New England Central Railroad, Inc. ("NECR") pursuant to Decision No. 89 in this proceeding. Decision No. 89 granted NECR's responsive application in Sub-No. 75 "insofar as it seeks to require CSX to grant NECR trackage rights between Palmer, MA and West Springfield, MA" and directed CSX and NECR to "attempt to negotiate the details of such trackage rights" and report to the Board on their progress. In Decision No. 97, the Board extended until today the deadline for completing negotiations on the terms of the trackage rights agreement.

CSX and NECR continue to believe that they will be able to conclude the trackage rights agreement by mutual consent. However, they have not yet reached final agreement on all terms, and have determined that additional time will be required in order for them to do so.

The Honorable Vernon A. Williams
November 20, 1998
Page 2

CSX and NECR accordingly request that the Board extend the deadline established in Ordering Paragraph 64 of Decision No. 89 to December 21, 1998. CSX is authorized to state that NECR concurs in this request.

Respectfully submitted,

A handwritten signature in dark ink, reading "Timothy M. Walsh". The signature is written in a cursive, slightly slanted style.

Timothy M. Walsh
Counsel for CSX Corporation
and CSX Transportation, Inc.

cc: Karl Morell, Esquire

STB FD 33388 (Sub 75) 10-21-98 D 191742

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October 21, 1998



The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423-0001

Sub-75

Re: Finance Docket No. 33388: CSX Corporation and CSX Transportation, Inc., 191741
Norfolk Southern Corporation and Norfolk Southern Railway Company - Control
and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation

Finance Docket No. 33388 (Sub-No. 75): New England Central Railroad, Inc. 191742
- Trackage Rights - CSX Transportation, Inc.

Report on Status of Trackage Rights Agreement in Sub-No. 75

Dear Secretary Williams:

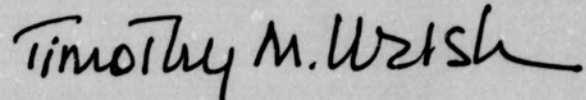
Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") hereby submit this report on the status of negotiations with New England Central Railroad, Inc. ("NECR") pursuant to Decision No. 89 and Decision No. 94 in this proceeding. The first decision granted NECR's responsive application in Sub-No. 75 "insofar as it seeks to require CSX to grant NECR trackage rights between Palmer, MA and West Springfield, MA" and directed CSX and NECR to "attempt to negotiate the details of such trackage rights" and report to the Board on their progress. The second decision gave CSX and NECR until today to file a further report on the status of those negotiations.

CSX and NECR have continued their negotiations and believe they will be able to resolve all outstanding issues by mutual consent, apart from the matter addressed in NECR's September 21 petition and CSX's October 13 response. See NECR-10 (petition); CSX-164 (response). However, CSX and NECR have concluded that they require additional time in order to do so, and accordingly request that the Board extend the deadline established in

The Honorable Vernon A. Williams
October 21, 1998
Page 2

Ordering Paragraph 64 of Decision No. 89 by an additional thirty days, to November 20, 1998. CSX is authorized to state that NECR concurs in this request.

Respectfully submitted,

A handwritten signature in dark ink, reading "Timothy M. Walsh". The signature is written in a cursive style with a long horizontal flourish at the end.

Timothy M. Walsh
Counsel for CSX Corporation
and CSX Transportation, Inc.

cc: Karl Morell, Esquire

STB FD 33388 (Sub 75) 10-13-98 D 191572

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D



October 13, 1998

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building
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Washington, DC 20423

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Office of the Secretary

OCT 14 1998

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Re: 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

Finance Docket No. 33388 (Sub-No. 75), New England Central Railroad, Inc. - Trackage Rights - CSX Transportation, Inc.

Dear Secretary Williams:

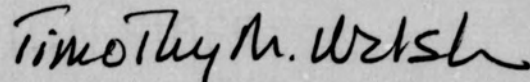
Enclosed are an original and twenty-five (25) copies of the "Response of CSX Corporation and CSX Transportation, Inc. to Petition of New England Central Railroad, Inc. to Set Terms of Trackage Rights Agreement or for Clarification" for filing in the above-referenced docket.

A disk containing this filing in WordPerfect for Windows 6.1 format is also enclosed.

The Honorable Vernon A. Williams
October 13, 1998
Page 2

I would appreciate it if you could date stamp the enclosed additional copies of this letter and the filing and return them to our messenger. Thank you for your assistance.

Sincerely yours,

A handwritten signature in cursive script that reads "Timothy M. Walsh".

Timothy M. Walsh
Counsel for CSX Corporation
and CSX Transportation, Inc.

Enclosures

cc: All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

Finance Docket No. 33388 (Sub-No. 75)

NEW ENGLAND CENTRAL RAILROAD, INC.
-- TRACKAGE RIGHTS --
CSX TRANSPORTATION, INC.

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Public Record

RESPONSE OF CSX CORPORATION
AND CSX TRANSPORTATION, INC. TO
PETITION OF NEW ENGLAND CENTRAL RAILROAD, INC.
TO SET TERMS OF TRACKAGE RIGHTS AGREEMENT
OR FOR CLARIFICATION

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October 13, 1998

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and CSX Transportation, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

Finance Docket No. 33388 (Sub-No. 75)

NEW ENGLAND CENTRAL RAILROAD, INC.
-- TRACKAGE RIGHTS --
CSX TRANSPORTATION, INC.

RESPONSE OF CSX CORPORATION
AND CSX TRANSPORTATION, INC. TO
PETITION OF NEW ENGLAND CENTRAL RAILROAD, INC.
TO SET TERMS OF TRACKAGE RIGHTS AGREEMENT
OR FOR CLARIFICATION

New England Central Railroad, Inc. ("NECR") has petitioned the Board to order that a contract term in a 1996 agreement by NECR's sister company, Connecticut Southern Railroad, Inc. ("CSO"), to pay Consolidated Rail Corporation ("Conrail") "additional consideration" for CSO's purchase of Conrail lines should be effectively nullified.^{1/} NECR contends

^{1/} Petition of New England Central Railroad, Inc. to Set Terms of Trackage Rights Agreement or for Clarification (filed Sept. 21, 1998) (NECR-10). NECR and CSO are both subsidiaries of RailTex, Inc., a noncarrier that controls a large number of railroads. See NECR-2 at 4; CSO-2 at 4.

that such relief should be mandated either as a term of the NECR trackage rights between Palmer, MA and West Springfield, MA granted in Sub-No. 75 or as a "clarification" that the CSO contract - to which NECR is not a party - will be to that extent overridden.

CSX Corporation and CSX Transportation, Inc. ("CSXT") (collectively, "CSX") respectfully submit that NECR's belated request for modification of the CSO-Conrail line purchase agreement is neither an appropriate term of the trackage rights the Board granted NECR nor necessary to carry them out. To the contrary, NECR will be able to obtain substantial advantages from the trackage rights - in particular operating efficiencies and cost savings that NECR itself repeatedly claimed as major benefits of a direct connection with CSO - without any need to interfere with the CSO-Conrail contract.

By contrast, modifying the CSO agreement as NECR urges would give those two RailTex companies a windfall by effectively eliminating this important part of the bargain CSO and Conrail made when CSO was created. For these reasons, as set forth more fully below, NECR's Petition should be denied.

BACKGROUND

NECR filed a "Description of Anticipated Responsive Applications" (NECR-2) in August 1997, a Responsive Application (Sub-No. 75) in October 1997 (NECR-4), rebuttal in support of its application in January 1998 (NECR-8) and a brief in February 1998

(NECR-9). None of those documents so much as mentions the contract between CSO and Conrail, let alone seeks the relief now demanded. The proposed trackage rights agreement NECR submitted as part of its Responsive Application (NECR-4, Exh. 2) did not purport to modify or override the prior CSO-Conrail agreement in any way. Indeed, NECR disclaimed any need to involve CSO in its application at all. See NECR-2 at 4-5 (seeking waiver from requirement that other RailTex subsidiaries be applicant carriers). In doing so it represented to the Board that other RailTex carriers -- including CSO -- "would not be affected by the trackage rights NECR anticipates seeking in its responsive application." Id. at 5.

