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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET No. 33388 (Sub-No. 91)

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

(GENERAL OVERSIGHT)

REPLY OF NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

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Date: August 4, 2003

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Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") hereby reply to the comments submitted by various parties in the fourth annual round of the Conrail general oversight proceeding.

In this oversight round, only five parties submitted comments, the fewest in any round so far. They are: (1) National Lime and Stone Company (NLS); (2) the SEDA-COG Joint Rail Authority (SEDA-COG) and related interests; (3) the "Lackawanna Coalition;" (4) the New Jersey Department of Transportation (NJDOT); and (5) the North Jersey Transportation Planning Authority (NJTPA). Most of the commenting parties do not even request any Board relief, and none provide any basis for the Board to impose additional conditions on the Conrail transaction, either now or in the future.

This response will address, briefly, the comments of (1) NLS, (2) SEDA-COG, (3) the "Lackawanna Coalition" and (4) because they relate to the same general subject, NJDOT and NJTPA jointly, under the heading "North Jersey Shared Assets Area."

National Lime and Stone Company

In Decision No. 89 approving the Conrail transaction, the Board imposed a limited and temporary condition affecting NLS and another Ohio aggregate shipper, Wyandot Dolomite. Ordering Paragraph No. 43 provides that, with respect to those two shippers, NS and CSX "must adhere to their offer to provide single-line service for all existing movements of aggregates, provided they are tendered in unit trains or blocks of 40 or more cars; and in other circumstances including new movements, for shipments moving at least 75 miles, must arrange run-through operations (for shipments of 60 cars or more) and pre-blocking arrangements (for shipments of 10 to 60 cars)." *CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al.*, 3 S.T.B. 196, 390 (1998).

In Decision No. 96, the STB clarified that this condition was limited to a five-year term beginning on Split Date (June 1, 1999), and thus expiring on May 31, 2004. *See CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al.*, 3 S.T.B. 764, 772, 789 (1998).

In its comments, NLS notes that it and CSX "are negotiating a new service agreement to replace the service [NLS] presently receives under the auspices of Condition No. 43." NLS-3 at 3. NLS seeks no new relief from the Board, but does assert that "to the extent that no such agreement can be reached prior to the expiration of Condition No. 43, [NLS] intends to request that the Commission [sic] issue a

supplemental order pursuant to 49 U.S.C. 11327 revising Condition No. 43" to continue beyond its five-year term. *Id.* at 4.[1]

Because NLS is not now requesting any Board action, an extensive response here is not necessary. Nevertheless, it is important to point out that, not only does NLS not seek Board action now, it has provided no basis for seeking an extension of Condition No. 43 in the future.

NLS asserts that it intends to request an extension of the condition at some point in the future if it is unable to negotiate a commercial arrangement with CSX "to replace" the service it presently is receiving—apparently meaning an agreement to continue its current single-line service beyond the termination of Condition No. 43. *See* NLS-3 at 3 (noting that the CSX has represented that it is willing to "continue" providing such service to NLS, and that the agreement of NS would have to be obtained). NS is, of course, willing to discuss this matter with NLS and explore whether it is possible to reach agreement on commercial terms acceptable to all the parties.[2]

NLS is incorrect, however, in its apparent belief that failure to reach a commercial agreement that would replicate NLS' present single-line service for certain major

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[1] NLS asserts that it "invested over $12 million at its Bucyrus and Wooster facilities." NLS-3 at 2. This, apparently, is the same $12 million referenced in NLS' comments in the first round of this proceeding three years ago, *see* NLS-1 at 1, and in NLS' comments to the Board in 1997 during the pendency of the main Conrail control proceeding. *See* Finance Docket No. 33388, NLS-2 at 8-9 (dated Oct. 21, 1997) (identifying $6.2 million spent for NLS' sales yard in eastern Ohio and $6 million for capital improvements in Bucyrus). Thus, evidence of this NLS expenditure was already on the record and known to the Board when the Board imposed condition No. 43 and set its term at five years. It is not new evidence, and it provides no basis for the Board now or in the future to consider extending the term of that condition.

[2] Indeed, a service proposal has been submitted to NS and is presently under review.

shipments would entitle NLS to a future extension of Condition No. 43. NLS apparently would like to view Condition No. 43 as, in effect, a permanent safety net that would guarantee NLS single-line service in perpetuity. But that is very clearly not what the Board provided or intended; indeed, the Board previously has rejected that very assertion. In Decision No. 96, the Board unambiguously rejected the contention of NLS and others that Condition No. 43 should be permanent. To the contrary, in expressly limiting the condition to a 5-year term, the Board said that permanent relief for NLS and Wyandot would be, among other things, "unnecessary" and "contrary to the public interest." *CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al.*, 3 S.T.B. 764, 772 (1998). Limiting the duration of Condition No. 43 to a five-year term, said the Board, "is consistent with [the settlement agreement with Martin Marietta Materials, another aggregate shipper] and with the relevant terms of the NITL Agreement." *Id.* Further, said the Board, "[p]ermanent relief would unduly interfere with the operations of both applicants and impair their operating flexibility, which we believe is the real key to efficient, economical operations from which all shippers ultimately benefit." *Id.*

Later, in the first annual round of oversight, NLS again tried to modify Condition No. 43, and the Board again declined to do so. At that time, NLS sought to change Condition No. 43 so that it would not automatically terminate at the end of its 5-year term, but rather would continue in effect unless and until NS and CSX obtained Board permission to terminate it. In other words, NLS sought, in effect, to make the condition permanent unless the railroads carried the burden of proving to the Board that it should end. In rejecting that request, the Board made clear yet again that Condition No. 43

was not intended to permanently guarantee NLS single-line service. Rather, the Board observed, the condition was a "*transitional* remedy for the aggregate shippers, providing them 5 years of single-line service for major movements *to give them an opportunity to adjust to their new circumstances*,"—*i.e.*, to the possibility that single-line service might not always be available in the future. *CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al.*, Finance Docket No. 33388 (Sub-No. 91) [General Oversight], Decision No. 5 at 16 (served Feb. 2, 2001) ("*Decision No. 5*") (emphasis supplied). Condition No. 43, said the Board, "was not designed to guarantee that these aggregate shippers losing single-line service would be insulated from all effects of the merger or from changing markets," but rather to "permit these shippers *to adjust their businesses to these new circumstances*," again, referring to the possible loss of single-line service in the future. *Id.* at 17.[3]

In sum, NLS does not now ask the Board to take any action to extend Condition No. 43 and provides no evidence indicating the Board should do so. NS remains willing to discuss these matters with NLS through normal commercial channels. But even if the parties are unable to reach a commercial agreement to extend NLS' current single-line service into the future, that state of affairs would not justify extending Condition No. 43 at a future date.

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[3] NLS argues that CSX and NS "have not presented a scintilla of evidence" that NLS' single-line service "imposes an operational burden on the railroads." NLS-3 at 3. Apart from the fact that an actual request to modify Condition No. 43 is not before the Board, NLS asserts a burden of production on the railroads that does not exist. As the Board specifically affirmed in oversight Decision No. 5, Condition No. 43 is self-terminating after five years; the railroads are not required to present evidence in the first instance as to why it should end.

SEDA-COG Joint Rail Authority

SEDA-COG is a rail authority in central Pennsylvania that owns rail lines operated by various railroads controlled by Richard Robey. (Mr. Robey's railroads will be referred to collectively as the "North Shore affiliates.") As it did last year, SEDA-COG submits a verified statement by its Executive Director, Jeffrey K. Stover. Accompanying that statement are a "Joint Statement of Shippers" endorsed by certain shippers located on lines operated by the North Shore affiliates and a "Statement of Rail Line Owner" signed by one other entity that owns a rail line operated by one of the North Shore affiliates.[4] These statements are very nearly identical in substance to the corresponding statements submitted by those interests last year.

Mr. Stover reiterates his comments of last year to the effect that SEDA-COG does not face service problems as a result of the Conrail implementation. Stover V.S. at 2. He notes SEDA-COG's "previously-expressed concerns" arising from "pre-acquisition service commitments by NS," and asserts that "because of the complexity of service arrangements related to pre-acquisition commitments those issues continue to be a serious concern." Mr. Stover seeks no Board action, but appears to advocate continued dialogue among the parties. *See id.* at 3.

The "Joint Statement of Shippers" is endorsed by six shippers, each located on one of the North Shore affiliates' lines. These shippers filed a similar statement last year.[5] The shipper statement repeats, verbatim, much of last year's statement, which

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[4] SEDA-COG, the shippers, and the other rail line owner are referred to collectively as "the SEDA COG interests."

[5] Notably, two shippers who joined the statement last year did not do so this year.

objected to the terms of a September 1, 2001 trackage rights agreement (which the shippers had not seen) between the North Shore affiliates and NS, as allegedly not consistent with the terms of a 1997 letter from Norfolk Southern to Mr. Robey. This year, the shippers state that this matter has not yet been satisfactorily resolved, and they assert that NS and the North Shore affiliates "have agreed to provisions that will attempt to implement the terms and restrictions of the trackage rights agreement." Joint Statement of Shippers at 1. The shippers admit they do not know the effect this "implementation" will have on traffic the shippers have developed since Split Date, but nevertheless they "object to NS and [the North Shore affiliates] taking any steps to implement an agreement that is not consistent with the original settlement" (referring again, apparently, to the 1997 letter).

The "Statement of Rail Line Owner" essentially repeats a similar statement last year.[6] The statement simply notes that the West Shore Railroad, which owns a rail line operated by one of the North Shore affiliates, "has the same concerns as SEDA-COG" about the "proposed settlement" between the North Shore affiliates and NS and the "lack of satisfaction of the concerns raised with NS," and that West Shore Railroad supports "the changes the shippers believe are necessary to fulfill the terms of the original settlement between [the North Shore affiliates] and NS." Statement of Rail Line Owner at 1.

As NS stated in response to last year's filings, NS values its relationship with all of the involved entities—SEDA-COG, the North Shore affiliates, other rail line owners,

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[6] One of the two parties to last year's "Statement of Rail Line Owners" did not join this year's statement.

and the shippers. NS remains willing to continue discussing these issues with SEDA-COG, and to talk individually with any shipper or other party that asks to do so.

It bears repeating, however, that with respect to the specific issue of the September 2001 trackage rights agreement and the 1997 letter, the real parties in interest (along with NS) are the North Shore affiliates themselves. The Board has specifically so found. *See Decision No. 5* at 22. None of the SEDA-COG interests are parties to either the 1997 letter or the 2001 trackage rights agreement implementing it. Although the shipper statement asserts that "based on" the 1997 letter SEDA-COG and various shippers "supported the [Conrail] transaction," NS did not enter into a settlement with any of the SEDA-COG interests, and none of them filed statements of support for the transaction, whether "based on" the 1997 letter to the North Shore affiliates, or in exchange for any commitments to them by NS, or otherwise.

The real parties in interest, the North Shore affiliates, have expressed no concern or dissatisfaction with the 2001 trackage rights agreement between them and NS. In fact, it is NS' understanding that the North Shore affiliates fully agree with NS that the terms of the 2001 trackage rights agreement are consistent with the 1997 letter.

Last year, the Board concluded, correctly, that no intervention was necessary because the SEDA-COG interests asked for none and the parties indicated a continued willingness to discuss issues of concern. *See CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al.*, Finance Docket No. 33388 (Sub-No. 91) [General Oversight], Decision No. 10 at 5 ("*Decision No. 10*") (served Nov. 5, 2002). The same holds true this year: The SEDA-COG interests again do not request any Board action, and NS remains willing to discuss issues of concern to the SEDA-COG

interests. But the SEDA-COG interests have shown no sound basis in any event for the Board to involve itself with the privately-negotiated 2001 trackage rights agreement, given that (1) none of the SEDA-COG interests are parties to the 1997 settlement agreement; (2) none of the SEDA-COG interests are parties to the trackage rights agreement implementing it; and (3) the real parties in interest here—the North Shore affiliates—believe that the trackage rights agreement they entered into with NS properly reflects and implements the terms of their settlement with NS.

The "Lackawanna Coalition"

The "Lackawanna Coalition," which describes itself as "an independent coalition which advocates on behalf of rail riders on New Jersey Transit's Morris & Essex and Montclair-Boonton Lines," (Coalition Comments at 1),[7] submits a letter that raises issues regarding two rail lines: the Boonton Line, a line owned by PRR[8] and operated by NS between Hoboken and Dover, New Jersey, and the Lackawanna Cutoff Line, an abandoned former Conrail line between Port Morris Junction and the Pennsylvania/New Jersey state line near the Delaware Water Gap.[9] (The Coalition refers to the Boonton Line as a shared asset, but it is not; it is a PRR-allocated asset operated by Norfolk Southern.)

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[7] The Coalition provides no indication as to what persons or entities comprise it. The Coalition has never before appeared in either the main Conrail control proceeding or in this general oversight sub-docket.

[8] PRR refers to Pennsylvania Lines LLC.

[9] The bulk of what the Coalition refers to as the Lackawanna Cutoff Line was abandoned by Conrail in the late 1970's. The abandoned Lackawanna Cutoff Line connects with an 8.4-mile line segment owned by PRR and allocated to NS' operation; that PRR line segment has been leased to the Monroe County Rail Authority.

The Coalition makes an astonishing request that the Board step in and simply confiscate significant privately-held property—namely, the Boonton Line—and hand it to someone else, primarily in pursuit of an extraordinarily speculative future commuter operation. The Coalition's comments are unfounded, and its bald attempt to commandeer PRR property is utterly baseless and should be rejected.

First, the Coalition says it supports a proposal by the New York & Greenwood Lake Railway Co. to operate commuter passenger service on the Boonton Line, following cessation of service by New Jersey Transit (NJT) on September 20, 2002. In this regard, the Coalition expresses "concern" that NS' "recent removal of one of the tracks" of the formerly double-tracked line has reduced the likelihood of restoring passenger service on the line and that NS "could decide to discontinue operations" on the DB drawbridge, "thereby rendering restoration of commuter service impossible." Coalition Comments at 1. The Coalition concludes that the STB should simply take the Boonton Line away from NS and give operation and control of the line to some "local, New Jersey-oriented entity."[10] *Id.* at 2.

Second, the Coalition says it supports the rebuilding of the "Lackawanna Cutoff Line between Morris Jct. and the Pennsylvania side of the Delaware Water Gap" for the restoration of passenger rail service. *Id.* It asserts that the rebuilding could allow access to the New York area by Canadian Pacific/Delaware & Hudson, via the Boonton Line. The Coalition, however, expresses a vague concern that NS "could engage in

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[10] The Coalition further suggests that "[s]uch an entity could be either an independent railroad company established to operate the line at issue, or a consortium of existing short line railroads currently operating in the region (such as the Morristown & Erie)." *Id.*

unspecified "practices" that will "have impact of preventing competition from D&H." *Id.* at 2.[11]

To respond to the Coalition's comments, it is necessary, at the outset, to take a step back and recall first principles. Fundamentally, conditions are to be imposed only to ameliorate or eliminate harms that result from the transaction itself; "[c]onditions will generally not be imposed unless the merger produces effects harmful to the public interest that a condition will ameliorate or eliminate." *CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al.*, 3 S.T.B 196, 277 (1998). In short, a condition "must address an effect of the transaction. . . ." *Id.* at 278.

Based on those principles alone, the Board should reject the Lackawanna Coalition's request, as the issues it raises and the forced line divestiture it seeks have nothing whatsoever to do with any purported harm arising from the Conrail transaction. With respect to the Boonton Line, the Coalition itself admits that the problem it seeks to address—the loss of certain passenger service on the line—arose from a decision by NJT to make certain changes in its operations that took effect last September. *See* Coalition Comments at 1; *see also* NJT "Customer Notice" attached as Exhibit 1. It had nothing to do with the Conrail transaction. Similarly, as NJT notes on its website, the Lackawanna Cutoff Line project is a stand-alone proposal that involves the possible

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[11] The Coalition also generally asserts that NS "has attempted to entice shippers to move away from locations along [the Boonton Line] . . . in favor of other locations on its line in Pennsylvania," and leaps to the conclusion that, in essence, NS "does not wish to actively compete with CSX in New Jersey." Coalition Comments at 1. First, NS has not "enticed" shippers off the Boonton Line. Second, NS, which accesses the North Jersey Shared Assets Area via a number of routes, does compete vigorously with CSX in northern New Jersey and has every intention of continuing to do so. See also the discussion below under the heading "North Jersey Shared Assets Area."

reconstruction and reactivation of a line that Conrail abandoned in the 1970's—decades before the Conrail transaction. *See* "Lackawanna Cutoff – Background," *available at* http://www.njtransit.com/ an_capitalprojects_project019.shtm (attached as Exhibit 2). Again, it has nothing whatsoever to do with remedying a "harm" caused by the Conrail transaction. Thus, even if one were to take the Coalition's allegations and assertions at face value, it is not entitled to relief under the Board's well-established standards for exercising its conditioning power.

Moreover, the Coalition's comments contain a number of factual inaccuracies and fail to mention various facts that further undermine its request for Board action. First, the Coalition repeatedly asserts that the Boonton Line is part of the North Jersey Shared Assets Area. As already noted, that is not correct; the Boonton Line is a PRR line allocated to NS' operation. *See, e.g.*, Finance Docket No. 33388, CSX/NS-25 (Control Application) Vol. 8B pocket part, containing Transaction Agreement Schedule 1 Attachment II (system map). Additionally, as for the "proposal" by the New York & Greenwood Lake Railway Company ("NYGL") to operate commuter passenger service, there is no agreement in place, and no negotiations in progress, for NYGL to operate such service. NS has repeatedly asked NYGL to provide a viable business plan for such service, including financial information and proof of sufficient liability insurance, neither of which NYGL has provided. In short, NYGL has not demonstrated that it has the capability to provide the service that the Coalition supports, and there is no agreement in place for it to do so. NJT also has recognized as much. *See* Exhibit 1. Finally, NS believes the Boonton Line is important to NS' future operating capabilities. NS has no present intention of abandoning the Line; although NS might not presently

operate over a portion of the Line, it is, and will remain, available and accessible in the event future business opportunities arise.

As for restoration of the Lackawanna Cutoff Line, apart from the essential point, discussed above, that the project has no bearing on any "harm" caused by the Conrail transaction, and thus is inappropriate as the subject of a Board-imposed condition here, a number of other points should be made. First, publicly-available information estimates the total project cost for restoring the Lackawanna Cutoff at some $200-230 million, not including property acquisition costs, and indicates that the project is not funded. *See* Exhibit 2. The Coalition has provided no evidence to indicate that sufficient funding will be available to accomplish the project anytime in the foreseeable future.

Second, as a group self-described as advocating for rail passengers (Coalition Comments at 1), the Coalition's primary goal in supporting rebuilding and reactivation of the Lackawanna Cutoff purportedly is the restoration of passenger service over the Line. But even assuming, for the sake of argument, that the Lackawanna Cutoff project were actually completed some time in the future, the passenger service that the Coalition apparently wants could be established over that Line without regard to NS' Boonton Line. Instead, that service could be routed over NJT's Morristown Line. In short, restoring passenger service over the Lackawanna Cutoff would not require the extraordinary line divestiture that the Coalition demands.

Perhaps realizing this, the Coalition goes on to add, as a further reason for forcing the divestiture of the Boonton Line, that restoring the Cutoff could allow access to the New York area for freight service by Canadian Pacific/Delaware & Hudson, via the Boonton Line. The Coalition expresses "concern" that NS "could engage in

practices that will have the impact of preventing competition from CP/D&H." Coalition Comments at 2. This argument is specious. As the Board has recognized, the Conrail transaction created new direct, two-carrier competition between NS and CSX in numerous markets where Conrail did not face competition from other major railroads before, including northern New Jersey. *See CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al.*, 3 S.T.B. 196, 247 (1998). That extraordinarily pro-competitive restructuring, far from being a "harm" that must be remedied, is one of the central public benefits of the Conrail transaction. Nevertheless, the Coalition asks the Board here to accept the utterly remarkable proposition that a transaction that *increased* access from one Class I carrier to two in northern New Jersey (and numerous other areas) must be further conditioned to force access by yet a *third* carrier. There is absolutely no basis in fact or in law for that astounding proposition, and the Board should reject it in no uncertain terms.

Further, the "concern" that the Coalition raises about NS in connection with the Lackawanna Cutoff amounts to nothing more than a prediction that NS might do something in the future that the Coalition would label as "anticompetitive." *See* Coalition Comment at 2. Such vague, unsubstantiated and conclusory allegations about possible future unidentified events provide no basis whatsoever for Board action—particularly the draconian step the Coalition advocates of forced divestiture of a significant NS-operated rail line.

NS wishes to be clear that all of the foregoing is not meant to imply that restoring the Lackawanna Cutoff Line may not be a project worthy of pursuit or support as a stand-alone project. NS expresses no view on that question here, and the company is

always ready and willing to discuss with NJT and others possible projects that NS believes make operational and commercial sense. The point here, rather, is that this is not the proper forum for debating the question; in the context of this proceeding, the Coalition has no legal or factual basis for seeking Board-imposed confiscation of PRR property in pursuit of that project.

The North Jersey Shared Assets Area

Two commentors, the New Jersey Department of Transportation ("NJDOT") and the North Jersey Transportation Planning Authority ("NJTPA") discuss issues pertaining to the North Jersey Shared Assets Area ("NJSAA"). Neither NJDOT nor NJTPA seek Board intervention, but rather both support continued discussions among the parties to address issues of concern. Indeed, as NJDOT notes, NS (and CSX) have agreed to confer regarding these matters over the next several months. NJDOT Comments at 3.

NJDOT generally asserts that NS is not actively competing in the NJSAA and that CSX and NS have not yet developed and implemented economic development plans within the port district of the Port Authority of New York and New Jersey ("PANYNJ"). NJTPA essentially concurs with the views of NJDOT. NJTPA suggests that if discussions among the parties do not sufficiently address its concerns, some future "reorganization" of Conrail's "corporate structure" and unspecified change in "the conditions under which [Conrail] operates" in northern New Jersey might be warranted, NJTPA Comments at 2-3; NJDOT similarly alludes to the possibility of a future request for "Board-imposed changes with respect to the NJSAA." NJDOT Comments at 3.

The Conrail transaction, it should be recalled, produced a substantial increase in rail-to-rail competition throughout the territory formerly served by Conrail, as well as new

single-line service throughout the entire eastern United States and into parts of Canada. The New York/New Jersey area is, of course, an enormous consumer market, and access to that market was a key strategic objective for both NS and CSX in their negotiation of the terms of the Conrail transaction. Ultimately, the SAA structure was agreed upon as the best way to ensure that both railroads could serve this market and introduce the two-carrier competition that is one of the principal hallmarks of the Conrail transaction. That structure has been in place for more than four years, and has, in fact, resulted in vigorous and effective competition between NS and CSX in northern New Jersey.[12]

The implication that NS has deliberately sought to discourage rail service into the NJSAA in favor of increased truck traffic is simply untrue. As a rail system that spans the eastern United States, NS has, of course, a network of intermodal, bulk transload and carload facilities across its system, including some in New Jersey and many others outside it. NS has an interest in marketing and developing business at all of those facilities, both inside and outside New Jersey, all in a manner that will most efficiently and effectively serve its customers and enable NS to obtain a greater share of the total transportation market.[13]

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[12] In this regard, the fact that one carrier or the other may be carrying the traffic of a particular shipper does not necessarily mean that the other carrier did not compete for the traffic, but simply that the carrying railroad won that competition.

[13] NS, for example, does have an intermodal facility at Bethlehem, PA, which, in part, serves traffic destined for New Jersey. (Conrail operated a similar facility at Allentown, which operated at volumes not very different from NS' at Bethlehem.) This facility, however, supplements the intermodal facilities in the North Jersey or South Jersey Shared Assets Areas. To the extent that volumes at Bethlehem may increase in the future, such increases would not result from any inherent desire by NS not to compete in northern New Jersey, but rather from accommodating the business decisions of

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Indeed, NS has effectively shaped its rail facilities and service offerings to respond to the many changes in transportation market that result from myriad business and economic factors that have nothing whatsoever to do with the Conrail transaction (the implementation of which is now more than four years old), that were not anticipated in the planning for the Conrail transaction, and over which the railroads have no control. For example, the Port of New York and New Jersey has exerted substantial efforts in recent years to capture trans-Pacific traffic that formerly would have moved through West Coast ports and then on to eastern destinations by rail. Due to the success of the Port's efforts, portions of that traffic have shifted now to all-water routes to New York/New Jersey where, in the absence of rail service, it would have to be trucked to destination. NS, however, has responded to this fundamental change in traffic patterns by establishing new intermodal rail service operations to accommodate this traffic.

Indeed, it is this type of responsiveness that demonstrates that NS is far from "opting out" of rail service in the NJSAA. In fact, NS has aggressively marketed services involving facilities in the NJSAA; these include, for example, (1) NS' expedited service, in conjunction with Canadian Pacific Railway, between Montreal and Toronto and the intermodal facility at Dockside, NJ; (2) NS' "Blue Steak" service, in conjunction with Union Pacific Railroad, between points in California and Nevada and points in the east and south, including ERail, NJ; (3) NS' intermodal service, in conjunction with Union Pacific Railroad, between Laredo, Texas and points in the southeast and northeast, including ERail, NJ; and (4) NS' intermodal service, in conjunction with

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shippers that may be shifting production and distribution functions away from the metropolitan area.

Burlington Northern and Santa Fe Railway, between points in California and points on the East Coast including ERail, Dockside and Croxton, NJ.

Moreover, NS has made tens of millions of dollars of investments in its intermodal system to better serve New Jersey. These investments include, for example, expansion and improvement of the ERail and Croxton intermodal facilities in the NJSAA. *See* NS-3 at 12.[14] Additionally, Conrail has invested significantly in the NJSAA. *See, e.g.*, NS-1 at 12; NS-5 at 13.

Moreover, since Split Date, the annual volume of intermodal traffic (excluding Triple Crown) carried by NS alone in New Jersey has well exceeded half that carried by Conrail in the years leading up to the Conrail transaction. In sum NS has been, and intends to remain, a vigorous competitor in New Jersey, and there is no basis for any conclusion to the contrary.[15]

With respect the settlement agreement with the Port Authority of New York and New Jersey, NS (and CSX) have regularly consulted with PANYNJ since Split Date on issues of mutual interest, including economic development matters. Significantly, PANYNJ, the party to the settlement agreement, has not expressed to NS any concern about NS' cooperation on economic development matters, nor does PANYNJ itself raise

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[14] Additionally, due to the network-like nature of rail systems, infrastructure investments and improvements in one part of the system can have salutary effects elsewhere in the system. One example of this is NS' previously-reported development of its new intermodal facility at Rutherford Yard in Harrisburg, PA. That facility enables NS to block and classify cars there rather than in the NJSAA, thus improving the flow of cars into and out of the NJSAA. *See* NS-2 at 58-59.

[15] Triple Crown service to Portside was discontinued, in part because anticipated traffic simply did not develop. The cessation of that service, however, freed up space for Port operations and was done without any objection from the Port.

this issue with the Board. NS believes that the dialogue with PANYNJ has been and is useful, and NS fully intends to continue those consultations.

Again, both NJDOT and NJTPA indicate that they support further discussions among the parties and do not ask for any Board intervention at this time. Nevertheless, NJTPA's suggestion that it might, in the future, seek Board intervention to "change the conditions under which [Conrail] operates" in the Shared Assets Areas should be firmly rejected. As already discussed, the organization and operation of the Shared Assets Areas as negotiated by NS and CSX and implemented since Split Date constitute a fundamental underpinning of the Conrail transaction, providing the mechanism through which NS and CSX have been able over the past four years to introduce new and effective two-carrier competition in northern New Jersey and elsewhere. What NJTPA appears to suggest would amount to a radical and unwarranted restructuring of that arrangement.

In its decision approving the Conrail transaction, the Board stated that it sought not to "undermine the strength and integrity" of the proposed transaction, and in that regard the Board declined to alter "the already procompetitive [Shared Assets Areas] carefully negotiated by applicants." *CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al.*, 3 S.T.B. 196, 250 (1988). There is no basis for the Board to reconsider doing so either now or in the future.

CONCLUSION

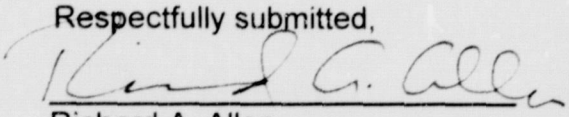
In its decision addressing comments in the third annual round of this proceeding last year, the Board found that "the conditions we imposed on the Conrail transaction are working as intended, . . . the Conrail transaction has not resulted in any competitive

or market power problems, and . . . substantial progress has been made in implementing the various environmental conditions and settlement agreements. The reports, comments, and replies further demonstrate that the service problems that occurred immediately after the Split Date have not recurred. The implementation of the Conrail transaction is now largely complete." *Decision No. 10* at 3.

None of the comments filed this year provide any basis for the Board to deviate from those conclusions. The record low number of comments itself indicates that those conclusions remain valid; moreover, all but one of the (few) commenting parties do not even request any Board intervention, but believe that any concerns they have can be worked out among the parties through further discussion. And the one request for active Board intervention—the remarkably overreaching demand by the "Lackawanna Coalition" that the Board force divestiture of a PRR (NS-operated) line—is utterly without legal or factual foundation.

Based on the record in this year's round of oversight, NS respectfully requests that the Board find that no Board action is required or warranted and that there is no reason to alter the conclusions, quoted above, that it reached last year.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on August 4, 2003 a true copy of NS-11 was served by first class U.S. Mail, postage prepaid, or by more expeditious means, upon all known parties of record in Finance Docket No. 33388 (Sub-No. 91,.

