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April 26, 2004

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**By Hand**

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

Re: 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, F.D. No. 33388 (Sub-No. 94)

Dear Mr. Secretary:

We write to inform the Board that last Friday, April 23, 2004, our clients CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR") each filed with the Securities and Exchange Commission ("SEC") Registration Statements on Form S-4 that relate to the transaction approved by the Board in a Decision served on November 7, 2003 in the above-referenced Finance Docket. Specifically, the SEC filings describe an offer to exchange new unsecured debt securities of CSXT and NSR and cash for unsecured debt securities of Conrail, which initiates the final stage in implementing the restructuring of Conrail's unsecured indebtedness as described in the parties' "Petition for Supplemental Order", filed with the Board on June 4, 2003.

In connection with the offer to exchange, Conrail is soliciting consents from holders of its unsecured debt securities in order to permit the restructuring. As described in the Registration Statements, Conrail also intends to solicit the consents of certain holders of its equipment trust certificates and pass through trust certificates. The solicitation of these certificate holders is expected to occur concurrently with the proposed exchange offer and consent solicitation.

The Registration Statements may be reviewed by the SEC and will not be declared effective until any such review has been satisfactorily completed. If and when the Registration Statements become effective, the completion of the exchange offer and consent

Honorable Vernon A. Williams

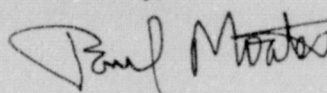
April 26, 2004

Page 2

solicitation are subject to a number of conditions, including Conrail's successful solicitation of consents from the holders of certain of its secured debt obligations.

Please direct any questions about this matter to the undersigned.

Sincerely,

A handwritten signature in dark ink, appearing to read "G. Paul Moates", with a long horizontal line extending to the right.

G. Paul Moates

Paul A. Hemmersbaugh

cc: David M. Konschnik, Director, Office of Proceedings

James A. Squires,  
Senior General Counsel, Norfolk Southern Corporation

Peter J. Shudtz,  
Vice President-Regulatory Affairs & Washington Counsel, CSX Corporation

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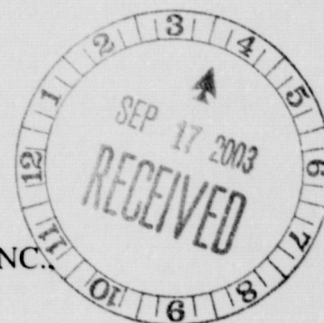


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CSX/NS-2

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 33388 (SUB-NO. 94)



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

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**PETITIONERS' RESPONSE TO COMMENTS AND RESPONSE  
TO MOTION FOR MODIFICATION OF PROCEDURAL SCHEDULE**

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*Of Counsel*

Dated: September 17, 2003

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

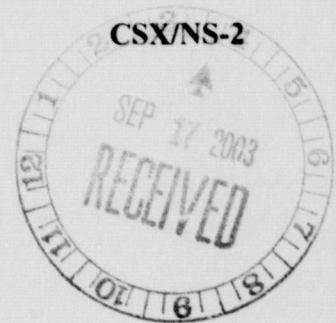
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STB FINANCE DOCKET NO. 33388 (SUB-NO. 94)

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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

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**PETITIONERS' REPLY TO COMMENTS AND RESPONSE  
TO MOTION FOR MODIFICATION OF PROCEDURAL SCHEDULE**

Petitioners CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"),  
Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"), Conrail  
Inc. ("CRR"), and Consolidated Rail Corporation ("CRC")<sup>1</sup> (collectively, "Petitioners"),<sup>2</sup>  
respectfully submit their Reply to comments and their opposition to the Motion of the New York

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<sup>1</sup> CSXC, CSXT and other wholly owned affiliates of CSXC are collectively referred to herein as "CSX." NSC, NSR and other wholly owned affiliates of NSC are collectively referred to herein as "NS." CRR, CRC and other wholly owned affiliates of CRR are collectively referred to herein as "Conrail."

<sup>2</sup> On June 4, 2003, Petitioners filed a Petition for Supplemental Order in STB Finance Docket No. 33388 (Sub-No. 94), which seeks a supplemental order authorizing the consolidation of New York Central Lines LLC ("NYC") with CSX and of Pennsylvania Lines LLC ("PRR") with NS, including certain intermediate and related transactions, in order to effectuate the acquisition of full ownership and control of the assets and business of NYC by CSX and of PRR by NS. CSX and NS are already authorized to control and manage NYC and PRR, respectively, and to operate their respective assets, pursuant to Decision No. 89. See "Petition for Supplemental Order," *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements – Conrail, Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (Sub-No. 94) CSX/NS-1 (June 4, 2003).



City Economic Development Corporation for a Modification of the Procedural Schedule (Aug. 28, 2003), in the above-referenced proceeding.<sup>3</sup> As Petitioners explain below, the very few comments and inquiries submitted by interested parties raise no real objections to the transaction, and the lack of objections or any other substantive opposition to the transactions during the comment period (which closed on August 28, 2003) is powerful evidence that the Petition should be granted. The NYCEDC provides no adequate or persuasive reason for the Board to change the procedural schedule it set in Decision No. 1 (July 9, 2003), and the Board should deny NYCEDC's motion to revise the schedule.

**I. THE PETITION SHOULD BE APPROVED BECAUSE NO PARTY IN INTEREST HAS OBJECTED TO THE PROPOSED TRANSACTIONS, AND THE FEW COMMENTS FILED DEMONSTRATE THAT THE PROPOSED TRANSACTIONS ARE APPROPRIATE AND IN THE PUBLIC INTEREST.**

One of the most compelling arguments for approval of the Petition is the complete absence of objections to the substance of the proposed transaction. Conspicuous by their absence are comments from the overwhelming majority of the approximately one hundred (100) interested parties who submitted comments objecting to the original Conrail transaction in previous phases of this proceeding. Despite ample notice, not one shipper or association of shippers has objected or filed a comment in this proceeding. Similarly, not one rail carrier or other transportation service provider has submitted a comment or objection. No representative of labor or employees has objected or even filed comments. No unit of government or government agency or authority has filed any objection or request for modification, or stated that it opposes

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<sup>3</sup> Movant and commenter New York City Economic Development Corporation is referred to hereinafter as "NYCEDC."

the transaction.<sup>4</sup> Finally, even the single comment filed by certain Conrail debtholders expressed no substantive opposition to the transaction, but rather sought only a procedural condition (which, as explained below, would be both inappropriate and inconsistent with governing law and long-established precedent). *See* Comments of the Conrail Ad Hoc Bondholders' Committee at 2-4 (Aug. 28, 2003), STB Finance Docket No. 33388 (Sub-No. 94) (hereinafter, "Bondholder Comments").