NECR sought trackage rights from Palmer east to Albany and south from there to the New Jersey/New York Shared Assets Area. NECR-4 at 2, 14. It broke that request into three segments: from Palmer to West Springfield; from West Springfield to Albany; and from Albany to the Shared Assets Area. Id. at 2-4. CSX opposed those requests, pointing out that NECR shippers would suffer no competitive harm as a result of the primary transaction and that NECR had failed to prove there would be any loss of essential services.

Decision No. 89 granted NECR's Responsive Application "insofar as it seeks to require CSX to grant NECR trackage rights between Palmer, MA, and West Springfield, MA"; NECR's other

requests were denied. Decision No. 89 at 180.² The Board directed CSX and NECR to "attempt to negotiate the details of such trackage rights" and if they could not fully agree, submit proposed terms no later than September 21, 1998. Id.

Negotiations began in August 1998, and CSX and NECR have resolved most of the terms normally addressed in trackage rights agreements. See Verified Statement of Mark S. Bennett (appended as Attachment 1 hereto) at 1. In separate September 21 reports to the Board, CSX and NECR each expressed confidence that they would be able to agree on the remaining issues other than one addressed herein, and the Board has given them until October 21 to do so. See Decision No. 91 (served Oct. 1, 1998).

In the August negotiations, NECR demanded that the NECR-CSX trackage rights agreement include a provision limiting the applicability of the contract between CSO and Conrail. Its position was that the "additional consideration" requirement should not apply to any traffic interchanged between NECR and CSO. Id. See also Petition at 3, 9.

^{2/} The Board did so after concluding that, "[d]espite the fact that its diversion evidence is flawed, NECR has shown that it will be financially harmed by this transaction" and that "NECR provides important services for both its shippers and for Amtrak." Decision No. 89 at 105. While the Board stated that it was granting the limited trackage rights "to ensure NECR's ability to provide these services," id., it did not make any of the specific findings under the essential services standard established by the regulations and applicable precedent. See 49 C.F.R. § 1180.1 (c)(2)(ii). See also Decision No. 89 at 171 (findings re NECR responsive application).

As the excerpts from the CSO-Conrail contract attached to the Petition evidence, the provision NECR attacks was plainly contemplated as an element of consideration for Conrail's 1996 line sale to CSO. The contract states as follows:

Additional Consideration.

Purchaser [CSO] recognizes that, in selling the Property, Conrail is enabling Purchaser to interchange with one or more third parties traffic that originates or terminates or otherwise moves over the Property, and as to which Conrail, prior to this sale, could or did participate as a carrier for a portion of the movement that occurred or could occur on Conrail lines other than the Property [*i.e.*, the CSO line]. In consideration thereof, Purchaser agrees that, should Purchaser (at its own option or that of the shipper or consignee) interchange such traffic with a carrier other than Conrail, it will pay Conrail the amounts set forth in Appendix Q, per loaded car of such traffic.

Agreement § 9.10.1. The Appendix Q amounts are to be adjusted annually using the RCAF (adjusted). Id.

As the Board recognized in Decision No. 89, provisions such as this

are features of many contracts of sale or lease of rail lines ... that are imposed by sellers to ensure that the traffic originated by shortline carriers on these segments that used to be owned by Class I carriers continues to flow over the lines of the seller to the maximum extent possible.

Decision No. 89 at 77 (citing BNSF, slip op. at 17, 94). The Board went on to state that it "is clear that Class I carriers have been willing to sell lines at lower prices with these conditions attached." Id.

CSO sought no relief in this proceeding. It did not request conditions or file comments, nor was it a party to NECR's responsive application. CSO's only submissions were a notice of intent to participate (CSO-1) and a description of a possible responsive application (CSO-2). Neither mentioned the CSO-Conrail agreement. The anticipated responsive application described in CSO-2 - which would have sought trackage rights from CSO's southern terminus in the New Haven area to Fresh Pond Junction (in Queens) - was never filed, and CSO was not heard from again.

Although it sought no relief, CSO will be protected by a ruling in Decision No. 89 that affects provisions such as that in the CSO-Conrail contract generally. While it affirmed the validity of such terms, the Board held that existing provisions of this nature must not be "interpreted in such a way that the transaction would expand their reach." Decision No. 89 at 77.

CSX has accordingly advised NECR that it will not apply the CSO contract's "additional consideration" term to traffic that would be subject to that provision solely because it could have moved via Conrail between Palmer and West Springfield but instead moves via NECR pursuant to the trackage rights granted by the Board, including traffic that originates on NECR and terminates on CSO or vice versa. See Bennett V.S. at 2. CSX will also, of course, honor the recently negotiated Rail Industry Agreement, which includes a provision regarding "paper barriers" that may work to the benefit of both NECR and CSO.

NECR's demand, however, is that the "additional consideration" provision must be made inapplicable to any NECR-CSO traffic. See Petition at 3, 9. Such a modification would destroy the protection for line-haul business that provision plainly was designed to provide. For example, shipments of lumber and other commodities from western Canada to points on CSO normally would be received by Conrail from Canadian National or Canadian Pacific at Buffalo or Montreal and handled by Conrail from there to Springfield. See Bennett V.S. at 2-3. Such traffic could instead be routed on the Canadian railroads and their connections to northern Vermont and on NECR from there to Springfield.^{3/} If the Board were to accept NECR's position -- that when a direct NECR-CSO interchange is involved the contract provision cannot apply even if Conrail (CSX) is cut out of its traditional participation in such Canadian traffic -- Conrail (CSX) would stand to lose significant line-haul revenues without the offsetting compensation that CSO agreed to pay in such circumstances. See id.

NECR nonetheless claims that its proposal will not give it a "windfall," asserting that the provision would continue to apply to traffic that CSO interchanges with other carriers. Id.

^{3/} NECR says it hopes to participate in shipments of paper and lumber to customers on CSO from Canada and outbound movements of paper scrap from CSO origins to Canada. NECR-10, Carlstrom V.S. at 2. Conrail (CSX) could participate in such movements over either Montreal or Buffalo, in each case moving through Syracuse and Springfield to CSO.

at 3. However, it is clear that adopting NECR's position would indeed permit "additional consideration" to be avoided for all CSO traffic by use of routings that include an intermediate movement on NECR. See Bennett V.S. at 3.^{4/} If there is traffic that Conrail (CSX) could handle but that NECR could participate in only if "additional consideration" charges are avoided, the modification NECR urges would give it the opportunity, and its status as a sister RailTex subsidiary of CSO the economic incentive, to avoid those charges for all such traffic.

The relief NECR seeks thus would deprive the contract provision of any practical effect and thereby undo the bargain CSO struck with Conrail when it purchased its lines. The result would be that CSX would lose traffic this provision plainly was designed to cover and would be denied the compensation CSO agreed to pay in consideration for such a loss.

ARGUMENT

NECR's petition is an untimely attempt to obtain additional and unwarranted relief. Modification of a contract term that CSO agreed to with Conrail wholly independent of this proceeding was not a part of the trackage rights granted in

^{4/} CSO currently has a direct connection with Conrail, Guilford (at Springfield) and Providence & Worcester Railroad (at New Haven). Id. CSO traffic could easily reach the Guilford and P&W lines by means of a short intermediate movement over NECR via Springfield. Id. NECR currently connects with Guilford at several points and with P&W at New London, CT. See NECR-4, Exh. 1 (map).

Decision No. 89, nor is it necessary to carry them out. Indeed, it is clear that NECR will be able to obtain not only what the Board granted - trackage rights permitting a direct connection with CSO at Springfield for "through movements" (Decision No. 89 at 105) - but also the substantial operating efficiencies that NECR repeatedly underscored as a goal of that connection. There simply is no justification in Decision No. 89 or precedent for the additional relief NECR now seeks.