Scott M. Zimmerman

Exhibit 1

Customer Notice

To Our Arlington Station, Rowe Street Station, and Benson Street Station Customers

As many of you know, NJ TRANSIT will be launching direct service to midtown Manhattan and Newark for Boonton and Montclair Branch riders on September 30. This service is a significant benefit for our riders because it opens up travel opportunities previously unavailable for the majority of travelers on these two rail lines. It will result, however, in the closure of three stations, Arlington, Rowe Street, and Benson Street, effective September 20.

Apparently, New York Greenwood Lake Railway has represented that they are planning to operate passenger rail service into Hoboken once NJ TRANSIT ceases its operation on Friday, September 20. This is simply not true and is an inappropriate representation on their part. NJ TRANSIT wants to set the record straight so that you have the necessary information to plan your commute on Monday, September 23.

It is important for you to know that New York Greenwood Lake Railway representatives have not demonstrated the financial capability to operate rail passenger service, have not received the appropriate approvals from the Federal Railway Administration, nor have they received the authority to operate along the line from the owner, Norfolk Southern. They have failed to provide the necessary documentation needed by NJ TRANSIT to assess whether its railroad could safely and efficiently operate into Hoboken, including an overall business plan, proper insurance information, financial documentation, and service plan among others. Lacking this information, there is no agreement for New York Greenwood Lake Railway to provide service from these stations.

As we have reported, Benson Street, Rowe Street and Arlington Stations on the Boonton Line will no longer be served after the last scheduled trip on Friday, September 20. Travel options notices, which include information about rail shuttle buses that will provide service to and from these closed stations to nearby stations, were distributed and will continue to be distributed at stations. This information is also available at Customer Service offices and on our website at www.njtransit.com.

NJ TRANSIT understands that the new Montclair-Boonton Line and the resulting closing of Benson Street, Rowe Street and Arlington stations could impact your daily commute. Because of this, we have been working with your local governments to provide you with alternative service, and have been actively promoting this by visiting your stations and distributing the information via customer notices, posters and newspaper inserts.

NJ TRANSIT will continue to assist each and every one of you during this transition period.

▸Schedules & Fares
▸Trip Planner
▸My Transit
▸Accessible Services
▸Travel Advisories
▸News & Events

Lackawanna Cutoff

Background

In the early part of the 20th century, the Delaware Lackawanna and Western Railroad constructed a level-graded route from Roxbury, NJ to just over the Delaware River to serve as a faster, more direct route between existing rail lines in Pennsylvania and New Jersey. The Lackawanna Cutoff, as this route came to be known, includes a series of unique structural features, viaducts and massive fill embankments through the deep valleys of this region. In the 1970s, Conrail, the eventual receiver of this property, abandoned the right of way and the track was removed. The objective of the Lackawanna Cutoff project is to reinstitute passenger rail service on the abandoned rail right of way of the Lackawanna Cutoff and over existing freight right of way in Pennsylvania. The reinstituted rail line would provide service from Scranton to Hoboken and New York Penn Station via transfer to MidTown Direct service by connecting to the existing NJ TRANSIT Montclair-Boonton and Morris & Essex Lines.

Click here to view a map of the system .

Project Scope

The project includes complete reconstruction of the line including track and signal improvements to approximately 60 miles of right of way, new stations, parking facilities, a train storage yard and additional rail rolling stock. It is assumed that NJ TRANSIT would operate the new service. Proposed stations would serve Blairstown and Andover in New Jersey and Scranton, Mount Pocono, Analomink and East Stroudsburg in Pennsylvania.

Project Cost

The Draft Major Investment Study estimated the project cost at $200 - $230 million (2000 Rough Estimate). This estimate does not include property acquisition costs. The project is not funded.

Current Status

In October 2002, NJ TRANSIT's Board of Directors authorized consultant work for conceptual design, completion of the environmental assessment and preparation of the documentation required by the FTA for new transit lines. The State of New Jersey completed the purchase of the Lackawanna Cutoff property in May 2001.

Next Milestone

The next milestone will be the completion of the Major Investment Study and Environmental Assessment. A cost-sharing agreement for both capital and ongoing operating subsidies with Pennsylvania must also be negotiated.

Benefits

The project will provide passenger rail service to New York City from Northwestern New Jersey and Northeastern Pennsylvania.

NJ TRANSIT Department of Capital Planning and Programs
November 2002

U.S. Department of Transportation
Office of the Secretary of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

208613

August 4, 2003

Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 33388 (Sub-No. 91)

Dear Mr. Williams:

Enclosed please find an original and twenty-five copies of the "Reply Comments of the United States Department of Transportation" in Finance Docket No. 33388 (Sub-No. 91). Also enclosed is a diskette containing a version of our comments saved in WordPerfect.

We have also enclosed a service copy of our comments, and would appreciate it if you would time-stamp that copy and return it to the courier delivering our comments.

Sincerely,

Dale C. Andrews
Deputy Assistant General Counsel
for Litigation

cc: All parties of record

DOT-7

Before the
Surface Transportation Board
Washington, D.C.

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. (GENERAL OVERSIGHT)	)	Fin. Dkt. No. 33388 (Sub- No. 91)

Reply Comments of the
United States Department of Transportation

Introduction

The Surface Transportation Board ("STB" or "Board") instituted this proceeding to implement the oversight condition it imposed in Finance Docket No. 33388, the acquisition and division of Consolidated Rail Corporation ("Conrail") by CSX Transportation, Inc. ("CSX") and the Norfolk Southern Railway Co. ("NS") (collectively, "Applicants"). Decision No. 1, served February 9, 2000. The proceeding focuses upon "the progress of implementation" of the transaction, and the efficacy of the conditions imposed by the Board. Id. at 1.

Last year, the third in the five-year period originally established, the Board modified its oversight. The Applicants no longer have to prepare comprehensive annual "progress reports." Decision No. 10 (served November 5, 2002). Instead, individual parties would be free to raise specific issues of concern, and the Applicants and other interested parties could respond. Id. Several complaints have now been lodged on the record; the common thread running through most of them is an allegation that the

Applicants have yet to fulfill certain commitments or conditions. The United States Department of Transportation ("DOT" or "Department") hereby responds to the issues raised in this fourth year of the Board's oversight.

The Record

A number of shippers, small railroads, and others have submitted initial comments. Most express dissatisfaction with what they regard as the Applicants' failure to date to fulfill conditions imposed by the Board, the terms of settlement agreements, or other representations made during the course of the proceeding. Most, however, do not seek specific action from the Board at this time.

Two New Jersey state government entities, the New Jersey Department of Transportation ("NJDOT") and the North Jersey Transportation Planning Authority ("NJTPA"), raise an issue that surfaced last year. Both perceive a large "gap" between the Applicants' promises for increased rail service and competition in the Shared Asset Area ("SAA") of Northern New Jersey and the alleged reality of marketing initiatives (especially by NS) that de-emphasize rail service in the SAA, with resultant increased truck traffic, roadway congestion, and the like. *See* Comments of NJDOT and Comments of NJTPA. Both state agencies pledge to continue discussions with the Applicants, but both also intend to return to the STB if these prove unfruitful. Id.

A second pair of parties has also returned to an issue that they brought to the Board's attention last year: the alleged inconsistency between a condition imposed by the Board and a subsequent agreement. The parties are shippers and the public owner of six small railroads in Pennsylvania who seek to secure continued access to the Canadian

Pacific railroad, which access they believe is ensured by the Board's acceptance of their original settlement agreement with NS. *See* the Joint Statement of Shippers and Comments of SEDA-COG Joint Rail Authority. These parties also support continued negotiations with NS.

The National Lime and Stone Company ("NL&S") reports that for the past four years it has made extensive use of the single-line service required by the Board as a condition of approval, and that it expects to increase shipments of aggregates in the future. *See* Comments of NL&S at1-2. The shipper is concerned, however, that the condition may expire next year. It informs the STB that negotiations with CSX continue, and it reserves the right to seek an extension of the condition. Id. at 3.

The Lackawanna Coalition ("Coalition") is an organization that supports commuter and intercity passenger rail service in the Northeast. The Coalition asserts that NS's alleged de-emphasis on rail service in the SAA and similar actions have made restoration and expansion of passenger rail service more difficult. Comments of Coalition at 1-2. It asks the STB to remove control of the pertinent lines from NS and give them to a "local, New Jersey-oriented entity." Id.

Discussion

The core issue in this year's oversight proceeding remains essentially what it was last year: whether the Applicants have fulfilled various conditions, settlement agreements, or other binding commitments. The Applicants' responses may effectively rebut the allegations summarized above. If they do not, however, it is a hopeful sign that

almost all the parties who have taken issue with the Applicants' performance to date have also expressed a willingness to continue ongoing discussions.

In these circumstances the Board last year found that no action was warranted, and that it retained the power to redress non-compliance with obligations imposed on or assumed by the Applicants. Decision No. 10 at 4-8. The Department believes that is the appropriate response this year as well. [1]

We share the STB's well-established preference for private negotiations to address controversies among parties. To the extent that parties cannot resolve their differences -- or, as SEDA-COG contends, to the extent private agreements run afoul of conditions -- the Board remains poised to vindicate the public interest. Id. That is as it should be, for it is only through compliance with conditions or other binding obligations that a transaction warrants approval. 49 U.S.C. § 11324(c); *see also* CSX Corp/ et al; -- Control -- Conrail Inc. et al, 3 S.T.B. 196, 277-78 (1998) ("Conrail Decision"). [2]

This is particularly true with respect to such potentially major and recurring questions as the true state of competition in the SAA. [3] The Board, of course, always

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[1]/ Only the Coalition seeks immediate action from the STB. DOT does not support grant of the relief requested. Not only is the transfer of control of rail lines extraordinary in its own right, but the Coalition does not ground its request in any specific condition imposed on, or commitment made by, the Applicants. Generalized challenges to railroad operational decisions based upon a preference for passenger rail transportation do not meet the Board's standard for relief.

[2]/ The Board in this case required the Applicants to adhere to a host of conditions, settlement agreements, and representations. For example, the STB directed the Applicants to "comply with all of the conditions imposed in this decision, whether or not such conditions are specifically referenced" in the ordering paragraphs. Conrail Decision at 387, ordering paragraph 16. The Applicants must also "adhere to all of the representations they made during the course of this proceeding, whether or not such representations are specifically referenced in this decision." Id. at 388, ordering paragraph 20.

[3]/ The STB deemed the intramodal competition introduced in the Shared Asset Areas to be "the most important public benefit" of the underlying transaction. Id. at 333.

retains the ability to address merger-related conduct that is inimical to the public interest, regardless of whether it was specifically addressed at the time of initial approval. Decision No. 10 at 6-7.

Conclusion

This year's oversight presents many of the same issues as last year. DOT believes that much the same response is warranted at this point: encouragement of ongoing discussions and confirmation of the Board's readiness to enforce conditions and other binding obligations should that eventually prove necessary.

Respectfully submitted,

ROSALIND A. KNAPP
Deputy General Counsel

August 4, 2003

Certificate of Service

I certify that on this date copies of the foregoing document were served on all parties of record in this docket by first class mail, postage prepaid.

Dale C. Andrews
Deputy Assistant General Counsel
for Litigation
United States Department of Transportation

August 4, 2003

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August 4, 2003

BY HAND

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
1925 K Street, NW
Washington, DC 20423-0001

208608

Re: STB Finance Docket No. 33388 (Sub-No. 91)
CSX Corporation and CSX Transportation, Inc.,
Norfolk Southern Corporation and Norfolk Southern Railway Company
– Control and Operating Leases/Agreements –
Conrail Inc. and Consolidated Rail Corporation (General Oversight)

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of CSX-13, the "Reply Comments of Applicants CSX Corporation and CSX Transportation, Inc." for filing in the above-referenced docket.

Please note that a 3.5-inch diskette containing a WordPerfect 5.1 formatted copy of this filing is also enclosed.

Kindly date-stamp the additional copy of this letter and the "Reply Comments" at the time of filing and return them to our messenger.

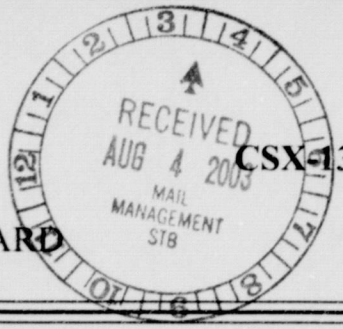
Thank you for your assistance in this matter. Please contact the undersigned at (202) 942-5773 if you have any questions.

Respectfully yours,

Mary Gabrielle Sprague

Mary Gabrielle Sprague
Counsel for CSX Corporation and
CSX Transportation, Inc.

Enclosures



CSX-13

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388 (SUB-NO. 91)

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY — CONTROL AND OPERATING LEASES/AGREEMENTS — CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION (GENERAL OVERSIGHT)

REPLY COMMENTS OF APPLICANTS CSX CORPORATION AND CSX TRANSPORTATION, INC.

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Counsel for Applicants
***CSX Corporation** and*
CSX Transportation, Inc.

Dated: August 4, 2003

TABLE OF CONTENTS

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY — CONTROL AND OPERATING LEASES/AGREEMENTS — CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION (GENERAL OVERSIGHT)

REPLY COMMENTS OF APPLICANTS
CSX CORPORATION AND CSX TRANSPORTATION, INC.,

INTRODUCTION

CSX Corporation and CSX Transportation, Inc. (collectively "CSX"), submit the following reply comments to the comments submitted by the public in the current (2003) round of this proceeding.

In this fourth round of formal oversight, only five comments were received: one from a shipper (National Lime and Stone Company), one from a joint rail authority (SEDA-COG Joint Rail Authority) which was joined by a number of shippers and a short line railroad, one from the State of New Jersey Department of Transportation, one from a New Jersey nonprofit corporation (the North Jersey Transportation Planning Organization, Inc.), and one from a group of rail commuters in northern New Jersey (Lackawanna Coalition). The first four

commenters have written simply to apprise the Board of ongoing discussions with CSX and/or NS regarding various issues of interest to them. CSX concurs with these commenters that there is no need for Board intervention as to any of these subjects at this time; CSX understands that the Board remains available, under its retained jurisdiction, to address any of these concerns that cannot be resolved through private discussions.[1] Only the Lackawanna Coalition has suggested any action by the Board at this time. As explained below, this commenter has provided no basis whatsoever for any action by the Board.

* * * * *

We will discuss briefly the five comments.

1. National Lime and Stone Company ("NL&S") (NLS-3)

NL&S is a beneficiary of Condition No. 43, which, as amended in Decision No. 96, provides as follows:

> As respects Wyandot and NL&S, CSX and NS must adhere to their offer to provide single-line service for all existing movements of aggregates, provided that they are tendered in unit-trains or blocks of 40 or more cars; and in other circumstances including new movements, for shipments moving at least 75 miles, must arrange run-through operations (for shipments of 60 cars or more) and pre-blocking arrangements (for shipments of 10 to 60 cars). The requirements imposed on CSX and NS under the preceding sentence will expire at the end of the 5-year period commencing on Day One.

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[1] CSX notes that the five-year period of retained jurisdiction provided for in the Board's Oversight Condition expires on May 31, 2004, the end of the five-year period commencing with the "Split Date." *See CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al.*, 3 S.T.B. 196, 365-66 (1998).

CSX Corp. et al.—Control and Operating Leases/Agreements—

Conrail Inc. et al., 3 S.T.B. 764, 789 (1998).

As originally set forth in Decision No. 89, Condition No. 43 did not include an expiration date. CSX and NS sought clarification of this condition, arguing that the Board's intent was to limit the condition to five years. The Board agreed, and in Decision No. 96 explained why permanent relief would be inappropriate:

> [W]e believe that permanent relief is unnecessary, would be contrary to the public interest, and would be inconsistent with applicants' proffer. Accordingly, our condition will specifically include a 5-year term from Day 1, the term that was offered by applicants. This period should allow these shippers sufficient time to make adjustments to the altered business environment brought about by this transaction. . . . Permanent relief would unduly interfere with the operations of both applicants and impair their operating flexibility, which we believe is the real key to efficient, economical operations from which all shippers ultimately benefit.

3 S.T.B. at 772.

Dissatisfied by the relief afforded by the Board, including the denial of permanent relief, and apparently unpersuaded by the Board's analysis, NL&S petitioned for judicial review. The Second Circuit denied NL&S's petition:

> The record shows that the STB carefully considered the requests of the mineral shippers, granted most of the measures they sought, and reserved oversight authority concerning rail service for that industry. The STB's decision to deny more extensive remedies at this time was not an abuse of discretion.

Erie-Niagara Rail Steering Committee v. Surface Transportation Board, 247 F.3d 437, 447-48 (2d Cir. 2001).

NL&S states that it is in the process of negotiating a new transportation contract with CSX, which would also require the agreement of NS to an extension of trackage rights to CSX to provide "single-line" service. NL&S does not ask for any relief at this time, but advises the Board that, if a new agreement is not reached by June 1, 2004, it intends to ask the Board for a supplemental order under 49 U.S.C. 11327 revising Condition No. 43 to extend its terms.

As is the case with respect to all situations involving multiple carriers, if terms and conditions for the Bucyrus to Wooster movement make economic and operational sense for each of NL&S, CSX and NS, arrangements to continue the "single-line" service after June 1, 2004 will be reached. CSX and NS are, of course, in the business of serving the transportation needs of their customers. If there is no economic benefit for one of the three parties, the Board clearly contemplated that after that date, two-carrier service would be the result, absent an extraordinary showing by NL&S of an abuse by the carriers involved. The marketplace changes over time as producers and consumers change customers and suppliers with the ebb and flow of commercial transactions. The Board's condition was sufficient to avoid disruption of then-existing commercial relationships. Once the five-year condition expires, the Board ought to leave the matter in the hands of the parties.

But the Board need not decide this matter at this time because NL&S does not seek any present relief from the Board. NL&S and CSX have made encouraging progress toward a single-line service package agreeable to the two of them and CSX understands that NS is considering it from the standpoint of the use of its trackage and the terms thereof.

2. SEDA-COG Joint Rail Authority ("SEDA") (undesignated)

These comments by a municipal authority in Pennsylvania interested in the preservation of rail service in seven Pennsylvania counties address issues which relate to NS rather than CSX, and CSX assumes that they will be discussed by NS in its Reply Comments.

3. State of New Jersey Department of Transportation ("NJDOT") (undesignated)

NJDOT's letter expresses concerns about the North Jersey Shared Assets Area ("NJSAA").[2] NJDOT recites several statements made by CSX and NS in the CSX/NS Operating Plan for the North Jersey Shared Assets Area and Supporting Statement (CSX/NS-119) (filed October 29, 1997), and then asserts that "the public benefits anticipated by CSX and NS have not come to fruition." NJDOT has two items of complaint: (1) that NS is not actively competing in the NJSAA,

[2] No concerns were expressed relating to the South Jersey/Philadelphia Shared Assets Area ("SJ/PSAA").

and (2) that CSX and NS have not yet provided and implemented "economic development plans to promote the development of rail traffic within the Port Authority of New York and New Jersey's Port District, which covers virtually all of the NJSAA."

CSX assumes that the first complaint will be addressed by NS in its Reply Comments. It appears to CSX, however, that there has been keen two-carrier competition for business in the area served by the NJSAA. As explained below, port traffic is growing and shippers have been willing to locate or expand their rail-served businesses at locations in northern New Jersey served by the NJSAA. Despite a lagging economy and the closing of two key auto plants in the area, traffic to and from customers served by the NJSAA continues to be strong, albeit somewhat down from prior high levels. Total rail traffic to the SJ/PSAA, which did not experience such major plant closings, is actually up.

The second complaint refers to a settlement which CSX and NS entered into with the Port Authority, notice of which was provided to the Board in Finance Docket No. 33388 on April 10, 1998 (NY/NJ-20). That Settlement Agreement included numerous agreements, including the referenced agreement regarding economic development plans:

> 5. CSX, NS and CSAO [the Conrail Shared Assets Operator] will provide and implement economic development programs designed to promote the development of rail traffic within the Port District. CSX and NS will consult with the Port Authority in the development of

such plans, and the Port Authority will apprise CSX and NS of opportunities for the development of rail traffic affecting the Port District. To the extent it deems appropriate, the Port Authority will seek input from CSX, NS and CSAO in its capital planning process.

CSX and NS have been consulting with the Port Authority on an ongoing basis with respect to economic development opportunities and other issues of common interest, and CSX does not understand that the Port Authority is of the view that CSX's cooperation has been lacking.[3] The Port Authority has not sought the Board's assistance in this regard, even though the Port Authority well knows how to do so. The Port Authority was an active participant in Finance Docket No. 33388, and indeed was the driving force behind the Board's order that CSX and NS prepare a special Operating Plan for the NJSAA. It has continued to be an active participant in this General Oversight proceeding, submitting comments in the first and third rounds (NY/NJ-2 filed July 14, 2000 and NY/NJ-3 filed July 17, 2002 respectively).

In last year's Comments, the Port Authority expressly referenced the importance of ongoing communications with the carriers, but made no complaint about the level of those communications. It stated that it was reviving its efforts to

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[3] NJDOT apparently misconstrues CSX's commitment to share its plans (lowercase) with the Port Authority – that is, communicating to the Port Authority what it is doing and what it intends to do – with some sort of formal "Plan" (uppercase) – the kind of planning document that a government or quasi-government agency would prepare.

obtain public sector funding to provide additional infrastructure in the area, and that the carriers provide useful information to this end in their regular meetings. NY/NJ-3 at 4. The Port Authority also noted that "the volumes of traffic moving through the Port Authority on-dock ExpressRail facility are reaching record levels on a regular basis." *Id.* NJDOT's present charges of weak competition in the NJSAA are belied by this increase in traffic, given the availability of other Atlantic ports available to shippers.

During the past year, CSX, NS and Conrail have continued their discussions with the Port Authority, NJDOT and NJ Transit regarding the need for additional rail infrastructure to handle the growth in cargo through the ports, and have made significant progress. A prioritized list of potential projects has now been developed. CSX, NS, Conrail, the Port Authority and NJDOT have agreed that these projects will be funded through a combination of railroad and public contributions. Negotiations are ongoing, and some important issues are yet to be resolved, but CSX and the other parties are committed to continuing the process. CSX is optimistic that the priority rail projects will be completed in timely fashion.[4] In addition to these concrete capital projects to improve NJPort competitiveness in future years, CSX, NS, and Conrail have actively contributed to

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[4] CSX also helped the Port Authority reestablish documents and records destroyed on September 11, 2001.

various studies and capital planning efforts of the Port Authority and State of New Jersey.

Much progress has already been made. CSX has made many capital improvements in the vicinity of the NJSAA following the Conrail Transaction, as detailed in this General Oversight proceeding in the First Submission by Applicants CSX Corporation and CSX Transportation, Inc. (CSX-1) at 13-19, 50-52 (filed June 1, 2000); Second Submission by Applicants CSX Corporation and CSX Transportation, Inc. (CSX-4) at 10-18, 42 (filed June 1, 2001); and Third Submission by Applicants CSX Corporation and CSX Transportation, Inc. (CSX-9) at 9-13, 24-25, 30-31 (filed June 3, 2002). During the past year, CSX undertook the following projects:

- Installed a second main line track between North Bergen, NJ and Ridgefield Park, NJ and completed a major tie renewal project between these points
- Made drainage improvements at Bogota, NJ
- Replaced UG Bridge at Ridgefield Park, NJ
- Installed capacity yard tracks at Elizabeth Port Yard and commenced construction of a TRANSFLO terminal to load containerized waste onto railcars (including the rehabilitation of one yard track, the construction of a second track, paving of an operating area, and construction of various access roads, yard crossings, and support facilities).

Conrail has also made many capital improvements in the NJSAA following the Conrail Transaction. As we have previously reported, substantial resources

have been invested in information technology upgrades and planned cyclical renewal of rail and rail ties, as well as the following significant projects:

- Adding two new, high capacity yard tracks at Port Reading Yard in Woodbridge, NJ (CSX-1 at 19)
- Adding a new connection to NYS&W near Croxton Yard (CSX-1 at 19)
- Installation of 7.1 miles of welded rail, primarily in Oak Island Classification Yard and Pavonia Receiving Yard (CSX-4 at 18)
- Addition of two new tracks at Bayline Yard at Newark, NJ (CSX-4 at 18)
- Rehabilitation of the bridge at Bayonne, NY (CSX-9 at 12)
- Installation of second main track between Jersey City, NJ and North Bergen, NJ (during past year)
- Signal improvements at various locations in NJSAA (during past year).

The rail infrastructure is supporting economic development in the NJSAA area. Following the Conrail Transaction, over 20 companies served or to be served by the NJSAA (or short lines connecting to the NJSAA) announced expansions or start-ups of operations that represent over $90 million of private capital investment in the area and are expected to provide over 600 jobs. CSX expects over 16,000 carloads of business annually from these expanded or new customers, and NS can reach these same customers via the CSAO in accordance with the terms of the North Jersey Shared Assets Area Operating Agreement. Other expansions and/or start-ups are expected in the coming year. A number of these expansions and start-

ups were facilitated through the involvement of state and local economic development officials. CSX has been actively engaged with these New Jersey officials, and believes that they have been an important factor in past economic successes and will continue to be an important factor in business growth in the northern New Jersey area.

4. North Jersey Transportation Planning Authority ("NJTPA") (undesignated)

The NJTPA writes separately to note its concurrence with NJDOT's views and concerns, and similarly expresses the view that the Board should await the outcome of discussions among the parties interested in the NJSAA. In the event those discussions fail, however, NJTPA expresses the view that the Board should reorganize the CSAO (a branch of the continuing Conrail) into an entity that would "market [its] services, quote rates, engage in economic development, [and] operate as a profit center."

The Board should reject this suggestion at the outset. It runs directly counter to a fundamental premise of the Board's approval of the Conrail Transaction – that the Shared Assets Areas covering the critical markets in North Jersey, South Jersey/Philadelphia and Detroit should be operated neutrally by an entity (the CSAO) owned by both carriers, and used by its joint owners for the pickup and delivery of their line-haul freight. There is simply no justification, five years after the Board's approval of the Transaction and four years after Split Date, for the

Board even to contemplate such a forced radical restructuring of the Transaction at the suggestion of a nonprofit corporation, unsupported by any shipper or anyone else with an economic interest in the matter. The NJTPA's suggestions should be rejected.

5. Lackawanna Coalition (undesignated)

This organization consists of rail commuters who were riders on the New Jersey Transit ("NJT") Boonton Line until NJT discontinued that service in September 2002. NJT operated this service over a former Conrail track (now PRR track) that was allocated in the Conrail Transaction for operation by NS. Contrary to the statement made by the Lackawanna Coalition, the former NJT Boonton service did not utilize any track operated by the CSAO within the NJSAA. CSX understands that, pursuant to NJT's long-term plan, NJT discontinued the Boonton service in favor of service on a parallel rail line, which NJT apparently concluded some time ago would better serve the public interest. CSX does not have a direct interest in the operation of commuter service over a Conrail line operated by NS, and CSX assumes that NS will respond to the comments of the Lackawanna Coalition regarding commuter service in more detail.

However, CSX must provide a general response to the Lackawanna Coalition's unsupported proposals intended to increase freight traffic over the Boonton line, including a proposal to grant one or more competing freight railroads

rights to use this line and the NJSAA, assets for which they have not paid. The Coalition impermissibly proposes to confiscate private freight rail assets. And, putting to the side the questionable notion that increasing freight traffic would in fact help the Coalition achieve its goal of restoring its members' preferred local commuter service, the Coalition's comments reflect a fundamental misunderstanding of the relationship between commuter operations over lines owned by freight railroads and the freight railroad hosts. If and when this group of local commuters has a concrete plan for financing and operating a new service to replace the one NJT found to be unsupportable, it is free to negotiate with NS -- the allocated operator of the line – for rights to use the line, subject of course to mutually agreeable terms.[5]

In any case, what we have here is a statement of disagreement by a group of local commuters with a decision of *NJT* to terminate their preferred local rail service, and an expression of frustration that they have no immediate plan for financing and operating a replacement service. No basis whatsoever has been provided for the Board to involve itself in this matter.

---

[5] In addition, rail lines can be bought and sold where parties bargain at arm's length and fair value is given. For example, as we reported in our First Submission by Applicants CSX Corporation and CSX Transportation, Inc. (CSX-1) (filed June 1, 2000), Conrail (with the approval of CSX and NS) sold its Bordentown Secondary to NJT for construction of a light rail line between Trenton and Camden. CSX-1 at 62.

CONCLUSION

After four years of operations, the Conrail Transaction has clearly justified the Board's finding that the Transaction is in the public interest. This conclusion is further demonstrated by the fact that no commenter this year provides any basis for any action by the Board.

Respectfully submitted.

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(202) 942-5000

Samuel M. Sipe, Jr.
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***CSX Corporation** and*
CSX Transportation, Inc.

Of Counsel:
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Washington, D.C. 20004

Paul R. Hitchcock
CSX TRANSPORTATION, INC.
500 Water Street
Jacksonville, FL 32202

Dated: August 4, 2003

CERTIFICATE OF SERVICE

The undersigned counsel for CSX Corporation and CSX Transportation, Inc. hereby certifies that on this 4th day of August, 2003, a copy of the foregoing "Reply Comments of Applicants CSX Corporation and CSX Transportation, Inc." were served on all parties of record by first-class mail, postage prepaid, or more expedited method.

Mary Gabrielle Sprague

Mary Gabrielle Sprague
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(202) 942-5858

Counsel for CSX Corporation and CSX Transportation, Inc.

