

STB

FD-33388

(SUB 91)

7/16/03

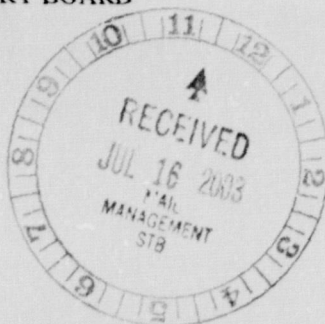
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COUNTY



COUNTY OF ESSEX
DEPARTMENT OF PUBLIC WORKS
TRANSPORTATION ADVISORY BOARD

900 BLOOMFIELD AVENUE
VERONA, NEW JERSEY 07044
(973) 226-8500
(973) 226-7469 FAX



JOSEPH N. DIVINCENZO, JR.
COUNTY EXECUTIVE

DAVID ALAN
CHAIRMAN

July 9, 2003

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

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

Dear Mr. Williams:

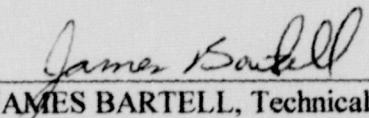
The Essex County Transportation Advisory Board is an instrumentality of Essex County, whose purpose is to provide advice toward the improvement of mobility of people and goods to and from, and within, Essex County.

We note that a portion of the rail line listed as Conrail Shared Assets (CSA) and operated by Norfolk Southern Railway Co. (NS) runs through our county. The line in question is a portion of the Boonton Line, formerly known as the Greenwood Lakes Line. We note that one track has recently been removed on a portion of this line, downgrading that segment from double to single track. This represents a loss of part of the transportation infrastructure of our county. We have also been informed that this act of removal was performed despite urging by the New Jersey Department of Transportation to keep the line intact.

Our Board has passed a resolution supporting the application of the New York & Greenwood Lake Railway Co. (NY&GL) to operate rail commuter passenger service between Benson Street Station in Glen Ridge and Hoboken, over a portion of this line. Norfolk Southern's act of downgrading the line in question has complicated efforts by NY&GL to restore service on this line, which was permanently discontinued by N.J. Transit last September.

In the interest of keeping this rail line intact, and in the interest of serving our county residents and visitors who would ride a restored service on the line, we express our concern over Norfolk Southern's continued operation of the line. It appears to us that a locally-oriented entity, such as a railroad company organized to serve the New Jersey region, or a consortium of local short line railroads, could do a better job of preserving this important transportation infrastructure resource in our county.

Yours very sincerely,
ESSEX COUNTY TRANSPORTATION
ADVISORY BOARD
DAVID PETER ALAN, Chair


By: JAMES BARTELL, Technical Secretary

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FD-33388 (SUB 91)

10-9-02

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206353

ARNOLD & PORTER

Dennis G. Lyons
Dennis_Lyons@aporter.com

202.942.5858
202.942.5999 Fax

555 Twelfth Street, NW
Washington, DC 20004-1206

October 9, 2002

CSX-12

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:

In the filing (CSX-11) made by CSX Corporation and CSX Transportation, Inc. (collectively "CSX"), in the above matter on September 25, 2002, CSX undertook to provide the Board with a progress report by today, October 9, 2002.

On October 4, 2002, Cargill Incorporated filed a Status Report with the Board (CARG-6) which outlines the state of negotiations as seen from Cargill's standpoint. That report concludes by saying that: "[a]lthough Cargill is hopeful that these details [discussed in the report] will be addressed to everyone's mutual satisfaction, Cargill asks the Board to retain jurisdiction over this matter until such time as Cargill notifies the Board that a final resolution has been reached."

In the light of the Cargill Status Report, CSX does not believe that any purpose would be served by CSX filing a separate status report.

