

STB FD 33388 (Sub 86) 10-31-97 D 183655



Argeo Paul Cellucci
Governor

Patrick J. Moynihan
Secretary and MBTA Chairman

183655
The Commonwealth of Massachusetts
Executive Office of Transportation and Construction
Ten Park Plaza, Boston MA 02116-3969

Office of the Secretary
Case Control Branch
Attn: STB Finance Docket 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



FD-33388 Sub-86

October 31, 1997

Dear Sir or Madam:

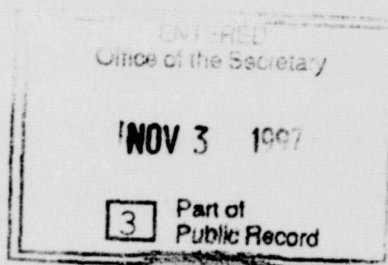
Enclosed for filing are the original and twenty-five copies of the "Comments and Request for Conditions by Commonwealth of Massachusetts." Also enclosed is a 3.5" diskette containing the Description formatted for WordPerfect 6.1 which can be converted to WordPerfect 7.0.

Would you please date-stamp and return the extra copy of this document to the messenger?
Thank you very much for your assistance.

Sincerely,

J. Cirame
John D. Cirame

Deputy General Counsel
for the Commonwealth of
Massachusetts Executive
Office of Transportation
and Construction

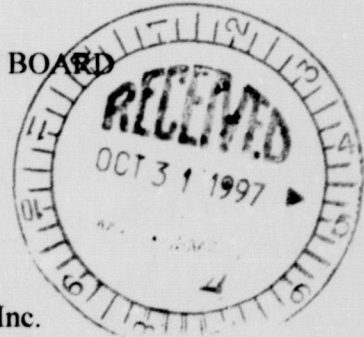


Enclosures



BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388
Sub 86



CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation and Norfolk Southern Railway
-Control and Operating Leases/Agreements-
Conrail Inc. and Consolidated Rail Corporation

COMMENTS AND REQUEST FOR CONDITIONS BY
COMMONWEALTH OF MASSACHUSETTS

SUMMARY OF POSITION

The Commonwealth of Massachusetts ("The Commonwealth") supports, for the reasons set forth below, the approval of the partition of Conrail by CSX and NS as outlined in their joint application but conditioned upon fulfillment of the agreed upon stipulations reached by the Commonwealth of Massachusetts with CSX Corporation and its subsidiaries. The Commonwealth requests that the Board retain jurisdiction over the proposed transaction for the specific purpose of confirming the fulfillment of these stipulations within a reasonable time frame, but not less than three years nor more than five years after the effective date of approval.

BACKGROUND

In August the Commonwealth filed a Description of Responsive Application with the Surface Transportation Board which highlights the public interest concerns of the Commonwealth.

The Commonwealth recognizes that the proposed control of Conrail by CSX and NS will enhance certain railroad service opportunities throughout the eastern United States. These enhancements will benefit shippers, industries and businesses, and communities through the delivery of cost effective freight services.

In the case of Massachusetts, however, the proposed transaction simply replaces Conrail service with service by CSX. The apparent impact to Massachusetts is the status quo, but this places the Commonwealth and its business community at a disadvantage when compared to other regions formerly served only by Conrail which will now enjoy competitive freight service by two (or more) class one railroad companies.

CSX will also assume the rights, duties and obligations of Conrail under terms of trackage rights agreements with the Massachusetts Bay Transportation Authority ("MBTA"). These agreements impact on the operation of commuter rail services over Conrail owned properties, and the operation of freight services over MBTA owned properties. Additionally, the integration and coordination of such services has important public safety implications.

The Commonwealth, acting through its Executive Office of Transportation & Construction, has addressed these concerns to representatives of CSX. The Commonwealth has found a serious lack of specificity in the joint filing with respect to passenger and commuter operations as well as a lack of adequate justification for the failure to include the Boston metropolitan area among those receiving dual class one rail service.