STB FD-33388 (SUB 91) 07/16/03 D 208428

LACKAWANNA COALITION
Box 283
Millburn, N.J. 07041

July 10, 2003

Mr. Vernon Williams, Secretary
Surface Transportation Board
1925 K St., N.W., Room 700
Washington, D.C. 20423

208428

Re: CSX Corp., CST Transportation Inc., Norfolk Southern Railway Co. – Control and Operation Leases/Agreements – Conrail, Inc. and Consolidated Rail Corp. (General Oversight), Docket No. FD-33388 (sub 91)

Dear Mr. Williams:

The Lackawanna Coalition is an independent organization which advocates on behalf of rail riders on New Jersey Transit's Morris & Essex and Montclair-Boonton Lines. While we are concerned with issues regarding passenger rail service in our geographic area, the present matter is an instance where rail freight issues directly impact upon proposed passenger services of interest to rail riders and potential rail riders in our region.

We have adopted a resolution in support of a proposal by the New York & Greenwood Lake Railway Co. to operate commuter passenger service between Benson St. Station on the Boonton Line (former Greenwood Lakes Line) and Hoboken. A portion of the line proposed for this service is part of Conrail Shared Assets (CSA) and is operated by the Norfolk Southern Railway Co. (NS). Commuter rail passenger service was operated on this line by New Jersey Transit until September 20, 2002, and the New York & Greenwood Lake Railway Co. has proposed to restore this service. We are concerned that the recent removal of one of the tracks on this portion of the line (formerly double tracked), despite urgings by the New Jersey Department of Transportation to leave the line intact, has reduced the likelihood of the restoration of this passenger service. For passenger service to be restored, DB Drawbridge (over the Hackensack River) must be kept intact and operable. We are concerned that NS could decide to discontinue operations on the bridge, thereby rendering restoration of commuter service impossible.

We have also been informed that NS has attempted to entice shippers to move away from locations along this line (which it operates in New Jersey as part of CSA), in favor of other locations on its line in Pennsylvania. Such practices must inevitably result in the diminution of the usefulness of this line to the region of New Jersey which it serves, both in terms of current freight and future passenger operations. Every major metropolitan area should be served by two Class I freight railroads. It appears that NS has not acted as if it is willing to serve the New York area through its CSA line in New Jersey. This leaves only CSX to serve the nation's largest market. If NS does not wish to actively compete with CSX in New Jersey, the line should be turned over to an operator that would. Perhaps a revenue sharing arrangement between NS and CSX is inherently flawed, since it creates an inherent conflict, and should be abandoned.

The Lackawanna Coalition has also adopted a resolution supporting rebuilding of the Lackawanna Cutoff Line between Morris Jct. and the Pennsylvania side of the Delaware Water Gap, for the restoration of passenger rail service to Scranton and possibly beyond. We have been informed that the restoration of the Lackawanna Cutoff would allow the Canadian Pacific Railway Co./Delaware & Hudson Railway Co. (CP/D&H) access for freight shipments to the New York area, through the Boonton Line, which is part of the line currently operated by NS. We are concerned that NS could engage in practices that will have the impact of preventing competition from CP/D&H. Such a result would have an anticompetitive effect in serving the New York area through rail lines in New Jersey. Moreover, infrastructure investment by CP Rail, as a major freight carrier, could help to defray the cost of rebuilding the Lackawanna Cutoff Line. A prospective partnership with CP Rail to develop this line for both freight and passenger service could result in significant cost savings for the organizations that have pledged funds for rebuilding the line; New Jersey Transit, and Monroe and Lackawanna Counties in Pennsylvania.

The Lackawanna Coalition wishes to assist in the restoration of commuter service between Benson St. and Hoboken, as well as intercity service on the Lackawanna Cutoff Line to Scranton and points beyond. We believe that these ends can be effectively served by the removal of the line comprising the Boonton Line (including the former Greenwood Lakes Line), Orange Branch, Washington Secondary and Phillipsburg Branch from control and operation by NS, and giving such control and operation to a local, New Jersey-oriented entity. Such an entity could be either an independent railroad company established to operate the line at issue, or a consortium of existing short line railroads currently operating in the region (such as the Morristown & Erie). Accordingly, we request that you hold final acceptance of the present post-Conrail arrangement, and substitute an arrangement that makes the CSA line in New Jersey independent of CSX and NS. Such a move would promote both the viability of our freight rail infrastructure and the possibility of restoring two proposed passenger services in the region.

On June 23, 2003, the Lackawanna Coalition adopted a resolution in support of the objectives described in this letter. A copy of that resolution is enclosed. Copies of the other resolutions mentioned herein will be furnished on request.

Please consider this letter and the enclosed resolution to constitute the comments by the Lackawanna Coalition on the above-entitled matter.

Yours very sincerely,

DAVID PETER ALAN
Chair

Encl. as stated
Cc: Bruno Maestri, Esq.; Norfolk Southern Railway Co.
Commissioner Jack Lettiere, N.J. Dept. of Transportation
North Jersey Transportation Planning Authority
New Jersey Transit

RESOLUTION REGARDING PENDING SURFACE TRANSPORTATION BOARD REVIEW OF OWNERSHIP AND OPERATION OF THE FORMER LACKAWANNA RAILROAD MAIN LINE AND FORMER ERIE GREENWOOD LAKES LINE IN THE STATE OF NEW JERSEY.

At a meeting of the Lackawanna Coalition, held in Millburn, New Jersey on June 23, 2003, the following resolution was adopted.

WHEREAS the Surface Transportation Board is currently reviewing the grant of ownership and operating rights given to the Norfolk Southern Railway Co. (NS) and CSX Transportation Co. (CSX) as a result of the breakup and redistribution of assets of the Consolidated Rail Corp. (Conrail); and

WHEREAS NS has been granted operating rights over railroad trackage from freight yards in New Jersey serving the New York area west to Philippsburg, New Jersey; the line in question comprising the former Greenwood Lake Branch (also known as the Lower Boonton Line), the Orange Branch, Boonton Line, Washington Secondary and Philippsburg Branch; in a financial arrangement with CSX, known as Conrail Shared Assets (CSA); and

WHEREAS we have secured a legal opinion that NS has engaged in anticompetitive practices such as enticing shippers out of New Jersey and away from the aforementioned rail line, and

WHEREAS we believe that such enticement weakens the economic viability of the aforementioned rail line for both freight and passenger services; and

WHEREAS the New York & Greenwood Lake Railway Co. has a proposal before the New Jersey Department of Transportation to operate a commuter-type passenger rail service to carry passengers on the portion of the aforementioned rail line nearest to Hoboken, N.J. and the Lackawanna Coalition has enthusiastically supported the operation of such service to replace service permanently discontinued by New Jersey Transit in September of 2002; and

WHEREAS the practices in which NS appears to be engaged would clearly have the effect of decreasing the likelihood of future operation of passenger service by the New York & Greenwood Lake Railway Co.; and

WHEREAS the rebuilding of the line between Morris Jct. and the Pennsylvania side of the Delaware River at the Delaware Water Gap (Lackawanna Cutoff Line) would allow the operation of a proposed rail passenger service between Hoboken and Scranton, Pa., with possible extension to Binghamton, N.Y. and beyond at a future time; and the Lackawanna Coalition (along with Monroe and Lackawanna Counties, the affected counties in Pennsylvania) has taken a position in support of the rebuilding of the Cutoff Line and the operation of such service; and

WHEREAS the rebuilding of the Lackawanna Cutoff Line would provide the Canadian Pacific Railway Co. (CP Rail) with a route through New Jersey over the Lackawanna Cutoff line,

the former Lackawanna Boonton Line and the former Erie Greenwood Lake Line, thereby increasing the economic viability of the rail line and, thereby, its availability for passenger service; and

WHEREAS a transfer of ownership or control over the aforementioned rail line by the STB would put an end to the anticompetitive practices apparently engaged in by NS along this line and facilitate the use of the line for both freight and proposed passenger rail services: it is hereby

RESOLVED that the Lackawanna Coalition hereby urges the Surface Transportation Board to remove the rail line comprising the Boonton Line (including portions formerly known as the Greenwood Lakes Line), Orange Branch, Washington Secondary and Philippsburg Branch from control by the Norfolk Southern Railway Co. and either establish an independent railroad company to operate the line, or turn the line over to a consortium of short lines operating in New Jersey.

FURTHER RESOLVED that copies of this resolution and any supporting papers shall be sent to the Surface Transportation Board, members of the New Jersey Congressional Delegation in our area of concern, members of the New Jersey Legislature in our area of concern, the North Jersey Transportation Planning Authority, the Commissioner of the New Jersey Department of Transportation, New Jersey Transit and other persons to whom the Lackawanna Coalition deems it advisable to send such papers.

Dated: June 23, 2003

DAVID PETER ALAN
Chair

May 21, 2003

By Messenger

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

RE: STB Finance Docket No. 33388 (Sub-No. 91), CSX Corp. and CSX Transp. Inc., Norfolk Southern Corp. and Norfolk Southern Ry. Co. — Control and Operating Leases/Agreements — Conrail Inc. and Consolidated Rail Corp. [General Oversight]

Dear Secretary Williams:

This letter is filed, on behalf of Cargill, Inc., in brief response to the "Joint Report of Norfolk Southern and CSX Regarding Cargill, Inc." (CSX/NS-3), filed in the above-referenced docket on May 19, 2003. Although the Joint Report makes no reference to Cargill's "Status Report and Request to Establish Deadline," filed on April 28, 2003, both the timing (within 20 days) and the subject matter of the Joint Report clearly are intended to respond to Cargill's filing, which expressed frustration over the inordinate delay by CSX and NS in developing an operating plan to preserve Cargill's 2-to-1 status at Sidney, Ohio that is consistent with the representations they made to Cargill and the Board in their Application for control of Conrail.

CSX and NS, however, ignore Cargill's request that the Board establish a May 30, 2003 deadline for resolution of this long-pending matter. Instead, they assert that they are close to resolving the matter and promise to report further to the Board when an agreement is signed, or in any event, by June 9, 2003. Cargill has heard such promises before and understandably is dubious of these most recent representations, particularly since CSX and NS promise only to file another status report.

Cargill nevertheless is willing to acquiesce to the proposed 10 day extension of its requested deadline until June 9, 2003, but only if CSX and NS reach a final agreement by that date. In addition, Cargill requests that the Board require any status report that is unaccompanied by a

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jom 147800.1

final agreement on June 9th to fully explain why CSX and NS have been unable to reach an agreement, identify the remaining open issues, and thoroughly explain each railroad's position on those issues.

Sincerely,

Jeffrey O. Moreno

Cc: Dennis G. Lyons
Arnold & Porter
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Washington, DC 20004
Counsel for CSX

Richard A. Allen
Zuckert, Scoutt & Rasenberger, LLP
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Washington, DC 20006
Counsel for Norfolk Southern

206335

October 4, 2002

By Hand

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

RE: STB Finance Docket No. 33388(Sub-No. 91)
CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation and Norfolk Southern Railway Company
- Control and Operating Leases/Agreements-
Conrail Inc. and Consolidated Rail Corporation (General Oversight)

Dear Secretary Williams:

Enclosed please find an original and twenty five (25) copies of The Status Report of Cargill, Incorporated to be filed in the above-referenced docket.

Also, enclosed is one additional copy for stamp and return. Kindly date-stamp the additional copy for return to this office by messenger.

If you have any questions, please do not hesitate to call. My direct dial number is (202) 263-4107.

Sincerely,

Michael H. Higgins

Michael H. Higgins
Attorney for Cargill, Incorporated

ENTERED
Office of Proceedings
OCT 4 2002
Part of
Public Record

cc: Mr. Jeffrey Johnson
Mr. Ron Hunter

CARG-6

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388 (SUB-NO. 91)

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

[GENERAL OVERSIGHT]

STATUS REPORT
OF CARGILL, INCORPORATED

Cargill, Incorporated ("Cargill") hereby submits this Status Report in the above-captioned proceeding.

In Comments filed on August 5, 2002, Cargill raised concerns that recent developments involving the fees charged by CSX to NS to preserve two-carrier access at Sidney, Ohio are inconsistent with the merger decision by not adequately protecting Cargill's shipments of agricultural products from Sidney, Ohio to NS-served destinations, effectively negating the protections that both carriers assured Cargill, as a 2-to-1 shipper at Sidney, would preserve two-carrier competition post-merger. At the request of CSX and NS, and without objection from Cargill, the Board extended the time for filing Reply Comments to Cargill until September 25, 2002, in order to allow the parties to reach a negotiated resolution of Cargill's concerns. See Decision No. 9 (served Sept. 13, 2002).

CSX and NS separately filed comments on September 25th, stating that CSX had sent a written proposal to Cargill, which was copied to NS, on the preceding day, September 24, 2002. Both railroads expressed hope that a negotiated resolution could be reached, although NS expressed some preliminary concerns regarding CSX's proposal.[1]

The CSX proposal offered four alternative solutions to Cargill. The first option would implement the solution approved by the Board in the merger decision, by providing a cost-based interchange rate of $60 at Sidney. The second option preserves the current operations, but only at a rate slightly lower cost than CSX initially had estimated. The third and fourth options offer proportional rates over various interchanges with NS. After obtaining and reviewing proportional rates from NS for use in combination with the CSX rates, Cargill has concluded that Options 2-4 do not remedy its concerns.

Option 1, however, is attractive to Cargill and Cargill has communicated this fact to CSX and NS. Based upon preliminary discussions with NS, Cargill understands that certain operational details still would need to be worked out between NS and CSX. Although Cargill is hopeful that these details will be addressed to everyone's mutual satisfaction, Cargill asks the

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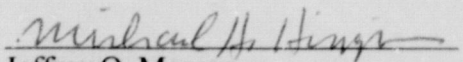
[1] There is a materia' misstatement of fact in CSX's comments that Cargill desires to correct for the record. CSX states:

> When the Split Date came, instead of providing this remedy [the proposal approved by the Board in the merger decision] to Cargill, with Cargill's consent CSX and NS provided an alternative method of providing access to NS for the Cargill facility at Sidney. An arrangement was worked out under which CSX would move the outgoing cars from Sidney to Indianapolis, where they would be classified and then delivered to NS at Marion, OH.

CSX Comments at 2. Cargill consented only to a direct movement of its cars from Sidney to Marion, not Sidney-Indianapolis-Marion. It is the cost of this nearly 200-mile round-trip diversion West to Indianapolis, before moving only 60 miles East to Marion, that has triggered Cargill's comments in this oversight proceeding. Cargill Comments at 3, 5.

Board to retain jurisdiction over this matter until such time as Cargill notifies the Board that a final resolution has been reached.

Respectfully submitted,



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(202) 331-8800

Attorney for Cargill, Incorporated

October 4, 2002

CERTIFICATE OF SERVICE

I, Pamela D. Plummer, a secretary at the law firm of Thompson Hine LLP, do hereby certify that on this 4th day of October, 2002, a copy of the Status Report of Cargill, Incorporated was served by first-class mail, postage prepaid, or more expedited method to the following:

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Greg E. Summy
John V. Edwards
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*Attorneys for **Norfolk Southern Corporation** and **Norfolk Southern Railway Company***

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Counsel for Applicants
***CSX Corporation** and*
CSX Transportation, Inc.

Pamela Plummer
Pamela D. Plummer

***by hand**

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September 25, 2002

206268

BY HAND DELIVERY

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

Re: CSX Corp. *et al.* – Control and Operating Leases/Agreements – Conrail Inc. *et al.*, Finance Docket No. 33388 (Sub-No. 91) (General Oversight)

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are the original and 25 copies of NS-10, "Norfolk Southern's Reply To The Comments Of Cargill, Incorporated." Also enclosed is a 3.5-inch computer disk containing the text of NS-10 in WordPerfect 5.0 format.

Kindly date-stamp the enclosed additional 2 copies of NS-10 and return them to our messenger.

Sincerely,

Scott M. Zimmerman

Enclosures

cc: All parties of record

ENTERED
Office of Proceedings
SEP 25 2002
Part of
Public Record

NS-10

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET No. 33388 (Sub-No. 91)

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

(GENERAL OVERSIGHT)

NORFOLK SOUTHERN'S REPLY
TO THE COMMENTS OF CARGILL, INCORPORATED

Pursuant to the Board's Decision No. 9 in this proceeding, served September 13, 2002, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") submit the following in reply to the submission of Cargill, Incorporated (CARG-5) filed with the Board on August 5, 2002.

Cargill's comments pertain to its soybean processing and refining facility at Sidney, Ohio. Sidney is a CSX/Conrail 2-to-1 point identified in the CSX/NS/Conrail control application. *See* Finance Docket No. 33388, CSX/NS-18 (Application Vol. 1) at 546, 549.

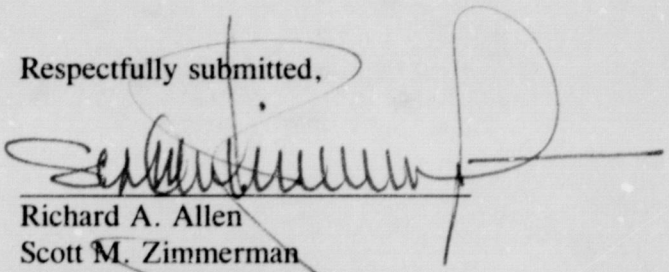
Cargill asserts that the present arrangement under which CSX and NS provide for NS service to Cargill's Sidney facility (thus preserving two-carrier access) is not adequate, and "will render Cargill non-competitive in the soybean meal market to NS destinations." CARG-5 at 5. Cargill asks the Board "to take sufficient oversight action to ensure that Cargill is protected as a 2-to-1 shipper in the Conrail merger." CARG-5 at 5.

Soon after the original Cargill filing, NS and CSX began discussions and NS made a series of proposals in an effort to craft a new access arrangement acceptable to the carriers and Cargill. Over the past several weeks, however, CSX has failed to meet or discuss the matter substantively with NS despite several overtures by NS to do so.

Late yesterday, CSX sent a written letter proposal addressed to Cargill. NS received the letter proposal substantially after close of business. The proposal has not been discussed with, much less approved by, NS.

NS remains willing to meet with CSX to discuss resolution, in a manner consistent with Board precedent and practice. NS continues to believe that the matter can be resolved in a manner satisfactory to the carriers and Cargill without the need for Board intervention, although resolution based on the CSX proposal seems doubtful at best. Nevertheless, given that NS only received the CSX document well after close of business last night, NS respectfully reserves the right to respond, and notes that it intends to respond, in due course.

Respectfully submitted,



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Norfolk, Virginia 23510-2191
(757) 629-2838

Attorneys for Norfolk Southern Corporation and Norfolk Southern Railway Company

September 25, 2002

. . . .

CERTIFICATE OF SERVICE

I certify that on September 25, 2002 a true copy of NS-10 was served by hand delivery upon:

Jeffrey O. Moreno
Thompson Hine LLP
1920 N Street, NW
Suite 800
Washington, D.C. 20036
Attorney for Cargill, Incorporated

Dennis G. Lyons
Arnold & Porter
555 Twelfth Street, NW
Washington, D.C. 20004
Attorney for CSX Corporation and CSX Transportation, Inc.

and by first class U.S. Mail, postage prepaid, or by more expeditious means, upon all other parties of record in Finance Docket No. 33388 (Sub-No. 91).

Scott M. Zimmerman

STB FD-33388 (SUB 91) 9-25-02 D 206267

206267

ARNOLD & PORTER

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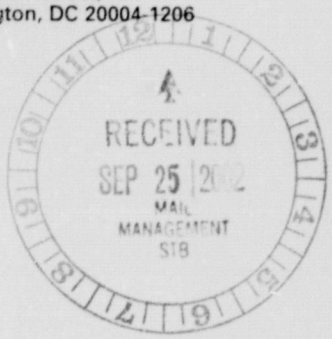


September 25, 2002

BY HAND

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
1925 K Street, NW
Washington, DC 20423-0001

Re: STB Finance Docket No. 33388 (Sub-No. 91)
CSX Corporation and CSX Transportation, Inc.,
Norfolk Southern Corporation and Norfolk Southern Railway Company
– Control and Operating Leases/Agreements –
Conrail Inc. and Consolidated Rail Corporation (General Oversight)

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of CSX-11, the "Response of Applicants CSX Corporation and CSX Transportation, Inc., to Comments of Cargill, Incorporated" for filing in the above-referenced docket.

Please note that a 3.5-inch diskette containing a WordPerfect 5.1 formatted copy of this filing is also enclosed.

Kindly date-stamp the additional copy of this letter and the "Response" at the time of filing and return them to our messenger.

Thank you for your assistance in this matter. Please contact the undersigned at (202) 942-5858 if you have any questions.

Respectfully yours,

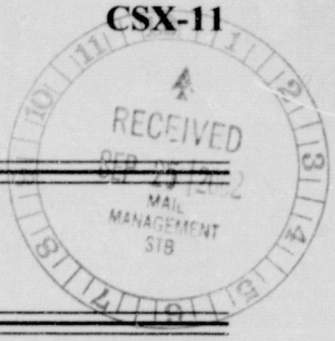
Dennis G. Lyons
Counsel for CSX Corporation and
CSX Transportation, Inc.

rjm
Enclosures

206267

CSX-11

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB FINANCE DOCKET NO. 33388 (SUB-NO. 91)

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY — CONTROL AND OPERATING LEASES/AGREEMENTS — CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION (GENERAL OVERSIGHT)

RESPONSE OF APPLICANTS CSX CORPORATION AND CSX TRANSPORTATION, INC., TO COMMENTS OF CARGILL, INCORPORATED

Of Counsel:

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Peter J. Shudtz
CSX CORPORATION
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Paul R. Hitchcock
CSX TRANSPORTATION, INC.
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Jacksonville, FL 32202

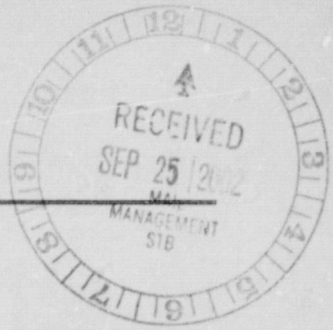
Dennis G. Lyons
Mary Gabrielle Sprague
Sharon L. Taylor
ARNOLD & PORTER
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202
(202) 942-5000

Counsel for Applicants
***CSX Corporation** and*
CSX Transportation, Inc.

Dated: September 25, 2002

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY — CONTROL AND OPERATING LEASES/AGREEMENTS — CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION (GENERAL OVERSIGHT)

RESPONSE OF APPLICANTS
CSX CORPORATION AND CSX TRANSPORTATION, INC.,
TO COMMENTS OF CARGILL, INCORPORATED

CSX Corporation and CSX Transportation, Inc. (collectively "CSX") submit this as their initial response to the comments of Cargill, Incorporated ("Cargill") filed on August 5, 2002 (CARG-5). They propose to supplement this response, as set forth below.

BACKGROUND

Cargill's soybean processing and milling facility at Sidney, Ohio was an acknowledged "two-to-one" point in the Transaction in which CSX and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS") acquired control of Consolidated Rail Corporation ("Conrail") and divided the operations of its routes and other assets between them (the "Conrail Transaction").

See McClellan V.S., CSX/NS-18, Vol. 1 at 546, 549.[1] The proposal to deal with this "two to one" situation, which was presented to and approved by the Board, involved the formula used to deal with a number of two-to-one issues: The carrier which would not otherwise have had access to the shipper in question (here, NS) was granted trackage rights over the other carrier at 29 cents a car mile, subject to RCAF(U) escalation. 3 S.T.B. 196, 231 (1998). So in this case, the proposal submitted to the Board and approved by it involved NS being afforded trackage rights from Lima, OH to Sidney, OH on the basis just mentioned. *See* CSX/NS-25, Vol. 8B at 543-50 (trackage rights) and CSX/NS-25, Vol. 8C at 616-39 (switching to get in to the facility), for the documentation.

When the Split Date came, instead of providing this remedy to Cargill, with Cargill's consent CSX and NS provided an alternative method of providing access to NS for the Cargill facility at Sidney. An arrangement was worked out under which CSX would move the outgoing cars from Sidney to Indianapolis, where they would be classified and then delivered to NS at Marion, OH. A temporary charge for compensation to CSX was established between NS and CSX, to be revised after a cost study. The cost study was over two years in the making and it, quite naturally, reflected the inefficiency of the CSX movement (hauling the cars westward to Indianapolis and then eastward to Marion). The cost study indicated a cost of $646 per car. Cargill does not appear to dispute the validity of the cost

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[1] Citations not otherwise indicated are to the record in the primary docket, Finance Docket No. 33388.

study, but argues that the change in cost required NS to raise its charges to Cargill by $450 (per railroads-owned car) and by $480 (per private car). CARG-5 at 2. Cargill made this matter the subject of its comments in CARG-5.[2]

THE CSX PROPOSAL

CSX is committed to providing a method whereby Cargill will receive an appropriate remedy for the facility at Sidney, so that it may serve destinations on NS on an economical basis to the extent that CSX can itself appropriately do so. In implementation of this, CSX on September 24, 2002, made a written proposal to Cargill (with a copy to NS) offering to restore the provisions contemplated in the CSX/NS Application in the Conrail Transaction, that is, by performing switching at Sidney for NS movements on NS's trackage rights between Lima and Sidney. As contemplated by the Application, cost-based switching at Sidney is to be provided by CSX, and, moreover, the proposal includes an attractive flat rate for it.

In addition to that proposal, which would restore the parties to the provisions originally made for Cargill in the Conrail Transaction Application, CSX also offered a number of other alternatives, which Cargill could elect without prejudice to Cargill's right to insist on the original arrangement contemplated in the Conrail Transaction Application.

These alternatives include the provision of favorable proportional rates from Sidney to Anderson, OH (near Marion), for use in connection with movements beyond Anderson over NS; the provision of a set of proportional rates to various

---

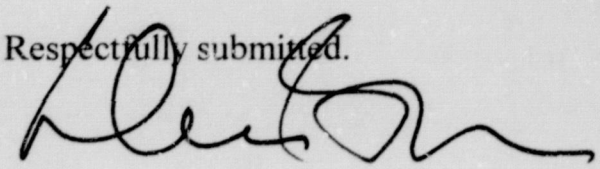
[2] CSX has no objection to Cargill's having filed its Comments out of time.

locations in the Midwest and Pennsylvania connecting to NS for use in movements on NS (including Muncie, IN; Marion, OH; Cincinnati, OH; Columbus, OH; and Pittsburgh, PA); and, if Cargill elects, a version of the current operation over Marion, for which a proportional rate would be established, with a somewhat more favorable rate than the $646 rate if private equipment is used.

Cargill has not yet responded to these proposals. CSX believes, assuming satisfactory arrangements can be made with NS by Cargill (which we assume will be the case and in connection with which CSX will cooperate), that these proposals will have the effect of giving Cargill the full access to NS destinations that the original two-to-one solution proposed in the Application contemplated. While the CSX proposals are subject to specified terms and conditions, CSX's proposal to maintain the original solution – cost-based switching at Sidney in connection with NS's use of its trackage rights from Lima – is unconditional and will remain a safety net for Cargill.

As is evident, this response is an interim response, filed in order to bring the Board up to date as to the status of this matter. CSX will supplement it as appropriate as developments take place, and in any event will file a status report with the Board in two weeks' time if no solution satisfactory to Cargill has been arrived at by then.

Respectfully submitted.



Dennis G. Lyons
Mary Gabrielle Sprague
Sharon L. Taylor
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Counsel for Applicants
***CSX Corporation** and*
CSX Transportation, Inc.

Of Counsel:
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One James Center
901 East Cary Street
Richmond, VA 23219

Paul R. Hitchcock
CSX TRANSPORTATION, INC.
500 Water Street
Jacksonville, FL 32202

Dated: September 25, 2002

CERTIFICATE OF SERVICE

The undersigned counsel for CSX Corporation and CSX Transportation, Inc. hereby certifies that on this 25th day of September, 2002, a copy of the foregoing "Response of Applicants CSX Corporation and CSX Transportation, Inc., to Comments of Cargill, Incorporated" were served on all parties of record by first-class mail, postage prepaid, or more expedited method.

Dennis G. Lyons
ARNOLD & PORTER
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202
(202) 942-5858

Counsel for CSX Corporation and CSX Transportation, Inc.

STB FD-33388 (SUB 91) 7-23-02 D 205909

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STB FD-33388 (Sub 91) 7-23-02 D

ID-205909

205909

FLETCHER & SIPPEL LLC

Two Prudential Plaza, Suite 3125
180 North Stetson Avenue
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Phone: (312) 540-0500
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www.fletcher-sippel.com

Thomas J. Litwiler
(312) 540-9440
tlitwiler@fletcher-sippel.com

July 19, 2002

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

Re: **Finance Docket No. 33388 (Sub-No. 91)**
CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation (General Oversight)

Dear Secretary Williams:

Wheeling & Lake Erie Railway Company ("W&LE") hereby files the following comments in the third annual oversight proceeding on the acquisition of Consolidated Rail Corporation ("Conrail") by CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NS"). W&LE respectfully requests leave to late-file these comments and believes that, particularly given the nature of W&LE's comments, no party would be prejudiced by the Board's acceptance of this filing.

In approving the CSXT/NS-Conrail transaction, the Board imposed a number of conditions for the benefit of W&LE, including (as relevant here) requirements that NS grant W&LE trackage rights access to Toledo, Ohio and that NS extend W&LE's lease of, and trackage rights access to, the Huron Dock facility on Lake Erie at Huron, Ohio. See CSX Corp. et al. -- Control -- Conrail Inc. et al. 3 S.T.B. 196, 309-311, 377, 392 (1998). While W&LE has operated trains on a restricted basis over NS's line to Toledo pursuant to a "detour" agreement since consummation of the CSXT/NS-Conrail transaction and continues to access and lease the Huron Dock, the parties have never reached any permanent arrangements regarding these rights.