NECR is not even a party to the contract it is seeking to have modified. Both NECR and CSO previously have gone out of their way to emphasize that they are separate and distinct corporations even if commonly controlled by RailTex. NECR sought and received waivers to exclude both RailTex and "all of NECR's affiliated carriers in the RailTex family" - including CSO - as applicants or applicant carriers for purposes of its responsive application. NECR-2 at 4; Decision No. 11 at 2-4. Although it ultimately decided not to file a responsive application, CSO sought and was granted a parallel waiver excluding, among others, NECR. CSO-2 at 4; Decision No. 11 at 2-4. Under these circumstances, modification of the CSO-Conrail contract for the benefit of NECR is plainly inappropriate.^{2/}

^{2/} Nor would this in any event be an appropriate trackage rights term. CSX is not aware of any instance in its experience which an interpretation or modification of a preexisting "paper barrier" has been addressed in a trackage rights agreement. The standing of NECR to object to a charge made to CSO is doubtful. It is evident, however, that after assuring the Board that its

(continued...)

NECR nevertheless argues that continued application of the CSO contract -- even with the limitations CSX will recognize to avoid any expansion of the contract's reach -- is inconsistent with Decision No. 89. NECR offers three reasons why it believes that to be so, none of which has merit.

NECR first argues that because the Board granted trackage rights between Palmer and West Springfield that permit a direct connection with CSO, this somehow precludes continued application of the CSO-Conrail agreement. Petition at 3-4. That simply is not so. Grants of trackage rights are grants of operating authority, and that authority will in no way be affected by the CSO-Conrail contract provision.^{6/} Indeed, as discussed below NECR will be fully able to achieve the operating efficiencies that it repeatedly highlighted as a goal of the CSO connection.

What NECR now seeks is not simply to connect with CSO but to obtain a new commercial advantage by eliminating the "additional consideration" whenever NECR can provide even the shortest link in a route from CSO's Springfield terminus to a

(...continued)

parent and sister companies -- including CSO -- were irrelevant to its Responsive Application and "would not be affected by" the relief it sought, NECR is now pursuing broader economic benefits for the RailTex group.

^{6/} The connection between the Conrail line and the line over which CSO operates is actually located in Springfield, MA rather than West Springfield. There is no operational impediment to a NECR-CSO connection there.

destination beyond the Palmer-Springfield line. That is neither what NECR's responsive application sought nor what the Board granted. Moreover, Decision No. 89 and other precedent make clear that it is not an appropriate use of the Board's power to impose conditions under 49 U.S.C. § 11324© to restrict the pre-transaction reach of legitimate "paper barriers" such as this. See Decision No. 89 at 77; see also id. at 57. The paper barriers provision of the Rail Industry Agreement recently adopted under the Board's aegis will provide ample protection against such provisions being abused.

NECR's second argument is that the CSO contract term must be swept aside because "concern over the financial losses that NECR would suffer" as a result of the transaction underlay this grant of trackage rights. Petition at 4-5. NECR contends that even with the limitations CSX will apply, any "additional consideration" charge "would effectively negate the trackage rights condition awarded to NECR by the Board and prevent NECR from recouping any of its lost revenues." Id. at 5.

NECR's own evidence refutes that claim. The fact that NECR did not so much as mention the CSO-Conrail agreement in its responsive application, rebuttal or brief makes clear that NECR did not consider relief from it to be an integral part of the requested Palmer-Springfield trackage rights and the resulting connection with CSO. This was not some forgotten, arcane or inaccessible deed restriction, contractual proviso or municipal ordinance. It is a clear and fundamental term of a line purchase

transaction that another, closely neighboring RailTex subsidiary had entered into as recently as October 1996.

NECR indeed specifically told the Board that other RailTex railroads "would not be affected" by these trackage rights. See NECR-2 at 4-5. Having done so in seeking waivers (which the Board granted), NECR has no basis for now claiming that CSO was always intended to be a silent partner and passive beneficiary of the Sub-No. 75 Responsive Application.

Moreover, the Petition simply ignores the fact that NECR's prior filings vigorously and repeatedly emphasized that the connection with CSO would yield significant operating cost benefits. Its Responsive Application argued that "by providing NECR a connection with its corporate affiliate, [CSO], both of those carriers would be able significantly to improve their operating efficiencies." NECR-4 at 5 (emphasis added). It went on to state that "the trackage rights between Palmer and West Springfield would enable NECR and CSO to reduce costs by coordinating their operations." Id. at 8 (emphasis added). On rebuttal, NECR explained those anticipated efficiencies further:

If NECR is granted the right to connect with the CSO, the two railroads would be able to achieve a number of efficiencies. For example, employees could be utilized more efficiently and locomotives could be shared thereby reducing costs for both carriers. Because of current [Conrail] restrictions, it takes two weeks for NECR to move a locomotive over the 30-mile [Conrail] line between the NECR and CSO. Under current conditions, locomotive sharing between NECR and CSO is simply not practical.

NECR-8 at 7.

Those cost savings from more efficient crew and locomotive utilization as well as other operating coordinations are nowhere mentioned in the Petition. None of those savings would be diminished by continuing to enforce the "additional consideration" provision as it was agreed to by CSO and has been interpreted by CSX to avoid any impermissible expansion of its effect.

Furthermore, it appears from NECR's latest filing that the traffic with CSO NECR now claims to have been a critical goal of the Palmer-Springfield operating rights was actually identified after Decision No. 89 was issued. The verified statement attached to the Petition states that "[s]ince the Board granted NECR the connection with CSO, NECR's marketing staff has actively pursued traffic that could be interchanged between the two carriers." NECR-10, Carlstrom V.S. at 2. See also id. (discussing traffic identified "[t]o date" and potential traffic NECR is "exploring").

In any event, there is nothing that prevents NECR from working with area industries to develop local traffic on the more than 400 miles of newly-connected NECR and CSO lines that would not be subject to "additional consideration" as CSX intends to apply that contract term. For example, NECR previously suggested that it would seek to use the CSO connection to compete "for traffic that moves today by truck." NECR-4 at 8. Some of that truck traffic may well be outside the term's reach.

NECR's third argument — that the CSO-Conrail agreement is somehow overridden by 49 U.S.C. § 11321 (Petition at 5-8) — fails for the same reasons. What NECR sought and what the Board granted was operating authority. What it now seeks is not operating authority but a special commercial dispensation for its sister company and the RailTex group as a whole.

As explained above, there is nothing inconsistent with NECR receiving operating authority between Palmer and Springfield — which will yield the operating efficiencies NECR itself has identified — and CSO continuing to honor its contractual obligation to pay "additional consideration" with respect to any traffic that moves to or from third party carriers from NECR junctions on or beyond the Palmer-Springfield line. For the same reasons NECR's effort to nullify this provision of the CSO contract would not be an appropriate basis for relief under the Board's conditioning power, it would not be an appropriate use of section 11321 preemption. See also Decision No. 89 at 57.^{1/}

The inapplicability of section 11321 in the instant situation is in stark contrast to such matters as the assignment of railroad assets, operating rights, contracts or other property

^{1/} In terms of requiring action by an applicant in a Subchapter II proceeding, the appropriate source of statutory authority is the Board's conditioning power, not section 11321. However, even if section 11321 applied, it should not involve an outcome the conditioning power itself would not be used to create. Both powers are broad, but the use of either of them here is equally inappropriate.

or franchises that are themselves the subject of a transaction under Subchapter II of the Act. NECR's attempt to use explanations of the necessity for overriding antiassignment clauses that would prevent CSX and NS from obtaining the various elements of Conrail property whose transfer to them was approved by the Board thus is entirely off the mark.^{2/}

NECR is simply wrong in claiming that CSX has been "internally inconsistent" by allegedly "conceding a partial ... override" of the contract. Petition at 7. As explained above, the limitations on CSO's "additional consideration" obligation that CSX has described to NECR are based on the Board's ruling that the effect of such provisions cannot be expanded by the transaction.