The absence of opposition and objections to the proposed transactions is further, and indeed compelling, evidence that the proposed transactions will not affect rail operations, service or competition generally, and will have no adverse impact on shippers, other rail carriers, or Petitioners' employees. *See* Petition at 2, 11-12. The proposed transactions simply will permit CSX and NS to acquire direct ownership and exclusive control of Conrail properties that they already own indirectly (through their joint ownership of Conrail), and that they are already authorized to operate and manage separately as part of their respective rail systems. In practical effect, the proposed transactions would make more effective the division of the Conrail "Allocated Assets" between CSX and NS that the Board previously approved (in Decision No. 89), thereby allowing CSX and NS greater and more efficient management control and independence over the assets of NYC and PRR, respectively.<sup>5</sup> In the following sections,

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<sup>4</sup> The comments of NYCEDC pose a series of questions regarding the proposed restructuring, but NYCEDC has expressly advised the Board that it has not taken a position regarding the proposed transactions described in the Petition. *See* NYCEDC Comments at 1.

<sup>5</sup> As the Petition made clear, the proposed transactions will preserve the existing rail operating structure in the Conrail "Shared Assets Areas" in North Jersey, South Jersey/Philadelphia and Detroit, and will preserve the balanced competitive rail service in the eastern United States that resulted from the creation of the Shared Assets Areas and otherwise from the Conrail Transaction. *See* Petition at 3-4.



Petitioners address the brief comments of four interested entities, which comprise the entire universe of comments submitted in this proceeding.

**A. The Bondholders' Comments Simply Express a Procedural Preference for Negotiations Concerning Their Consent to Debt Restructuring, Which is Precisely the Procedure the Petition Contemplates Will Commence Upon Board Approval of the Transactions.**

On behalf of itself and four other unidentified debtholders, Dodge and Cox submitted comments describing its interest in the proposed transaction, and requesting that the Board "allow consent negotiations [between Conrail debtholders and Petitioners] to proceed in a neutral environment." Bondholder Comments at 2, 4. Significantly, the Bondholders do not oppose the proposed reorganization and implementing transactions themselves, or claim that the proposed debt restructuring necessary to implement the reorganization is unfair or unreasonable. *See id.* Moreover, the bondholders essentially endorse Petitioner's preferred process for achieving the debt restructuring necessary to implement the proposed transactions – negotiations to obtain bondholder consent. *See* Bondholder Comments at 3-4. Petitioners reiterate that it is their intent, shortly after Board approval of the proposed transactions and issuance of the requested supplemental order, to commence negotiations with relevant debtholders aimed at obtaining those debtholders' consent to the proposed debt restructuring. Petitioners' strong preference would be to develop fair and reasonable terms for the necessary debt restructuring through negotiations, rather than to invoke the authority of the Board to make a binding and overriding fairness determination.

The only area of apparent disagreement regarding the Petition arises in the last page of the comments submitted by the Bondholders. *See* Bondholder Comments at 4, IV. In the concluding sentence of their comments, the Bondholders appear to request that the Board condition its approval of the proposed transactions on "the completion of the consent solicitation



process through registered exchange offers.” *Id.* To the extent this request seeks to foreclose Petitioners from exercising their right to ask the Board to conduct a fairness proceeding in the event negotiations do not result in the consents necessary to complete the proposed transactions, Petitioners oppose Bondholders’ request.<sup>6</sup> Petitioners believe the law is clear regarding the Board’s authority and responsibility to make a fairness determination in the event the parties are unable to reach a negotiated agreement regarding the terms of the necessary debt restructuring. *See, e.g., Schwabacher v. United States*, 334 U.S. 182 (1948). Because Petitioners prefer to resolve the terms of the debt restructuring through negotiations, they have not at this time asked the Board to convene a fairness proceeding as part of the pending Petition. Nonetheless, in the event that the parties are not able to reach agreement through negotiations, the Board should reserve its statutory power and responsibility to make a binding determination regarding fair terms of the necessary debt restructuring. The Board’s statute and precedent make clear that the Board – not the Bondholders or any other private party – is the final arbiter of the public interest in this proceeding.

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<sup>6</sup> It is not entirely clear that the condition the Bondholder Comments request is intended to preclude a Board proceeding to determine the fairness of the terms of the proposed reorganization transaction, which a long line of ICC and Board precedents hold is the Board’s responsibility in the event affected parties are unable to agree on the financial terms of a rail carrier reorganization transaction. *See, e.g., Penn-Central Merger and N&W Inclusion Cases*, 389 U.S. 486, 511 (1968); *Schwabacher*, 334 U.S. 18; *Zatz v. U.S.*, 149 F.3d 144 (2<sup>nd</sup> Cir 1998); *Union Pacific Corp., et al. – control – Missouri Pacific Corp. et al.*, 366 I.C.C. 462 (1982). If, instead, the Bondholders are requesting that the Board condition its approval of the transactions upon Petitioners’ resolution of issues concerning Bondholders’ consent through negotiations, and that Petitioners not ask the Board to commence a fairness proceeding unless consent negotiations with the bondholders fail to reach sufficient agreement(s), then their position is consistent with Petitioners’ position, and the parties have no material disagreement with respect to the Petition and the supplemental order it seeks.

**B. NYCEDC Does Not Oppose the Proposed Transactions or Propose Any Modification to Those Transactions, and its Comments Primarily Seek Information that is Already Available in the Public Record.**

The Comments submitted by NYCEDC do not oppose the proposed transactions, acknowledge that Petitioners have adequately described those transactions, their purpose, and intended effects, and "applaud the efforts of the Petitioners to enhance efficiency with the ultimate goal of improving operations". Comments of NYCEDC, Acting on Behalf of the City of New York, NY at 1-2, EDC-1, Finance Docket No. 33388 (Sub-No. 94) (Aug. 28, 2003) (hereinafter "NYCEDC Comments"). NYCEDC then poses several questions seeking information to facilitate its evaluation of certain representations in the Petition, most prominently the representation that "the proposed transaction will not have any effect on either the ownership or operation of the Shared Assets areas." NYCEDC Comments at 2-3. Petitioners believe that NYCEDC's questions have largely been addressed in previous filings, or seek information that is not relevant to the supplemental authorization the Petition seeks. Petitioners will nonetheless attempt to provide answers to NYCEDC's questions, summarizing them and then providing responses in the general order in which they appear in the comments. *See* NYCEDC Comments at 3.

1. The Original CSX/NS/Conrail Transaction and Organizational Structure, and Reasons for the Proposed Restructuring

NYCEDC's questions regarding Petitioners' current structure, and their structure after the proposed reorganization, are thoroughly addressed in the original Conrail transaction Application filed in 1997, and in the pending Petition. The existing structure of Conrail, NYC, and PRR and the reasons for that structure were thoroughly explained in the original Application. *See, e.g.,* Conrail Control Application Volume I at 9, 12-13, 22-24, 29-58, *CSX Transportation, Inc. et al. - Control and Operating Leases/Agreements Conrail Inc., et al.*, CSX/NS-18 in STB Finance



Docket No. 33388 (June 1997) ("Conrail Control Application"). The Application also advised the Board that Petitioners intended in the future to restructure Conrail in the manner proposed in the pending Petition. *See* Conrail Control Application Vol. 8B, CSX/NS-25 at 61-63 (Transaction Agreement Section 8.9). After careful review and thorough consideration of thousands of pages of comments, and public hearings, the Board found the original Conrail transaction was in the public interest and approved the original Application, including the present organizational structure, in 1998. *See* Decision 89, STB Fin. Docket No. 33388 (July 23, 1998), 3 STB 196. That structure was approved by the Board, and there is no reason for the Board to revisit that approval in the context of this proposal.