W&LE has no material dispute with NS's discussion of the status of negotiations between the parties with respect to the Toledo and Huron Dock rights. See NS-8 at 34-36. However, these rights are critically important to the operation and viability of W&LE, and it is equally important that the final arrangements that will permanently establish and govern these rights be fair, effective and even-handed. It is vital that the Board continue its oversight over at least this aspect of the Conrail transaction for the full five years initially contemplated or until NS and W&LE reach final agreement on these matters. Cf. Conrail General Oversight, Decision

No. 7 (STB served June 11, 2002) at 2. Indeed, the ongoing nature of the Board's oversight role helps ensure that the parties can move toward a permanent and productive resolution of the issues remaining between them.

We note that NS is of the same viewpoint with respect to continued Board oversight on this matter. NS-8 at 36 ("NS believes there is no need for Board intervention at this point, but NS reserves the right to seek relief from the Board with respect to these matters should circumstances warrant."). If it is not feasible to discontinue oversight of the remainder of the Conrail transaction while retaining the original five-year oversight condition solely with respect to this aspect of the transaction (i.e. the relief granted on W&LE's responsive application in Finance Docket No. 33388 (Sub-No. 80)), the Board should continue its oversight of the entire transaction for the full five-year period adopted in 1998.

Twenty-five copies of this letter are enclosed for filing with the Board. One extra copy of this letter also is enclosed. I would request that you date-stamp that copy to show receipt of this filing and return it to me in the provided envelope. I certify that a copy of this letter has been served by overnight delivery on counsel for NS and CSXT.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Wheeling & Lake Erie
Railway Company

TJL:tl

Enclosures

cc: Richard A. Allen, Esq.
Dennis G. Lyons, Esq.

STB FD-33388 (SUB 91) 7-22-02 D 205895

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STB FD-33388(Sub-91) 7-22-02 D

ID-205895

U.S. Department of Transportation

General Counsel

400 Seventh St., S.W.
Washington, D.C. 20590

205895

July 17, 2002

Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Fin. Dkt. No. 33388 (Sub-No. 91)

Dear Secretary Williams:

Enclosed herewith are the original and ten copies of the Initial Comments of the United States Department of Transportation in the above-referenced proceeding. There is also a computer diskette of this document, convertible into Word Perfect. I have included as well an additional copy of the Department's comments that I request be date-stamped and returned with the messenger.

Respectfully submitted,

Paul Samuel Smith

Paul Samuel Smith
Senior Trial Attorney

Enclosures

cc: Dennis G. Lyons, Esq.
Samuel M. Sipe, Jr., Esq.
Richard A. Allen, Esq.
Constance A. Sadler, Esq.

DOT-5

Before the
Surface Transportation Board
Washington, D.C.

CSX Corp. and CSX Transportation, Inc.,	)	
Norfolk Southern Corp. and Norfolk Southern	)	
Railway Co. -- Control and Operating Leases/	)	Fin. Dkt. No. 33388 (Sub- No. 91)
Agreements -- Conrail, Inc. and Consolidated	)	
Rail Corp. (GENERAL OVERSIGHT)	)	

Initial Comments of the
United States Department of Transportation

Introduction

This ongoing proceeding implements the five-year oversight condition imposed by the Surface Transportation Board ("STB" or "Board") in Finance Docket No. 33388, concerning the acquisition and division of Consolidated Rail Corporation ("Conrail") by CSX Transportation, Inc. ("CSX") and the Norfolk Southern Railway Company ("NS") (collectively, "Applicants"). General Oversight Decision No. 1, served February 9, 2000. The purpose of this proceeding has been to determine whether the Applicants are complying with the conditions originally imposed by the STB and whether those conditions are serving to address the harms otherwise resulting from the Conrail acquisition. Id., slip opinion at 2.

At the end of the first year of oversight, the Board found that CSX and NS had "substantially resolved" post-implementation service problems, and that its original conditions were "working as intended." Decision No. 5, served February 2, 2001. The

STB also found that there was no evidence that the Applicants were exercising increased market power, and that the Applicants were working to implement various environmental conditions. Id. After the second year of oversight the STB concluded that no party had demonstrated the existence of any transaction-related competitive problem, and that the Applicants were working to resolve continuing community and environmental issues. Decision No. 6, served December 13, 2001. At that time the Board determined to continue its oversight "to ensure that these favorable trends continue." Id. at 3.

This is the third year of the scheduled five-year oversight period. The STB has made it clear, however, that parties are free to comment on the possibility of early termination of this proceeding. Decision No. 7, served June 11, 2002.

The United States Department of Transportation ("DOT" or "Department") remains very interested in the ongoing results of this unique transaction and in the efficacy of the STB's conditions. We take no position at this time on any of the substantive issues herein, including whether the proceeding should end sooner than originally contemplated.

Discussion

In every major railroad consolidation case since the passage of the Staggers Act the Department has assessed the information, evidence, and arguments presented by other private and public parties before expressing its own substantive views. We have followed this approach in post-merger oversight proceedings as well, because at the initial comment stage in such proceedings the record consists only of reports submitted by the merging carriers (here, CSX-9 and NS-8), and does not yet reflect the input of shippers, communities, or other parties that potentially are directly affected by those

carriers' post-acquisition operations. *See* DOT-1 and DOT-3, filed herein on July 14, 2000, and July 16, 2001, respectively. Accordingly, with one exception, DOT again intends to file substantive views on the issues in this proceeding only in its reply comments, after we have reviewed the initial submissions of others. The one exception to this general approach relates to the issue of safety.

Safety

The Department is addressing in this filing the safety aspects of the Conrail acquisition because, through the Federal Railroad Administration ("FRA"), we are charged with overseeing the safety of the railroad industry. That responsibility and other factors led the STB to direct each Applicant to work with FRA to prepare a formal Safety Integration Plan ("SIP"), the first time this had ever been required in a railroad consolidation case. Fin. Dkt. No. 33388, Decision No. 52, served November 3, 1997. [1] Since then FRA has carefully monitored the Applicants' progress, and modified the SIPs as necessary. *See* Decision No. 89, served July 23, 1998, at 419. The Applicants both indicate this year that they have maintained or improved upon their safety records, and that they have completed their obligations set forth in their respective SIPs. *See* CSX-9 at 20-21; NS-8 at 20-21.

FRA has reported periodically to the Board on the implementation of the CSX and NS SIPs. The first report, covering the period from the date the transaction was approved (July 23, 1998) through April of 1999, was submitted on May 4, 1999. [2] FRA's

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[1]/ FRA and the STB have recently completed a joint rulemaking to require SIPs in future consolidations involving large railroads. 67 Fed. Reg. 11582 (March 15, 2002).

[2]/ Conrail Merger Surveillance: NS, CSX and CSAO SIP/Safety Update, FRA, May 4, 1999.

second report, dated June 23, 2000, covered the period from May through December of 1999. [3] The third FRA report encompassed the time from January through May of 2000; it was submitted on August 30, 2000. [4] FRA's fourth report, which addresses the period from June of 2000 through March of 2001, and summarizes safety findings through March of 2002, will be submitted to the STB in the very near future.

Throughout the period covered by these reports the FRA met with the Applicants (and the operator of their Shared Asset Areas, CRCX) on a quarterly basis to evaluate the ongoing implementation of their SIPs and to make adjustments as necessary. The devotion of resources by all parties and the continued cooperation among all concerned attest to the rigor of this process and to a shared commitment to safety. The result is that the systemic safety shortfalls that were identified early in the integration process (*e.g.*, information technology deficiencies, hazardous materials documentation defects, and operating procedures problems) have received additional attention and have been satisfactorily resolved.

The fourth FRA report will conclude the formal safety oversight of this transaction and its aftermath. It will confirm that the Applicants have successfully completed the safe integration of Conrail for all practical purposes. The only noteworthy concern expressed is with an apparent decline in capital investment by both railroads, which is important to long-term safety.

For more than a year now FRA has scrutinized the safety of operations on CSX

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[3]/ Conrail Merger Surveillance: NS, CSXT and CRCX Second Safety Integration Plan/Safety Update, FRA, June 23, 2000.

[4]/ Conrail Merger Surveillance: NS, CSXT and CRCX Third Safety Integration Plan/Safety Update, FRA, August 30, 2000.

and NS, both separately and in the Shared Asset Areas, according to the normal Safety Assurance and Compliance Program applicable to the industry at large. [5] FRA will continue in this manner, and will work carefully with these carriers and their employees to address any problems that develop. We will keep the Board informed as appropriate.

Conclusion

The Department commends the Board for its active exercise of oversight authority over the Conrail acquisition, a transaction that transformed the railroad structure of the eastern United States. The Applicants appear to have managed their transaction well after an initial period of difficulty. There is no longer any basis to continue formal FRA oversight of the safety of the Applicants' operations. We look forward to reviewing the submissions of other parties.

Respectfully submitted,

Kirk K. Van Tine
GENERAL COUNSEL

July 17, 2002

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[5]/ This program is a collaborative effort in which FRA and individual railroads both work to identify and resolve the root causes of safety problems across the carrier's entire network.

Title This Jacket

STB FD-33388(Sub91) 7-11-02 D

ID- 205816

PPG Industries, Inc.
One PPG Place Pittsburgh, Pennsylvania 15272 USA Telephone: (412) 434-3532

BRUCE H. NELSON
MANAGER, LOGISTICS SERVICES

205816

July 9, 2002

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K. Street NW
Washington, DC 20423

Re: STB Finance Docket No. 33388 (Sub-No. 91), CSX Corporation, et al. – Control and Operating Leases/Agreements – Conrail, et al. General Oversight Decision No. 7.

Dear Secretary Williams:

Enclosed for filing in the above referenced proceeding is one original of the comments of PPG Industries, Inc. as an interested party. Thank you.

Sincerely,

Bruce Nelson

enclosure

205816

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

PPG INDUSTRIES, INC.'S COMMENTS TO ABOVE REFERENCE PROCEEDING

Bruce H. Nelson

PPG Industries, Inc.
One PPG Place
Pittsburgh, PA 15272
(412) 434-3532

July 9, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

PPG INDUSTRIES, INC.'S COMMENTS TO ABOVE REFERENCE PROCEEDING

PPG Industries, Inc. is a large rail shipper of chemicals and a rail receiver of glass-making raw materials. As such PPG has multiple plants that are served solely by either CSX Transportation (CSXT) or Norfolk Southern (NS). In many cases, PPG has customers and suppliers who are served solely by CSXT or NS.

PPG recommends that STB continue its general oversight of the Conrail transaction over the initial 5-year period. From the outset PPG's service deteriorated to intolerable levels. CSXT and NS have strived to improve operations and should be commended for their efforts. While service has become more consistent, which many feel is the most important measure of rail service; it does not always meet pre-Conrail transaction levels. PPG remains concerned about the future quality of its rail service.

Many of the metrics that CSXT and NS use to tout their service will truly be tested only after a sustained period of strong economic activity. Rail yards appear to be more fluid than they have in the past, and that stands to reason since chemical industry activity is down by over 10% in the past 18 months.

Many industries are recovering and showing signs of increased rail activity. STB should consider its mission complete only after CSXT's and NS's newly designed service offerings hold-up under the next sustained strong level of rail activity. The most recent downturn afforded CSXT and NS the opportunity to purge their systems and implement new scheduled operations. It is our hope that their plans improve service for all rail customers.

In conclusion, please accept our comments and recommendation as you consider this proceeding.

Respectfully submitted,

Bruce H. Nelson
Manager, Logistics Services
PPG Industries, Inc.
One PPG Place
Pittsburgh, PA 15272

STB FD-33388 (SUB 91) 7-17-02 D 205872

Title This Jacket

STB FD-33388 (Sub-91) 7-17-02 D

ID-205872

NY/NJ-3

205872

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET No. 33388 (Sub-No. 91)

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

(GENERAL OVERSIGHT)

COMMENTS OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Hugh H. Welsh, Deputy General Counsel
The Port Authority of New York And New Jersey
One Madison Avenue, 7th Floor
New York, NY 10010
(212) 635-3501

Paul M. Donovan
LaRoe, Winn, Moerman & Donovan
4135 Parkglen Court, N.W.
Washington, DC 20007
(202) 298-8100

Attorneys for The Port Authority of New York and New Jersey

Dated: July 17, 2002

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET No. 33388 (Sub No. 91)

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

(GENERAL OVERSIGHT)

COMMENTS OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

The Port Authority of New York and New Jersey ("the Port Authority") is an agency of the States of New York and New Jersey whose bi-state compact was approved by the Congress. Foremost among the statutory responsibilities of the Port Authority is the protection of the commerce of the New York/New Jersey Port District. The Port District, a statutorily defined area, is a district that is roughly a 25 mile radius around the Statue of Liberty, and includes virtually all of the North Jersey Shared Asset Area ("NJSAA") as that area was defined in the Application in this proceeding.

The Port Authority has actively participated throughout the course of these proceedings. In its brief filed in the application proceeding (NY/NJ-19), the Port Authority sought the imposition of certain conditions to which the Applicants subsequently agreed. These conditions were as follows:

"1. Norfolk Southern, CSX, and the Port Authority ("the parties") shall meet regularly in accordance with a mutually amenable schedule, to discuss major issues affecting the Port Authority and the provision of rail service to the Port District, for the purpose of promoting effective and efficient transportation for the District. The parties shall meet no less than quarterly following the decision of the Board's approval of the proposed transaction. Present at these meetings shall be senior officials of the parties, including such officials from the CSAO. In the event that any issues cannot be resolved by the representatives of the parties then the issues may be referred by the Chairman and Executive Director of the Port Authority to the Presidents of CSX and Norfolk Southern for resolution.

2. a) In the event the Board approves the Application, the Port Authority shall review CSX's and Norfolk Southern's planning for the operations within the Port district and consult with CSX and Norfolk Southern from time to time with respect to significant changes to CSAO operations within the District.

b) The Port Authority, CSX and Norfolk Southern shall agree upon the development of certain operational data that is appropriate and necessary for the Port Authority to analyze the efficiency or rail operations within the Port District and between the Port District and major origins or destinations. To this end, the parties shall meet on a periodic basis to develop and review data. Such data shall include statistical data of the type currently produced by Conrail for the Port Authority, including aggregated traffic, car supply and distribution data, as well as data that will demonstrate transit times and performance standards for several time sensitive traffic types. The parties shall agree that the production, handling and disclosure of any such data will be treated in accordance with all applicable laws, and will be maintained, where appropriate, in a confidential

manner to protect any proprietary or confidential information.

3. a) CSX and Norfolk Southern shall provide the Port Authority with the capital plans and budgets for CSAO within the Port District, and CSX and Norfolk Southern will continue to provide the Port Authority the same level of cooperation provided by Conrail in the past with respect to capital spending for operations within the Port District.

b) Should any impasse arise between Norfolk Southern and CSX that they submit to arbitration under the Shared Assets Agreement regarding CSAO improvements or capital investment in the Port District affecting the Port Authority's interest, the Port Authority will have a right to present an amicus position to the arbitrator or arbitrators setting forth the Port Authority's views from a regional perspective.

4. CSX, Norfolk Southern and CSAO shall provide and implement economic development programs designed to promote the development of rail traffic within the Port District. CSX, and Norfolk Southern shall consult with the Port Authority in the development of such plans, and the Port Authority shall apprize CSX and Norfolk Southern of opportunities for the development of rail traffic affecting the Port District. To the extent it deems appropriate, the Port Authority shall seek input from CSX, Norfolk Southern and CSAO in its capital planning process.

5. The Port Authority shall have standing before the Board to seek whatever necessary relief during such time as the Board maintains oversight following approval of the transaction with respect to the Port District."

Quite obviously, rail transportation to, from and within the NJSAA is of vital importance to the Port Authority and to the economy of the Port District. The Port Authority has invested, and continues to invest, billions of dollars in port related facilities. These investments would be

severely imperiled without the rail services necessary to move export/import traffic through the Port of New York and New Jersey. The Port Authority has participated in these proceedings to protect its port related investments and to protect the commerce of the Port District.

In its first comments in these oversight proceedings (NY/NJ-2) the Port Authority noted that: "Notwithstanding the combined cooperative efforts of the Port Authority and the carriers, and even while NS and CSX, as well as the CSAO, have labored mightily to improve service, systematic problems, particularly capital problems, are preventing those carriers from providing the quality and quantity of rail service that was promised in the acquisition proceeding." The Port Authority is pleased that many of the service problems that initially plagued the NJSAA have been resolved. However, all is not well. Localized service problems still exist from time to time, and the carriers remain woefully short of capital to make investments in the NJSAA.

The Port Authority has sought, and continues to seek, public sector funds to provide necessary rail investment. Those efforts have been hampered by the events of September 11, 2001, and the resulting dislocation of staff and priorities. Currently, normalized operations are returning within the Port Authority and within the Port District. Thus, the Port Authority expects to re-energize its efforts to provide public sector funds. To accomplish this, the Port Authority will rely heavily upon the information obtained as a result of its regular meetings with the carriers held pursuant to the conditions agreed to by the parties and outlined above.

The Board's notice of June 10, 2002, asks for comments on the need for continued oversight. The Port Authority is of the firm opinion that oversight should continue for several reasons. First, the volumes of traffic moving through the Port Authority on-dock ExpressRail facility are reaching record levels on a regular basis. For example, the second quarter of 2002

saw an increase in container lifts of 27.8% over the same period in 2001. Nearly 60,000 containers were handled at that facility in the second quater. In addition, the Port Authority is working with the City of New York to provide renewed rail service to Staten Island and the Howland Hook marine terminal facility located there. Such rail service will increase the number of rail containers moving through the Port District and strain the already strained rail capacity of the NJSAA.

Second, the Port Authority, and other parties, have heard persistent rumors that the carriers might seek to fundamentally alter the nature of operations within the NJSAA. The NJSAA concept was a integral part of the application that was approved by the Board herein. Any significant change in that concept or the relations determined by that concept should be the subject of meaningful review by the interested parties, including the Port Authority, and ultimate review and approval by the Board. Maintaining oversight provides the easiest and most reliable way to provide that necessary review and approval if warranted.

The Port Authority has no interest in creating or maintaining unnecessary burdens on the carriers. However, the oversight necessary to scrutinize activities within the NJSAA, and the Port District are warranted, and should not be unduly burdensome for the carriers. Indeed, the Port Authority is unaware of any statement by either carrier that would indicate that continued oversight is causing problems.

In view of the foregoing, the Port Authority submits that oversight should continue to the extent necessary to provide the necessary scrutiny within the NJSAA and the Port District and keep in place the conditions agreed to by the carriers and the Port Authority as a basis for the Port Authority's support of the application in this proceeding.

Respectfully submitted,

Hugh H. Welsh, Deputy General Counsel
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Paul M. Donovan
LaRoe, Winn, Moerman & Donovan
4135 Parkglen Court, N.W.
Washington, DC 20007
(202) 298-8100

Attorneys for The Port Authority of New York And New Jersey

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of July, 2002, caused a copy of the foregoing comments of the Port Authority of New York and New jersey to served upon all parties to this proceeding by first class mail, postage prepaid.

Paul M. Donovan

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The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
1925 K Street, N.W., Seventh Floor
Washington, DC 20423

Re: Finance Docket No. 33388 (Sub-No. 91), CSX Corporation and CSX CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail, Inc. and Consolidated Rail Corporation (General Oversight)

Dear Secretary Williams:

These are the Comments of Indianapolis Power & Light Company ("IPL") on the Third Annual Reports of CSX Corporation and CSX Transportation (collectively, "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") filed June 3, 2002, pursuant to Decision No. 6 herein.

As the Board knows, IPL was provided with two remedies in Decision No. 89 in the underlying proceeding (Finance Docket No. 33388), which were modified somewhat subsequently. IPL sought judicial review of, inter alia, Decision No. 125, but the United States Court of Appeals for the Second Circuit decided that IPL's challenges were premature. Erie-Niagara Rail Steering Committee v. STB, 247 F.3d 437 (2d Cir. 2001). Subsequently, on July 26, 2001, the D.C. Circuit, upon the urging of the Board to treat IPL's challenges to Decision No. 3 as "premature," dismissed IPL's Petition for Review of that Decision, in No. 01-1005 (not published). After IPL submitted the evidence to the Board that the Board said should be

submitted in Decision No. 6 the Board again denied IPL further relief. As the Board knows, IPL has sought judicial review of Decision No. 6 in D.C. Circuit Case No. 02-1056. Motions for Summary Affirmance, filed by CSX and NS, which the Board supported (to IPL's surprise, in light of the above), but which IPL vigorously opposed, were denied. The Court has set a schedule for the filing of briefs, and for oral argument on March 18, 2003.

In light of Decision No. 6, and the Board's support for the Motions for Summary Affirmance in the D.C. Circuit, we respectfully submit that it would obviously be futile for IPL to submit the same concerns and evidence this year as it submitted in its Comments in 2001. Suffice to say that IPL's concerns are genuine, and continuing, but in light of the Board's view of that evidence and IPL's position, we will not belabor the matter here.

In Decision No. 7, the Board also asked for comments on whether the "Oversight" process is useful and should be continued. The Board has not frequently, if at all, modified its prior decisions in the Oversight process. It thus seems that the process is not productive, in that it encourages parties to submit comments which have not historically changed the outcome. Especially in light of the Board's recent conclusion that there are no problems of which the Board is aware with the transaction (Decision No. 7 at 1-2), it seems clear that the Board is unlikely to grant further relief of its own volition in this proceeding.

Nevertheless, the Board is always open to providing redress if the circumstances require. IPL appreciates that the Board granted it relief in the underlying proceeding, and modified the originally granted relief, also in the underlying proceeding. Thus, rather than engage in additional Oversight proceedings herein, when those are unlikely to produce change, IPL instead suggests that the Board state that relief may always be sought, at least by a party such as IPL which has obtained remedies from the Board, by seeking further relief. IPL contends that it should not have to have met the standard for reopening, in light of the new evidence and changed circumstances it presented in 2001 prior to Decision No. 6, and in light of the Board's prior statements that IPL was free to offer additional evidence if the remedies it was afforded were not providing effective competition. It also seems clear that the same standard would be applied to all other parties if it were applied to a party which was invited to return. Accordingly, if but only if the Board indicates its willingness to entertain comments from parties at any time who assert that their circumstances require relief and are the result, in whole or in part, of this transaction as modified and approved by the Board, the Board could dispense with the remaining two years of

Oversight proceedings and provide instead that comments or petitions for relief may be filed in Finance Docket No. 33388. The Board should not require a filing fee for such a petition for relief, as that would not have been required during an Oversight proceeding, and the matter should not be different based solely on the procedural posture in which the dispute arises.

Respectfully submitted,

Michael F. McBride

Michael F McBride
Bruce W. Neely

Attorneys for Indianapolis Power &Light Company

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STB FD-33388 (Sub-91) 7-17-02 D

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ACC-3

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

COMMENTS OF THE AMERICAN CHEMISTRY COUNCIL

The American Chemistry Council ("the Council")[1] respectfully submits these comments in accordance with the Board's Decision No. 6 served December 13, 2001 in this oversight proceeding. In addition, the Council wishes to respond to the issue raised in Decision No. 7 (served June 11, 2002) -- whether oversight should be continued for the full five years originally ordered by the Board.

The Council will first address the issue of whether to continue oversight, and then comment on certain specific issues.

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[1] The American Chemistry Council (formerly the Chemical Manufacturers Association, or CMA) represents the leading companies engaged in the business of chemistry. Council members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. The Council is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a $455 billion a year enterprise and a key element of the nation's economy. It is the nation's largest exporter, accounting for 10 cents out of every dollar in U.S. exports. Chemistry companies invest more in research and development than any other business sector.

The Board's Oversight Should Be Continued

It is important that the Board continue its oversight to ensure that problems growing out of this complex transaction are addressed expeditiously. Doing so would be consistent with the Board's prior determinations concerning the appropriateness of five years of oversight. While their application to acquire Conrail was pending before the Board, CSX and Norfolk Southern entered into a settlement agreement with the National Industrial Transportation League ('the NITL Agreement") which, among its other provisions, specified that there would be three years of Board oversight assuming approval of the transaction. The Board, on the basis of comments from the U.S. Department of Transportation, the Council's predecessor CMA, and others, decided instead to establish a five year oversight period. Decision No. 89 at 54. The Board commented:

> Although the NITL settlement agreement proposes that we require oversight of the transaction for a 3-year period, we believe that a 5-year oversight period would be more appropriate, given the operational complexity and broad scope of this transaction.

Decision No. 89 at 160. The Board noted that maintaining oversight would provide a ready forum for addressing any problems as they arise:

> If problems do arise after approval and consummation of the transaction ...., our oversight condition should provide a fully effective mechanism for quickly identifying and resolving them.

The operational complexity noted by the Board when it scheduled five years of oversight has not diminished. Although CSX and NS have overcome the transitional difficulties associated with the division of Conrail properties and the initiation of post-split-date service, service issues in the former Conrail territory remain and in fact appear to be increasing. This is particularly true in the Shared Assets Areas in Philadelphia and

New Jersey, in which the operations of NS, CSX, Conrail, various short lines, and numerous passenger and commuter railroads, all need to be coordinated in a tightly constricted space.[2] As CSX Chief Executive John Snow himself testified in this case, operations in the SAAs have the "potential for mischief" and CSX and NS have to watch each other "like a hawk" to prevent abuses. Snow deposition Sept. 18, 1997, tr. p. 197 line 11 through p. 198 line 1.[3]

In sum, the potential for problems in the Shared Assets Areas and elsewhere would warrant the Board's continued oversight for the full 5 years, even if no current problems were being observed. Continued oversight is even more appropriate, however, given that there are indications of emerging problems in the SAAs which may need to be addressed by the Board in the relatively near future. These are discussed in the section that follows.

Shared Assets Area Issues

Continued oversight is appropriate not only because of the complexity of operations in the SAAs and the potential for problems, but also because of the significance of the SAAs in providing a competitive justification for the CSX-NS-Conrail control transaction. The creation of new competition in the SAAs and elsewhere was cited by the Board as the "most important public benefit" of the transaction:

> The most important public benefit resulting from the transaction will be a substantial increase in competition by allowing both CSX and NS to serve where only Conrail served before. This will bring new competition to shippers in such markets as

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2 See generally, Joint Comments of the Chemical Manufacturers Association and the Society of the Plastics Industry, Inc. CMA-10, at 21-23 and attached V.S. of Grocki.

3 See deposition excerpts attached to CMA-10, id.

> Southern New Jersey/ Philadelphia, Northern New Jersey, Detroit, Ashtabula, and the Monongahela coalfields. Applicants estimate that $700 million worth of traffic per year will receive new two-carrier competition.

Dec. No. 89 at 129-130.

The extent of rail to rail competition in the SAAs, as well as the level of service to shippers, is potentially threatened by several developing trends. As these matters currently stand, immediate action by the Board does not appear justified, but these issues certainly bear watching.

First, several of the Council's member companies have heard that CSX and NS are discussing how operations in the SAAs may be changed to reduce the role of Conrail as the SAA operator and increase the direct control of CSX and NS. Second, members of the Council have noticed a recent deterioration in service and responsiveness to customers in the Philadelphia/South Jersey and North Jersey SAAs, apparently because Conrail managers and other employees who deal with customers' inquiries (over late or missing cars, for example) have retired and not been replaced.

According to reports from Council members, CSX and NS appear to view the continued existence of Conrail as creating an additional and possibly unnecessary level of costs in the SAAs. It appears that CSX and NS are considering options including re-deeding Conrail assets to CSX and NS, and cutting Conrail budgets. The recent transfer of Conrail police functions to CSX and NS (see Third General Oversight Report of Norfolk Southern Corporation and Norfolk Southern Railway Company, NS-8 at 18-19) is perhaps reflective of an inclination on the part of CSX and NS to reallocate to themselves responsibilities formerly residing with Conrail.

While the Council appreciates that CSX, NS and Conrail should be accorded some leeway to conduct SAA operations in the most efficient manner, changes that impair the ability of Conrail to act as an independent and neutral switching carrier are of serious concern. Similarly, actions by CSX and NS to increase their respective control over particular districts within the SAAs, or to increase their functional control over certain areas, could raise competitive concerns. Any CSX or NS proposals that may arguably have competitive implications, or otherwise arguably affect the merger conditions, should be aired before the Board. In this way the public, and interested parties, for whose benefit the SAA-related conditions were imposed, can comment, and so that the Board, rather than the railroads acting on their own, can judge whether the proposals are consistent with the conditions.

NS represents in its Third Annual Oversight Report (NS-8, at 26-27) that it is complying with the condition that requires that any new or existing facility within SAAs must be open to both railroads "to the extent and as provided in those [Shared Assets Areas Operating] Agreements." But NS appears to hedge on exactly what the parameters of that condition are. NS states that the NITL Agreement signed by NITL, CSX and NS "construes those [Shared Assets Areas Operating] Agreements as generally providing that both CSX and NS shall have access to existing and new customer-owned facilities in the SAAs, that both CSX and NS may invest in joint facilities in the SAAs in order to gain access to such facilities, and that either NS or CSX may solely develop facilities that it will own or control and exclusively access. NS continues to comply with this condition."

It would be helpful if NS would confirm that its understanding of its obligations in the SAAs under its Operating Agreements with CSX conforms to what it cites as the NITL Agreement's construction of those operating agreements.