AGREEMENTS REACHED BY THE COMMONWEALTH AND CSX

CSX has demonstrated a serious commitment to address the concerns raised by the Commonwealth, and has agreed, with its subsidiary companies, CSXT, CSXI and Sea-Land, to the following conditions:

Economic Issues

1. Immediate resumption of multi-party negotiations to reach accord on the Master Agreement required by the Seaport Act, Section 29, pertaining to Doublestack clearance improvements, and a commitment by CSX to provide funding for its share of the improvements on a timely basis following successful completion of negotiations.
2. CSX, Sea-Land and Massport will cooperate in collective efforts to substantially reduce costs of doing business at the Port of Boston while concurrently improving labor flexibility, and stability. Sea-land, as a subsidiary of CSX, agrees to maintain current vessel services in the Port of Boston until at least 2001 provided that labor stability exists and Sea-Land's Vessel Sharing Agreement continues to operate. Sea-Land also agrees to immediately commence substantive discussions with Massport regarding the addition of Boston to its trans-Suez Asian service. Sea-Land also agrees to immediately commence substantive discussions with Massport regarding the movement of additional intermodal cargo through the Port of Boston.
3. CSX commits to engage in discussions with EOTC and MassPike about long and short term strategies pertaining to development potential in the Allston-Brighton section of Boston. These strategies relate to the functional use of Beacon Park rail yard and will be consistent with CSX freight requirements. Consistent with its transaction agreements, and limitations on control of Conrail under Federal law, CSX will support the prompt opening (or continuation) of discussions with Conrail regarding possible interim measures related to this matter. This commitment recognizes that CSX succeeds to Conrail's perpetual rights at this location.

4. CSX agrees to work equitably with short line and regional railroads currently connected to those Conrail lines that CSX will operate in a good-faith effort to resolve service and interchange issues, and to develop mutually acceptable commercial agreements. The Commonwealth expects that such efforts will produce a reasonable rate structure to rail customers served by CSX or its connecting carriers.

5. After STB approval of the joint CSX/NS application for control of Conrail, CSX agrees to perform an adequate maintenance effort on all lines currently operated by Conrail in the Commonwealth. Consistent with its transaction agreements and limitations on control of Conrail under Federal law, CSX will urge Conrail to continue to maintain and serve all branch lines up to the date of CSX assumption of service, in compliance with applicable FRA safety rules, standards and regulations.

Passenger and Freight Operations Issues

1. After STB approval of the joint CSX/NS application for control of Conrail, CSX will continue dispatching of the Boston Main line from Conrail's current facilities at Selkirk, New York. CSX agrees not to relocate that dispatching function without giving a minimum of six months prior notice to MBTA and will consult with the MBTA regarding a relocation decision. CSX will permit the MBTA (and its contract operator) to obtain adequate technical information to monitor the dispatching function of commuter operations over the Boston Main Line. CSX acknowledges statutory, contractual and safety related requirements and considerations regarding the priority of passenger trains over freight trains. CSX will strive to achieve maximum on time performance standards (OTP) for the involved services. Weather related delays excepted, CSX will strive for an OTP of at least 96% for passenger operations on the Boston Main Line. CSX and MBTA will establish a clearly defined line of communication between MBTA and the dispatching office responsible for the Boston Main Line, which will facilitate prompt response to MBTA service needs.

2. CSX agrees to honor Conrail's existing contractual obligations to MBTA as to maintenance, staffing, and passenger train OTP. CSX also acknowledges existing contractual requirements as to the need to seek MBTA's prior approval of maintenance activities, and to the need to consult with the MBTA to minimize the effects of such activities on passenger train OTP.

3. After approval of the CSX/NS joint application for control of Conrail, CSX agrees to discuss with the MBTA extensions of commuter rail services. Consistent with its transaction agreements and limitations of control of Conrail under Federal law, CSX will support the prompt opening of discussions between MBTA and Conrail regarding interim measures in these matters. Notably, service extensions to Fall River and New Bedford, via the Conrail owned branch lines, will be explored with total flexibility of options as to funding, ownership and operation. Any new passenger rail service over CSX property will be developed consistent with the following CSX principles:

- a) Adherence to all applicable federal and AAR industry railroad safety laws, regulations, rules and standards;
- b) The importance and necessity for growth and increasing reliability of rail freight service throughout the CSXT network, including Massachusetts branchlines;
- c) No CSXT direct or indirect subsidy of passenger rail operations;
- d) A level of tort liability indemnity and/or insurance acceptable to CSXT and taking into account federal and state law for those areas of rail operation under the control of CSXT.