To apply section 11321 here would in any event be impossible to reconcile with the clear objective of the statute, which is to lift legal and contractual constraints on an applicant (or its predecessor) that would inhibit the applicant from carrying out the approved transaction. The "additional

^{2/} NECR thus is wrong in contending that if the "additional consideration" term of the CSO-Conrail agreement is not overridden, its antiassignment clause cannot be. See Petition at 7. What standing NECR has to complain of an overriding of CSO's antiassignment clause is not clear. In any event, under Decision No. 89 and the statute, the transfer of Conrail's rights and obligations under the agreement, both as a selling railroad and as an operating carrier, unquestionably must be allowed to pass to New York Central Lines, LLC and be subject to that company's operating agreement with CSX. See Decision No. 89 at 175 (Ordering Paragraph 10).

consideration" in the CSO-Conrail agreement plainly is not a legal constraint on NECR, the Responsive Applicant in Sub-No. 75. Nor is it one on Conrail, the provision's beneficiary; and CSX has not asked that it be overridden. Thus, no participant in the NECR trackage rights transaction approved in Sub-No. 75 needs relief from otherwise applicable law. In sum, there is neither any factual nor legal basis for applying section 11321 to the CSO-Conrail contract here.

CONCLUSION

CSX stands ready to enter into a trackage rights agreement that gives NECR all of the operating authority the Board granted in Sub-No. 75 and that permits NECR to connect directly with CSO and thereby realize significant operating efficiencies. CSX has appropriately limited the potential reach of the "additional consideration" provision in the CSO-Conrail contract consistent with the Board's ruling that such provisions must not be expanded as a result of the transaction, and CSO will have the benefit of those limitations as well as the "paper barriers" provision of the recently adopted Rail Industry Agreement. The modification of CSO's line purchase contract that NECR now asks the Board to impose would bestow a commercial advantage of a windfall nature to its parent and sister companies that is neither inherent in nor necessary to implement

the trackage rights NECR was awarded. NECR's Petition should accordingly be denied.

Respectfully submitted,

Timothy M. Wrisel

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Counsel for CSX Corporation
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October 13, 1998

VERIFIED STATEMENT OF
MARK S. BENNETT

My name is Mark S. Bennett. I am Director of Interline Market Development for CSX Transportation, Inc. ("CSXT"). The purpose of this Verified Statement is to address certain issues raised in the September 21, 1998 "Petition of New England Central Railroad, Inc. to Set Terms of Trackage Rights Agreement or for Clarification."

I have participated on CSXT's behalf in negotiations with New England Central Railroad, Inc. ("NECR") for a trackage rights agreement to implement the Surface Transportation Board's grant of trackage rights to NECR between Palmer, MA and West Springfield, MA. CSXT and NECR began discussing that agreement in August 1998 and have been able to resolve most of the issues presented on a mutually acceptable basis.

NECR's petition asks the Board to modify or override a provision in the October 1996 Agreement Relating to Acquisition and Operation of Rail Lines Known as the Connecticut Cluster between Connecticut Southern Railroad, Inc. and Consolidated Rail Corporation. Specifically, NECR asks the Board to modify or override Section 9.10.1 of that Agreement, pursuant to which

Connecticut Southern Railroad, Inc. ("CSO"), the purchaser, agreed to pay Consolidated Rail Corporation ("Conrail"), the seller, certain "additional consideration" in the event CSO interchanges with a third party traffic in which Conrail could have participated. Those amounts were in addition to the purchase price for the lines.

The provision in question was brought to our attention by NECR in mid-August of this year. NECR asked that CSXT agree not to apply that provision to any NECR-CSO traffic. In response, CSXT advised NECR that after the trackage rights take effect, it will not interpret the "additional consideration" provision to apply to traffic in which the only potential Conrail participation is over the Palmer-Springfield segment, including traffic that originates on NECR and terminates on CSO, or vice versa.

NECR's proposal would destroy the protection for Conrail line-haul business this provision of the CSO agreement was obviously intended to provide. For example, significant lumber and paper movements originating in Western Canada and destined for points on CSO normally would be interchanged from Canadian National or Canadian Pacific to Conrail at Buffalo or Montreal, which would leave Conrail with the line haul from there to Springfield. NECR's proposal would take that business away

from Conrail, such as by permitting CN to take the traffic to East Alburg, VT for interchange with NECR, which would then have the business to Springfield.

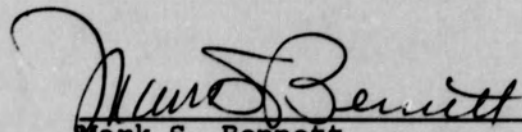
The Petition contends that even under NECR's proposed modification of the CSO-Conrail contract, the "additional consideration" provision "would continue to apply to any traffic that is covered by the provision and interchanged directly by CSO with a carrier other than NECR and CSXT." Petition at 3 n.2. There is unlikely to be any such traffic. The only carriers with which CSO now has a direct connection apart from Conrail are the Guilford Rail System and Providence & Worcester Railroad. CSO traffic could easily reach those carriers' lines indirectly by means of intermediate movements on NECR using the Palmer-Springfield line. I would expect CSO to make the maximum possible advantage of a routing that includes NECR to avoid any "additional consideration" payments here, as well as for traffic interchanged directly or indirectly with the Canadian line-haul railroads.

NECR's proposal thus would deprive Conrail (CSX) of significant line-haul revenues for Canadian and other traffic that the "additional consideration" charge was designed to protect. The end result would be to deprive that provision of the CSO-Conrail contract of any practical effect.

VERIFICATION

I, Mark S. Bennett, declare under penalty of perjury that the foregoing is true and correct. Further, I certify I am qualified and authorized to file this verified statement.

Executed on the 9 day of October, 1998.



Mark S. Bennett
Director of Interline
Market Development
CSX Transportation, Inc.

CERTIFICATE OF SERVICE

I, Timothy M. Walsh, certify that on October 13, 1998, I have caused to be served a true and correct copy of the foregoing "Response of CSX Corporation and CSX Transportation, Inc. to Petition of New England Central Railroad, Inc. to Set Terms of Trackage Rights Agreement or for Clarification," (CSX-164) to all parties on the Service List in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means.

Timothy M. Walsh
Timothy M. Walsh

STB FD 33388 (Sub 75) 9-22-98 D 191306

STEPTOE & JOHNSON LLP

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September 21, 1998



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The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423-0001

Re: 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

Report of Applicants CSX Corporation and CSX Transportation, Inc.
Concerning Negotiations With New England Central Railroad Regarding
Trackage Rights Between Palmer and West Springfield, MA (Sub-No. 75)

Dear Secretary Williams:

Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") hereby submit this report on the status of their negotiations with New England Central Railroad, Inc. ("NECR") pursuant to Ordering Paragraph No. 64 of Decision No. 89 in this proceeding. In that Decision, the Board granted NECR's responsive application in Sub-No. 75 "insofar as it seeks to require CSX to grant NECR trackage rights between Palmer, MA and West Springfield, MA." Decision No. 89 at 180. The Board directed CSX and NECR "to attempt to negotiate the details of such trackage rights" and submit separate proposals by today in the event those negotiations were not "fully successful." Id.

As a result of its negotiations with NECR, CSX believes that all trackage rights agreement terms necessary for NECR to receive the operating rights granted to it in Decision No. 89, including unrestricted interchange, have been or will shortly be agreed upon, and that no action by the Board to impose any such terms will be necessary. CSX and NECR are still in the process of negotiations regarding two items, which they are hopeful can be resolved without Board intervention. CSX accordingly asks that the Board extend Decision No. 89's deadline for concluding these trackage rights negotiations by 30 days to permit the parties to resolve those issues. CSX understands that NECR concurs in that request.

In discussions on the trackage rights agreement, NECR has raised another, extraneous issue that CSX understands NECR will present to the Board in its submission today. NECR contends that CSX is somehow required to ignore, waive or modify certain contractual commitments that were entered into by Connecticut Southern Railroad Inc. ("CSO") when that company purchased its line from Conrail in 1996.^{1/} At that time, CSO agreed to pay Conrail certain additional consideration in the event traffic that could have moved over Conrail was instead routed over another carrier, under what the Board has generally characterized as a "blocking" provision. See Decision No. 89 at 77.

With respect to such blocking provisions, the Board held that "[w]e do not believe ... that it would be appropriate for us to require a wholesale elimination of these freely negotiated contractual terms as part of this proceeding." Id. However, it ruled that it would "preclude existing blocking provisions from being interpreted in such a way that the transaction would expand their reach." Id.