Conclusion

The Board should maintain continuing oversight for the full five year period ordered by the Board when it approved the Conrail control transaction. Such oversight should address CSX and NS compliance with all of the conditions imposed by the Board, including specifically those relating to operations and competition within the Shared Assets Areas.

Respectfully submitted,

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Thomas E. Schick
American Chemistry Council
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Arlington, VA 22209

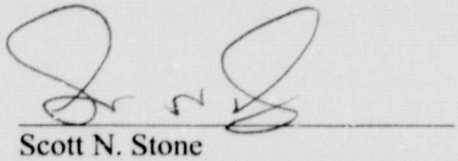
Scott N. Stone
John L. Oberdorfer
Patton Boggs, LLP
2550 M Street, N.W.
Washington, D.C. 20037

Counsel for the American Chemistry Council

dated and due: July 17, 2002

CERTIFICATE OF SERVICE

This is to certify that I have, this 17th day of July, 2002, served copies of the foregoing filing by hand upon Washington counsel for Norfolk Southern and CSX and by first class mail upon other parties of record.



Scott N. Stone

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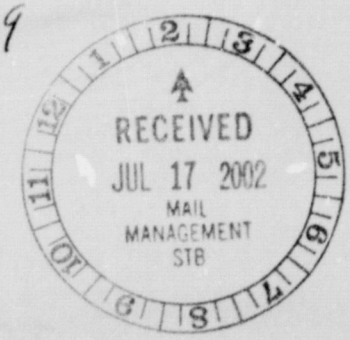

July 17, 2002

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20036-0001

Re: STB Finance Docket No. 33388 (Sub-No. 91)
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND NORFOLK
SOUTHERN RAILWAY COMPANY - CONTROL AND
OPERATING LEASES/AGREEMENTS - CONRAIL, INC.
AND CONSOLIDATED RAIL CORPORATION

Dear Secretary Williams:

Enclosed for filing and appropriate consideration in the above matter is original and 25 copies of the Verified Statement of Jeffery K. Stover, Executive Director of SEDA-COG Joint Rail Authority.

Respectfully submitted,

Keith G. O'Brien
Counsel for SEDA-COG Joint Rail Authority

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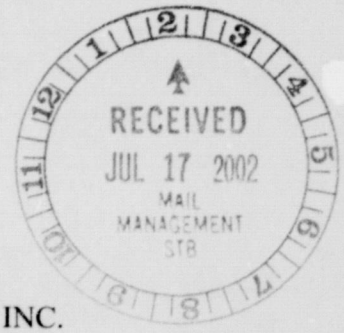

STB FINANCE DOCKET NO. 33388 (SUB-N0. 91)
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND NORFOLK
SOUTHERN RAILWAY COMPANY - CONTROL AND
OPERATING LEASES/AGREEMENTS - CONRAIL, INC.
AND CONSOLIDATED RAIL CORPORATION

205869

(GENERAL OVERSIGHT)

VERIFIED STATEMENT OF JEFFERY K. STOVER

My name is Jeffery K. Stover. I am Executive Director of the SEDA-COG Joint Rail Authority ("JRA") which is affiliated with the SEDA-Council of Governments. JRA is a Pennsylvania municipal authority formed in 1983 by seven central Pennsylvania counties to acquire rail lines and preserve rail service on lines slated for abandonment or other disposition.[1] Commencing with acquisition of two lines in 1984, the JRA now owns five rail lines that handle approximately 30,000 carloads of traffic annually. The preservation and ready availability of rail service on the JRA lines has been instrumental in economic development activity and expansion of employment in Central Pennsylvania over the last eighteen years. Our lines are operated by North Shore Railroad Company, Juniata Valley Railroad Company, Nittnay & Bald Eagle Railroad Company, Lycoming Valley Railroad Company and Shamokin Valley Railroad Company. All of these Class III railroads pursuant to contracts with JRA are managed by Mr. Richard D. Robey. In

[1] The counties which comprise SEDA-COG JRA include Centre, Clinton, Lycoming, Northumberland, Montour, Columbia and Union Counties.

ORIGINAL

accordance with the Operating Agreements Mr. Robey and his staff provide monthly reports concerning operation and maintenance of the lines.

JRA is mindful that it has a residual common carrier service obligation. For this and other important reasons we are endeavoring to foster an effective working relationship with Norfolk Southern Corporation ("NS") as all our former Conrail lines now connect with NS. In addition we coordinate closely with our member counties and the short line operator on economic and industrial development projects. We have achieved a most effective public/private rail partnership over the years.

In the first oversight proceeding JRA expressed serious concerns arising out of transition problems and in regard to unresolved interchange commitments that had been made by NS in connection with the acquisition proceeding. At this juncture the transition problems have been resolved or they are being managed to the extent that they no longer present serious problems for JRA. For this reason JRA would support discontinuance of further oversight reporting requirements for NS.

Not all of our previously expressed concerns relating to service expectations arising out of pre-acquisition commitments by NS have been resolved at this point [2]. Nevertheless, based on NS's positive response to JRA's recent initiatives, we are hopeful that on-going efforts will produce long term solutions and results that will prove to be both satisfactory and beneficial to all interested parties including NS, JRA and the rail dependant shippers in the region we serve. We believe such results to be very important to continued economic development and vitality in the counties served by JRA lines. In

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[2] Certain of the rail shippers have expressed concerns about the service relationships that have been established with respect to the JRA and related rail lines. Their separate supporting views are attached hereto. The separate supporting views of two other rail owners whose lines are operated by another railroad controlled by Mr. Robey are also attached hereto.

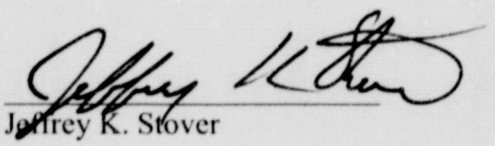
this regard we are mindful of the Board's conviction that well motivated private efforts are most likely to produce results that will best meet the needs of all concerned.

We appreciate the Board's continuing interest and oversight of post acquisition progress that is continuing to evolve. While, as noted above JRA does not believe that continued regular reporting by NS needs to be required, JRA respectfully urges the Board to continue its oversight jurisdiction of the Conrail transaction for at least one more year to ensure that the transaction continues to be implemented in the interest of all concerned parties.

VERIFICATION

I, Jeffrey K. Stover, declare under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

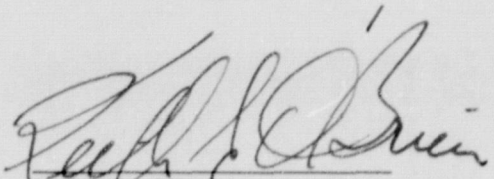
Executed on July 17, 2002.



Jeffrey K. Stover

CERTIFICATE OF SERVICE

I hereby certify that I have, this 17th day of July, 2002, served copies of the foregoing by first class mail, postage prepaid, upon all parties of record.



Keith G. O'Brien

DATED: July 17, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388 (Sub-No. 91)

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

(General Oversight)

JOINT STATEMENT OF SHIPPERS

Each of the undersigned is a shipper located on lines of railroad operated by North Shore Railroad Company and its affiliates (collectively, "NSHR")[1], and owned by either the SEDA-COG Joint Rail Authority ("SEDA-COG") , West Shore Railroad, or Lewisburg and Buffalo Creek Railroad.

One of the major selling points of the Conrail transaction was that many shippers (and the shortlines that serve them) were going to have access to two Class I carriers instead of just Conrail. In June, 1997, Norfolk Southern Railway Company ("NS") and NSHR entered into a settlement under which NSHR would, among other rights, be given direct access to the Canadian Pacific ("CP") system at Sunbury, Pennsylvania, to interchange traffic moving to CP local points and points on railroads interchanging only with CP.[2] In return NSHR agreed to support the proposed split of Conrail. Based on the settlement, SEDA-COG and various shippers also supported the transaction. NS's compliance with the settlement became a condition of the approval of the transaction. *See* Decision No. 89, p. 105 and ordering paragraph no. 19.

On June 1, 1999 ("Split Date"), Conrail was split between NS and CSX. NSHR and NS entered into temporary interim arrangements that allowed traffic to begin moving directly between the

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[1] For the purposes of this statement, NSHR refers to the following Class III railroads: North Shore Railroad Company, Juniata Valley Railroad Company, Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company, Shamokin Valley Railroad Company and Union County Industrial Railroad Company. All of the railroads are under the common control of Richard Robey.

[2] Later in the proceeding, NS entered into a separate settlement with CP which granted indirect access to CP - the access to CP is only through Harrisburg, Pennsylvania, with NS handling the traffic between Harrisburg and Sunbury for a fixed handling charge.

CP system and NSHR at Sunbury. The undersigned shippers began to take advantage of the interchange and to move traffic to and from the CP system that they understood was covered under the settlement . (The shippers understood that they could ship to and from the CP system with CP system being broadly defined in the same way that CP was defined in the CP/NS settlement agreement).[3] Traffic continued to move in this manner, for over two years.

In the interim, after Split Date, NSHR continued to try to negotiate a formal agreement with NS. However, they were unable to do so because of restrictions that NS insisted on including in the agreement. In the first round of this Oversight Proceeding, both NSHR and SEDA-COG filed comments detailing their frustrations over NS's attempts to limit the points on CP that could be origin or destination points of the traffic, the types of traffic that could be handled, and the time period of the agreement.

In July, 2001, SEDA-COG and the shippers first learned that NSHR had reached a tentative agreement with NS; however, the specific terms of the trackage rights agreement that would implement the settlement were not disclosed. Nor was it initially disclosed to SEDA-COG or the shippers that the negotiated terms were far different than those NSHR and SEDA-COG were seeking only a year before. Despite objections to the proposed trackage rights agreement raised by both SEDA-COG and the shippers, on August 21, 2001, without any changes apparently having been made, NSHR notified the Board that they had reached a final agreement with NS over the terms of an agreement to implement the settlement.

The undersigned shippers object to the terms of the trackage rights agreement that has purportedly been reached between NSHR and NS on the basis that they are inconsistent with the original settlement which was made a condition of the transaction. Based upon the description of the terms of the settlement,[4] the shippers object to the proposed trackage rights settlement because it fails to include the following terms:

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[3] As the shippers understand it, under the CP/NS settlement agreement, the CP system is defined broadly to include local points on CP, railroads that are later spun off from CP, and railroads that had been spun off from CP over the previous ten years. Railroads spun off over the last ten years include I&M Rail Line ("IMRL"), New Brunswick Southern, CDAC, Ottawa Valley, Quebec & Gastineau, and Twin City & Western. Although not spinoffs of the CP system, the CP/NS agreement also provides access to points on Ontario Northern and Bangor and Aroostook Railroad.

[4] Despite repeated requests by the shippers, NSHR has refused to provide a copy of the trackage rights agreement. The shippers understand that NSHR and NS have recently provided a copy of the agreement to SEDA-COG under terms of a strict confidentiality agreement does not permit the agreement to be shared with the shippers.

(1) Either SEDA-COG, as the owner of the rail line should be a party to the settlement agreement, or the agreement should be assignable to SEDA-COG or any successor operators of its lines in the event NSHR are no longer the operators;

(2) The term should be unlimited, or should be renewable at the option of SEDA-COG and its operator(s); early termination provisions must be eliminated;

(3) The definition of traffic that can be interchanged with CP under the settlement agreement should cover all traffic similar to the traffic that was interchanged at Sunbury between NSHR and CP between June 1, 1999 and June 30, 2001; and

(4) The definition of traffic that can be interchanged with CP under the settlement agreement should be consistent with the traffic that is covered under the CP/NS settlement agreement.

The undersigned shippers are the parties most affected by the settlement and the proposed trackage rights agreement. The shippers understand that SEDA-COG is continuing to negotiate with both NS and NSHR to address these issues. The shippers support the negotiations and are hopeful that the results will be beneficial for all of the concerned parties.

Although negotiations are continuing, the affected shippers believe that it is imperative that the Board make clear that it retains jurisdiction to review any agreements that purport to implement settlements that were a condition of approval of the Conrail transaction (including the agreement between NSHR and NS), whether or not the formal oversight proceeding is continued.

Based on the foregoing, the undersigned shippers support the comments of SEDA-COG to which this statement is attached.

JOINDER

Shipper: BRANDT Mills Inc

The above referenced shipper joins in the foregoing statement.

I, Rick BRANDT of BMI verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on 7/12, 2002.

Name: RICHARD A BRANDT Jr

JOINDER

Shipper: Agway Agricultural Products

The above referenced shipper joins in the foregoing statement.

I, Peter DelGobbo of Agway verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on July 10, 2002.

Peter DelGobbo

Name: Peter DelGobbo

Director of Bulk Transportation

JOINDER

Shipper: Ag Resources, Inc

The above referenced shipper joins in the foregoing statement.

I, Sharon M. Miller of Ag Resources verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on 7/16/02, 2002.

Sharon Miller

Name:

H:\WPDATA\TRANS\PA Distribution\Joinder-Statement.wpd

JOINDER

Shipper: Clark's Feed Mill, Inc

The above referenced shipper joins in the foregoing statement.

I, Robert Clark of Clark's verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on 7/10/, 2002.

Robert W. Clark

Name: Robert W. Clark Sec/Treasurer

H:\WPDATA\TRANS\PA Distribution\Joinder-Statement.wpd

JOINDER

Shipper: Co-Operative Feed Dealers

The above referenced shipper joins in the foregoing statement.

I, Lon P. Stephens, General Manager of Co-Operative Feed Dealers verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on July 11, 2002.

Name: Lon P. Stephens

JOINDER

Shipper: CORNING INCORPORATED

The above referenced shipper joins in the foregoing statement.

I, JOHN ARMSTRONG of CORNING verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on 7/10, 2002.

Name: John A Armstrong

SR. TRANSPORTATION SPECIALIST

JOINDER

Shipper: PA Distribution

The above referenced shipper joins in the foregoing statement.

I, Dennis E. Shaffer of PA Distribution verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on 7/10, 2002.

Dennis E. Shaffer

Name: DENNIS E. SHAFFER

General Manager

JOINDER

Shipper: Raisio Chemicals U.S., Inc.

The above referenced shipper joins in the foregoing statement.

I, Robert Eveland of Raisio verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on 15 July, 2002.

Name: Robert Eveland
Manufacturing Manager
Raisio Chemicals U.S., Inc.

H:\...PDATA\TRANS\PA Distribution\Joinder-Statement.wpd

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388 (Sub-No. 91)

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

(General Oversight)

JOINT STATEMENT OF RAIL LINE OWNERS

Like the SEDA-COG Joint Rail Authority ("SEDA-COG"), West Shore Railroad and Lewisburg and Buffalo Creek Railroad (collectively "Rail Owners") each own rail lines operated by Union County Industrial Railroad, one of the affiliates of North Shore Railroad Company (collectively, "NSHR")[1]. The Rail Owners thus have the same concerns as SEDA-COG about the proposed settlement entered into between NSHR and Norfolk Southern Railway ("NS"), and join in the comments being filed by SEDA-COG.

Further, to the extent the shippers on the lines of the Rail Owners have expressed concerns about the terms of the settlement in their Joint Statement, the Rail Owners express their support for the changes the shippers believe are necessary to fulfill the terms of the original settlement between NSHR and NS.

The Rail Owners support the ongoing negotiations with NS, and hope that they will result in arrangements that benefit all concerned parties.

---

[1] For the purposes of this statement, NSHR refers to the following Class III railroads: North Shore Railroad Company, Juniata Valley Railroad Company, Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company, Shamokin Valley Railroad Company and Union County Industrial Railroad Company. All of the railroads are under the common control of Richard Robey.

I, Noah Brubaker of West Shore Railroad verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on 7-12-, 2002.

Noah M. Brubaker

Noah Brubaker
Title: Track supervisor, director

I, Julia Sanders of Lewisburg and Buffalo Creek Railroad verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on 7 - 16, 2002.

Julia E Sanders

Julia Sanders
Title: Owner

Title this docket

STB FD-33388(Sub-91) 7-17-02 D

ID-205868

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (SUB-NO. 91)

205868

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

(GENERAL OVERSIGHT)

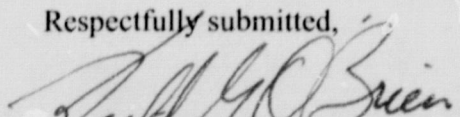
NOTICE OF APPEARANCE OF COUNSEL

Please enter the appearance of the undersigned as counsel for the SEDA-COG Joint Rail Authority:

Keith G. O'Brien
Rea, Cross & Auchincloss
1707 L Street, NW
Suite 570
Washington, DC 20036
(202) 785-3700

We respectfully request the Board's service list for this proceeding reflect this addition, and that parties of this proceeding change their service list accordingly.

Respectfully submitted,



Keith G. O'Brien
Counsel for SEDA-COG Joint Rail Authority

Dated: July 17, 2002

cc: All parties of record

STB FD-33388 (SUB 91) 7-17-02 D 205867

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STB FD-33388(Sub91) 7-17-02 D

ID-205867

LAW OFFICE

MCLEOD, WATKINSON & MILLER

MICHAEL R. MCLEOD
WAYNE R. WATKINSON
MARC E. MILLER
RICHARD T. ROSSIER
CHARLES A. SPITULNIK
RICHARD PASCO
ALEX MENENDEZ
ELIZABETH A. HAWS**
AMY B. JONES***

(**Admitted in Ohio only)
(***Admitted in New York only)

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TELECOPY (202) 408-7763

KATHRYN A. KLEIMAN*
OF COUNSEL
(*Admitted in Virginia only)

ROBERT RANDALL GREEN
LAURA L. PHELPS
GOVERNMENT RELATIONS

205867

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Office of Proceedings

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Public Record

July 17, 2002

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Mail
MANAGEMENT
STB

Hon. Vernon A. Williams
Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Finance Docket No. 33388 (Sub-No. 91)
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 33388 (Sub-No. 91)

Dear Sir:

I am enclosing for filing the original and twenty-five (25) copies of the Comments of the State of Maryland (MD-4) in this proceeding. I am also enclosing a 3.5 inch diskette with this document.

In addition, I am enclosing one additional copy of this document which I ask that you date stamp and return to our messenger.

Sincerely,

Charles A. Spitulnik

cc: Julia Farr, Esquire
All parties of record in F. D. No. 33388 (Sub-No. 91)

MD -4

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C.

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

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

(GENERAL OVERSIGHT)

COMMENTS OF
THE STATE OF MARYLAND

Pursuant to Decision No. 7 (Service Date June 11, 2002) in this Oversight Proceeding, the State of Maryland by and through its Department of Transportation including the Maryland Transit Administration and the MARC Commuter Rail Service ("MDOT"), hereby submits its comments on the progress reports filed by CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") (CSX and NS are collectively referred to in these Comments as "Applicants") on June 3, 2002. In Decision No. 7, the STB specifically raised the question whether the parties believe that this Oversight Proceeding should be continued. For MDOT, the answer is a resounding "yes".

MDOT has continued to work with both CSX and NS to achieve the benefits for the State that the railroads touted as part of their applications and during the proceedings in F. D. No. 33388 (Sub-No. 1), *et al., CSX Corporation, et al. – Control and Operating Leases/Agreements*

- - *Conrail, Inc., et al.*, Decision No. 89 (Service Date July 23, 1998). NS has completed none of the capital infrastructure improvements it described either in the Operating Plan or in the Letter Agreement with the State dated September 24, 1997 that formed a part of the consideration for the State's support of the application.

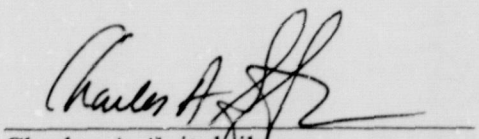
With respect to CSX, the State continues to discuss the improvements that were part of the Letter Agreement dated September 24, 1997, that was consideration for the State's support of the CSX part of the proposed transaction. MDOT has commented previously on the impacts of the proposed transaction on the MARC train service, and has seen marked improvement on a regular basis on the Camden Line service but a continuing intermittent problem on the Brunswick line. There, notwithstanding the railroad's representation that there is plenty of capacity on the line to handle the freight traffic and the commuter rail traffic, there appear to be capacity issues on the line.

Both CSX and NS made numerous representations to the State during the course of the initial approval proceedings and in the Letter Agreements that have not yet been fulfilled. This Oversight Proceeding is intended to ensure "applicants' adherence to the various representations that they have made on the record during the course of this proceeding." *Id.* at 161. Because not all have been fulfilled, and in order to preserve the incentive to CSX and NS that is created by

the presence of this continuing oversight, MDOT asks this Board to continue this proceeding for the full five years originally contemplated in *Decision No. 89.*

Dated: July 17, 2002

Respectfully submitted,



Charles A. Spitulnik
Alex Menendez
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001
(202) 842-2345

Counsel for the State of Maryland

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing Comments of the State of Maryland on behalf of its Department of Transportation to be served by first class mail upon all parties of record on the service list of this Oversight Proceeding (F. D. No. 33388 (Sub-No.91)).

Dated this 17th day of July, 2002.

Charles A. Spitulnik

STB FD-33388 (SUB 91) 7-17-02 D 205866

Title This Jacket

STB FD-33388 (Sub-91) 7-17-02 D

ID-205866

City of Cleveland
Jane L. Campbell, Mayor

Department of Law
Subodh Chandra, Director
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
216/664-2800 • Fax: 216/664-2663
www.city.cleveland.oh.us

205866

July 16, 2002

The Honorable Vernon Williams, Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

RE: Finance Docket No. 33388 (Sub-No. 91)
Comments of City of Cleveland to CSX Corporation and CSX Transportation's Third Submission to Limit Oversight of the Surface Transportation Board

Dear Secretary Williams:

Enclosed for filing is the Original and 11 copies of the above referenced document. Please return the extra time-stamped copy to me in the self-addressed stamped envelope enclosed herein.

If you have any questions, please do not hesitate to contact me at (216) 664-4303.

Very truly yours,

K Novak

Katie K. Novak
Assistant Director of Law

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

FINANCE DOCKET NO. 33388 (Sub-No. 91)

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

(GENERAL OVERSIGHT)

COMMENTS SUBMITTED BY
THE CITY OF CLEVELAND, OHIO

RE:
THIRD SUBMISSION BY APPLICANTS CSX CORPORATION AND CSX TRANSPORTATION, INC.

Communications with respect to this document should be addressed to:

Subodh Chandra
Director of Law
Richard F. Horvath
Chief Corporate Counsel
Katie K. Novak
Assistant Director of Law
City of Cleveland
Department of Law - Room 106
601 Lakeside Avenue
Cleveland, Ohio 44114
(216) 664-4303
knovak@city.cleveland.oh.us

Counsel for the City of Cleveland, Ohio
Dated: July 16, 2002

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

FINANCE DOCKET NO. 33388 (Sub-No. 91)

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

(GENERAL OVERSIGHT)

COMMENTS SUBMITTED BY
THE CITY OF CLEVELAND, OHIO

RE:
THIRD SUBMISSION BY APPLICANTS CSX CORPORATION AND CSX TRANSPORTATION, INC.

The City of Cleveland, Ohio ("Cleveland") respectfully submits its comments to the Surface Transportation Board ("Board") objecting to the request by CSX Corporation and CSX Transportation, Inc. (collectively, "CSXT") to limit the Board's oversight concerning the impact and implementation of the Conrail control transaction (the "Transaction") authorized by the Board in Decision No. 89 in Finance Docket No. 33388 (served July 23, 1998). Cleveland urges the Board to reject the request because CSXT has not honored its obligations to Cleveland to assist in noise mitigation and to provide critical train traffic data.

In Decision No. 89, the Board conditionally approved the applications by CSXT and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") to acquire control of Conrail, Inc. and Consolidated Rail Corporation (collectively, "Conrail") and to divide the operations of a portion of the assets of Conrail between CSXT and NS. In the course of that proceeding, Cleveland and CSXT entered into a settlement agreement (the "Negotiated Agreement") on June 4, 1998 to address various impacts on Cleveland arising from the Transaction.

On July 14, 2000, Cleveland submitted its comments to the statements made by CSXT and NS in the "First Submission By Applicants CSX Corporation and CSX Transportation, Inc.," filed with the Board on June 1, 2000, and the "First General Oversight Report of Norfolk Southern Corporation and Norfolk Southern Railway Corporation," filed with the Board on June 1, 2000.

Cleveland submitted comments concerning:

- the significant environmental impact on Cleveland resulting from the unexpectedly large volume of rail traffic following June 1, 1999 (the "Split Date"), and the lack of proper maintenance of railroad property by CSXT; and
- the status of NS and CSXT's compliance with their respective settlement agreements with Cleveland.

Cleveland's comments addressed various provisions of the Negotiated Agreement between Cleveland and CSXT that remained unfulfilled and required ongoing consultation between the parties, such as the construction of noise walls, expenditure of funds for

fencing and landscaping, and marketing of surplus properties. Cleveland noted that disagreements between the parties regarding these outstanding issues arose repeatedly, although both parties continued to make good-faith attempts to resolve the issues. On July 13, 2001, Cleveland submitted its comments to the statements made by CSXT in the "Second Submission By Applicants CSX Corporation and CSX Transportation, Inc.," filed with the Board on February 2, 2001.

Cleveland is submitting comments concerning various provisions of the Negotiated Agreement between Cleveland and CSXT that remain unfulfilled and require continued consultation between the parties. In preparing these comments, Cleveland has considered the statements made by CSXT in the "Third Submission By Applicants CSX Corporation and CSX Transportation, Inc.," filed with the Board on June 3, 2002, (the "CSXT Report").

On page 54, section XI.1.d of the CSXT Report, CSXT states that it is in compliance with the terms of its Negotiated Agreements. Unfortunately, CSXT is not in compliance with the terms of the Negotiated Agreement entered into between CSXT and Cleveland. Although the parties have resolved many of the issues surrounding the various rights and obligations of the parties contained in the Negotiated Agreement, continued oversight of the Board has been invaluable in promoting the cooperation of CSXT to achieve resolution of these issues. Cleveland is skeptical that without this Board's continued oversight, any outstanding issues will ever be resolved.

A. Noise Mitigation Structures

Paragraph 1. H. of the Negotiated Agreement states:

> To the extent that any noise mitigation structures are to be constructed or installed on CSX's right of way or other CSX property, the City shall be required to consult with CSX and to obtain CSX's concurrence with respect to the design, schedule for construction and/or installation, and, to the extent permitted by law, the identity of individuals or entities performing the construction and/or installation. *CSX agrees not to unreasonably withhold such concurrence.* The City understands that all noise mitigation structures or landscaping constructed and/or installed on CSX's right of way and/or property must be in compliance with any applicable federal law or regulations governing railroads, including but not limited to the regulations of the Federal Railroad Administration, and *must conform with any applicable engineering and other standards of CSX.* CSX shall grant the City such easements or licenses as may be necessary for construction and/or installation of such noise mitigation structures and landscaping.

(emphasis added).

Under the quoted provision of the Negotiated Agreement, CSXT agreed it would not unreasonably withhold concurrence with the design, schedule for construction and/or installation of any noise mitigation structures. Nevertheless, to this date, CSXT has failed to approve plans for noise walls that were delivered to CSXT in August 2000. Although Cleveland has always been responsive to the requests of CSXT engineers, CSXT has been uncooperative and untimely in providing approvals, significantly impairing Cleveland's ability to provide noise mitigation structures to its citizens.

In Cleveland's comments to the statements made by CSXT in the "Second Submission By Applicants CSX Corporation and CSX Transportation, Inc.," filed with the Board on February 2, 2001, Cleveland listed the construction of the noise walls as an

unresolved issue in the Negotiated Agreement. The noise wall construction issue remains unresolved to this date.

Because of the long delays caused by the lack of approvals on the part of CSXT, it is unlikely that Cleveland will be able to commence the noise walls project this construction season. If oversight of this Board is terminated, it is unlikely that the noise mitigation structure project will be completed without additional significant delays caused by CSXT's withholding of review and approval of designs.

B. Lakeshore Line Study

After ongoing efforts by Cleveland that nearly escalated into a lawsuit, CSXT produced the Lakeshore Line Study ("Study") in March 2001. The Study was to be provided to Cleveland in December 1999 under Paragraph 11 of the Negotiated Agreement. The Study's purpose was to determine whether it was feasible for CSX to divert two trains from the CSX Short Line to the NS Lakeshore Line, in an attempt to alleviate some of the greatly increased train traffic.

Prior to receiving the Study, Cleveland determined that a much greater amount of train traffic was occurring on the CSXT Short Line than CSXT had represented. Since the scope of Cleveland's noise mitigation efforts depends on the number of trains traveling on the Short Line, and since CSXT claims that train diversion is not feasible, CSXT agreed to provide Cleveland with train count data on an ongoing basis. Negotiations are underway to supplement the Negotiated Agreement with the requirement that CSXT continue to provide the train-count data.

Given the extraordinary efforts required to obtain information from CSXT, oversight by the Board on this issue is essential.

The Transaction has had an enormous impact upon the City of Cleveland and has imposed burdens on its citizens neighboring the CSXT and NS rail lines. Cleveland does not believe that CSXT is currently meeting its commitments under the Negotiated Agreement, and that the risk is great that the outstanding issues will remain unresolved if the Board does not retain oversight. Issues that existed last year at the time Cleveland submitted its comments to CSXT's second submission to limit oversight have not yet been resolved. Cleveland respectfully requests that the Board continue to oversee compliance by CSXT of its obligations under the Negotiated Agreement.