The reasons that Petitioners seek to reorganize the existing entities and rationalize their structures are set forth in the Petition, filed on June 4, 2003. *See, e.g.*, Petition at 2-4, 8-11, 17-20. Based on their 4 ½ years of experience with the current shared ownership structure, NS, CSX, and Conrail have determined that they can reduce costs and improve efficiency, reduce unnecessary entanglement between NS and CSX, and enhance the independence of the two Eastern Class I carriers by effecting a permanent division of ownership of the Conrail Allocated Assets between CSX and NS. As the Petition explains, the proposed transactions will enhance the transparency and visibility of the overall financial results and performance of CSX and NS; will consolidate the ownership and management functions for the portions of the Allocated Assets now managed by NS (*i.e.* PRR) and CSX (*i.e.*, NYC), thereby eliminating a number of costs and inefficiencies resulting from the current joint ownership structure; will simplify the corporate structures of NS, CSX, and Conrail; and will provide NS and CSX greater independence to manage their respective shares of the Allocated Assets in accordance with the parent railroad's individual goals, needs, and opportunities. *See id.*

2. Conrail's Financial Condition After the Consummation of the Proposed Transactions

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Upon completion of the proposed restructuring, Petitioners expect that Conrail's remaining assets will have a book value in excess of \$1.0 billion and will include 1,200 miles of track, three (3) major classification yards, and twenty-five (25) support yards serving the North Jersey, South Jersey/Philadelphia and Detroit areas. If all of the holders of Conrail's unsecured debentures elect to participate in the proposed exchange, the restructuring will result in the removal of approximately \$800 million in unsecured debt from Conrail's balance sheet, so Conrail's remaining liabilities will comprise mostly deferred tax and pension liabilities, casualty reserves, and equipment and other lease-related obligations. However, Petitioners expect that all of Conrail's equipment and lease related obligations would be supported by leases or subleases between Conrail and either CSXT or NSR. These supporting leases/subleases will have terms, conditions and cash flows matching the controlling agreements between Conrail and the relevant debtors/equipment lessors. Additionally, the 1997 Keepwell Agreement (detailed in Section 4.3 of the original Transaction Agreement) will remain in full force and effect following the restructuring. *See* Petition at 20-21; Conrail Control Application, CSX/NS-25, Vol. 8B at 49.

Moody's Investors Service and Standard & Poor's have reviewed the proposed restructuring and concluded (as more particularly described in Exhibits 5 and 6 to the Petition) that they would rate Conrail's secured debt A1/A respectively, a level commensurate with Conrail's current secured debt ratings from those same credit agencies. These prominent credit ratings companies are in a good position to assess Conrail's ability to pay its debts post-restructuring, and their judgement should provide adequate comfort as to Conrail's on-going financial viability.



### 3. Future Role and Commercial Viability of Conrail

Questions 3, 5, 6 and 7 address related aspects of the same general questions, *viz.*, after the consummation of the proposed transactions, what will be Conrail's role, and will Conrail remain commercially viable? Petitioners address those four questions together, because they are closely related. Conrail's mission after the proposed restructuring will be unchanged from its present mission, except that its role as landlord for the Allocated Assets will come to an end. After the STB approved the original Conrail Transaction pursuant to Decision 89, Conrail's principal activity changed from that of a Class I line-haul carrier to operator of the Shared Assets Areas. The services provided by Conrail in the Shared Assets Areas allow CSXT and NSR to provide competitive rail service in, to, and from, North Jersey, South Jersey/Philadelphia and Detroit. The proposed restructuring will preserve this balanced, competitive rail service and Conrail's operations in these areas will be unaffected by the restructuring.

As the owner/operator of the Shared Assets Areas, after the proposed restructuring, Conrail will continue to receive fair-market value rent and operating fees for the services it provides to CSXT and NSR.<sup>7</sup> Conrail will receive lease/sublease rental payments from NSR and CSXT in amounts sufficient for Conrail to pay its debt and lease rental obligations as they become due. Also, Conrail will continue to generate annual revenues from fiber optics, signboard licensing, and real estate and right-of-way sales and leasing. For further support, the 1997 Keepwell Agreement (*see* Response No. 2, *supra*) remains in full force and

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<sup>7</sup> Conrail will no longer receive rents from the lease of the Allocated Assets, but, on the other side of the ledger, it will no longer pay (or be liable for) the debt service for those Assets. *See generally*, Petition Exhibits 2-4.



effect, and provides additional assurance that Conrail's cash flows will be adequate to maintain financial and operating stability.

4. Petitioners Do Not Currently Plan Any Additional Financial and/or Organizational Changes for Conrail

Petitioners have no current plans to make significant changes in the organization or operations of Conrail beyond those necessary to implement the transactions and restructuring described in the Petition. Of course, NS, CSX, and Conrail will evaluate opportunities and conditions as they develop, and they cannot predict future developments, let alone predict how they might respond to such unknown developments. *See* Petition at 3, n.4. Presently, however, Petitioners do not plan any additional material changes in Conrail's organization or functions.

**C. Conrail has Fully Responded to the Questions Posed by Residco.**

Petitioners believe they have fully responded to three narrow questions posed in the comment letter filed by Residual Based Finance Corporation ("Residco"). *See* Residco Comments (Aug. 20, 2003). Like other commenters, Residco does not oppose the proposed transaction. Rather, its comments simply sought limited additional information concerning the proposed transactions' effect on a specific Conrail lease obligation. Shortly after Residco filed its comment letter, a Conrail representative contacted Residco to discuss Residco's questions regarding the effect of the proposed transactions on an equipment conditional sale agreement between Residco and Conrail. On behalf of all Petitioners, Conrail explained to Residco that, while Conrail would remain primarily liable for debt payments to Residco, NSR and CSXT would also be directly liable under subleases to Conrail, whose terms would mirror those of the conditional sale agreement between Residco and Conrail. At Residco's request, Conrail memorialized its responses in a letter. *See* Letter from T. McFadden to S. Lorenz (Aug. 26,

2003) (copy attached hereto as Exhibit A). Petitioners believe their response fully and adequately addresses the inquiry and concerns of Residco.

**D. The Comments of the Commonwealth of Massachusetts Essentially Support the Proposed Transactions.**

CSX appreciated the Commonwealth of Massachusetts' support for the Conrail Transaction in 1997 and appreciates the Commonwealth's present support for the Petition for Supplemental Order. As stated in the letter of August 26, 2003 from Daniel A. Grabauskas, Secretary of Transportation, "[t]he Commonwealth supports simplification of the ownership structure, with the expectation that such simplification will redound to the benefit of the Commonwealth and its constituents through increased efficiency and economy in rail service."

The Commonwealth understandably expresses the desire that CSX continue to live up to the commitments of the Agreement between the Commonwealth and CSX dated October 31, 1997. CSX believes that it has complied with those commitments to date, and both parties continue to work to meet the commitments in the Agreement. The Commonwealth correctly states that the Board's oversight period for the underlying Transaction extends until June 2004.