CSX has advised NECR that it will apply the CSO blocking provision in compliance with Decision No. 89's directives. Moreover, CSX has also advised NECR that it will not, after assuming Conrail's role in this regard, apply the blocking provision to traffic that originates on NECR and terminates on CSO, or vice versa.

NECR, however, has taken the position that all traffic it interchanges with CSO - regardless what other railroad originates or terminates that traffic- must be exempted from the blocking provision, and has argued that such blanket relief should be made part of the trackage rights agreement. That position is neither required by Decision No. 89 nor supported by the record in this proceeding.

The payment of additional consideration under the "blocking provision" is a contractual obligation of CSO, to which NECR is not even a party. CSO itself did not seek any relief from the Board in this transaction, let alone establish any factual or legal basis upon which its contractual agreement with Conrail could or should be set aside.^{2/}

^{1/} CSO and NECR are both RailTex companies. However, NECR expressly disclaimed any need to involve RailTex or any of "NECR's affiliated carriers in the RailTex family" in NECR's responsive application. See NECR-2 at 4-5 (Aug. 22, 1997).

^{2/} CSO entered an appearance in the proceeding and filed a description of a possible responsive application. See CSO-1 (Aug. 6, 1997); CSO-2 (Aug. 22, 1997). However, CSO did not in fact file a responsive application, nor did it submit comments or a brief seeking any relief from the Board. Tellingly, CSO's description of its potential responsive application did not even mention, let alone seek modification of, its agreement with Conrail.

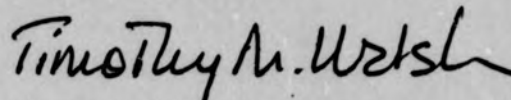
The Honorable Vernon A. Williams
September 21, 1998
Page 3

Nor did NECR itself ask the Board to modify the CSO blocking provision. To the contrary, NECR's responsive application and brief do not mention the CSO agreement with Conrail at all. What NECR sought (and what the Board granted with respect to the line between Palmer and West Springfield) was a request for trackage rights, and nothing more.

The Board correctly held that the contractual commitments of rail line purchasers should continue to be honored and should not be affected by approval of the transaction in this proceeding. Decision No. 89's express statement to that end makes clear that there can be no "implied" modification of the CSO contract or preemption of its terms.

In sum, CSX has complied with Decision No. 89 fully in negotiating an agreement for NECR to obtain trackage rights between Palmer and West Springfield. CSX has also advised NECR that it will not apply the CSO blocking provision to traffic that originates on NECR and terminates on CSO or vice versa. What NECR now seeks is new and additional relief from the Board - relief that neither it nor CSO sought at the appropriate time and that is flatly inconsistent with the Board's recognition that the economic bargain struck in line sale transactions and embodied in so-called "blocking" provisions should not be upset. CSX respectfully submits that NECR is not entitled to any modification, waiver or preemption of CSO's contractual obligations and that the Board should deny any request for such relief.

Respectfully submitted,



Timothy M. Walsh
Counsel for CSX Corporation
and CSX Transportation Inc.

cc: Karl Morell, Esquire

STB FD 33388 (Sub 75) 1-14-98 D 185219

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KARL MORELL

January 14, 1998

HAND DELIVERY

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



185 215
Sub 75

RE: 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

Dear Secretary Williams:

Enclosed for filing please find the original and 25 copies of the Rebuttal of New England Central Railroad, Inc. Also enclosed is a 3.5 inch diskette containing the filing in WordPerfect 5.2.

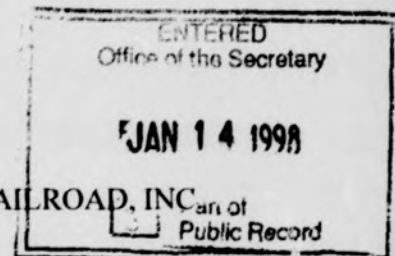
Please time and date stamp the extra copy of the filing and return it with our messenger.

If you have any questions, please contact me.

Respectfully,

Karl Morell
Attorney for:

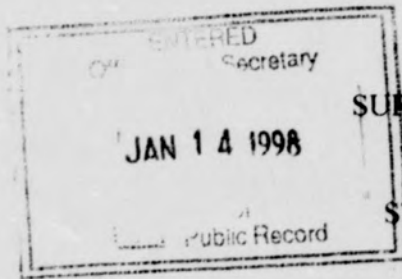
NEW ENGLAND CENTRAL RAILROAD, INC. att of
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ORIGINAL



BEFORE THE

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

STB FINANCE DOCKET NO. 33388 (SUB-NO. 75)

NEW ENGLAND CENTRAL RAILROAD, INC.
--TRACKAGE RIGHTS--
CSX TRANSPORTATION, INC.

REBUTTAL OF
NEW ENGLAND CENTRAL RAILROAD, INC.

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Attorney for:
NEW ENGLAND CENTRAL
RAILROAD, INC.

Dated: January 14, 1998

BEFORE THE
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

STB FINANCE DOCKET NO. 33388 (SUB-NO. 75)

NEW ENGLAND CENTRAL RAILROAD, INC.
--TRACKAGE RIGHTS--
CSX TRANSPORTATION, INC.

REBUTTAL OF
NEW ENGLAND CENTRAL RAILROAD, INC.

New England Central Railroad, Inc. ("NECR"), pursuant to Decision No. 12 in this proceeding and the Surface Transportation Board's ("STB" or "Board") Railroad Consolidation Procedures at 49 C.F.R. Part 1180, hereby submits its rebuttal in support of NECR's Responsive Application.

INTRODUCTION

On June 23, 1997, CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"), Conrail

Inc. ("CRR"), and Consolidated Rail Corporation ("CRC")¹ (collectively referred to as the "Primary Applicants") filed their Railroad Control Application ("Control Application").² On October 21, 1997, NECR filed its Responsive Application seeking trackage rights between Palmer, Massachusetts and the New Jersey/New York Shared Assets Area over rail lines currently owned by CRC and to be acquired by CSXT. Comments addressing the anticompetitive effects of the Primary Transaction in the New England area were also filed by, among others, the Coalition of Northeastern Governors, the State of Maine Department of Transportation, the Rhode Island Department of Transportation, the Connecticut Department of Transportation and the Housatonic Railroad Company, Inc.

On December 15, 1997, the State of New York, the State of Vermont and the Housatonic Railroad Company, Inc., filed comments in support of NECR's Responsive Application.

TRackage RIGHTS REQUESTED BY NECR

In its Responsive Application, NECR requested the Board to condition the approval of the Primary Transaction by granting NECR trackage rights between Palmer, Massachusetts and the New Jersey/New York Shared Assets Area as follows:

1. Palmer - West Springfield
Between Palmer, Massachusetts and West Springfield, Massachusetts over the rail line currently owned and operated by CRC and to be acquired and operated by CSXT.

¹CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as Conrail.

²In the Control Application, Primary Applicants seek Board approval for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS (hereinafter referred to as the "Primary Transaction").

2. West Springfield - Albany
Between West Springfield, Massachusetts and Albany,³ New York over the rail line currently owned and operated by CRC and to be acquired and operated by CSXT.
3. Albany - New Jersey/New York Shared Assets Area
Between Albany, New York and the New Jersey/New York Shared Assets Area⁴ over the rail line located on the west side of the Hudson River currently owned and operated by CRC and to be acquired and operated by CSXT.

SUMMARY OF REBUTTAL EVIDENCE

Included in this filing are the Rebuttal Verified Statements of Mr. Dale Carlstrom, the Senior Vice President and General Manager of NECR, and John Sullivan, Director of Market Development, Rail Systems, Inc. Mr. Sullivan and Mr. Carlstrom, who previously testified in this proceeding, respond directly to the Rebuttal Verified Statements of John W. Orrison and Howard A. Rosen.

In his statement, Mr. Carlstrom demonstrates that Applicants' estimate that NECR's annual revenue losses as a result of the Primary Transaction will be only \$1.6 million is vastly understated due to the method by which Applicants made their estimate and the use of certain inaccurate assumptions Applicants employed in arriving at their estimate. Mr. Carlstrom points out that the mechanical analysis employed by Applicants in their methodology could not possibly capture most of the traffic diversions from NECR. Mr. Carlstrom demonstrates that, contrary to Applicants' assertions, NECR will lose approximately \$8 million in annual revenue

³ The requested right to serve Albany includes the right to serve Albany, Selkirk and Mechanicville, New York for the purpose of interchange with connection carriers. The Delaware and Hudson Railway Company, Inc. ("D&H"), the Guilford Rail System ("Guilford"), and NSR (through a proposed haulage arrangement with the D&H) have interchange facilities at those locations.