Respectfully submitted,

Subodh Chandra
Director of Law

Richard F. Horvath
Chief Corporate Counsel

By: Katie K Novak

Katie K. Novak
Assistant Director of Law
City of Cleveland
Department of Law - Room 106
601 Lakeside Avenue
Cleveland, Ohio 44114
(216) 664-4303
knovak@city.cleveland.oh.us
Counsel for the City of Cleveland, Ohio

Dated: July 16, 2002

VERIFICATION

STATE OF OHIO)
) SS:
CITY OF CLEVELAND)

I, COLLETTE APPOLITO. being duly sworn, depose and say that I am qualified and authorized to file this Verification, and that I have read the foregoing submittal by the City of Cleveland, know the factual contents thereof, and that the factual statements contained therein are true as stated to the best of my knowledge, information and belief.

Collette Appolito
COLLETTE APPOLITO

Subscribed and sworn to
before me this 16
day of July, 2002.

Theodora M. Monegan
Notary Public

My Commission expires:

THEODORA M. MONEGAN, Attorney-At-Law
Notary Public - State of Ohio
My Commission has no expiration date
Sec. 147.03 R.C.

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2002, a copy of the Comments Submitted by the City of Cleveland, Ohio was served by first class mail, postage prepaid, or more expedited method, upon the counsel for Applicant CSXT and upon all parties of record.

Katie K Novak

Katie K. Novak
Assistant Director of Law
City of Cleveland
Department of Law - Room 106
601 Lakeside Avenue
Cleveland, Ohio 44114

STB FD-33388 (SUB 91) 7-17-02 D 205864

Title This Jacket

STB FD-33388 (Sub 91) 7-17-02 D

ID-205864

LAW OFFICE

MCLEOD, WATKINSON & MILLER

MICHAEL R. MCLEOD
WAYNE R. WATKINSON
MARC E. MILLER
RICHARD T. ROSSIER
CHARLES A. SPITULNIK
RICHARD PASCO
ALEX MENENDEZ
ELIZABETH A. HAWS**
AMY B. JONES***

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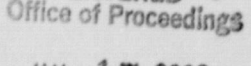
KATHRYN A. KLEIMAN*
OF COUNSEL
(*Admitted in Virginia only)

ROBERT RANDALL GREEN
LAURA L. PHELPS
GOVERNMENT RELATIONS

205864

July 17, 2002



Hon. Vernon A. Williams
Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Finance Docket No. 33388 (Sub-No. 91)
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 33388 (Sub-No. 91)

Dear Sir:

I am enclosing for filing the original and twenty-five (25) copies of the Comments of the New York City Economic Development Corporation (NYC-4) in this proceeding. I am also enclosing a 3.5 inch diskette with this document.

In addition, I am enclosing one additional copy of this document which I ask that you date stamp and return to our messenger.

Sincerely,

Charles A. Spitulnik

cc: Julia Farr, Esquire
All parties of record in F. D. No. 33388 (Sub-No. 91)

NYC-4

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C.

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

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

(GENERAL OVERSIGHT)

COMMENTS OF
THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

Pursuant to Decision No. 7 (Service Date June 11, 2002) in this Oversight Proceeding, the New York City Economic Development Corporation acting on behalf of the City of New York, New York ("NYCEDC") hereby submits its comments on the progress reports filed by CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") (CSX and NS are collectively referred to in these Comments as "Applicants") on June 3, 2002.

NYCEDC has continued its dialog with both CSX and NS about issues related to the implementation of the transactions approved in F. D. No. 33388 (Sub-No. 1), *et al., CSX Corporation, et al. – Control and Operating Leases/Agreements - - Conrail, Inc., et al.*, Decision No. 89 (Service Date July 23, 1998). There remain possibilities for enhancing the service offerings and opportunities available to the shipping public in New York City and on the east side of the Hudson River. Happily, the railroads that serve the market appear willing to discuss

those enhancements and NYCEDC looks forward to continuing to work with them to find ways to achieve them.

In Decision No. 7, the STB specifically raised the question whether the parties believe that this Oversight Proceeding remains of value. For NYCEDC, the answer is clearly "yes". Work remains to be done, the effects of this transaction continue to unfold, and the potential remains that either a public agency or a shipper may need to ask this Board to step in to determine that "additional conditions are necessary to address unforeseen harms caused by the transaction." *Decision No. 89* at 160.

In addition, *Decision No. 89* requires CSX and NS to provide regular reports of origins, destinations and routings for motor carrier traffic at their intermodal terminals in Northern New Jersey and Massachusetts. *Id.* at 82. Decision No. 5 in this Oversight Proceeding (Service Date February 2, 2001) required the railroads to continue providing those reports directly to NYCEDC's representatives. (*Id.* at 32 n.55.)[1] This information remains valuable to NYCEDC. It provides important data on the volume of intermodal traffic that is off-loaded from rail to truck for direct transport to the east-of-the-Hudson market. This is useful for understanding the volume of truck traffic and the environmental consequences of this traffic for the region. The market trend information derived from these data is critical to informing feasibility analyses of many publicly owned rail freight facilities in that market. This trend information will continue to

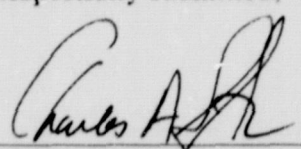
[1] It is not clear to NYCEDC whether NS and CSX are preparing and submitting this information as part of the Operational Monitoring that is part of the ongoing obligation following the approval of the proposed transactions, or of the reporting related to this Oversight Proceeding. If the reporting is part of this Oversight Proceeding, then the reporting should be continued for the remaining two years of this Proceeding. If it is part of the Operational Monitoring, then the decision of Melvin F. Clemens, Jr., Director of the STB's Office of Compliance and Enforcement, dated June 17, 2002, to permit the railroads to discontinue the weekly and monthly operating reports effective with the weekly report for the week ending June 28, 2002 and the monthly report for the month ending June 30, 2002, should be rescinded, at least to the extent that it applies to this intermodal traffic information. That decision was made without notice and comment to the public that might have an interest in the information provided, and, should be reversed to the extent that it is contrary to the interests of parties that rely on the data who do not have recourse to the information from other sources.

be important after completion of the Cross Harbor Freight Movement Project Environmental Impact Statement that relates to funding Cross Harbor Improvements. The intermodal operational reporting is also needed to help transportation agencies assess multimodal use of the Hudson River crossings, as congestion increases over time.

Moreover, both CSX and NS made numerous representations both to NYCEDC and to the shippers during the course of the initial approval proceedings, and this Oversight Proceeding is intended to ensure "applicants' adherence to the various representations that they have made on the record during the course of this proceeding." *Id.* at 161. Not all have been fulfilled. In order to preserve the incentive to CSX and NS that is created by the presence of this continuing oversight, NYCEDC asks this Board to continue for the full five years originally contemplated in *Decision No. 89.*

Dated: July 17, 2002

Respectfully submitted,



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Counsel for the New York City
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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing Comments of the New York City Economic Development Corporation to be served by first class mail upon all parties of record on the service list of this Oversight Proceeding (F. D. No. 33388 (Sub-No.91)).

Dated this 17th day of July, 2002.

Charles A. Spitulnik

Title This Jacket

STB FD-33388 (Sub-91) 6-3-02 D

ID-205522

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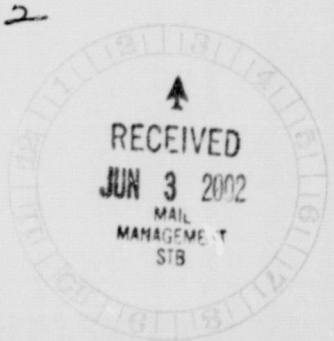
205522

BY HAND



The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
1925 K Street, NW
Washington, DC 20423-0001

Re: STB Finance Docket No. 33388 (Sub-No. 91)
CSX Corporation and CSX Transportation, Inc.,
Norfolk Southern Corporation and Norfolk Southern Railway Company
– Control and Operating Leases/Agreements –
Conrail Inc. and Consolidated Rail Corporation (General Oversight)

Dear Secretary Williams:

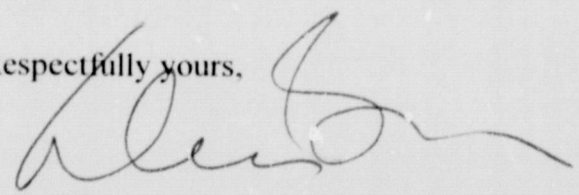
Enclosed are an original and twenty-five (25) copies of CSX-9, the "Third Submission by Applicants CSX Corporation and CSX Transportation, Inc.," for filing in the above-referenced docket.

Please note that a 3.5-inch diskette containing a WordPerfect 5.1 formatted copy of this filing is also enclosed.

Kindly date-stamp the additional copy of this letter and the "Third Submission" at the time of filing and return them to our messenger.

Thank you for your assistance in this matter. Please contact the undersigned at (202) 942-5858 if you have any questions.

Respectfully yours,



Dennis G. Lyons
Counsel for CSX Corporation and
CSX Transportation, Inc.

rjm
Enclosures

CSX-9

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388 (SUB-NO. 91)

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY — CONTROL AND OPERATING LEASES/AGREEMENTS — CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION (GENERAL OVERSIGHT)

THIRD SUBMISSION BY APPLICANTS CSX CORPORATION AND CSX TRANSPORTATION, INC.

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***CSX Corporation** and*
CSX Transportation, Inc.

Dated: June 3, 2002

ORIGINAL

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY — CONTROL AND OPERATING LEASES/AGREEMENTS — CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION (GENERAL OVERSIGHT)

THIRD SUBMISSION BY APPLICANTS
CSX CORPORATION AND
CSX TRANSPORTATION, INC.

CSX Corporation ("CSXC") and CSX Transportation, Inc. ("CSXT")[1] respectfully submit this report pursuant to the Board's Decision No. 6 served December 13, 2001, in the above-captioned matter.

This is CSX's third annual submission in this General Oversight proceeding. As CSX stated in the earlier submissions, these annual filings are not, however, in any sense the only submissions in conformance and cooperation with the Board's oversight regarding the Conrail Transaction (the "Transaction"). As the Board is

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[1] Occasionally collectively, "CSX." We will generally refer to Norfolk Southern Corporation as "NSC," its subsidiary Norfolk Southern Railway Company as "NSR," and occasionally the two of them collectively as "NS."

well aware, this has been the most intensively and thoroughly monitored rail combination[2] in history.

In addition to the weekly and monthly progress reports, before and after implementation, that the Board required CSXT to submit under Decision No. 89 in Finance Docket No. 33388 (served July 23,1998),[3] CSXT operating management has continued, and will continue, to keep the Board thoroughly informed in conferences, and through onsite inspections. This General Oversight proceeding is but one additional step the Board is taking in its overall monitoring of the progress of the Transaction.[4]

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[2] We use the word "combination" throughout this submission to apply to all railroad combinations within 49 U.S.C. § 11323. Any reference to "merger" should be similarly construed.

[3] *See* pages 162-65. We refer to this Decision throughout as "Decision No. 89" or sometimes as the "Decision."

[4] The divided allocation of Conrail's assets for operation by CSXT and NSR was effected through Consolidated Rail Corporation's ("CRC's" or "Conrail's") conveyance of all of its assets (other than the shared assets and certain of the retained assets) to one of two limited liability companies ("LLC's") wholly owned by Conrail. The two LLCs were New York Central Lines LLC and Pennsylvania Lines LLC ("NYC" and "PRR" respectively). In turn, the assets conveyed to NYC are being operated by CSXT, and the assets conveyed to PRR are being operated by NSR, under long-term Operating Agreements executed on the Split Date. To simplify the descriptions in this submission, we will refer to Conrail's assets as being "allocated" to CSXT or NSR, to refer to the process just described. The simplified descriptions do not purport to change the actual legal status of the assets in question and the rights to them.

I. INTRODUCTION

After the first annual round of General Oversight filings, the Board analyzed the record and, in Decision No. 5, served February 2, 2001, concluded that "CSX and NS have substantially resolved their transitional operational and service problems and that the carriers are in the process of successfully integrating from an operational perspective their respective portions of Conrail." Decision No. 5 at 10-11. In its decision following the second annual round of filings, the Board noted (citing a statement by the DOT) that no party had expressed concern as to any "ongoing transaction-related service disruptions." Decision No. 6 at 3, served Dec. 13, 2001.

As the third anniversary of the "Split Date" arrives, it is fair to say that a substantial preponderance of the steps necessary to integrate the properties whose operation CSX acquired from Conrail have been taken. There will be, of course, many more steps that will need to be taken over time in order to carry out the Conrail Transaction, but compared to what has now been done, these further steps will be modest.

CSXT is pleased to be able to report that the railroad is performing at record or near-record levels as measured by all operational metrics. Yards are fluid and line of road train speeds are unprecedented. Transit times have improved and are more reliable.

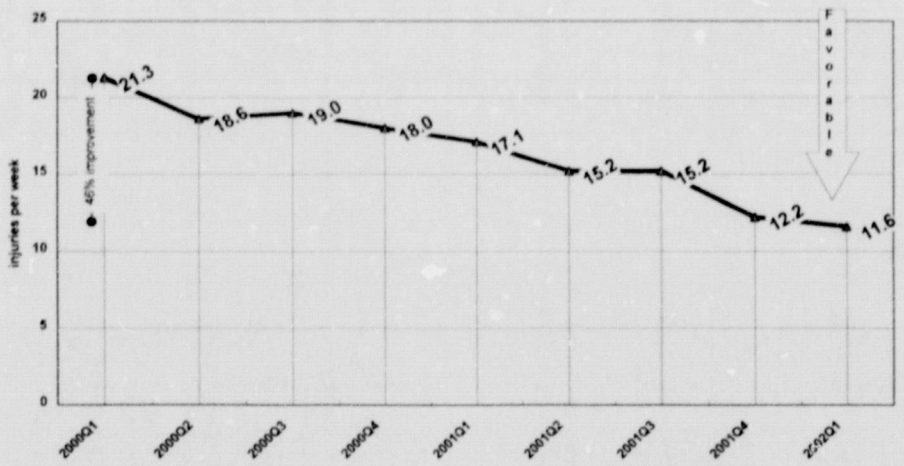
Over the past 12 months, since its last Report in this Oversight Proceeding, CSXT has improved in every operational metric reported to the Board, the Association of American Railroads ("AAR"), and the Conrail Transaction Council

("CTC"). This continues a marked trend since the first quarter of 2000. It is important to note that improvements are being made across the entire family of measurements, rather than "buying" performance improvement in one area at the expense of another. CSXT has set a post-Conrail Transaction course that results in completely new, and much higher, expectations of operational performance.

Operational performance can be divided into the categories of Safety, Inventory, Velocity, Crew Utilization, Yards/Terminals, Local Service, and Locomotive Utilization.

Safety has been enhanced most significantly, allowing more employees to enjoy incident-free working lives. Reports to the Federal Railroad Administration show a 55% improvement in number of derailments, and a 46% improvement in personal injuries, from 2000 to most current quarter.[5]

FRA Reportable Injuries



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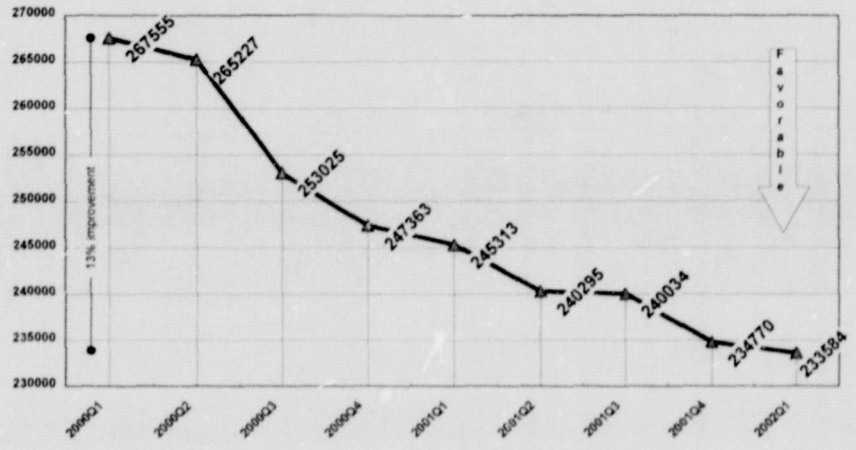
[5] At the time of writing, statistics for the second quarter 2002 have not been compiled.

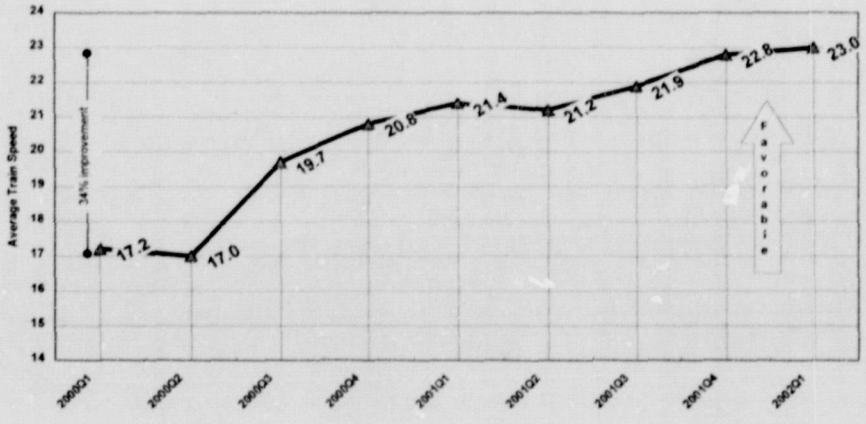
Congestion is frequently measured in terms of cars-on-line. This number is maintained by the Association of American Railroads and shows a 13% improvement since the beginning of 2000.

Cars On Line



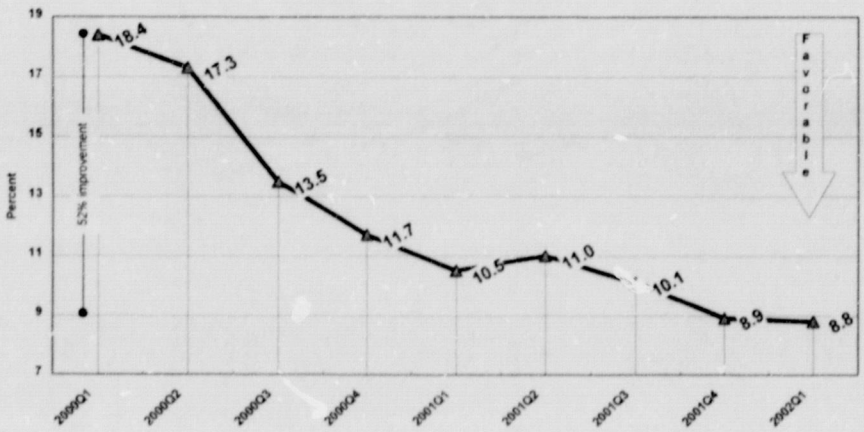
Velocity on CSXT also has improved by all measures. Overall velocity improved from the beginning of 2000 through first quarter of 2002 by 27%, and merchandise train velocity improved even more, by 34%.

Merchandise Train Velocity



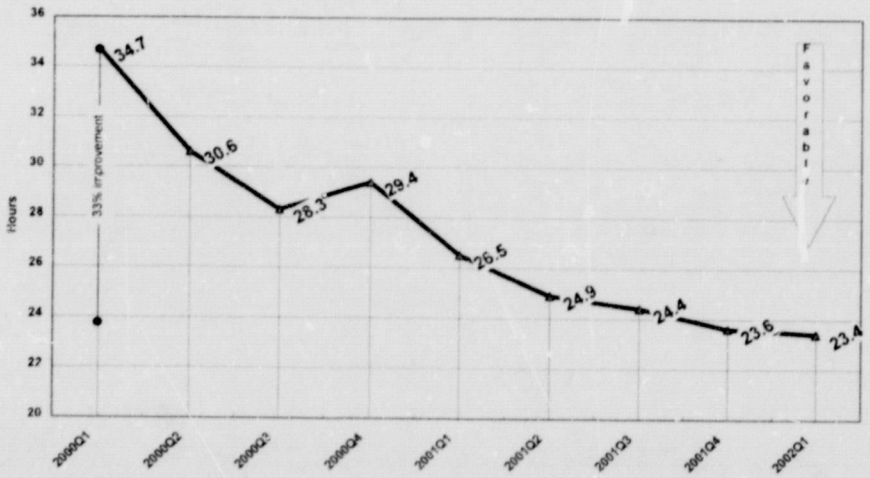
Crew Utilization has also improved in all categories. The CSXT internal measurement of crews on duty greater than 12 hours has improved 52%. Recrews are down 78%, and the number of hours that trains are delayed for crews is down 62%.

Crews on Duty > 12 Hours



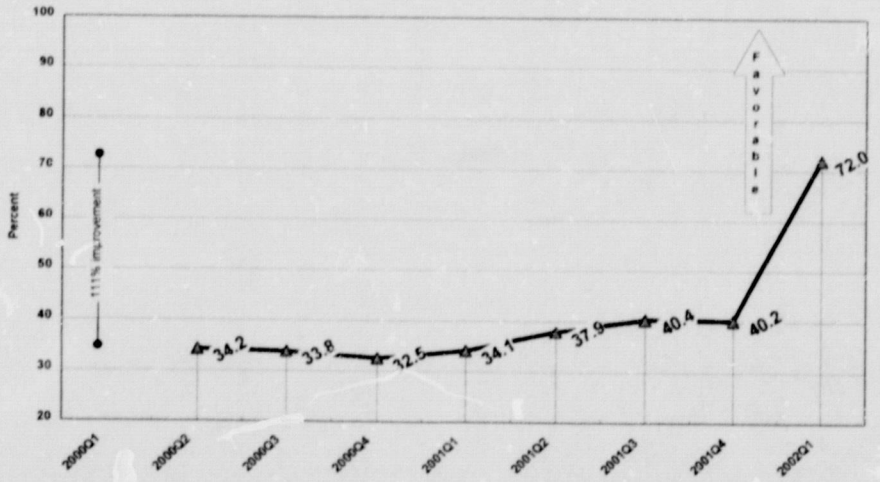
Performance in Yards and Terminals likewise has improved steadily by all measures. Overall dwell for the CSXT system has improved 33% over the period. On-time train originations have improved 80%. CSXT has recently reemphasized trains arriving at destination on time and that metric has improved 136%. The number of cars spending more than 30 hours in their current terminal has improved 62%.

System Dwell



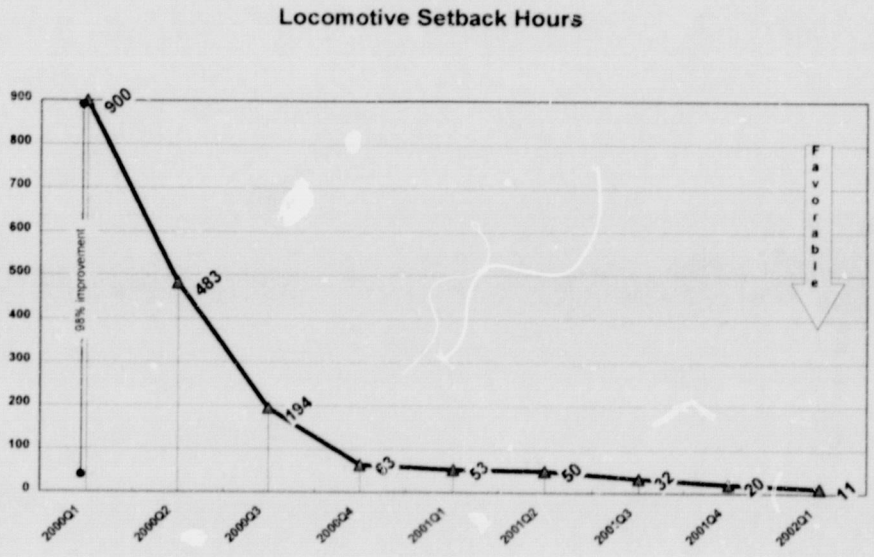
CSXT has been emphasizing its local service to customers during this time and the improvements have been noticeable. The company's measurement of local switching performance improved 12%, and an emphasis on originating local trains on time has led to a 111% improvement.

Local Train Originations



Locomotive Utilization. The final set of operational performance indicators on CSXT measures the company's effectiveness in managing locomotives. In this

regard, the number of hours of train origination delay due to power availability has improved 98%, based to some degree on an improvement in the ratio of locomotives out of service. This measurement has improved 28%.



The overall picture is of one of consistent improvement over the entire range of measurements used by CSXT to track operational performance. Many of these numbers are shown in public forums including AAR, CTC, and the Board's public reportings. The numbers reveal a healthy railroad, operating post-transaction at extremely high levels of operational excellence. In addition, the measurements continue to indicate improvement, even after achieving levels formerly considered to be the highest possible.

Much remains to be done, to be sure. Operating income needs to be increased and expenses must be reduced. CSX needs to achieve a level of revenue and income that can attract capital at favorable rates and make CSX capable of

sustaining itself in the long run to the advantage of its stockholders, customers, workers and other constituencies.

II. CAPITAL PROJECTS

In its June 1, 2001 filing, CSXT demonstrated that substantially all of the capital projects contemplated in Volume 3A of the Conrail Railroad Control Application had been completed. CSX has deferred a few projects to conserve capital for other more immediately beneficial investments with higher priority.

During the past year, CSX completed three major projects at points that are highly important to the combined CSX-Conrail: Avon Yard near Indianapolis, Frontier Yard in Greater Buffalo, and Selkirk Yard near Albany. CSX acquired these three key yards from Conrail in the Transaction. CSX installed hump processor controls at Selkirk (2001), and a similar project is now in progress at Avon. Hump processor control replacement for Buffalo is in planning. CSX is building a new Locomotive Service Center at Selkirk with expected completion by year's end. In addition, CSX is rehabilitating the hump building and constructing a new Yard Office Building at Selkirk, starting in 2002.

A key aspect of the Conrail Transaction involved increased service between Chicago and the Greater New York area and other locations in the Northeast previously served by Conrail. In the Greater Chicago area, CSX completed the installation of two 9,000-foot surge tracks at Barr Yard and the installation of TCS between Blue Island Junction and Dolton. Construction of a third main track between Blue Island Junction and Riverdale is nearly complete. A 3,400-foot segment has not yet been completed due to litigation over property needed to

relocate oil and jet fuel pipelines. These projects greatly enhance the fluidity of operations in and out of B&OCT's (a CSXT subsidiary) Barr Yard in Greater Chicago. CSX completed a new hump building and terminal office at Collinwood Yard in Cleveland, and, at Toledo, completed a new yard air system. As specified in the CSX Operating Plan for the Conrail Transaction, the Transaction increased service to and through these two Midwest locations.

The proposed 75th Street BOCT/BRC connection track on the Blue Island Subdivision in Chicago is still deferred. This project is now being considered as part of the Chicago Regional Plan.

CSX is adding 5.6 miles of second main track on CSX property in Northern New Jersey from the north end of Conrail's new second main track at North Bergen to the south end of Teaneck. This is a multiyear 2001-2003 project now over 50% complete.

Capital expenditures on rolling stock forecast for 2002 will again cover a wide range of car types, with somewhat greater emphasis on rebuilds/repairs. In 2001 CSXT repaired 2,469 cars, purchased 86 cars, and leased 1,311 cars. CSXT plans to continue in 2002 repairing 300 cars, purchasing 90 cars, and leasing approximately 500 cars. CSXT will purchase 40 GE 4400 HP AC Locomotives and will again have a significant number of locomotives in service under short-term arrangements in 2002, including short-term leases on 75 GE 4400 HP AC locomotives built in 2000 and 10 locomotives rebuilt in 2002.

Buffalo Infrastructure. — The Board has requested that reports on Buffalo Infrastructure issues be made as part of the annual general oversight reports. The following supplies that report on behalf of CSX.

In the years 2000 and 2001 through last year's report, CSXT made capital expenditures of about $1.9 million in the Buffalo area. This included expenditures for yard, shop, and TRANSFLO improvements. CSXT's plans for the Greater Buffalo area at the present time remain the same as those reported in the September 2000 Buffalo Infrastructure Submission and the June 2001 report: CSX is working toward making improvements with the aim of expanding its ability to provide service to Buffalo area customers, and believes that its railroad capacity infrastructure in the area is presently adequate.

Particular attention is being given to the enlargement of transloading (CSX "TRANSFLO") facilities and intermodal facilities. Previously reported capital improvements have doubled the former Conrail capacity at the William Street Intermodal Yard in Buffalo. The present project is to triple the Conrail intermodal capacity (from the yard's original configuration) at William Street. To make space for this, the TRANSFLO facility currently located at William Street will be relocated and enlarged. A site on property allocated to CSXT has been identified as the preferable new location for the TRANSFLO facility, and finalization of the site selection, groundbreaking and construction will follow. Agreement and funding issues have delayed progress but start of construction is still anticipated in 2002 with completion of the new TRANSFLO facility in 2003.

At that time, the old TRANSFLO facilities will be available for further enlargement of intermodal facilities at William Street.

Nonetheless, some other projects have been undertaken: the installation of heating systems in the locomotive shop at Buffalo, which has been completed; and the installation of siding on the car shop, which is now in progress. As previously mentioned, the hump processor control replacement for Buffalo is in planning.

In Buffalo and elsewhere, CSXT will continue to upgrade the combined system of CSXT and the former Conrail lines operated by it to the extent cost-justified and prudent with available capital resources.

* * * * *

Shared Assets Areas. — The Shared Assets Areas ("SAA's") continue to be the subject of capital improvements relating to the continuing Conrail-operated assets. Descriptions of the projects completed in the prior two years were supplied in the June 1, 2000 and June 1, 2001 CSX Reports. During the past year several substantial projects, involving each of the three Shared Assets Areas, were completed. These included the installation of new circuits for FN Interlocking at Trenton, MI in the Detroit Shared Assets Area; the installation of remote control at the Darby Drawbridge at Darby, PA in the South Jersey/Philadelphia Shared Assets Area; and the rehabilitation of the bridge at Bayonne, NJ in the North Jersey Shared Assets Area.