As CSX reported in its annual submissions in the General Oversight proceeding, CSX agreed in 2000 and 2001 to add a total of six round-trip schedules to the Massachusetts Bay Transportation Authority's (MBTA's) commuter service between Framingham and Worcester on the Boston Main Line, and has cooperated with MBTA regarding other proposed extensions of commuter service.<sup>8</sup> CSX is presently working with the Commonwealth to complete one of those

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<sup>8</sup> See Finance Docket No. 33388 (Sub-No. 91) (General Oversight): First Submission by Applicants CSX Corporation and CSX Transportation, Inc. 60 (CSX-1) (filed June 1, 2000); Second Submission by Applicants CSX Corporation and CSX Transportation, Inc. 46-47 (CSX-4) (filed June 1, 2001); Third Submission by Applicants CSX Corporation and CSX Transportation, Inc. 28-29 (CSX-9) (filed June 3, 2002).



proposed projects – extension of commuter service to Greenbush – and believes that this project is on target for completion within the timeframe contemplated by the parties.

Representatives of CSX also continue to meet on a quarterly basis with representatives of the Commonwealth to discuss a full range of immediate issues and the long-term interests of CSX and the Commonwealth (including operating, engineering, passenger rail, real property and economic development issues). CSX believes that these discussions have been very productive in the past and that these regularly scheduled meetings will continue to provide a constructive forum for future communication. Approval of the Petition for Supplemental Order would facilitate CSX's ability to make plans with the Commonwealth to implement future projects in their common interest.<sup>9</sup>

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In sum, no person or entity has indicated that it opposes the proposed transactions, or that it seeks any substantive modification to those transactions. None of the four commenters has taken the position that the proposed transactions is not in the public interest, or that there is any substantive basis for opposition to the proposed restructuring. Petitioners have addressed the minor concerns and requests for clarification submitted by the four commenters, and there is no outstanding concern that would warrant any modification to the proposed transactions, or any additional conditions beyond those proposed in the Petition. The Board should approve the

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<sup>9</sup> As Massachusetts' comments recognize, the sale of certain of the Allocated Assets is a good example of the type of transaction that will be facilitated by the restructuring proposed in the Petition.

Petition as submitted, and issue the requested Supplemental Order, authorizing Petitioners to complete the proposed restructuring transactions.<sup>10</sup>

## II. THE PROCEDURAL SCHEDULE IS ADEQUATE, AND THE MOTION FOR MODIFICATION OF THAT SCHEDULE SHOULD BE DENIED.

The Board should deny NYCEDC's Motion for modification of the procedural schedule as untimely, unnecessary, and inconsistent with Board practice and precedent. Petitioners filed the subject Petition on June 4, 2003. More than a month later, the Board issued a decision that, *inter alia*, summarized the proposed transactions, established a procedural schedule governing the submission of comments and responses in this proceeding, and directed that Petitioners serve a copy of the Board's decision (which included the schedule) on all parties of record in the Conrail transaction docket, and all known Conrail debtholders and lease obligees. *See* STB Decision No. 1, STB Finance Docket No. 33388 (Sub-No. 94) (July 9, 2003) ("Decision No. 1"). The Decision (which Petitioners served on NYCEDC) unambiguously requires that:

[a]ny person (including, but not limited to, persons served with copies of this decision) who wishes to file comments respecting the petition **must file such comments by August 28, 2003.**

Decision No. 1 at 16 (emphasis added). On August 28, the last day allowed for filing comments, NYCEDC filed a motion requesting that the Board revise and extend its procedural schedule to allow NYCEDC to file additional "rebuttal" comments fifteen (15) days after Petitioners file their Reply to the comments of interested parties. Motion of NYCEDC . . . For A Modification

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<sup>10</sup> The Petition requests that the Board issue a supplemental order approving the transaction, subject to a condition that Petitioners will seek to obtain the consent of debtholders through negotiations or, in the event those negotiations do not result in the consents necessary to consummate the transactions, Petitioners may propose further proceedings before the Board to determine outstanding issues regarding such consents (including the fairness and reasonability of the terms of exchange and compensation offered by Petitioners). *See* Petition at 20-24.



of the Procedural Schedule, EDC-2, STB Finance Docket 33388 (Sub-No. 94) (Aug. 28, 2003) (NYCEDC's motion is in addition to the separate comments it filed the same day). For at least three independently sufficient reasons, NYCEDC's Motion lacks merit and should be denied.<sup>11</sup>

First, the motion is untimely. The Board issued Decision No. 1 on July 9, 2003, clearly advising all interested persons that the deadline for submitting any and all comments in this matter was August 28, 2003. If NYCEDC believed it needed more time or information to submit comments, it should have advised the Board and Petitioners of this promptly after the Board issued the procedural schedule in Decision No. 1. In the intervening seven weeks, however, NYCEDC provided no notice or other indication that it believed the time for filing comments was insufficient, or that it believed it needed more time to file comments. Nor did NYCEDC contact Petitioners in a timely manner to request any additional information it thought it needed in order to develop its position or submit comments.<sup>12</sup> NYCEDC offers no justification or excuse for the tardiness of its request for more time. The Motion should be denied as untimely.

Second, the schedule change the Motion seeks would deprive Petitioners of their right to respond to comments. It is well-established that applicants in a railroad consolidation proceeding (i.e., the Petitioners in this proceeding) are entitled to file the final evidence and close the record in that proceeding. See, e.g., ICC Finance Docket No. 32549, *Burlington Northern R. Co. et al. - Control and Merger - Atchison, Topeka and Santa Fe Ry. et al*, Decision No. 16

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<sup>11</sup> All interested parties are subject to the same procedural schedule. Notably, however, no other party has suggested that the procedural schedule was inadequate, or that the schedule should be extended to allow it more time to submit additional comments.

<sup>12</sup> NYCEDC first disclosed its questions to Petitioners less than two days before the deadline for filing comments.



(served Apr. 20, 1995), at 11 (“[A]pplicants . . . have the right to close the evidentiary record on their case. . . . Allowing [commenting] parties to file rebuttal evidence would deprive the primary applicants of their right to close the evidentiary record on their case.”). The Board has made abundantly clear – both in this proceeding and in many other rail consolidation cases – that non-applicant parties-in-interest are simply not allowed to file rebuttal comments. *See, e.g.*, STB Finance Docket No. 33388, Decision No. 6 (served May 30, 1997) (“We will not allow parties filing comments, protests, and requests for conditions to file rebuttal in support of those pleadings. Parties filing inconsistent and/or responsive applications have a right to file rebuttal evidence, while parties simply commenting, protesting, or requesting conditions do not”), *citing* ICC Finance Docket No. 32760, *Union Pacific R. Co. et al - Control and Merger - Southern Pacific Rail Corp. et al.*, Decision No. 6 (served Oct. 19, 1995), at 7-8 (“We will not allow parties filing comments, protests, and requests for conditions to file rebuttal in support of those pleadings.”).<sup>13</sup> NYCEDC offers no good reason for the Board to depart from its established rule prohibiting commenters from filing rebuttal comments, and the Motion should be denied as contrary to Board practice and precedent.