⁴ If NECR's condition is granted, NECR will negotiate with Primary Applicants as to the precise yard or yards in the New Jersey/New York Shared Assets Area that can be used by NECR to interchange traffic.

due to traffic diversions resulting from the Applicants' post-Transaction operations. Mr. Carlstrom states that a loss of this magnitude may be fatal to NECR, and at the very least will force NECR to significantly reduce or eliminate services critical to meeting its customers' needs. Mr. Carlstrom points out that the reduction of these services would, in turn, impact on revenues and cause NECR to resort to further economies in its operations, thus magnifying the losses and further impairing NECR's ability to meet its customers' demands for rail service.

Mr. Carlstrom refutes Mr. Rosen's criticism of NECR's estimates of traffic gains if the requested conditions are granted. Mr. Carlstrom points out that NECR is aware of marketing opportunities for joint movements with NECR's affiliate the Connecticut Southern Railroad (CSO) if the conditions are granted. Moreover, NECR expects to serve as a bridge carrier for traffic originating in Canada and moving to or through the New York and New Jersey areas. Through these and other efforts, Mr. Carlstrom estimates that NECR can possibly recover up to \$7 million of the projected revenue losses.

Mr. Carlstrom also refutes Mr. Rosen's conclusion that NECR would continue to serve all its customers even if it incurred losses of \$8 million in annual revenues. As Mr. Carlstrom points out, even the \$1.6 million loss projected by Applicants would force NECR to reduce its services or discontinue some services totally. This curtailment of services will place many of NECR customers at a competitive disadvantage and force them out of business.

Mr. Sullivan demonstrates that Applicants' diversion estimate is flawed because it fails to capture much of NECR's traffic that moves to transfer facilities on the NECR for furtherance by truck. Mr. Sullivan explains that Applicants will have a significant advantage over NECR from

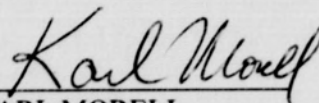
Southern origins because they will be able to provide single-line service to nearby locations as opposed to NECR's two-line haul service. Mr. Sullivan also points out that NECR is susceptible to losing its Canadian traffic post-Transaction, in part, because Applicants will be able to take advantage of the recently negotiated commercial access agreements with the Canadian railroads, enabling Applicants to redirect forest products to transfer facilities located on their newly acquired lines.

Mr. Sullivan points out that the NECR customers whose traffic will be diverted are composed predominantly of lumber and forest product shippers who conduct warehouse/transload operations on the NECR line where their products are temporarily stored for further movement by truck. The newly established transload facilities on Applicants' nearby lines would penetrate the markets served by NECR's customers, disadvantaging both NECR and its customers. Mr. Sullivan notes that a number of NECR's customers will be forced to compete with companies having single-line CSXT service as opposed to two-carrier CSXT-NECR or CN-NECR service.

Mr. Sullivan points out that currently Conrail provides a neutral and indifferent gateway service because it is primarily a terminator and not an originator of forest product commodities. Once CSXT and NSR offer single-line service for forest product commodities originating in the Southeast to destinations near NECR's service area, they can effectively foreclose NECR from handling this traffic by structuring their rates so that the NECR revenue represents an "up charge" to rates that the Applicants otherwise charge for shipments terminated on their own lines. This would, according to Mr. Sullivan, create a distinct disadvantage for customers located on

the NECR line. Transload operators on the NECR could not compete if charged higher freight costs and would face the redirection of the products they handle to facilities served by the Primary Applicants at lower rates.

Respectfully submitted,

A handwritten signature in cursive script, reading "Karl Morell".

KARL MORELL
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Attorney for:
NEW ENGLAND CENTRAL
RAILROAD, INC.

Dated: January 14, 1998

BEFORE THE
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

STB FINANCE DOCKET NO. 33388 (SUB-NO. 75)

NEW ENGLAND CENTRAL RAILROAD, INC.
--TRACKAGE RIGHTS--
CSX TRANSPORTATION, INC.

**REBUTTAL VERIFIED STATEMENT
OF
DALE CARLSTROM**

My name is Dale Carlstrom. I am Senior Vice President and General Manager of New England Central Railroad, Inc. (NECR). I previously submitted a verified statement, dated October 16, 1997, in support of NECR's Responsive Application in this proceeding. My qualifications are set forth in that statement. I am submitting this rebuttal verified statement in response to the verified statements of John W. Orrison and Howard A. Rosen.

In my initial statement, I explained that Applicants have significantly underestimated the projected traffic diversions for NECR as a result of their proposed Transaction. Applicants estimate that NECR would suffer \$1.6 million in annual revenue losses whereas we believe that a more realistic estimate is \$8 million in annual revenue losses from traffic diversions to CSX

Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NSR). Approximately 50 percent of NECR's traffic consists of forest products moving over the NECR to locations in New England. CSXT and NSR serve producers of forest products in the southeast United States and, with their significantly enhanced market power to the northeast as a result their acquisition of Consolidated Rail Corporation (CRC), CSXT and NSR will be able to displace most, if not all, of the forest product traffic moving over the NECR.

I also explained that a loss of \$1.6 million in revenues would have a significant adverse effect on NECR's ability to provide service to its customers. The \$8 million loss, which we project, would have a drastic and most likely fatal effect on NECR. Trucks are not a practical alternative for most of the traffic handled by NECR. Therefore, if NECR is forced to significantly reduce and possibly eliminate service altogether, NECR's customers will be harmed and, in some cases, forced out of business.

The trackage rights requested by NECR would enable NECR to access new markets and offset some of the revenue losses NECR will experience. The requested trackage rights would also enable NECR to ameliorate some of the anticompetitive consequences of Applicants' proposed Transaction in the New England area.

Mr. Rosen claims that NECR failed to provide details of its 1988 forecasts on which the diversion study was based and that no traffic and revenue information by customer was provided for prior years. Rosen RVS at 2. Toward the end of each year, NECR is required by its parent to prepare a business plan for the following year based on current and prior year carload and revenue data. The 1988 projected traffic volumes provided to Applicants were derived from NECR's 1988 business plan and was not prepared separately for this proceeding. The 1988

forecasts provided to Applicants identify all of the shippers receiving traffic that would be subject to diversion. For each shipper, NECR identified the commodity handled, the rate per car received by NECR, and the total projected carloads and revenues. NECR provided Applicants over 800 pages of documents. The documents included NECR's income and expense statements showing carloads and revenues for 1995, 1996 and the first ten months of 1997; the total carload revenue data for three of the larger customers for 1995, 1996 and 1997 (projected); and NECR's 1996 business plan showing carloads and revenues for each of NECR's customers by commodity that year. NECR also provided Applicants 1996 information by commodity group and 1997 information concerning NECR's six largest customers, including the commodities handled and the percentage of overall revenue and carloads NECR derives from these customers.

Mr. Rosen alleges that NECR made the following five assumptions that are not supported in NECR's Responsive Application. *Id.* at 3.

First, Mr. Rosen claims that we assumed that all forest products produced in the South are equivalent to or substitutes for products produced in Canada. NECR's traffic diversion study assumed that most, but not all, Southern products can be substituted for Canadian products. Applicants are also gaining improved access from Canadian points to the markets ultimately served by NECR's forest product customers, thus enabling them to also divert traffic that may be unique to Canadian origins.

Second, he claims that we assumed products moved from the South into the New York and New Jersey area are likely to penetrate New England markets. Mr. Rosen is only partially correct. Most of the forest products handled by NECR move to distribution centers which serve markets throughout the northeast which will be directly accessed by Applicants. Thus, for most

of NECR's divertible traffic this assumption would not apply. To the extent it does apply, Applicants will be able to locate distribution centers on their nearby lines that will penetrate the New England market and displace the distribution centers located on the NECR.