Respectfully yours,


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

ENTERED
Office of Proceedings

OCT 9 2002

Part of
Public Record

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cc All Parties of Record

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CHAIRMAN

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ID-CHAIRMAN



1825 K St., NW, Suite 850
Washington, D.C. 20425-0001

Surface Transportation Board

WAYNE O. BURKES
Vice Chairman

(202) 565-1525
Fax (202) 565-9018
turkesw@stb.dot.gov

MEMORANDUM

Date: June 7, 2002
To: Chairman Linda J. Morgan
From: Vice Chairman Wayne O. Burkes *WOB*
Re: Conrail Acquisition Oversight Proceeding (STB FD 33388 (Sub-No. 91))

This Memorandum is in response to your Memorandum to me dated June 4, 2002 in the above referenced proceeding.

I fully agree that the Board should now consider ending the reporting requirements. As to the issue of whether the Board should seek comment at this time on whether to end the general oversight proceeding, I tend to agree with your approach that we should await the filing of comments by the public to the Progress Reports filed by the CSX and NS and then assess whether to proceed to consider terminating the general oversight proceeding. However, I believe that we should afford parties the opportunity to address this matter in their comments.

Currently, comments by interested parties are due July 17, 2002 and Replies by CSX and NS are due August 7, 2002. There should be ample time to issue a brief Board order requesting parties to address whether or not to end the general oversight proceeding and for the parties to respond. Of course, the filing dates could be extended if the parties require additional time. Accordingly, I recommend that the Board promptly issue such an order.

cc: General Counsel Hanson
Director Clemens
Director Konschnik
Public Docket

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(SUB 91)

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CHAIRMAN

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ID-CHAIRMAN



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

MEMORANDUM

June 6, 2002

To: Vice Chairman Wayne O. Burkes

From: Chairman Linda J. Morgan *LJM*

Re: Conrail Oversight Memorandum

I was surprised to be informed by parties involved in STB Docket No. 33388 that they had received from you a copy of your May 31, 2002 Memorandum to the Board in that proceeding, along with a cover memorandum inviting recipients of your communication to contact you on the matter. This proceeding, as you know, is currently pending before the Board. Thus, the communication creates the appearance that you are soliciting comments from parties to a proceeding outside of the regulatory process.

While one may attempt to draw fine distinctions regarding whether a request for "questions" is tantamount to entertaining *ex parte* communications, the spirit of our regulation is clear [49 CFR §1102.2(c)(2)]:

No Board Member, hearing officer, joint board member, employee board member or employee of the Board who participates, or is reasonably expected to participate, in the decision in an on-the-record proceeding shall invite or knowingly entertain any *ex parte* communication concerning the merits of a proceeding or engage in any such communication to any party, counsel, agent of a party, or person reasonably expected to transmit the communication to a party or party's agent.

I am also concerned that publication of your Memorandum effectively announces your position on a matter pending before the Board in advance of completing the record and voting on the matter. Here again one could quibble about what the words really mean, but the overall appearance is one of prejudgment that invites later requests for recusal, which is a very serious matter for an agency such as ours with sensitive quasi-judicial responsibilities.

As officials of the Federal Government, we are charged with maintaining both the fact and the appearance of propriety and impartiality in all matters coming before us. [See Office of Government Ethics regulations at 5 CFR Part 2635.] Accordingly, to cure any actual or perceived ethical lapse, I am placing in the public docket a copy of your May 31 Memorandum, my response dated June 4, 2002, and one of your FAXes transmitting your Memorandum to the outside.

I trust you share my concern for the objectives of these regulations and for the integrity of the regulatory process which the regulations are meant to protect.

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CHAIRMAN

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ID-CHAIRMAN



Surface Transportation Board
Washington, D.C. 20423-0001

Office of the Chairman

MEMORANDUM

June 4, 2002

To: Vice Chairman Wayne O. Burkes

From: Chairman Linda J. Morgan *LJM*

Re: Conrail Acquisition Oversight

I have received your May 31st memorandum recommending that the Board seek public comment on whether to end the general oversight proceeding for the Conrail acquisition transaction. While I believe that it would be premature to initiate steps to end the general oversight proceeding at this point, I do believe that the Board should now consider ending the requirement for weekly and monthly operational reporting by CSX and NS other than for the Shared Assets Areas (SAAs) - a requirement that, as you know, is separate from the 5-year general oversight condition.