Third, granting NYCEDC’s belated request to extend the procedural schedule would unduly delay the Board’s consideration and determination of this Petition. If the Board were to grant the Motion and extend the schedule for 15 days to allow NYCEDC to file additional comments, it would presumably allow Petitioners at least the same amount of time to

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<sup>13</sup> *Accord*, STB Finance Docket No. 33388, Decision No. 64 (served January 29, 1998) (“parties filing comments, protests, and requests for conditions . . . are not permitted to file rebuttal in support of those pleadings. Parties filing inconsistent and/or responsive applications have the right to file rebuttal evidence, while parties simply commenting, protesting, or requesting conditions do not”); STB Finance Docket No. 33388, Decision No. 65 (served January 28, 1998) (same); STB Finance Docket No. 33388, Decision No. 66 (served February 3, 1998) (same).

prepare and file a response (to vindicate Petitioners' right to close the evidentiary record).<sup>14</sup> The result would be to delay by at least 30 days the submission of the full record for the Board's consideration and determination.<sup>15</sup>

NYCEDC had ample opportunity to develop and submit comments on the Petition. If it believed it needed more time or information to submit comments, NYCEDC could have filed a timely request for extension or more information, rather than filing the present Motion on the day of the deadline for comments of interested parties. The schedule provided in Decision No. 1 was fair and reasonable, and NYCEDC has offered no adequate reason for the Board to change that schedule. Accordingly, the Motion should be denied.

### **CONCLUSION**

The Petition is fully consistent with the public interest, and no modifications or additional conditions are necessary or appropriate. Accordingly, the Board should issue the

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<sup>14</sup> If the Board grants the Motion, or provides NYCEDC any opportunity to submit additional comments, Petitioners hereby request that the Board preserve their right to close the record by granting Petitioners the opportunity to file a response to NYCEDC's rebuttal or other supplemental submission, within a reasonable period of time after NYCEDC submits any such supplement.

<sup>15</sup> For business reasons, Petitioners wish to complete the proposed transactions as expeditiously as possible. Accordingly, Petitioners requested that the Board issue its decision within 45 days of this Reply (Petition at 23), and the Board has indicated that it "will endeavor to issue its decision on the merits of the petition as soon as possible after the filing of the petitioners' reply." Decision No. 1 at 16. To facilitate an expeditious decision, Petitioners have filed this Reply 8 days earlier than required by the Board's schedule. NYCEDC's unnecessary request for an extension, however, would effectively consume 30 of the first 45 days following Petitioners submission of this Reply.



Supplemental Order requested in the Petition.

**Peter J. Shudtz**  
CSX Corporation  
Suite 560  
1331 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
(202) 783-8124

*Counsel for CSX Corporation*

**Ellen M. Fitzsimmons**  
**Paul R. Hitchcock**  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, Florida 32202  
(904) 359-3100

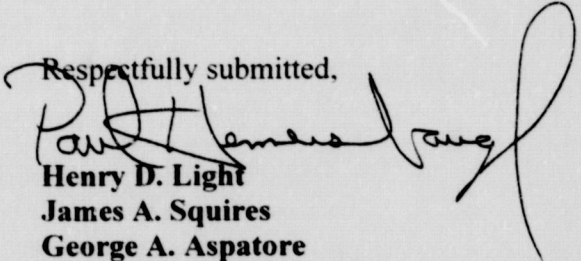
*Counsel for CSX Transportation, Inc.*

**Mary Gabrielle Sprague**  
Arnold & Porter  
555 12th Street, N.W.  
Washington, D.C. 20004  
(202) 942-5000

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

Dated: September 17, 2003

Respectfully submitted,



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**James A. Squires**  
**George A. Aspatore**  
Norfolk Southern Corporation  
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*Counsel for Norfolk Southern Corporation  
and Norfolk Southern Railway Company*

**Jonathan M. Broder**  
Consolidated Rail Corporation  
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Philadelphia, Pennsylvania 19103  
(215) 209-5020

*Counsel for Conrail Inc. and  
Consolidated Rail Corporation*

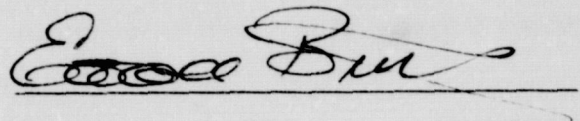
**G. Paul Moates**  
**Paul A. Hemmersbaugh**  
**Donald H. Smith**  
Sidley Austin Brown & Wood LLP  
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Washington, D.C. 20005  
(202) 736-8000

*Of Counsel*

Certificate of Service

I hereby certify that I caused copies of the foregoing Petitioners' Response to Comments and Response to Motion for Modification of Procedural Schedule in STB Finance Docket No. 33388 (Sub-No. 94) to be served, by first class mail or more expeditious method of delivery, upon counsel for each party that submitted comments concerning the pending Petition in Subdocket No. 94

September 17, 2003

A handwritten signature in cursive script, appearing to read "Edward B. Smith", is written over a horizontal line.





# CONRAIL®



August 26, 2003

Ms. Susan Lorenz  
Residual Based Finance Corporation  
Three First National Plaza, Suite 777  
Chicago, IL 60602

Dear Susan,

It was a pleasure speaking with you on the phone yesterday regarding the proposed Conrail transaction referred to in your letter to the Surface Transportation Board dated August 20, 2003. During our phone conversation you suggested that I respond in writing to the three questions that you raised in the above-noted STB letter.

Regarding question #1, assuming that the IRS and the STB approve the transaction, Conrail will remain primarily liable for all secured debt and lease payments and will continue to make all payments to the secured parties. Conrail will sublease approximately 58% of its encumbered equipment to Norfolk Southern Railway Company (NSR), and approximately 42% to CSX Transportation, Inc. (CSXT). As a result, NSR will be directly liable, as sublessee, to Conrail for 58% of the total debt service (or lease payments) under the applicable head lease (or secured agreement), and CSXT will be directly liable, as sublessee, for 42% of those payments.

As I mentioned in our phone call in response to question #2, I will send you the latest financial statements for both Norfolk Southern Corporation and CSX Corporation. You should already be receiving quarterly and annual financial statements from Conrail, and will continue to receive Conrail's financial statements in the event the proposed transaction is approved.

Finally, as I noted during our call, the "guarantor for payments" raised in your question #3 is not really applicable for Conrail's secured debt and lease transactions. Again, as noted in my answer to question #1, Conrail is proposing to sublease its encumbered equipment directly to NSR and CSXT. Those subleases are expected to have terms and payment schedules that are identical to the head-leases between Conrail and the secured parties, and all sub-leases will be junior and subordinate to the head-lease agreements. In summary, we expect that the subleases will comply in all respects with the requirements of Section 15.2 of the Agreement between Conrail and Residco.

If you find the above-noted answers satisfactory, we would appreciate you advising the STB that your questions have been adequately answered and that your comments are withdrawn. Should you or Vince Kolber require additional clarification, I would be pleased to speak with both of you at your earliest convenience.

Best Regards,

Tom McFadden  
Consultant

STB

FD-33388

(SUB 94)

08/28/03

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208802

Kirkpatrick & Lockhart LLP

208802

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202.778.9000  
www.kl.com

August 28, 2003



**VIA HAND DELIVERY**

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

ENTERED  
Office of Proceedings

AUG 28 2003

Part of  
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Edward J. Fishman  
202.778.9456  
Fax: 202.778.9100  
efishman@kl.com

**Re: Finance Docket No. 33388 (Sub-No. 94), 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 (Petition for Supplemental Order)**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Comments of the Conrail Ad-Hoc Bondholders' Committee**. A 3.5-inch diskette containing the text of the comments in WordPerfect format also is enclosed.