For 2002, capital expenditures planned for the Shared Assets Areas will amount to approximately $21.8 million, of which $7 million will be for information technology upgrades, $6.6 million for planned cyclical renewal of

rail and rail ties, and individual smaller projects, as well as the Northern Branch Project. For a description of the work done in collaboration with New Jersey Transit ("NJT") on the Northern Branch Project, *see* Item 6, in Part VIII, below.

III. EFFECT OF THE TRANSACTION ON JURISDICTIONAL THRESHOLD AND REVENUE ADEQUACY

The contentions by some parties during the Board's consideration of the Conrail Application in 1997-98 that CSXC and NSC had paid an excessive price for Conrail's stock, and those parties' requests for conditions that would prohibit the use of the costs of acquiring that stock in calculating jurisdictional thresholds under 49 U.S.C. § 10707(d)(1)(A) or in calculating revenue adequacy, were the subject of considerable discussion by the Board in Decision No. 89. The Board, while rejecting the arguments made by those parties, and denying their requests for conditions, set the issue as one for specific comments during the Oversight process. The Board's decision not to impose those conditions was challenged on appeal to the Second Circuit, but was upheld in 2001.

In the first annual round of Oversight presentations and comments, in the year 2000, CSX and NS furnished a detailed description of how the accounting for the costs of the Conrail stock and generally for the acquisition of Conrail was presented. CSX-1 at 21-28, NS-1 at 25-30. In its review in Decision No. 5 (at 18-19) in February 2001, the Board further discussed the issues, observed that only one public commenter had raised any issue as to the subject, and found that there was "no evidence on this record that the 'acquisition premium' or any aspect of purchase accounting rules played any role in pricing decisions made by NS or

CSX." *Id.* at 18. The Board saw no basis whatsoever for revising the decision it had made in 1998.

In the second annual round of the General Oversight process, no party whatsoever commented upon the issue or presented any evidence with respect to it, and in its December 2001 Decision No. 6, reviewing the 2001 round of comments, the Board evidently saw no reason to discuss these issues again. It thus appears to CSX that nothing has occurred to impeach the manifest correctness of the Board's original decision as to this matter.

IV. LABOR[6]

1. Implementing Agreement Process

Prior to the June 1, 1999 implementation of the Conrail Transaction, CSXT, NSR and Conrail had obtained all the implementing agreements with their respective unions, which were necessary for the Split Date implementation of the Conrail Transaction. Most of the implementing agreements were achieved through negotiations.

All litigation over the formation of the implementing agreements has been concluded. Last year we reported the existence of one proceeding (CSX-4 at 23). In December 1999, the Brotherhood of Maintenance of Way Employees ("BMWE") filed a petition to vacate the arbitration award issued by Referee

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[6] The material in this section is a general presentation of the topic, and also is responsive to Condition Nos. 21(e), 27, 77, 78, 79 and 80 in the Board's Decision No. 89.

William E. Fredenberger, Jr. in STB Finance Docket 33388 (Sub-No. 88). BMWE's petition did not criticize its settlement with CSXT, but that settlement had included the work force allocation methodology from the arbitrated implementing agreement. On January 26, 2001, the STB denied BMWE's petition to vacate the arbitration award. STB Finance Docket No. 33388 (Sub. No. 92). The BMWE, on March 2, 2001, appealed the STB's decision to the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals granted CSXT's, NS's and Conrail's motions to intervene. BMWE on November 9, 2001 filed a motion to voluntarily dismiss its appeal. The D.C. Circuit granted BMWE's motion on November 21, 2001.

Several of the implementing agreements negotiated in conjunction with the Conrail Transaction provided procedures to govern future coordinations that are determined to be necessary to realize the transportation benefits of that Transaction. For example, Chapter II of the implementing agreement with the Transportation Communications International Union ("TCU") contains the procedures applicable to future transfers of positions and/or work. Similarly, all of the implementing agreements negotiated with the various shop craft unions provided the procedures for future coordinations of work, services or operations in conjunction with the Conrail Transaction.

As anticipated, additional coordinations of work, services or operations have been necessary as a result of the Conrail Transaction. These coordinations have been accomplished, or are proceeding, either under the provisions governing future coordinations in the negotiated implementing agreements or under the employee

protective conditions which were imposed by the STB in its decision in the Conrail Transaction.

On April 19, 2002, CSXT notified the TCU of the transfer and consolidation of the typing of investigative transcript work from Selkirk, NY to CSXT's General Office typing pool in Jacksonville, FL. This coordination is being accomplished under the procedures established by the Conrail implementing agreement entered into with the TCU.

On the operations side, there have not been any Conrail coordinations this year.

CSXT, NSR and Conrail are also in the process of transferring the police work for the SAA's to CSXT and NSR. A tentative agreement was reached in early May 2002. However, since the agreement was not ratified by the scheduled arbitration date, the parties arbitrated the issue of the formation of the implementing agreement on May 20, 2002; the parties requested the arbitrator to issue a decision only if the tentative agreement is not ratified.

CSXT anticipates that other coordinations or transfers of work will likely occur from time to time. Any such future coordinations will be accomplished under the applicable implementing agreements, the two negotiated Revised Standards Agreement, or the STB-imposed labor conditions.

2. Application of Employee Protective Conditions

The STB, in approving the Conrail Transaction, imposed various employee protective conditions in ordering paragraphs 77, 78, 79 and 80 of Decision No. 89.

These employee protective conditions, however, each provided for the same level of monetary protection. Since the implementation of the Conrail Transaction, CSXT has either certified as eligible to receive protection or has received claims for labor protection from approximately 8,400 employees. CSXT has reviewed or is in the process of reviewing these claims for monetary protection. CSXT has paid protective benefits to approximately 4,300 employees since June 1, 1999.

There have been relatively few arbitrations under Article I, Section 11 of the STB's employee protective conditions over the application or interpretation of the Conrail Transaction implementing agreements.

As previously reported (CSX-4 at 27), CSXT was sued in federal district court by several former Conrail supervisors who became CSXT supervisors after Split Date. They claimed that they had improperly been denied labor protective benefits imposed by the STB in Decision No. 89 or were not being paid the correct amount of such benefits. The United States District Court in Cleveland subsequently dismissed their lawsuit, finding that the exclusive forum for resolution of disputes over an employee's entitlement to labor protection is through the dispute resolution procedures specified in the applicable STB imposed protective conditions. After the dismissai of their lawsuit, CSXT provided to the counsel for these supervisors the calculations of their protective benefits and engaged in discussions with their counsel regarding these calculations. Notwithstanding these efforts to resolve this dispute, counsel for these supervisors wrote to the National Mediation Board ("NMB") requesting the appointment of a neutral for an Article I, Section 11 proceeding for 17 claimants. CSXT informed

the NMB that the request was premature because the claimants had not followed the Section 11 mandatory procedures. CSXT is awaiting a decision whether the NMB will appoint a neutral at this time.

A few other employees' claims for *New York Dock* benefits as a result of the Conrail Transaction are in dispute. Last year, it was reported that there were two arbitrations pending (CSX-4 at 28). The dispute with the BLE Northern Committee over the calculation of test period averages has been arbitrated and CSXT is awaiting a decision from the arbitrator. The other dispute, which involved a claim for protection by 16 signalmen, was decided in CSXT's favor. This year a third claim with the BMWE will be arbitrated in August concerning their claim for protective payments.

On Conrail, there have been few disputes regarding labor protective conditions. A total of 503 employees have been certified as entitled to *New York Dock* displacement allowances, with approximately 225 displacement allowances being paid each month. Claims for displacement allowances have been submitted under the *New York Dock* protective conditions on behalf of employees represented by several labor organizations. Discussions of these claims are ongoing. Two organizations, the BMWE and the Transportation Workers Union ("TWU"), have requested arbitration, but to date the parties are still in discussion over these claims.

3. Labor Meetings on Integration and Safety

CSXT has continued its efforts to ensure frequent communications with its unions in an effort to see to it that integration and safety issues associated with the Conrail Transaction receive CSXT's prompt attention. For example, CSXT has continued to have telephone conference calls, a practice which was started after the implementation of the Conrail Transaction, although now on a less frequent basis. CSXT's senior operating, labor and safety officials participate in this call with operating unions and any other union that desires to participate. Normally present on these calls for CSXT are its Executive Vice President of Transportation, Senior Vice President of Transportation, and Vice President of Labor Relations, or their designees.

Additionally, CSXT's Transportation Department holds a quarterly meeting with all operating craft General Chairmen so that the vice president for CSXT's regions can inform the operating craft General Chairmen of regional plans and developments.

The quarterly meetings with the General Chairmen of the various shop craft unions in the Mechanical Department Safety Steering Committee also have continued. The purpose of these meetings is to review safety-related issues and policies of the Mechanical Department.

CSXT has not experienced any labor disruptions as a result of the implementation of the Conrail Transaction. CSXT believes that the improved communications with its unions and cooperative efforts have contributed greatly to the success of the ongoing implementation of the Conrail Transaction.

V. SAFETY

CSXT has continued its focus on safety as it has moved beyond the integration phase of the Conrail lines and assets into its rail system. The past year marked the completion of that integration process, a process carried out without any major safety issues or problems. While the Federal Railroad Administration ("FRA") has not yet filed its final report on safety integration contemplated by the Board's Memorandum of Understanding with FRA, CSXT understands that that FRA report is in process. As previously reported to the Board by CSXT (CSX-4 at 36), the formal integration consultations between CSXT and FRA have been completed, and FRA has advised CSXT that it has completed its review of safety integration in connection with the Conrail Transaction. The excellent and improving safety record that CSXT maintained during the first two years following the Conrail Transaction continued during the past year.

As the Board is aware, in integrating portions of the Conrail system into its own, CSXT was guided by detailed Safety Integration Plans ("SIP's") that it was required to implement pursuant to Condition 49 of the Environmental Conditions. One of those SIP's addressed the integration of Conrail operations into CSXT operations, while the other (prepared by CSX jointly with NS) concerned integration of the Conrail Shared Assets Operator ("CSAO") into the CSXT and NS systems. Both plans were implemented in consultation with the FRA, as required by Environmental Condition 49 and contemplated by the Board/FRA Memorandum of Understanding. The SIP's have now been fully

implemented and, as noted above, FRA review of SIP implementation has now been completed and the FRA is expected to file its final report with the Board.

With the completion of the SIP process, CSXT, like all other railroads, remains subject to FRA safety monitoring performed in the ordinary course of FRA oversight. CSXT continues to consult with FRA on discrete safety-related issues that arise and continues to emphasize safety as its highest priority. As explained in Part I above, CSXT has experienced continued improvement in its safety record during its implementation of the Conrail Transaction. For example, in comparison to the first quarter of 2001, CSXT experienced approximately a 30% reduction in personal injuries during the first quarter of 2002. This improvement has been experienced in departments throughout the railroad, including the engineering, mechanical and transportation departments. Further, the number of train accidents was 25% lower during the first quarter of 2002 in comparison to the same period last year, and there was an even more significant reduction in train accidents in the Northeast Region, embracing the area with the majority of track formerly operated by Conrail.[7]

VI. ECONOMIC DEVELOPMENT IN THE AREA FORMERLY SERVED BY CONRAIL

CSXT has long recognized that the lifeblood of any railroad is new or expanded customer facilities that are located on its system. Particular attention has been paid by CSXT's Industrial Development Department to new or expanded

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[7] For the favorable trend in derailments, *see* the statistics presented in Part I above.

existing businesses on the Conrail lines that are now operated by CSXT or on lines of the Shared Assets Areas.

In its filings in 2000 and 2001, CSX cumulatively reported that since June 1, 1999, a total of 69 companies had announced the construction of new or expanded facilities on former Conrail lines now served by CSXT. *See* CSX-1 at 48-49, CSX-4 at 37-38. Since those reports, 30 additional announcements by companies have been made with respect to the construction of new or expanded facilities on the Conrail lines now served by CSXT. These new projects, listed by company name, location and commodities are as follows:

NAME OF COMPANY	LOCATION		PRIMARY COMMODITY
CASEY TRANSPORTATION	Leominster	MA	Food/Paper Distribution
PCL	Taunton	MA	Plastic Pellets
HARRIS REBAR	Rochester	MA	Rebar Distribution
PLASTICAN	Leominster	MA	Plastic Bucket Manufacturing
WEYERHAUSER	Freetown	MA	Lumber Distribution
WASTE SOLUTIONS	West Springfield	MA	Waste Solutions
C. STEINWEG (BALTIMORE), INC.	Baltimore	MD	Copper/Aluminum
ENSLEY CORPORATION	Rossville	MD	Plastic Recycler
CASTROL HEAVY DUTY LUBRICANTS	Rossville	MD	Lubricant & Oil Processor
HUGO NEU SCHNITZER EAST	Jersey City	NJ	Automotive Scrap
SUNNY DELIGHT (PROCTOR & GAMBLE)	Dayton	NJ	Beverage Production
AMERICAN ROCKSALT	Troy	NY	Rocksalt Transload Facility
CANFIBRE	Lackawanna	NY	Wastewood Particle Board
INTERSTATE COMMODITIES	Troy	NY	Feed Ingredients
KOPPERS	Syracuse	NY	Utility Poles
WASTE MANAGEMENT INC.	Bronx	NY	Municipal Waste
EMPIRE BEEF COMPANY	Gates	NY	Frozen Food Distributor
DISTRIBUTION SERVICES	Liverpool	NY	Steel Distribution
CHELSEA FOREST PRODUCTS	Chelsea	NY	Lumber Distribution
APEX AGRICULTURAL	West Albany	NY	Transloading Cotton Seed
NEWCO	Newburgh	NY	Oil Manufacturing & Blending
APEX	Batavia	NY	Animal Feeds

NAME OF COMPANY	LOCATION		PRIMARY COMMODITY
DUTCHESS COUNTY RESOURCE RECOVERY AGENCY	Poughkeepsie	NY	Metal Distribution Site
AMERICAN ELECTRIC POWER	Convoy	OH	Generators
COLOR & COMPOSITES TECHNOLOGIES	Sidney	OH	Plastics
GRAMMER INDUSTRIES	Van Wert	OH	Fertilizer Terminal
SILVER LINE WINDOWS	Marion	OH	Vinyl Window Manufacturer
OWENS BROCKWAY	Erie	PA	Plastic Bottle Production
BARTON MALOW RIGGING/RELIANT ENERGY	Guldens	PA	Peak Power Plant

As noted, the foregoing list is only for announced projects. CSXT is currently involved in confidential negotiations for additional projects for new or expanded facilities in the territory formerly served by Conrail.

VII. INTERMODAL

In the past year, CSX Intermodal ("CSXI") has aggressively sought to convert business from "over-the-road" to Intermodal movement.

CSXI has approached this in several ways. Service has been improved and reliability and transit times have been brought to levels that are competitive with truck movements. This has permitted CSXI to acquire business as a low-cost alternative to truck service. New marketing approaches are being employed. CSX has been able to convert more than $15 million of business from "over-the-road" to Intermodal service in the first quarter of 2002.

Among other things, BNSF and CSXI have introduced rail movements to compete in the long haul truck lanes between Texas and the Ohio Valley, so-called "watershed" movements where historically trucks had little rail competition because of the short hauls presented for both the eastern and western carriers; CSXI has converted movements which used to involve a Detroit-to-Chicago truck

segment before a rail movement to Mexico, into a direct Detroit-to-Mexico rail intermodal route; CSXI has, in conjunction with Canadian National, opened a new intermodal gateway for movements between Eastern Canada and the Northeastern States, Mid-Atlantic Sates and the Southeastern States; CSXI has been offering new truck-competitive service between Columbus, Cleveland and Cincinnati and the Northeast; and has extended CSXI's "I-95" service between Florida and Savannah and Charleston to points in the Northeast, to include movements to New England. Transcontinental movements from the West Coast to and from Ohio and Michigan are now handled with "steel-wheel" service to the destination points in Ohio and Detroit, converting highway movements on the segment between Chicago and those eastern points.

A number of capital improvement projects have been initiated in support of Intermodal business. To increase capacity and support efficient operations in areas that have been impacted by the Conrail acquisition, CSX has been advancing the following substantial Intermodal terminal projects:

- An expansion of the CSX Intermodal terminal in Bedford Park, IL with additional track and parking. This project will enable CSX to vacate its occupancy of NS's 63rd Street terminal in South Chicago by mid-2002.
- A project to expand Intermodal terminal capacity in the Detroit, MI market. CSX, NS, and the State of Michigan are jointly progressing a project that will add capacity required by business growth in this market. The project is currently in the planning stage.

- An expansion of on-dock Intermodal terminal capacity within the Port Newark/Elizabeth, NJ marine terminal complex. CSX will begin service to a second Intermodal terminal at this port in mid-2002.

VIII. RELATIONSHIPS WITH AMTRAK AND COMMUTER AUTHORITIES

In Decision No. 1 in this General Oversight Proceeding, the Board explained that it would monitor "transaction-related impacts on Amtrak passenger operations and regional rail passenger operations" during the five-year oversight period.

During the period June 1, 2001 through May 31, 2002, CSXT has had generally positive relationships with Amtrak, MBTA, MARC, Metro North, NJT, SEPTA and VRE. CSXT continues to believe, as it did during the prior two years of the oversight period, that the Conrail Transaction has had no significant adverse effect on these passenger services, and indeed, that commitments made by CSXT in connection with Finance Docket No. 33388 have provided benefits to a number of these passenger agencies.

1. Amtrak

The oversight condition and the May 14, 1998 agreement with Amtrak require that Amtrak submit quarterly reports to the Board regarding its on-time performance. During the past year, Amtrak submitted a report on August 22, 2001 for the period April 1, 2001 through June 30, 2001. This report was sufficiently favorable that Amtrak proposed to eliminate regular reporting to the Board:

> During the second quarter of 2001, Amtrak's overall on-time performance on both CSX- and NS-operated lines acquired from Conrail was better than during the "base period" preceding the implementation of the Conrail acquisition. This is the first quarter in which this has been the case. . . .
>
> As has been the case for some time now, CSX on-time performance on ex-Conrail lines (89.3%) was better than Conrail's "base period" performance on the same lines, although it was slightly lower than the previous quarter's 92.7% figure.
>
> The results of the past quarter suggest that the majority of the on-time performance problems that developed on NS and CSX in the aftermath of the Conrail acquisition have been remedied. The freight train congestion and slow order problems that remain are generally limited to a few CSX lines that Amtrak has identified in previous reports, including CSX's Jacksonville-to-New Orleans line and portions of CSX's Washington-to-Florida lines. (Performance of Amtrak trains operating over these lines is not reflected in the attached data.) However, even on some of these lines, there have been positive developments during the last quarter. For example, a joint initiative by Amtrak and CSX to reduce delays on Amtrak's Lorton, VA-to-Sanford, FL Auto Train has resulted in an immediate and significant improvement in that train's on-time performance.

CSXT concurs with Amtrak's assessments.

The Board agreed to Amtrak's request to discontinue the quarterly performance reporting by letter dated October 2, 2001 from Melvin F. Clemens, Jr., Director, Office of Compliance and Enforcement, to Richard G. Slattery, Senior Associate General Counsel of Amtrak.

Overall CSXT system on-time performance improved four percent from calendar year 2000 to calendar year 2001, and that improvement was maintained during the period January through April 2002.

As we reported last year, CSXT management continues to focus attention on problem areas as they arise on a daily basis. CSXT managers confer with Amtrak managers each morning (seven days a week) to facilitate Amtrak operations throughout the CSXT system. CSXT and Amtrak also continue to participate in the "Partners in Performance" program which brings local CSXT and Amtrak management together to address problems on the local level. In addition, during the last year, CSXT and Amtrak commenced working together on a "Six-Sigma"[8] process to improve on-time performance of Amtrak's Florida service.

2. **Chicago Metra**

CSXT continues to comply with its agreement with Metra dated February 19, 1998. The operations protocols for the movement of Metra trains through the 75th Street (Forest Hill) interlocking (controlled by CSXT), Belt Junction interlocking (controlled by the IHB), and Chicago Ridge interlocking (controlled by the BRC) are working as designed.

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[8] As reported in the Second Annual Submission, CSXT was not satisfied with on-time performance of Amtrak service between Washington, DC and Florida (Amtrak's Silver Service and Auto-Train). The purpose of the "Six-Sigma" process, pioneered by GE, is to identify the root cause[s] of a problem, in this case the on-time performance of Amtrak's Florida service.

3. **MARC**

MARC on-time performance averaged 91% during calendar year 2001 and an excellent 95% during the period January 1 through April 30, 2002. Pursuant to the current agreement between CSXT and MARC, which was approved in 2000 and is effective through June 30, 2003, preliminary engineering work is underway on projects to enhance capacity on the Camden Line. Schedule changes to reduce conflicts between MARC trains that took effect on April 30, 2001 are working as designed.

Progress was made on a number of capital improvements during the past year. CSXT's construction of facilities for the new Frederick service was completed on schedule and train operations began on December 17, 2001. CSXT also continues to participate in planning and preliminary engineering/ environmental assessments for the Penn Line Connection (to the Camden Line). Finally, federal funding has been earmarked for a project to modernize signaling and add higher-speed crossovers between Weaverton, MD and Martinsburg, WV and CSXT is presently designing the improvements. The project is scheduled for completion in 2003.

4. **MBTA**

MBTA's on-time performance on the Boston Main Line (controlled by CSXT) was off slightly from 98% during calendar year 2000 to 95% during calendar year 2001 because of a significant capital improvement project on the line (signal upgrades and installation of a new interlocking near Framingham). During

the period January through April 2002, however, on-time performance has returned to an excellent 98% (once again exceeding the target of 96% on-time performance set in the October 31, 1997 agreement with the Commonwealth of Massachusetts).

We reported in the First Submission that CSXT agreed to extend, as of May 8, 2000, six existing MBTA train schedules on the Boston Main Line from Framingham to Worcester (equivalent to three round trips). We reported last year that CSXT had agreed to add three additional round-trip schedules between Framingham and Worcester commencing April 30, 2001. On-time performance remains high even with this additional service.

As provided in the October 31, 1997 agreement, CSXT continues to cooperate regarding MBTA's proposed extension of commuter service to Fall River and New Bedford. Construction of four replacement bridges is underway and property acquisition and operational agreements are being negotiated. MBTA's goal is to introduce service to Fall River and New Bedford in 2005. In addition, although not required to do so by the 1997 agreement, CSXT is negotiating with MBTA regarding the extension of MBTA's Old Colony Service Line to Greenbush.

5. **Metro North**

Metro North owns and thus controls all the lines over which CSXT operates on the east side of the Hudson south of Poughkeepsie to New York City. On-time performance of Metro North trains is thus generally not an issue. In our First Submission (at 61), we reported "some operating problems on the Metro North

Line south of Poughkeepsie caused by CSXT locomotives and freight cars that were not in compliance with Metro North requirements to accommodate the third rail required for its passenger operations." Last year, we reported that CSXT operations over Metro North south of Poughkeepsie had improved but were still not at a quality level acceptable to CSXT. Tightened mechanical inspections have significantly reduced the number of third rail "hits" (cars activating the third rail detector) and other mechanical problems. In February 2002, Metro North assessed the freight operation as satisfactory. CSXT will continue its efforts to maintain this good record.

CSXT continues to participate in the "East Side of the Hudson Users" task force that has been formed to plan for growth in train operations by both freight and passenger users between Albany and New York. The other participants include Amtrak, Canadian Pacific, Metro North and the New York State Department of Transportation. CSXT is in the process of evaluating a proposal for a line capacity study that was made in April 2002.

6. **New Jersey Transit**

NJT owns and thus controls most of the lines with NJT passenger service over which CSXT and the Conrail operate. NJT on-time performance is thus generally not an issue on these lines and no specific problems have arisen following the Conrail Split. CSXT participates in regular coordinating meetings with NJT.

Construction of NJT's Townley Station on the NK to Aldene line segment of the Lehigh Line (controlled by Conrail) is expected to be completed in late Spring 2002.

Progress was made in the past year toward the goal of shifting freight traffic from a segment of the former Conrail River Line south of the Weehawken Tunnel at North Bergen, NJ to the parallel Northern Branch to accommodate NJT's new Hudson Bergen light rail service on the River Line. Conrail's petition for abandonment of that segment of the River Line was granted by the Board during the past year.[9] Doubletracking of the "Northern Branch" is underway and one of two highway grade separations was completed. CSXT will transfer its freight traffic from the River Line to the Northern Branch when yard leads at North Bergen are shifted and when the second grade separation is completed.

CSXT is continuing to meet with NJDOT and NJT representatives regarding studies of a number of other proposals for new passenger rail service and will cooperate in their development where feasible — *i.e.*, where the passenger service will not result in a compromise of safety standards, increased liability for the freight railroads, direct or indirect subsidy of passenger service by freight, or reduced capacity of cost-efficient, reliable freight service.

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[9] *See Conrail — Abandonment of the Weehawken Branch — in Hudson County, NJ*, STB Docket No. AB-167 (Sub-No. 766N); *Conrail — Abandonment of the River Line — in Hudson County, NJ*, STB Docket No. AB-167 (Sub-No. 1067N).

7. **SEPTA**

SEPTA owns about half the lines with SEPTA passenger service, but under present contractual arrangements, SEPTA controls all of the lines over which it operates. SEPTA's on-time performance is thus generally not an issue on these lines and no specific problems have arisen following the Conrail Split, including with respect to SEPTA's R3 and R8 passenger services which operate over portions of the CSXT Trenton Line.

8. **VRE**

On-time performance averaged an excellent 95% during calendar year 2001 and remained at 95% during the period January-April 2002. VRE ridership has also continued to increase over the past year. This record is particularly good in light of the fact that only 5 miles of the 54-mile third main track VRE has committed to build is presently in place.

Construction was completed in October 2001 on a new interlocking junction with NS in Alexandria that doubled operating speed. As agreed with VRE, based on completion of this project, a new Fredericksburg mid-day train began operation on April 29, 2002. Moreover, CSXT, VRE and Virginia's Department of Rail and Public Transportation completed during the past year a number of capacity studies and have selected several additional capital projects as priority construction projects.

VRE's agreement with CSXT was amended through May 3, 2002, and has been extended to November 8, 2002. Negotiations are underway on a new long-term agreement.

IX. CHICAGO OPERATIONS/IHB

In its five-year oversight of the Transaction, the Board included review of the impact of the Transaction within the Chicago Switching District (or Chicago Terminal) and the effect of the joint control by CSX and NS of the 51% interest held in IHB by Conrail.[10] CSXT's experience has been that Chicago Terminal operations have been working very well and that the Conrail acquisition has had no adverse effect. Over the past twelve months, operations within the Chicago Terminal have continued to improve, due in no small part to capital investments and increased cooperation between interchange partners.

Operations in Chicago have continued to benefit from the numerous capital improvements made in the Chicago area in prior post-split years, particularly those on the BOCT, Barr and Blue Island Subdivisions and in the Barr Yard vicinity. As CSXT reported last year, the completion of these infrastructure projects and the

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[10] Prior to the Split, IHB was owned 51% by Conrail and 49% by Soo Line Railroad. After the Split, NSC and CSXC indirectly held 29.58% and 21.42% equity interests in IHB, respectively. Pursuant to an Ancillary Agreement between CSXC and NSC, the ownership interest of Conrail in IHB continues to be held by the continuing Conrail entity, and CSXC and NSC have the right to select an equal number of directors of IHB to be elected by Conrail. See Agreement Relating to the Contractual Rights and Ownership Interest of Consolidated Rail Corp. with respect to the Indiana Harbor Belt Railroad Company ("IHB Agreement"), Vol. 8C, Exhibit FF, at 693 *et seq.* of the Control Application (CSX/NS-25).

cooperative efforts of the carriers in the Terminal allowed the Terminal to accomplish an unprecedented level of fluidity. CSXT's experience over the past twelve months has been that operations in the Chicago Terminal have consistently maintained the significant improvement in fluidity over pre-transaction levels.

A review of key measurements demonstrates this marked improvement. In the first quarter of 2000, Chicago Terminal Dwell time was 23.9 hours. By the second quarter 2000, the dwell time had improved dramatically to 19.5 hours and continued to improve over the next two years at levels consistently below 19.5 hours. As of the second quarter 2002 the average dwell time was 17.8 hours, a 26% improvement over the first quarter 2000 level. By mid May 2002, the Chicago Gateway Operations measure for the percent of trains on-time-to-two hours late had moved favorably to 80% compared to 76.1% for the same week in 2001. The measure for the percent of trains greater than 6 hours late moved favorably to 5% from earlier fluctuating levels. The average for the three weeks prior to May 16, 2002 (11.7%) compares to 10.7% for the same three weeks in 2001, which is significantly improved from 19.6% in 2000.