As you point out in your memorandum, the Board's Office of Compliance and Enforcement (OCE) recently concluded that both carriers continue to operate at very efficient levels. In response to that conclusion, I contacted Director Clemens regarding the elimination of certain operational reporting requirements. Director Clemens informed me that he had just received a letter from CSX and NS seeking elimination of the weekly and monthly operational reporting requirements except for the SAAs, a copy of which he provided me at my request.

I am attaching a copy of that letter for your information. I agree in principle with the carriers' request, as does Director Clemens. Therefore, I am directing Board staff to prepare an appropriate response with a view toward implementing the carriers' proposal. Under the Conrail acquisition decision, Director Clemens has the authority to alter those reporting requirements, after consultation with the Board.

I do not agree, however, that the Board should seek comment at this time on whether to end the general oversight proceeding. As you know, both CSX and NS have just recently filed their Progress Reports for this year's general oversight proceeding. As we did in the CN/IC proceeding, we should await the filing of comments by the public to those reports and then assess whether to proceed to consider terminating the general oversight proceeding. By considering public comment as to the carriers' general oversight filings while eliminating most of the operational reporting now, I believe that we can best fulfill our obligation to ensure that the Conrail acquisition transaction continues to be in the public interest while minimizing the regulatory burden on the applicant carriers.

Enclosure

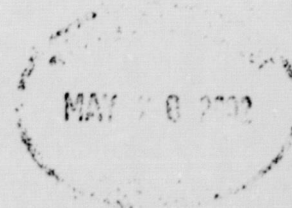
cc: General Counsel Hanson
Director Clemens
Director Konschnik

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May 3, 2002

OFFICE OF COMPLIANCE
AND ENFORCEMENT
Melvin R. Clemens
Director Office of Compliance and Enforcement
Surface Transportation Board
Washington, DC 20423-0001



RE: Reduction in STB Reporting

Dear Mr. Clemens:

In Finance Docket No. 33388, Decision 89, the Board imposed certain reporting obligations on CSX and Norfolk Southern as part of its approval of the Conrail Transaction and assigned monitoring responsibility to its Office of Compliance and Enforcement. We began submitting reports prior to June 1, 1999 (Closing Date) and have continued since that time to submit monthly and weekly reports. The metrics encompassed in those reports show steady improvement and have continued to trend favorably over a considerable period of time. As such, we believe that it would be appropriate at this point for CSX and NS to be relieved of most of those reporting obligations. The exception would be reporting that involves the Shared Assets Areas (SAA's). Even though operations in the SAA's are very fluid, we recognize that their unique nature makes it appropriate for us to continue to report to you on their operational efficiency.

The metrics and other information contained in the reports we seek to discontinue have served their purpose well. The primary purpose of these reports was to allow the Board, shippers and other interested parties to assess the implementation of the Conrail Transaction. Prior to the Closing Date, the reports provided a means of keeping the Board and others apprised of our preparation efforts and, after the Closing Date, they provided metrics by which our progress could be measured.

The reports provided a common frame of reference, which unfortunately was needed when implementation did not proceed as smoothly as we had anticipated. Whether meeting with you, the Conrail Transaction Council or individual customers, the reports provided a solid quantitative basis that made the discussion of anecdotal accounts more fruitful. The metrics also helped us focus on the problem areas, and as operations began to improve, helped us assure our customers and you that the transaction was being implemented successfully.

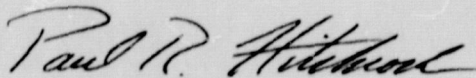
The initial implementation stage is well behind us and we therefore feel the reporting premised on oversight of that implementation should be discontinued. While we are requesting relief from the reporting imposed by the Board in Decision 89 (other than with respect to the SAA's), that does not mean CSX and NS will stop all public reporting. A number of the metrics formulated for reporting to the Board and in the Conrail Transaction have proven to have value to the shipping community and are included in the weekly metrics (including cars on line, average train speeds and dwell times) that NS and CSX make available to the AAR and on their individual websites.