Respectfully submitted,

Edward J. Fishman  
Counsel for Dodge & Cox

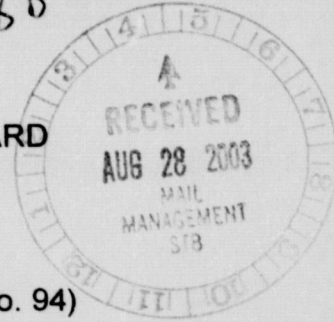
Enclosure



208802

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 33388 (Sub-No. 94)

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 (PETITION FOR SUPPLEMENTAL ORDER)

---

**COMMENTS OF THE AD-HOC CONRAIL BONDHOLDERS' COMMITTEE**

ENTERED  
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AUG 28 2003  
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Public Record

Kevin M. Sheys  
Edward J. Fishman  
Kirkpatrick & Lockhart, LLP  
1800 Massachusetts Avenue N.W.  
2<sup>nd</sup> Floor  
Washington, D.C. 20036  
(202) 778-9000

**ATTORNEYS FOR DODGE & COX, IN ITS  
CAPACITY AS A MEMBER OF THE AD-HOC  
CONRAIL BONDHOLDERS' COMMITTEE**

Dated: August 28, 2003

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 33388 (Sub-No. 94)

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 (PETITION FOR SUPPLEMENTAL ORDER)

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**COMMENTS OF THE AD-HOC CONRAIL BONDHOLDERS' COMMITTEE**

Pursuant to Decision 1 served in this proceeding by the Surface Transportation Board ("STB" or "Board") on July 9, 2003, the Ad-Hoc Conrail Bondholders' Committee hereby submits these comments on the Petition for Supplemental Order ("Petition") filed by CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail Inc. and Consolidated Rail Corporation (collectively referred to herein as "Petitioners") on June 4, 2003.

**I. Background**

The Ad-Hoc Conrail Bondholders' Committee ("Bondholders Committee") is an ad-hoc group that was formed to protect the interests of its members in their capacity as holders of a majority of the aggregate principal amount of the \$550,000,000 9.75% debentures due June 15, 2020 and the \$250,000,000 7.875% debentures due May 15, 2043 (together, the "Debentures") issued by Consolidated Rail Corporation ("Conrail") pursuant to an Indenture dated as of May 1, 1990, as amended by a Supplemental Indenture dated as of August 25, 1998 ("Indenture").<sup>1</sup> The members of the Bondholders

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<sup>1</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the proposed Distribution Agreement that was submitted to the Board as Exhibit 4-1 of the Petition.



Committee include Dodge & Cox and four other holders, some of whom hold the Debentures on behalf of their advised accounts.<sup>2</sup>

The Indenture provides for the issuance from time to time of unsecured debentures and other forms of indebtedness by Conrail in one or more series. The Indenture also includes various protective covenants pertaining to each series of securities outstanding under the Indenture. Among these protective provisions is Section 8.2 of the Indenture, which requires that holders of not less than a majority in aggregate principal amount of the securities outstanding under the Indenture consent to the modification of certain rights belonging to the holders. The Bondholders Committee believes that the Debentures are the only extant series of indebtedness outstanding under the Indenture and, accordingly, are the only securities that will be subject to the consent solicitation.

As the reorganization transaction proposed in the Petition will entail retiring the existing Debentures and replacing them with new debt securities to be issued by two new obligors, majority consent of the existing bondholders must be obtained. The members of the Bondholders Committee have a strong interest in ensuring that the contractual arrangements upon which they based their decision to invest in the Debentures, including the supplemental indenture provisions, are honored by the Petitioners.

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<sup>2</sup> These comments are being submitted by Dodge & Cox in its capacity as a member of the Bondholders Committee. The other members of the Bondholders Committee support these comments and are represented by separate counsel.



## **II. Overview Of Relief Requested By The Petitioners**

In this proceeding, the Petitioners seek a supplemental order under 49 U.S.C. § 11323 authorizing the consolidation of New York Central Lines LLC ("NYC") with CSX and the consolidation of Pennsylvania Lines LLC ("PRR") with NS, for the stated purpose of effectuating the acquisition of full ownership and control of the assets and business of NYC by CSX and PRR by NS. Petition at 1-2.<sup>3</sup> The proposed transaction requires the consent of the holders of a majority of the aggregate principal amount of the Debentures because it involves the transfer of ownership of a major portion of Conrail's assets (its membership interests in NYC and PRR) to NS and CSX, the cancellation of the tendered Debentures and the replacement of those Debentures with new obligations issued by NYC Newco and PRR Newco. Id. at 12-13.

The Petitioners have indicated that they will offer the bondholders an exchange of their existing Debentures for new unsecured debt securities issued by NYC Newco and PRR Newco on a \$.58/\$.42 pro rata basis. Id. at 13; 21. The new debt securities will have the same maturity dates, interest rates and aggregate principal amount as the Debentures, will be proportionally guaranteed by CSX and NS and will have covenant packages substantially similar to those of the publicly traded unsecured debentures of CSX and NS, respectively. Id. at 21. The Petitioners refer to this proposed exchange offer as the "debt restructuring." Id. at 13.

The Petitioners indicate that they intend to seek the consent of the bondholders to the proposed reorganization transaction and debt restructuring. The Petitioners have asked the Board to authorize the proposed reorganization transaction as consistent with

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<sup>3</sup> The terms "CSX" and "NS" shall have the meanings set forth in the Petition.

the public interest subject to a condition requiring the Petitioners to resolve any issues pertaining to the bondholders' consents through private negotiations. In the event that such negotiations fail, the Petitioners plan to propose further proceedings to resolve any such issues before the Board. Id. at 24.

### **III. Specific Comments On Relief Sought By The Petitioners**

In order to allow consent negotiations to proceed in a neutral environment, we request that the Board condition any supplemental order that it may issue in this proceeding on the successful resolution of the consent solicitation process. The STB's silence while negotiations proceed will maximize the opportunity to resolve any bondholder consent issues through the negotiation procedures prescribed by Article VIII of the Indenture and the registration requirements of Form S-4 under the Securities Act of 1933. The condition sought by the Petitioners is material because, absent resolution of the consent solicitation process, any finding that the Board makes with respect to the public interest of the proposed reorganization transaction will not be final.

### **IV. Conclusion**

For the foregoing reasons, the Bondholders Committee requests that the Board condition any supplemental order that it may issue in this proceeding on the successful completion of the consent solicitation process through registered exchange offers on Form S-4 in compliance with the terms of the Indenture.