A recent Board decision promises to further enhance fluid operations in the Chicago Terminal. In Docket No. AB-31 (Sub No. 38), *CSX Corporation and CSX Transportation, Inc. — Adverse Abandonment Application — Canadian National Railway Company and Grand Trunk Western Railroad Inc.*, (served Feb. 1, 2002), the Board opened the way for CSX to improve access to the 59th Street intermodal terminal and reduce congestion on a BOCT line caused by trains waiting to access that terminal. The trackage, known as Track No. 239, is located just north of the

59th Street terminal . Grand Trunk Western Railway's ("GTW") parent, CN, had leased the property from Conrail and that interest was allocated to NYC, which is managed and controlled by CSX. To facilitate access to the 59th Street facility and avoid congestion on the BOCT line, CSX/NYC sought control of the use of the trackage by terminating the lease. Although GTW had not used its portion of Track No. 239 for years, CN/GTW challenged the lease termination and refused to relinquish the track, thus forcing CSXT to apply to the Board for an adverse abandonment. The Board granted CSXT's adverse abandonment application, finding that abandonment of the track by GTW and its control by CSXT would further the public interest. Following the Board's decision, the lease of the property underlying the track was terminated and CSXT consummated its purchase of the trackage from GTW. By combining the GTW portion of the track with the use of CSXT's own segment, CSXT will have an ample staging area for CSXT trains, thus eliminating costly and time-consuming backups and delays on the BOCT mainline and improving access to the 59th Street intermodal facility. As a result, intermodal service in Chicago will be greatly improved, resulting in even more fluid and efficient rail operations in the Chicago Terminal area.

The most impressive improvements in the Chicago Terminal have come about as a result of increased cooperative efforts between CSXT and its interchange partners. Over the past twelve months, CSXT has continued to build on the successful bilateral carrier arrangements described in its report in the 2001 oversight proceeding (CSX- 4 at 53). Specifically, CSXT had made successful arrangements with one Western railroad to preblock traffic in ways that greatly

improved transit times for cars interchanged between that railroad and CSXT. Traffic had been shifted from the Belt Railway of Chicago ("BRC") where it had been classified to direct interchange at the IHB's Blue Island Yard. The Western railroad had agreed to preblock the traffic into three blocks, all for CSXT forwarding.

In the past year, CSXT has enhanced the arrangement with that railroad through additional blocking arrangements for westbound movements. In addition, CSXT has entered into similar blocking and run through arrangements with another Western railroad with respect to eastbound movements. Traffic moving from Galesburg, IN to Selkirk, NY that formerly required classification at Chicago by the BRC or IHB is now operating under a run-through agreement that eliminates the need for switching within the Terminal.

CSXT's blocking arrangements and run through agreements with its Western rail partners have resulted in a significant decrease in the number of cars handled by the intermediate switch carriers within the Chicago Terminal. In 2001, there were 28,351 fewer CSXT cars classified by BRC than in 2000, and 37,323 fewer CSXT cars classified by the IHB. The elimination of intermediate handling for these 65,674 cars substantially contributed to improved transit times and greater fluidity in the Chicago Terminal.

CSXT is particularly pleased with the progress of the AAR Rubber Tire Task Force and the Chicago Planning Group, which have been working diligently to reduce the number of trailers moving over highways in the Chicago area. Through remarkable cooperation among interchange partners, the railroads have

been able to improve rail-to-rail or "steel wheel" interchanges and thus to reduce sharply the incidence of cross-town rubber tire interchanges. The number of rubber tire interchanges was reduced from 94,781 in 2000 to 49,940 in 2001 – a dramatic 53% reduction in cross-town truck traffic moving over Chicago highways.

X. IMPLEMENTATION OF GENERAL CONDITIONS

Here we present CSX's report on the general (*i.e.*, nonenvironmental) conditions which are found in Decision No. 89 starting at page 173, and which are not elsewhere discussed herein.[11]

1. NITL Conditions, As Modified by Board (Cond. 20)

A package of conditions was agreed upon in December 1997 between the applicants and the National Industrial Transportation League ("NITL").[12] CSX's two earlier annual reports canvassed in some detail the operation of the conditions

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[11] Environmental conditions are discussed in Part XI of this submission.

[12] The NITL Settlement is discussed in Decision No. 89 at 53-58.

"Cond." numbers relate to the numbered ordering paragraphs found in Decision No. 89, pages 173 *et seq.* Omitted numbers are of ordering paragraphs not containing conditions, or containing conditions pertaining entirely to NS, or which are otherwise dealt with herein.

We have also omitted discussion of the following conditions which were discussed in earlier years' submissions and were completely fulfilled without continuing obligations on CSXT's part at that time: Conditions 10, 20 (partial) (shared asset area manuals, preparation for implementation, Board oversight); 24, 25; 33; 34; 41; 42; 56; and 64.

imposed under that agreement, including the modifications (expanding some of the conditions) imposed by the Board.

The conditions included the formation and frequent meetings of a Conrail Transaction Council, which as reported last year (CSX-4 at 57-58) determined in December 2000 that it would, after having had frequent meetings, thereafter meet only should events require (no such requirement has occurred). It also included a three-year provision for the general relief of "one-to-two" shipper situations, a provision for relief from the assignment of rail transportation contracts of Conrail, and provisions as to gateways, reciprocal switching, and facilities within the Shared Assets Areas. These conditions were fully explained in the earlier annual filings (CSX-1 at 73-78, CSX-4 at 57-60) and CSXT has complied with them.

2. Applicants must comply with the operational monitoring condition imposed in this decision, and, in connection therewith, must file periodic status reports and progress reports, as indicated in this decision. (Cond. 18)[13]

CSXT has complied with this condition.

3. Applicants must adhere to all of the representations they made during the course of this proceeding, whether or not such representations are specifically referenced in this decision. (Cond. 19)

CSXC and CSXT have complied with this condition.

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[13] We thus quote the texts of the Board's conditions henceforth in this Part.

4. Applicants must adhere to the terms of the settlement agreements that were entered into with Amtrak, ESPA, STWRB, the City of Indianapolis, and UTU. (Cond. 21)

The Board specifically mentioned five settlements:

A. **Amtrak**

This topic is discussed in the discussions of Amtrak and commuter operator relationships in Part VIII, above.

B. **Empire State Passenger Association**

CSXT is complying with this Settlement Agreement which was entered into on December 19, 1997.

C. **Southern Tier West Regional Planning and Development Board**

The settlement with this entity solely concerns NS.

D. **City of Indianapolis**

This Settlement Agreement has been complied with.

E. **UTU**

This settlement has been complied with.

5. Applicants must monitor origins, destinations, and routings for the truck traffic at their intermodal terminals in Northern New Jersey and in the Commonwealth of Massachusetts in a manner that will allow us to determine whether the CSX/NS/CR transaction has led to substantially increased truck traffic over the George Washington Bridge. Applicants should report their results on a quarterly basis. (Cond. 22)

CSXT has complied with and will continue to comply with this condition. During the past twelve months it has submitted four quarterly reports covering, *in toto*, the period from March 1, 2001 through February 28, 2002, in addition to the nine earlier reports mentioned in prior years' submissions. CSX-1 at 80, CSX-4 at 62. Further, consistent with its prior commitment and the Board's expectation in Decision No. 5 in this proceeding (at page 32, n.55), CSXT is regularly supplying a copy of each quarterly report to the designated representative of the NYCEDC.

6. Applicants: must allow IP&L to choose between having its Stout plant served by NS directly or via switching by INRD; must allow for the creation of an NS/ISRR interchange at MP 6.0 on ISRR's Petersburg Subdivision for traffic moving to/from either the Stout plant or the Perry K plant; and must provide conditional rights for either NS or ISRR to serve any build-out to the Indianapolis Belt Line. (Cond. 23)

Extensive reports on the status of this condition and on IP&L's attempts to enlarge it, current through May 31, 2001, were furnished in the year 2000 submission by CSX (CSX-1 at 80-86) and its submission last year (CSX-4 at 63-65); NS also discussed this condition in its submission of June 1, 2000 (NS-1 at 37-38) and its submission of June 1, 2001 (NS-5 at 27). CSX believes that it has complied fully with the terms of the conditions[14] and that there has been no demonstration whatsoever that the conditions are inadequate to perform the role

[14] NS was granted both (i) direct access through trackage rights and (ii) access through switching as a consequence of the condition in question imposed by the Board. IP&L's build-out option was also recognized and protected. Decision No. 89 at 117 and n.180, 177.

which was intended for them by the Board. As discussed by CSX in prior filings with the Board, IP&L's Stout Plant now has more options with respect to obtaining coal than it had before the Split of Conrail.

The history of IP&L's attempts to get more than what the Board gave it in Decision No. 89 is well known to the Board, but will be briefly updated as to events from and after June 1, 2001. At that time, a petition by IP&L to the United States Court of Appeals for the District of Columbia Circuit, seeking to overturn the Board's Decision No. 3 in this matter, served November 30, 2000, was pending before that court. On July 26, 2001, the court granted motions made by CSX and NS, supported by the Board, that the Board's decision be summarily affirmed.

During the course of the year 2001, negotiations took place between IP&L and INRD, and apparently between IP&L and other rail carriers, to enter into a long-term coal contract to supply the Stout Plant, in replacement of the expiring long-term contract that had been entered into between IP&L and INRD in 1996, before the Conrail Transaction. It had been the Board's intent in imposing the conditions which it imposed in Decision No. 89, to replicate the pre-Conrail Transaction competitive pressures on INRD (the only carrier physically serving Stout), which resulted in that favorable 1996 Contract for IP&L.

During the course of the summer of 2001, while the negotiations were going on, IP&L in its comments in this proceeding, filed July 16, 2001, represented to the Board that it had received long-term contract bids for joint movement by ISRR and NS of certain movements to Stout which it believed were too high; that it had told those bidders that unless they submitted a bid on a long-term contract for a price

less than the single movement tariff price promulgated by Conrail prior to the Conrail Transaction and adopted thereafter by CSX, there was no point in ISRR and NS's making any further proposals; and that to date ISRR and NS had made no further proposals. This, according to IP&L, showed that NS was not an effective competitor, and, as a result, ISRR should be given direct access to Stout (notwithstanding ISRR's participation in the bid disliked by IP&L).

CSX and NS replied in filings on August 6, 2001 (CSX-5 and NS-6); CSX's responsive filings were largely under seal, but it demonstrated that the rates and terms that had been quoted by INRD in its negotiations with IP&L were at least as favorable, if not more favorable to IP&L than those under the 1996 Agreement, and that accordingly the competitive constraints that existed pre-Transaction had been preserved by the Board's conditions. Further pleadings were filed and received by the Board, in which CSX refuted certain assertions concerning its bid which IP&L had made. (*See* IP&L undesignated filing of August 22, 2001; CSX-6, filed September 11, 2001.) On October 22, 2001, CSX advised the Board that INRD and IP&L had in fact executed a long-term coal contract to Stout. CSX-7.

In Decision No. 6, served December 13, 2001, the Board rejected IP&L's request that the bid which ISRR and NS had submitted which IP&L did not like should be rewarded by the award of direct access by ISRR to Stout. (No evidence was submitted by IP&L that it was NS's "fault," rather than that of ISRR, that the bid displeased IP&L.) The Board did not have to analyze the apparent absurdity of the relief requested on that basis. Instead, the Board took a more fundamental

view of the subject: IP&L was awarded several tools which were designed to replicate the competitive pressures that existed in 1996 when INRD extended IP&L a long-term contract. These included preservation of the build-out rights by the Board, as well as the grant of access to NS to Stout. The terms quoted for the long-term contact by INRD in 2001 were as good as, if not better than, the terms of the benchmark contract, the 1996 Contract. Accordingly, held the Board, no further relief was warranted.

Once again, IP&L filed a petition for review to the United States Court of Appeals for the District of Columbia Circuit, in this case on February 11, 2002. CSX and NS filed motions for summary affirmance of the Board's order with that court on March 20, 2002. Those motions, which were supported by a filing by the STB, have been fully briefed and are under consideration by the Court.

7. Applicants must adhere to their representation that, although the NS will have operational control of Conrail's MGA lines, CSX will have equal access to all current and future facilities located on or accessed from such lines. (Cond. 26)

At the present time, CSXT has no complaints concerning NSR's handling in the MGA.

8. CSX must attempt to negotiate, with CP, an agreement pursuant to which CSX will grant CP either haulage rights unrestricted as to commodity and geographic scope, over the East-of-the-Hudson Conrail line that runs between Selkirk (near Albany) and Fresh Pond (in Queens), under terms agreeable to CSX and CP, taking into account the investment that need to continue to be made to the line. If CSX and CP have not reached an agreement by October 21, 1998, we will initiate a proceeding addressing this matter. CSX and CP should advise us, no later than October 21,

1998, whether they have or have not reached an agreement. (Cond. 28)

CSXT has complied with this condition.

9. **CSX must make, by October 21, 1998, an offer to the City of New York to establish a committee intended to develop ways to promote the development of rail traffic to and from the City, with particular emphasis on Conrail's Hudson Line, as well as ways to address the City's goals of industrial development and the reduction of truck traffic that is divertible to rail movement, and CSX's goals to provide safe, efficient, and profitable rail freight service. (Cond. 29)**

As reported in CSX's June 1, 2000, filing (CSX-1 at 95), CSX and the City and other groups devoted to increasing rail service within New York City have participated in extensive discussions — both formally in committees or study groups and informally — to explore ways to enhance rail freight service East of the Hudson. The review of those activities, which are ongoing, has been provided in previous filings and will not be repeated here in length. In the past year those discussions have included regular meetings not only with Congr ssman Nadler and his "East of the Hudson Task Force," but also with the New York Metropolitan Transportation Commission and its Goods Movement Plan consultants.

CSX has entered into a Joint Agreement with the New York State Department of Transportation ("NYSDOT") and CP to operate 286,000 pound rail cars into the Oak Point Yard, and is negotiating to extend that service over the Amtrak Hell Gate line to Fresh Pond for interchange with the NY&A. CSX has also continued to meet with NYSDOT to discuss the conditions under which CSX would endeavor to introduce intermodal service to east of Hudson markets.

10. CSX must cooperate with the New York interests in studying the feasibility of upgrading cross-harbor float and tunnel facilities to facilitate cross-harbor movements, and, in particular, must participate in New York City's Cross Harbor Freight Movement Major investment Study. (Cond. 30)

In the past year CSX has had several meetings with the NYCEDC and its consultants to explore both the opportunities and challenges associated with attempting to develop an economically viable rail freight service across New York Harbor — either by rail float bridge or by rail tunnel. CSX has provided detailed information regarding its current operations, and regarding the additional technical, commercial and institutional obstacles to be overcome on both sides of the harbor to achieve success in that proposed service. CSX also has provided detailed comments on the scope of a Draft Environmental Impact Statement currently being undertaken by NYEDC in cooperation with the FRA and the Federal Highway Administration. CSX is awaiting the results of planning and environmental studies, and will carefully review and analyze the proposals to determine whether and in what manner it might be able to productively participate

11. CSX must discuss with P&W the possibility of expanded P&W service over trackage or haulage rights on the line between Fresh Pond, NY, and New Haven, CT, focusing on operational and ownership impediments related to service over that line. (Cond. 31)

CSXT has complied with this condition. There have been discussions as to such possible CSXT-P&W arrangements, but no mutually agreeable projects have been identified. CSXT will continue to evaluate mutually beneficial proposals for such cooperation with P&W.

12. **CSX must adhere to its agreements with CN and CP that provide for lower switching fees in the Buffalo area and increased access to these carriers for cross-border, truck-competitive traffic. (Cond. 32)**

CSXT has complied with these agreements.

13. **CSX must adhere to its representation regarding investment in new connections and upgraded facilities in the Buffalo area. (Cond. 35)**

CSX has adhered to all representations it made concerning investments in new connections and upgraded facilities in the Buffalo Area. Descriptions as to these investments were provided for in the June 1, 2000 and June 1, 2001 submissions of CSX and by it in the joint CSX/NS filing in the Board's Buffalo Infrastructure proceeding. Pursuant to the Board's decision discontinuing that proceeding (Decision of February 2, 2001, in Finance Docket No. 33388 (Sub-No. 93)), information concerning infrastructure issues in the Greater Buffalo area is being provided in Part II of this report.

14. **CSX must attempt to negotiate, with IC, a resolution of the CSX/IC dispute regarding dispatching of the Leewood-Aulon line in Memphis. CSX and IC must advise us, no later than September 21, 1998, of the status of their negotiations. (Cond. 36)**

CSXT has complied with this condition.

15. **The $250 maximum reciprocal switching charge provided for in the NITL agreement must be applied to certain points in the Niagara Falls area for traffic using International Bridge and Suspension Bridge, for which Conrail recently replaced its switching charges with so-called "line-haul" charges. (Cond. 37)**

CSXT has complied with this condition.[15]

16. A 3-year rate study will be initiated to assess whether Buffalo-area shippers will be subjected to higher rates because of the CSX/NS/CR transaction. (Cond. 38)

CSXT has cooperated and will continue to cooperate with the Board in that rate study, submitting data and commentary as requested. CSXT has made all required filings to date. The rate study is being handled by the Board in Sub-No. 90 and not in the present proceeding.

17. As respects any shortline, such as RBMN, that operates over lines formerly operated over by CSX, NS, or Conrail (or any of their predecessors), and that, in connection with such operations, is subject to a "blocking" provision: CSX and NS, as appropriate, must enter into an arrangement that has the effect of providing that the reach of such blocking provision is not expanded as a result of the CSX/NS/CR transaction. (Cond. 39)

The Conrail Transaction has not expanded the reach of any arrangement which CSXT has with a shortline requiring additional compensation to the line owner for shipments not routed via the owner. CSXT will not treat the Conrail Transaction as expanding the reach of such a provision.

18. As respects AA's new contract with Chrysler, CSX and NS must take no action that would undermine, or interfere with AA's ability to provide quality interline service under, this contract. (Cond. 40)

CSXT has continued to comply with this condition.

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[15] *See* the discussion of Cond. 32, above.

19. As respects Wyandot and NL&S, CSX and NS: must adhere to their offer to provide single-line service for all existing movements of aggregates, provided they are tendered in unit-trains or blocks of 40 or more cars; and in other circumstances including new movements, for shipments moving at least 75 miles, must arrange run-through operations (for shipments of 60 cars or more) and pre-blocking arrangements (for shipments of 10 to 60 cars). (Cond. 43)

This condition was clarified by the Board in Decision No. 96 as being applicable for five years with respect to the performance of certain single-line service via run-through trains. CSXT has complied with this condition.

20. NS will have access to any new line constructed by JS&S or NS, or by any entity other than CSX, between the JS&S facility at Capital Heights, MD, and any line over which NS has trackage rights. (Cond. 44)

CSXT will comply with this condition. No build-out has been proposed to date, however.

21. In STB Finance Docket No. 33388 (Sub-No. 80), the responsive application filed by W&LE is granted in part and denied in part. As indicated in this decision, applicants must (a) grant W&LE overhead haulage or trackage rights access to Toledo, with connections to AA and other railroads at Toledo, (b) extend W&LE's lease at, and trackage rights access to, NS' Huron Dock on Lake Erie, and (c) grant W&LE overhead haulage or trackage rights to Lima, OH, with a connection to IORY at Lima. Applicants and WALE must attempt to negotiate a solution with regard to these matters; and, if negotiations are not fully successful, may submit separate proposals no later than October 21, 1998. Further, applicants and W&LE must attempt to negotiate an agreement concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregates shippers or to serve shippers along CSX's line between

Benwood and Brooklyn Junction, WV, and inform us of any such arrangements reached. (Cond. 68)

The matters referred to in clauses (a) and (b) have been reported on by NS. As to the remainder, CSXT has complied with this condition.[16]

XI. IMPLEMENTATION OF ENVIRONMENTAL CONDITIONS

1. *Conditions Applicable to CSXT*

CSXT is very close to completing its implementation of the Environmental Conditions imposed by the Board in Appendix Q of Decision No. 89. In CSXT's First Submission filed with the Board on June 1, 2000, and in CSXT's Second Submission filed with the Board on June 1, 2001, CSXT documented its full implementation of the Environmental Conditions, or up-to-date compliance with those conditions which require ongoing compliance, with the exception of three – Environmental Conditions 10, 11 and 49.[17] CSXT reports below on the status of

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[16] Condition Nos. NS-77 through 80 are discussed in Part IV above, dealing with Labor, to the extent that there was activity pertinent to them in the past twelve months. The environmental conditions, ordered in Condition No. 17 and found in Appendix Q of Decision No. 89, are discussed in Part XI, which follows.

[17] For a full description of the environmental conditions, *see* Decision No. 89, Appendix Q, at 382-423, as amended in Decision No. 96. In its June 1, 2000 submission (CSX-1 at 113-29) and in its June 1, 2001 submission (CSX-4 at 83-90), CSX discussed all of the environmental conditions applicable to CSXT. In this year's filing, CSX has dropped discussion of those conditions applicable to CSXT that were reported to be fully completed in prior years' filings or which are matters which require continuous compliance and where the method of CSXT's compliance was fully described in prior years.

We note that Environmental Condition 4(B) requires that CSXT distribute Hazardous Materials Emergency Response Plans to local emergency response organizations along the rail line segments designated "key routes" or "major key

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these three conditions. In addition to its annual June submissions in this Oversight Proceeding, CSXT has also provided quarterly community status reports to the Board regarding CSXT's consultations with local governments and state agencies, pursuant to the Board's order in Decision No. 5 in this General Oversight Proceeding, slip op. at 33, and in Decision No. 6 in this proceeding, slip op. at 11.

a. **Environmental Condition 10**
[Transportation: Highway/Rail At-Grade Crossing Delay]

In our First Submission (at 63-71, 117-18) and Second Submission (at 85), we reported that CSXT had complied with Environmental Condition 10 with respect to the Dixie Highway and Broadway-135th Street at-grade crossings of the CSXT Blue Island Subdivision (Rail line segment C-010), and with respect to the W. Noel Ave. at-grade crossing of the CSXT rail line in Madisonville, KY (Rail line segment C-021).

During the past year CSXT addressed traffic delay at the Vine Street at-grade crossing of the CSXT rail line in Hamilton, Ohio (Rail line segment C-063) through operational improvements that have increased actual train speeds through this crossing. Although CSXT determined that it could not increase the authorized speed through this crossing above 20 mph because of the geometry of the track at this location, it has implemented operational changes that have

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routes" by the Board at least once every three years during the Board's Oversight period. CSX completed its initial distribution in 1999. CSXT distributed its 2002 Community Awareness Emergency Planning Guide to such organizations on May 20, 2002.

increased the actual speed through this crossing from the pre-transaction situation. The most important change is a switch to directional routing of both CSXT and NS trains by utilizing the CSXT line and a parallel NS line in the Hamilton area. CSXT also implemented train-scheduling changes to improve fluidity systemwide, which has increased actual train speed in this area.

Finally, CSXT addressed traffic delay at the Township Avenue crossing of the CSXT rail line in Cincinnati, Ohio (Rail line segment C-063) through an increase in authorized speed from 20 mph to 35 mph facilitated by capital and operational improvements in the area. The speed increase was implemented in June 2001.

CSXT has now completed its implementation of Environmental Condition 10.

b. **Environmental Condition 11 [Noise]**

As reported in our Second Submission (at 86-88), CSXT entered into 31 Negotiated Agreements under Environmental Condition 11, all of which have now been approved by the Board. The complete list is as follows:

1. **Village of Deshler, OH, approved Decision No. 121 (served April 14, 1999)**
2. **Village of New London, OH, approved Decision No. 130 (served July 9, 1999)**
3. **City of Plymouth, IN, approved Decision No. 130 (served July 9, 1999)**
4. **Town of Etna Green, IN, approved Decision No. 135 (served December 10, 1999)**

5. **City of Tontogany, OH, approved Decision No. 136 (served December 30, 1999)**

6. **Township of Washington, OH, approved Decision No. 137 (served December 30, 1999)**

7. **Township of Middleton, OH, approved Decision No. 138 (served February 2, 2000)**

8. **Township of New London, OH, approved Decision No. 139 (served February 16, 2000)**

9. **Township of Weston, OH, approved Decision No. 140 (served February 16, 2000)**

10. **Village of Haskins, OH, approved Decision No. 141 (served February 16, 2000)**

11. **Borough of Belle Vernon, PA, approved Decision No. 146 (served April 13, 2000)**

12. **Borough of Elizabeth, PA, approved Decision No. 147 (served April 13, 2000)**

13. **Village of Custar, OH, approved Decision No. 148 (served April 13, 2000)**

14. **Township of Milton, OH, approved Decision No. 149 (served April 18, 2000)**

15. **Village of Lagrange, OH, approved Decision No. 150 (served April 18, 2000)**

16. **Township of Washington, Belle Vernon, PA, approved Decision No. 151 (served April 18, 2000)**

17. **City of Cuyahoga Heights, OH, approved Decision No. 158 (served June 12, 2000)**

18. **Village of Grafton, OH, approved Decision No. 159 (served June 12, 2000)**

19. **Village of Wellington, OH, approved Decision No. 162 (served July 27, 2000)**

20. **Township of Forward, PA, approved Decision No. 163 (served August 3, 2000)**

21. **Borough of Fayette City, PA, approved Decision No. 165 (served August 22, 2000)**

22. **Borough of Lincoln, PA, approved Decision No. 169 (served September 5, 2000)**

23. **Borough of Newell, PA, approved Decision No. 170 (served October 3, 2000)**

24. **Borough of Glassport, PA, approved Decision No. 171 (served October 3, 2000)**

25. **City of Perrysburg, OH, approved Decision No. 172 (served October 13, 2000)**

26. **Village of Rochester, OH, approved Decision No. 174 (served November 7, 2000)**

27. **Lorain County, OH, approved Decision No. 176 (served November 28, 2000)**

28. **Village of Milton Center, OH, approved Decision No. 181 (served March 2, 2001)**

29. **City of McKeesport, OH, approved Decision No. 182 (served March 2, 2001)**

30. **City of Weston, Ohio, approved Decision No. 187 (served June 7, 2001)**

31. **Perrysburg Township, approved Decision No. 191 (served July 11, 2001)**

Only two responsible local governments, Elizabeth Township, PA, and Rostraver Township, PA, informed CSXT that they wished CSXT to

contact individual property owners regarding implementation of Environmental Condition 11. During the past year, CSXT contacted the individual property owners and entered into agreements covering 27 of the 28 structures eligible for noise mitigation in these townships. CSXT has thus satisfied Environmental Condition 11 with respect to over 99% of the structures eligible for noise mitigation under Environmental Condition 11. The Board has extended the compliance date until February 22, 2003 to satisfy the noise mitigation condition with respect to the remaining structure.

c. **Environmental Condition 49 [Safety Integration]**

CSXT has completed its implementation of this condition, as discussed in Part V (Safety) of this report.

d. **Environmental Condition 51 [Negotiated Agreements]**

CSXT is in compliance with the terms of its Negotiated Agreements.

City of Cleveland, Ohio. A number of matters addressed in the June 4, 1998 Agreement involve ongoing consultation between CSXT and Cleveland, such as the construction of noise walls, expenditure of funds for fencing and landscaping, and marketing of surplus properties. CSXT and Cleveland are continuing to work together in good faith to resolve issues as they arise.

Four City Consortium. CSXT entered into a Settlement Agreement with the Four City Consortium on October 26, 1998, which was approved by the Board in Decision No. 114 (served February 5, 1999). CSXT and the Four City Consortium resolved some additional outstanding issues on January 31, 2001.

CSXT has regularly consulted with representatives of the Four Cities, as well as with representatives of the IHB and NS, as required by Environmental Condition 21 and the October 26, 1998 Agreement. Representatives of the Four Cities have reported their satisfaction with CSXT's efforts during the past year, including efforts to reduce crossing blockage, in the Four City area.

2. **Conditions Applicable to the Conrail Shared Assets Operator ("CSAO")**[18]

a. **Environmental Condition 11 [Noise]**

CSAO entered into two Negotiated Agreements with responsible local governments pursuant to Environmental Condition 11:

1. **Brownstown Township, MI, approved Decision No. 152 (served April 18, 2000)**

2. **Huron Township, MI, approved Decision No. 184 (served April 12, 2001)**

At the direction of the responsible local governments, CSAO has contacted individual property owners regarding implementation of Environmental Condition 11 in Allen Park, MI, Ash Township, MI, and Lincoln Park, MI. During the past year, CSAO entered into agreements covering 6 of the 10 structures eligible for noise mitigation in these townships. The Board has extended the

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[18] CSX's First Submission (CSX-1 at 129-32) and Second Submission (CSX-4 at 91) contained a report on all environmental conditions applicable to CSAO. This year's report drops reference to those CSAO conditions that were reported to be fully completed in last year's filing or which are matters which require continuous compliance and where the method of CSAO's compliance was fully described last year.

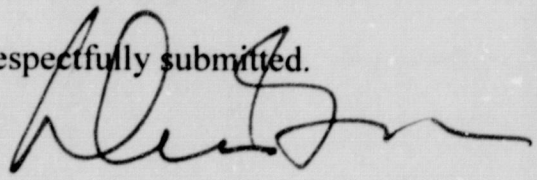
compliance date until February 22, 2003 to satisfy the noise mitigation condition with respect to the remaining structures.

XII. CONCLUSION

Today, CSX's rail network is operating at or near record performance levels. The difficulties encountered in the early period following the Split of Conrail's operations between CSXT and NSR are far behind us, and CSXT is in a position to take advantage of the enhanced single-system service and the opportunities for growth in revenue and market share inherent in the value created through the acquisition and integration of the new Conrail routes into the CSXT system and the greatly improved performance brought about in the past two years.

Once again, CSX can say that the Board's conditions have generally continued to work well, and CSXC and CSXT have complied with them to the best of their ability. The Conrail Transaction was emphatically "in the public interest" in CSX's view.

Respectfully submitted.



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Dated: June 3, 2002

CERTIFICATE OF SERVICE

The undersigned counsel for CSX Corporation and CSX Transportation, Inc. hereby certifies that on this 3rd day of June, 2002, a copy of the foregoing "Third Submission by Applicants CSX Corporation and CSX Transportation, Inc.," was served on all parties of record by first-class mail, postage prepaid, or more expedited method.

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