4. Following STB approval of the joint CSX/NS application for control, CSX agrees to discuss with MBTA resolution of issues of ownership and operations, especially concerning the Grand Junction Branch and the Foxboro special service trains. Consistent with limitations of law, CSX will support the prompt opening (or continuation) of discussions with Conrail in these matters.

HARM TO PUBLIC INTEREST ABSENT AGREEMENT

The Commonwealth believes that the transaction as proposed could cause economic harm to businesses in Massachusetts which rely on rail freight transportation services, and has the potential to disrupt the safe and efficient operation of passenger services within the Commonwealth. This belief is based on expert review of the application, and the facts presented therein which demonstrate unequivocally that economic development and growth are fostered by having competitive service by two or more class one railroads. The lack of specificity in the application with respect to passenger rail services within the Commonwealth leaves open important operational concerns.

CSX has agreed to certain conditions, outlined above, which, if implemented, will bring about economic balance and enhance passenger and freight operational coordination.

THE TRANSACTION IS UNIQUE

The Commonwealth urges the Board to consider the unique history of the Conrail property, the role which the federal and state governments had in the creation of Conrail, and the compromises made to preserve freight services some twenty one years ago. The provision of cost effective, competitive freight rail service, and the delivery of safe passenger services are critical components of Massachusetts's transportation policy. Therefore, the oversight sought herein seeks to assure that the public interests mandated by the Board are met in a timely and effective manner.

COMPLIANCE AND REVIEW IS FEASIBLE AND NOT BURDENSOME

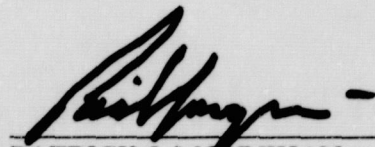
The retention of jurisdiction by the Board to oversee the public interest issues raised by the Commonwealth is reasonable, and will impose no economic burden on the parties to the transaction. The Commonwealth believes that the agreements reached with CSX are mutually beneficial, and will enhance the public benefits of the transaction.

SUMMARY

The Commonwealth respectfully requests the Board to retain jurisdiction over the transaction, to provide for periodic oversight of the issues raised by the Commonwealth, and to assure compliance with the elements of the agreements reached by the Commonwealth with CSX.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

A handwritten signature in dark ink, appearing to read "Patrick J. Moynihan", is written over a horizontal line.

PATRICK J. MOYNIHAN
SECRETARY

EXECUTIVE OFFICE OF TRANSPORTATION
& CONSTRUCTION

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 1997, I served a copy of the foregoing Executive Office of Transportation and Construction's Conditional Comments In Support on behalf of the Commonwealth of Massachusetts, by first class mail, postage prepaid, upon:

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, LLP
888 Seventeenth Street, N.W. Suite 600
Washington, D.C. 20006-3939

Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, N.E., Suite 11F
Washington, D.C. 20004-1202

Paul A. Cunningham, Esq.
Markins Cunningham
1300 19th Street, N.W., Suite 600
Washington, D.C. 20002

Richard G. Slattery, Esq.
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington, D.C. 20002

James C. Bishop, Jr., Esq.
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191

John M. Nannes, Esq.
Scot B. Hutchins, Esq.
Skadden, Arps, Slate, Meagher & Flom, LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

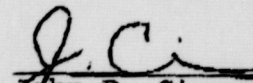
Mark G. Aron, Esq.
Peter J. Schudtz, Esq.
Ellen M. Fitzsimmons, Esq.
CSX Corporation
One James Center
901 East Cary Street
Richmond, VA 23129

P. Michael Giftos, Esq.
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

Samuel M. Sipe, Jr., Esq.
Steptoe & Johnson, LLP
1330 Connecticut Avenue., N.W.
Washington, D.C. 20036-1795

Timothy O'Toole, Esq.
Constance L. Abrams, Esq.
Consolidated Rail Corporation
Two Commerce Square
2001 Market Street
Philadelphia, PA 19101

and upon all other Parties of Record in this proceeding.