Respectfully submitted,

By: 

Kevin M. Sheys

Edward J. Fishman

Kirkpatrick & Lockhart LLP



1800 Massachusetts Avenue N.W.  
2<sup>nd</sup> Floor  
Washington, D.C. 20036  
(202) 778-9000

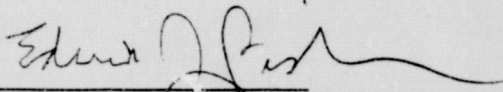
**ATTORNEYS FOR DODGE & COX, IN  
ITS CAPACITY AS A MEMBER OF THE  
CONRAIL AD-HOC BONDHOLDERS'  
COMMITTEE**

Dated: August 28, 2003



**Certificate of Service**

i hereby certify that on August 28, 2003, I caused to be served, by first-class mail, postage prepaid, a true and correct copy of the foregoing Comments of the Ad-Hoc Conrail Bondholders' Committee on all parties of record in STB Finance Docket No. 33388 (Sub-No. 94).

  
\_\_\_\_\_  
Edward J. Fishman

Dated: August 28, 2003

STB

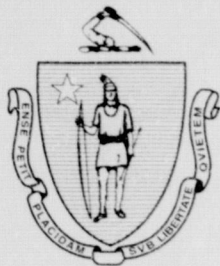
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208799



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

Mitt Romney  
Governor

Kerry Healey  
Lieutenant Governor

Daniel A. Grabauskas  
Secretary of Transportation

Office of the Secretary

AUG 23 2003

Dept of  
Transportation

August 26, 2003

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

208799



Re: **STB Finance Docket No. 33388 (Sub-No. 94)**

Dear Secretary Williams:

The Commonwealth of Massachusetts supported the acquisition of Conrail lines by CSX and NS in STB Finance Docket 33388, based upon a constructive agreement dated October 31, 1997, and executed by the Executive Office of Transportation and Construction, on behalf of the Commonwealth of Massachusetts, and CSX (the "CSX/Commonwealth Agreement" or "Agreement").

The CSX/Commonwealth Agreement addresses specific concerns identified by the Commonwealth and is expected to bring about economic balance and enhance passenger/freight rail operational coordination within the Commonwealth. The Agreement contemplates meaningful cooperation and negotiation on a number of issues of high priority concern to the Commonwealth. These issues include the Commonwealth's interest in extension of commuter rail service and resolution of ownership and operation of acquired lines deemed to be of critical importance to the Commonwealth.

While the Commonwealth did not request that the Board impose the stipulations and commitments established in the Agreement as conditions to Decision No. 89, we understand that the Board retained oversight over the transaction to confirm that conditions imposed by the Board, and specific agreements between CSX (or NS) and concerned parties would be fulfilled within a reasonable time (3 to 5 years) after approval of the proposed acquisition.

The involved parties now seek to simplify the ownership structure that resulted from the acquisition and control of Conrail by CSX and NS as approved by the Board in Decision No. 89. The Commonwealth supports simplification of the ownership structure, with the



expectation that such simplification will redound to the benefit of the Commonwealth and its constituents through increased efficiency and economy in rail service.

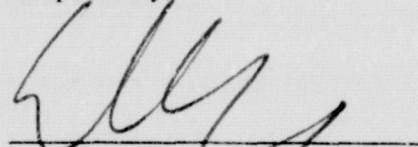
We note that one of the objectives sought by petitioners is removal of impediments to dispositions of property by the respective carriers. In this regard, we wish to emphasize that CSX has committed to discuss the Commonwealth's interests in extensions of commuter rail services with flexibility of options as to funding, ownership and operation of acquired lines. These discussions have been ongoing as they relate to various projects, but they have not yet been concluded. We look forward to continued cooperation in ongoing discussions with CSX regarding future disposition of properties in connection with passenger rail, freight rail and rail banking initiatives.

The Commonwealth expects that the commitments referenced in the CSX/Commonwealth Agreement will be resolved to the mutual satisfaction of the parties under the continued oversight of the Board. We anticipate that discussions between the parties will be completed and any outstanding matters of dispute resolved before CSX moves forward with new proposals for abandonment or sale of former Conrail lines within the Commonwealth. We are prepared to complete constructive discussions with CSX with that goal in mind.

As noted above, we are supportive of the proposed rationalization of the Conrail ownership restructure to the extent such rationalization will remove unnecessary obstacles to the efficient and cost-effective management of these rail assets. We remain concerned, however, that CSX may choose to proceed rapidly with disposition of rail assets currently within the NYC Allocated Assets. In order to ensure the orderly disposition of these properties to best serve the public interest, and recognizing the timeframes required to ensure adequate planning and funding, the Commonwealth is seeking to develop with CSX appropriate timeframes for prospective sales of Conrail/CSX properties to the Commonwealth and/or its agencies or authorities.

In addition to its support for the proposed rationalization of ownership structure sought herein the Commonwealth urges that the Board retain oversight over the underlying transaction through June 2004, as contemplated by Decision No. 89 and subsequent oversight decisions, to ensure full compliance with that Decision and related agreements between concerned parties.

Respectfully,

  
\_\_\_\_\_  
Daniel A. Grabauskas  
Secretary of Transportation

Cc: Parties of record

STB

FD-33388

(SUB 94)

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August 20, 2003

Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001



# RESIDCO

RESIDUAL BASED FINANCE CORPORATION  
Three First National Plaza Suite 777  
Chicago, Illinois 60602  
tel 312.726.6086 fax 312.726.3690  
www.residco.com

Dear Sir or Madam:

208740

Residual Based Finance Corporation ("RESIDCO") is in receipt of a copy of Surface Transportation Board Decision STB Finance Docket No. 33388 (Sub-No. 94) ("Decision") and wishes to file comments regarding this matter. It has been acknowledged that the transaction proposed in the Decision will have an effect on Conrail's debt and equipment lease obligations requiring the consent of the holders of such obligations. RESIDCO is unable to grant its consent to the proposed transaction without the submission of the following information:

1. Which entity will be making payments on the Agreement dated February 25, 2000 with Consolidated Rail Corporation Finance Number C100 ("Agreement")?
2. When will the financial statements of the entity making the payments on the Agreement be forthcoming?
3. Which entity will be acting as guarantor for the entity making the payments on the Agreement?

Replies to RESIDCO's comment should be sent to the following address:

Residual Based Finance Corporation  
Three First National Plaza, Suite 777  
Chicago, IL 60602-4275  
Attention: Vincent A. Kolber, President

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Thank you for your assistance in this matter. Please contact me at 312-726-0178 or e-mail me at [lorenz@residco.com](mailto:lorenz@residco.com) with any questions or concerns.

Sincerely,

Susan K. Lorenz  
Director Treasury & Control

CC: Mr. G. Paul Moates, Sidley Austin Brown & Wood LLP  
CC: Mr. Peter J. Shudtz, CSX Corporation  
CC: Mr. Henry D. Light, Norfolk Southern Corporation  
CC: Mr. Jonathan M. Broder, Consolidated Rail Corporation



STB

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**ANGELINI, VINIAR & FREEDMAN, LLP**

70 Euclid Street

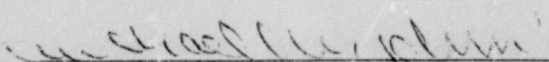
P.O. Box 751

Woodbury, NJ 08096

(856) 853-8500

Attorneys for South Jersey Transportation Planning Organization



  
Michael A. Angelini, Esquire

**SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.**

Finance Docket No. 33388 - 94

**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**

**NOTICE OF INTENT TO PARTICIPATE**

Please enter the appearance of the undersigned counsel on behalf of the South Jersey Transportation Planning Organization ("SJTPO"), acting on behalf of the southern district of the State of New Jersey, which intends to participate and become a party of record in this proceeding. Pursuant to 49 C.F.R. § 1104.12, service of all documents filed in this proceeding should be made upon the undersigned.