Mr. Melvin F. Clemens, Jr.
May 3, 2002
Page 2

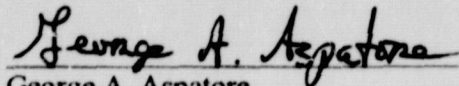
We believe that, with the significantly improved operations of both NS and CSX, operational reporting on the transaction should be a less formal process. In addition, as both CSX and NS seek to meet customer needs in a dynamic marketplace, we feel that with the publicly available AAR metrics, the press releases made by each carrier, informal briefings of Board Staff, our oversight filings and the continued SAA's reporting, there will be sufficient information available with which to monitor each carrier's operational efficiency.

We therefore respectfully request that you eliminate, except with respect to the weekly SAA reports and subject to reinstatement should the need arise, the Board's reporting requirement for monthly and weekly reports.

Sincerely,



Paul R. Hitchcock
Associate General Counsel
CSX Transportation, Inc. J150
500 Water Street
Jacksonville, FL 32202



George A. Aspatore
General Solicitor
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-2101

Staff/HOUCHIN/STB Monitoring Report/CLEMENS

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BOARD
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1000 F ST., NW, Suite 400
Washington, D.C. 20004-4001

Surface Transportation Board

WAYNE C. BURKE
Vice Chairman

(202) 545-4700
TDD (202) 545-4010
burke@stb.dot.gov

FAX MEMORANDUM

Date: May 31, 2002

To: The Honorable Norman Y. Mineta
Fax Number: (202) 366-7202

To: The Honorable Michael P. Jackson ✓
Fax Number: (202) 366-7202

To: The Honorable Allen Ruter
Fax Number: (202) 493-6068

From: Wayne C. Burke *WB*

Re: STB 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)

Comment:

For your information, I circulated the attached Memorandum in the Board today in the above reference proceeding. Please give me a call if you have any questions.

OFFICE OF VICE CHAIRMAN WAYNE O. BURKES

STB Docket No. 33385 (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)**

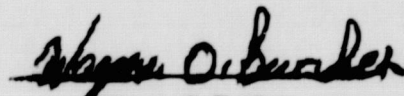
May 31, 2002

MEMORANDUM TO THE BOARD:

Tomorrow will mark the three-year anniversary of the "split date" in the above referenced proceeding when Conrail's assets and operations were officially divided between CSX and NS.

In Decision No. 6 in this oversight proceeding, served December 13, 2001, we concluded CSX and NS had resolved the service problems resulting from the implementation of the Conrail transaction, that there continues to be no competitive or market power problems stemming from the merger, and that the conditions we imposed are working as intended. Since that decision, there has been a marked stabilization and improvement in CSX's and NS's operations in nearly every category. In fact, the STB's Office of Compliance and Enforcement recently concluded that both carriers continue to perform in the range of "best since acquisition" in several key measures. I should also note that the Conrail Transaction Council, a group formed by the Board to promote communications between the carriers and shippers and to monitor the integration of Conrail, ended regularly scheduled meetings in December 2000.

Given the fact that both carriers have stabilized and substantially improved their operations, and since there appears to be no major pending competitive or labor issues, I believe that further oversight of this merger appears to be an unnecessary regulatory burden on CSX and NS (and on the Board). Moreover, during this time of our Nation's War on Terrorism, these carriers (which serve major metropolitan areas including the New York City and Washington, DC areas) should concentrate their time and efforts on internal security and safety, rather than unnecessary regulatory burdens. Consequently, I hereby recommend that we seek public comment on whether or not this general oversight proceeding should be continued.


Wayne O. Burkes

cc: Chairman Morgan
General Counsel Hanson
Director Clemens
Director Konschnik

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VICE CHAIRMAN

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OFFICE OF VICE CHAIRMAN WAYNE O. BURKES

STB 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)**

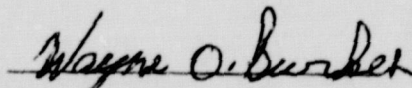
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Wayne O. Burkes

cc: Chairman Morgan
General Counsel Hanson
Director Clemens
Director Konschnik