John D. Cirame
Deputy General Counsel
for the Commonwealth of
Massachusetts Executive
Office of Transportation
and Construction

STB FD 33388 (Sub 86) 10-23-97 D 183054



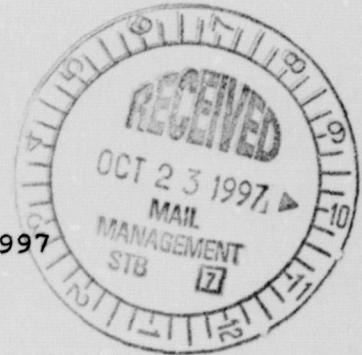
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Governor

Patrick J. Moynihan
Secretary and MBTA Chairman

183054
The Commonwealth of Massachusetts
Executive Office of Transportation and Construction
Ten Park Plaza, Boston MA 02116-3969

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October 22, 1997



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

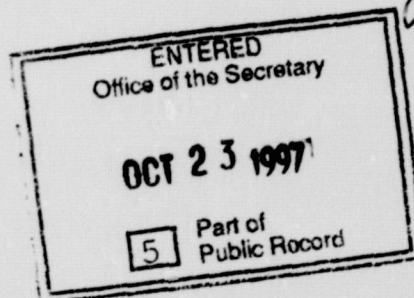
RE: Finance Docket 33388 sub86

Dear Mr. Williams:

Enclosed please find a Certificate of Service for the Commonwealth of Massachusetts request for an extension, which was previously filed on October 21, 1997.

Very truly yours,

John D. Cirame
Deputy General Counsel
Commonwealth of Massachusetts





Angelo Paul Cellucci
Governor

Patrick J. Moynihan
Secretary and MBTA Chairman

The Commonwealth of Massachusetts
Executive Office of Transportation and Construction
Ten Park Plaza, Boston MA 02116-3969

October 21, 1997

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street N.W.
Washington, D.C. 20433-0001

Re: Finance Docket 33388 sub86

Dear Mr. Williams:

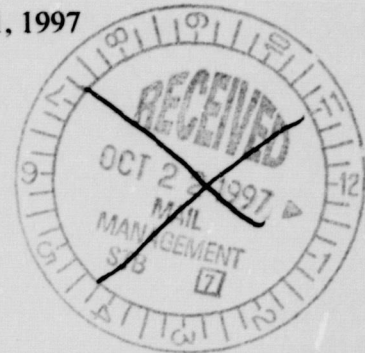
The Commonwealth of Massachusetts intends to file comments on the pending joint application of CSX/NS for control of Conrail. We have been in active negotiation with CSX on substantive issues and believe we have reached agreement in most areas. However, several points remain to be resolved.

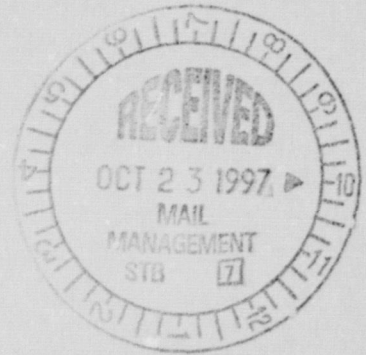
We respectfully request, with the concurrence of CSX, an extension of not more than ten days to complete our filing with the Board in this matter. Your cooperation is appreciated.

Respectfully submitted,

John D. Cirame
Deputy General Counsel
Commonwealth of Massachusetts

c: M. Ruehling, CSX Corp.





CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of October, 1997, I served a copy of the foregoing Executive Office of Transportation and Construction's request for an extension by the Commonwealth of Massachusetts first class mail, postage prepaid, upon:

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, LLP
888 Seventeenth Street, N.W. Suite 600
Washington, D.C. 20006-3939

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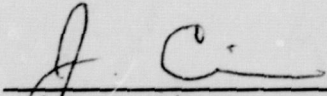
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Counsel for the Commonwealth
of Massachusetts Executive
Office of Transportation and
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