Third, Mr. Rosen is correct that we assumed the total delivered price for products from the South will be attractive to New England customers. A significant portion of the traffic at issue moves to the NECR from western Canada and the northwest region of the United States. Mr. Rosen also does not take into account the price differential for the products moving from the South and those moving from Canada.

Fourth, Mr. Rosen is also correct that we assumed the distribution centers on Applicants' nearby lines would materially change the competition in markets served by our customers. As already explained, most of the forest products traffic handled over the NECR is ultimately consumed in markets that Applicants will directly serve. We assumed that their direct access would materially change competition in those markets.

Fifth, Mr. Rosen is only partially correct in claiming that we assumed New England consumers would quickly and completely sever their long-standing relationships with Canadian producers. This assumption would not apply to most of the traffic, since it is not consumed in New England. The forest products traffic handled by NECR is extremely price-sensitive and would quickly shift to the lowest cost supplier.

Applicants now contend that their own diversion study may have overstated the potential NECR revenue losses because of the default assumptions in that study. CSX/NS-176 at 378. The very default assumption referred to by Applicants in the Rebuttal filing is presumably what led Applicants to vastly underestimate the revenue losses from the NECR. Applicants'

mechanical analysis could not possibly capture the traffic NECR will lose, since it is trucked considerable distances from distribution centers on the NECR to the ultimate consumer. Similarly, the ability of distribution centers located on Applicants' new lines to penetrate the New England market with forest products traffic would not be captured by Applicants' mechanical analysis.

Mr. Rosen is also critical of NECR's estimated traffic gains if the requested conditions are granted. Rosen RVS at 4-6. While NECR did not provide commodity-specific information for the traffic it hopes to attract, it did describe the general movements. NECR is aware of traffic currently handled by trucks to markets served by its affiliate, the Connecticut Southern Railroad (CSO), which could be diverted to a joint NECR-CSO movement. We estimated that NECR would be able to generate about \$2 million annually from this traffic. NECR is also aware of traffic originating in Canada that moves to or via the New York and New Jersey areas both in trucks and by rail that NECR could possibly divert if the requested conditions are granted. NECR is currently not participating in this traffic and it would simply serve as a bridge carrier for this traffic. Mr. Rosen also misconstrues the nature of NECR's requested conditions in claiming that NECR has not sought local access in the New Jersey/New York Shared Assets Area. *Id.* at 5. Most of the traffic NECR anticipates handling would be interchanged with the CSO or with other carriers in the Albany area. The traffic NECR expects to handle to the New Jersey/New York Shared Assets Area would move to CSXT or NSR yards for an interchange with those carriers or for delivery in the New York-New Jersey area by truck. NECR does not seek to serve directly any shippers in that area.

In claiming that NECR would average only \$170 per car from the new traffic, Mr. Rosen understandably misconstrued my prior testimony. *Id.* In arriving at the overall \$7 million estimate, I assumed that overall NECR would derive on average \$500 per car, which is NECR's current average. The traffic handled to the CSO would average \$400 per car. The majority of the traffic would be handled to the CSO, to the Albany area, and between the Albany area and the Housatonic Railroad Company, Inc. (HRRC). NECR expects to handle only limited volumes direct to the New York-New Jersey area. In pointing out that NECR hopes to attract "up to 100 additional carloads per day", I simply intended to state the maximum number on any given day and not, as Mr. Rosen assumed, a daily average. NECR expects that its average daily carloads would be about one-half that amount. In addition, while NECR would offer seven-day-a-week service, actual operating days would most likely be only about 260.

Mr. Rosen correctly points out that NECR is largely a single line and that the northern and southern portions of the system are economically important to NECR. Mr. Rosen thereby concludes that NECR could not discontinue operations over any portion of its system and would continue to serve all customers even if NECR lost \$8 million in revenues. *Id.* 6-7. NECR could not continue to operate profitably if it lost anywhere near the projected \$8 million in revenues. As Mr. Rosen correctly points out, the abandonment of either the northern or southern portion of the system in an attempt to reduce costs and fixed charges would lead to significant further revenue losses. NECR, therefore, would be forced out of business altogether, as pointed out in the Responsive Application. NECR could not continue to pay its acquisition costs of the line and would be forced to liquidate the assets on the line to pay off its loans. Even if the revenue losses were only \$1.6 million, as Applicants project, NECR would have to significantly cut its costs.

This would force NECR to reduce the overall level of service it provides today and stop service to, or significantly increase the rates for, the more marginal customers. An increase in rail rates for these marginal customers would be no different than simply stopping service, since the increased transportation costs would place them at a competitive disadvantage and force them out of business.

Relying on a discovery response from NECR, Applicants contend that many of NECR's shippers will still be able to use truck service if they lose all rail service. CSX/NS-176 at 379. The fact that many of NECR's customers use trucks to meet certain of their transportation needs does not mean that they could substitute trucks for the rail service provided by NECR. In my prior statement, I specifically explained that trucks would not be a practical or economic long-term transportation option for most of NECR's customers.

Mr. Rosen claims that NECR failed to explain the operating efficiencies that it would realize by connection with the CSO. *Id.* at 8. If NECR is granted the right to connect with the CSO, the two railroads would be able to achieve a number of efficiencies. For example, employees could be utilized more efficiently and locomotives could be shared thereby reducing costs for both carriers. Because of current CRC restrictions, it takes two weeks for NECR to move a locomotive over the 30-mile CRC line between the NECR and CSO. Under current conditions, locomotive sharing between NECR and CSO is simply not practical.

Mr. Rosen contends that NECR customers will continue to have a neutral routing option to NSR via the Guilford system. *Id.* The route Mr. Rosen suggests, however, is significantly more circuitous than the current CRC route which CSXT is to acquire to most major markets.

Mr. Orrison raises a few operational concerns regarding the trackage rights NECR requests. First, Mr. Orrison claims that we have failed to identify where in the North Jersey Shared Assets Area NECR would operate and what yards we would use. Orrison RVS at 55. Because Applicants were still developing their operating plan for this area when NECR's Responsive Application was filed, we simply suggested that, if the trackage rights are granted, we would negotiate with Applicants as to the precise yard or yards in that area to be used by NECR. NECR continues to believe it would be best to negotiate these matters with Applicants rather than NECR insisting on the use of certain lines or yards that may impede with Applicants' operations.

Second, Mr. Orrison is concerned that because NECR operates in rural areas of New England it might need special training to operate over the CRC lines CSXT will acquire. He also points out that locomotives operating over these lines require Cab signals. *Id.* at 56. Contrary to Mr. Orrison's suggestion, NECR is fully capable and qualified to operate over high-speed rail lines as well as lines traveled by passenger trains. NECR's main line is rated at the FRA class III level and can accommodate train speeds of up to 60 m.p.h. NECR's line handles as many passenger trains as does the CRC line CSXT will acquire. In fact, NECR consistently has the best on-time performance for Amtrak operations over a freight railroad. Also, all CSO employees have already been qualified to operate on CRC rail lines and all CSO locomotives are specially equipped with Cab signals. In fact, most New England railroads have locomotives with Cab signals because of the extensive passenger operations in the area.

Third, Mr. Orrison is concerned that NECR's proposed interchanges with the CSO and the HRRC and the proposed interchanges in the Albany area would create substantial

interference with CSXT's through traffic. NECR proposes to interchange with the CSO and HRRC the same way CRC does today and should result in no additional interference or delays for CSXT. NECR's proposed interchanges in the Albany area will occur in the existing yards of the connecting carriers and will have little, if any, impact on CSXT through traffic.

Finally, Applicants claim that competition in New England will not be adversely affected because CSXT will assume CRC's existing agreements with NECR. CSX/NS-176 at 377. Other than a standard interchange agreement, NECR is unaware of any agreements with CRC and, therefore, sees no benefit to competition in New England from CSXT's magnanimous gesture.

VERIFICATION

I, Dale Carlstrom, verify under penalty of perjury that the foregoing Rebuttal Verified Statement is true and correct to the best of my knowledge and belief.

Dale W. Carlstrom

Executed on 1/9/98

**BEFORE THE
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**

STB FINANCE DOCKET NO. 33388 (SUB-NO. 77)

**INDIANA & OHIO RAILWAY COMPANY
--TRACKAGE RIGHTS--
CSX TRANSPORTATION, INC. AND NORFOLK SOUTHERN RAILWAY COMPANY**

**REBUTTAL VERIFIED STATEMENT
OF
JOHN SULLIVAN**

My name is John Sullivan. I am Director of Market Development, Rail Systems, Inc. My qualifications are set forth below. I am submitting this rebuttal verified statement in response to the verified statements of John W. Orrison and Howard A. Rosen opposing the Responsive Application filed by NECR in Finance Docket No. 33388 (Sub-No. 75) seeking trackage rights between Palmer, Massachusetts and New Jersey/New York Shared Assets Area over the rail line currently owned by Consolidated Rail Corporation (CRC) and to be acquired by CSX Transportation, Inc. (CSXT) via West Springfield, Massachusetts and the Selkirk-Albany New York area.

I began my career with the Boston & Maine Railroad (B&MR) in 1970. During my tenure at the B&MR, I held the positions of Director of Food & Agricultural Product Marketing and Director of Consumer Product Marketing. In 1984, I joined Rail Systems, Inc., and during my 13-year tenure with this company, I provided marketing and sales services to more than a dozen Class I, regional and shortline railroads. In addition, I have participated in a number of market sizing and freight flow analysis consulting projects in the New England and Middle Atlantic States regions.

In their Control Application, the Applicants estimate that NECR will experience a diversion of approximately \$1.6 million in freight revenues if the transaction is approved. See CSX/NS-18 at 82. This represents only the minimum amount of uncompensated injury to NECR that the Applicants foresee as a direct result of the approval of Applicants' proposed transaction. NECR estimates its gross 1997 income to be \$16.8 million. See Carlstrom VS at 3. Thus, according to the Applicants' estimate, the approval of this transaction without affording NECR some protection from its negative effects will result in a minimum 9.5 percent reduction in NECR's gross operating income. NECR believes, however, that the Applicants' estimate is vastly understated. According to NECR's calculations, the loss in freight revenues could be as high as \$8 million because much of NECR's traffic moves through transfer facilities for furtherance by truck and is therefore highly susceptible to diversion.

Two companies currently served by NECR that would be highly susceptible to immediate diversion of traffic by Applicants are Northeast Treaters and Universal Forest Products, located at Belchertown, MA. Both of these companies receive exclusively shipments of southern yellow pine lumber originating on Applicants' lines in the Southeast. These two accounts represent over

1,100 carloads of NECR business. If the transaction is approved, Applicants will be able to provide single-line haul service as opposed to two-line haul service with NECR. This will enable Applicants to attract this business through new facilities established on Applicants' lines by offering lower freight prices or price incentives.

NECR is also susceptible to losing its Canadian traffic because a majority of the forest product business that NECR handles is through transfer facilities. Using the recently negotiated commercial access agreements with Canadian railroads, the Primary Applicants will have the capability of redirecting product flow through transfer facilities located on the Primary Applicants' lines once the transaction is approved.

The list of NECR customers that face an elimination or reduction in rail service is composed predominantly of lumber and forest product shippers. (NECR 000266 Har-Exh.6). The majority of the affected customers utilize warehouse/transload operations where their products are temporarily staged to await further movement by truck. It is therefore possible for the Primary Applicants to establish or provide incentives to transload operators to establish new facilities served exclusively by the Primary Applicants. These newly established transload facilities on Applicants' lines would penetrate the markets served by NECR's customers.

The Primary Applicants claim that NECR "mischaracterizes the competitive routing options that will exist if the proposed transaction is approved. NECR customers shipping to CSXT destination will have the option of two carrier NECR-CSXT service in place of three-carrier NECR-CR-CSXT service. This reduction in the number of carriers in the routing is a shipper benefit." Rosen RVS at 8. It is also true that, if the transaction is approved, a number of NECR's customers will be forced to compete with companies having single-line CSXT service

from many locations as opposed to two-carrier CSXT-NECR or CN-NECR service. It is precisely this option that can materially injure NECR and cause the loss of its transload business to new facilities served directly by Primary Applicants. Furthermore, the market cooperation agreement worked out between NSR and Canadian Pacific Railroad (CP) is publicly reported to provide direct access into the New Jersey/New York Shared Assets Area for CP. Moreover, the CP line between Rouses Point and Albany, New York operates in direct competition to the NECR Line between East Alburg, Vermont and Palmer, Massachusetts, which increases the likelihood that NECR will lose a portion of its Canadian business.

Primary Applicants claim "NECR fears of product displacements are unfounded." Rosen RVS at 10. Conrail indeed provides a neutral and indifferent gateway service because it is primarily a terminator and not an originator of forest product commodities. Therefore, Conrail remains indifferent as to which carrier directs business to them for termination. Further, any rate for the movement of products must be coordinated between Primary Applicants and Conrail. This currently obviates unilateral control over the rate making process by the Primary Applicants.

On the other hand, the Primary Applicants are major originators of these products. Post-transaction, each Applicant will be able to offer single-line prices on forest product commodities originating in the Southeast to destinations near NECR's service area. The Primary Applicants can then publish rates to the NECR interchanges on business originated in the Southeast such that any additional division of NECR revenue represents an "up charge" to rates that the Applicants otherwise charge for shipments terminated on their own lines. This would obviously create a distinct disadvantage for customers located on the NECR line. This is especially true for

NECR transload operators that could not compete at higher freight costs and face redirection of the products they handle to facilities served by the Primary Applicants at lower rates. In addition, transload operations tend to handle products from a broad range of market origins. As a result, Primary Applicants can use low single-line pricing from the Southeast as leverage to divert NECR Canadian transload business to a consolidated transfer point served by a Primary Applicant.

If NECR's trackage rights request is approved, it will have a sizable market opportunity to pursue. Public information generally confirms the existence of a flow of products to and from the area where NECR has requested trackage rights. The Bureau of Transportation Statistics of the United States Department of Transportation recently published state-to-state flow information for 1993. Below is an excerpt of the flow to and from the affected states where NECR has requested trackage rights.

Bureau of Transportation Statistics

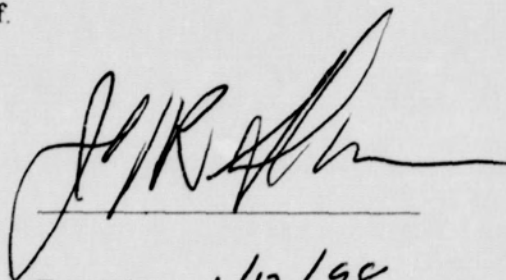
1993 Commodity Flow Survey In 000s of Short Tons

<u>Destination</u>	<u>Connecticut</u>	<u>New Jersey</u>	<u>New York</u>	<u>Vermont</u>	<u>Total</u>
<u>Origination</u>					
Connecticut		922	1,996	136	3,959
New Jersey	4,452			173	4,625
New York	3,636			2,509	6,501
Vermont	<u>77</u>	<u>147</u>	<u>804</u>	<u> </u>	<u>1,050</u>
Total	8,165	1,069	2,800	2,818	16,135

This data clearly suggests that a market of over 16.1 million tons of products exist for movement within the states indicated. These flows, however, include many commodities in less than truckload volume which would not likely be rail divertible. Therefore, assuming a market share capture of five percent, and assuming further that all cars are loaded to a net weight of 100 tons, NECR could capture 8,068 cars. Canadian originated traffic volume would be in addition to this volume.

VERIFICATION

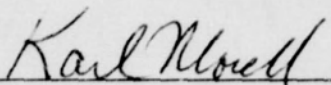
I John Sullivan, verify under penalty of perjury that the foregoing Verified Statement is true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "J. R. Sullivan", is written over a horizontal line.

Executed on 1/12/98

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 1998, I caused a copy of the Rebuttal of New England Central Railroad, Inc. (NECR-8) to be served on counsel for Primary Applicants by Hand Delivery and on Administrative Law Judge Jacob Leventhal and all other Parties of Record by first class mail, postage prepaid.


Karl Morell