Please also remove the appearance of the law firm Gruccio, Pepper, Giovinazzi, DeSanto & Farnoly, P.A., 817 Landis Avenue, CN 1501, Vineland, NJ 08360 as they are no longer counsel for the SJTPO.

Dated this 11th day of August 2003.

**ANGELINI, VINIAR & FREEDMAN, LLP**

**ANGELINI, VINIAR &  
FREEDMAN**  
Attorneys-At-Law  
70 Euclid Street  
Woodbury, NJ 08096

By: 

**MICHAEL A. ANGELINI, ESQUIRE**

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## SIDLEY AUSTIN BROWN &amp; WOOD LLP

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WRITER'S DIRECT NUMBER  
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**ORIGINAL**

WRITER'S E-MAIL ADDRESS  
pmoates@sidley.com

July 29, 2003

**By Courier**

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

Re: 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 (Petition for Supplemental Order), STB Finance Docket No. 33388 (Sub-No. 94)

Dear Secretary Williams:

We are counsel to Petitioners CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail, Inc., and Consolidated Rail Corporation in the above-referenced proceeding. Pursuant to the Board's July 9, 2003 Decision No. 1 therein, this is to certify that copies of Decision No. 1 have been served on all parties of record in STB Finance Docket No. 33388 by First-Class mail, postage prepaid. (A hard copy and an electronic copy of a July 24, 2003 letter transmitting Decision No. 1 to those parties are attached as Enclosure A hereto.) This service was effected by mailings directly from the undersigned counsel.

This is further to certify that copies of Decision No. 1 have also been served on all known holders of Conrail's debt and equipment lease obligations, including the holders of the "post-Split" lease obligation described in our letter to the Board dated July 17, 2003, by First Class mail, postage prepaid. (A hard copy and an electronic copy of a July 22, 2003 letter transmitting Decision No. 1 to those debt holders are attached as Enclosure B hereto.) This service was effected in the manner specified by regulations of the Securities Exchange Commission for the distribution of proxy statements and similar matters to shareholders of public corporations.

Sincerely,

*G. Paul Moates*

G. Paul Moates

Paul A. Hemmersbaugh

ENTERED  
Office of Proceedings

JUL 29 2003

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Enclosures (4)





SIDLEY AUSTIN BROWN & WOOD LLP

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WRITER'S DIRECT NUMBER  
(202) 736-8538

WRITER'S E-MAIL ADDRESS  
phemmersbaugh@sidley.com

July 24, 2003

**By First Class Mail**

Re: Surface Transportation Board Finance Docket No. 33388 (Sub-No. 94), 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 (Petition for Supplemental Order)

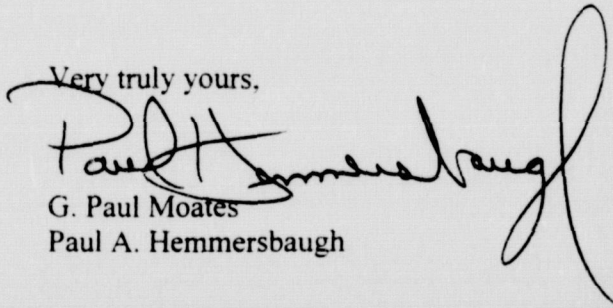
Dear Party of Record in STB Conrail Control Proceeding:

We are counsel to Petitioners CSX Corporation, CSX Transportation Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail, Inc., and Consolidated Rail Corporation (the "Petitioners") in the above-captioned proceeding. On July 9, 2003, the Surface Transportation Board issued a Decision in that proceeding, which, among other things, directed Petitioners to serve a copy of the Decision "on all parties of record in STB Docket No. 33388." See Decision No. 1, STB F.D. No. 33388 (Sub-No. 94) at 2, 17.

We are mailing the enclosed copy of Decision No. 1 to you, because you are listed on the official service list as a party of record or representative of a party of record in STB Finance Docket No. 33388. While we have used the most current official service list to distribute the enclosed Decision, we recognize that, in some instances, the contact person for the party in interest – or even the party in interest itself – may have changed since that party's information was last updated. Therefore, we request that, if you are not the appropriate representative of a party-in-interest to this proceeding, you promptly forward this letter and enclosure to the appropriate representative.

If you have any questions, please contact one of the undersigned.

Very truly yours,

  
G. Paul Moates  
Paul A. Hemmersbaugh

enclosure





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WRITER'S DIRECT NUMBER  
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WRITER'S E-MAIL ADDRESS  
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July 22, 2003

**By First Class Mail**

Re: Surface Transportation Board Finance Docket No. 33388 (Sub-No. 94),  
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 (Petition for Supplemental Order)

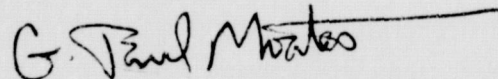
Dear Holder of Conrail Debt or Equipment Lease:

We are counsel to Petitioners CSX Corporation, CSX Transportation Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail, Inc., and Consolidated Rail Corporation (the "Petitioners") in the above-captioned proceeding. On July 9, 2003, the Surface Transportation Board issued a Decision in that proceeding, which, among other things, directed Petitioners to serve a copy of the Decision "on all known holders of Conrail's relevant debt and equipment lease obligations." See Decision No. 1, STB F.D. No. 33388 (Sub-No. 94) at 2, 17.

We are mailing the enclosed copy of Decision No. 1 to you, because Conrail's records reflect that you are a holder or beneficial owner of Conrail debt (e.g., a debenture or equipment lease), or a custodian of Conrail debt instruments.

If you have any questions, please contact one of the undersigned.

Very truly yours,



G. Paul Moates  
Paul A. Hemmersbaugh

Enclosure

STB

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Public Record

WRITER'S DIRECT NUMBER  
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WRITER'S E-MAIL ADDRESS  
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July 17, 2003

*By Courier*

Vernon A. Williams  
Secretary  
Surface Transportation Board  
Room 888  
1925 K Street, N.W.  
Washington, D.C. 20423

208429



Re: STB F.D. No. 33388 (Sub-No. 94), 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 (Petition for Supplemental Order)

Dear Secretary Williams:

In response to ordering paragraph number one of Decision No. 1 in the above-captioned proceedings, Petitioners CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail, Inc., and Consolidated Rail Corporation (collectively, the "Petitioners"), hereby submit the clarification requested by the Board regarding the nature of the debt obligations covered by the proposed restructuring discussed in the June 4, 2003 Petition for Supplemental Order. Specifically, Petitioners confirm that, with one exception, all of the debt obligations of Conrail predate the Split Date of June 1, 1999 and are therefore "preexisting debt obligations" as that term was used in the Petition and by the Board in Decision No. 1.

The sole exception was \$6.774 million principal amount of debt that also originally represented "preexisting debt [lease] obligations" with an original termination date of February 2000. Prior to the end of that particular lease (which contained a mandatory purchase obligation), the lessors offered Conrail the option of exercising its purchase obligation for the underlying equipment using a conditional sales agreement at a favorable market rate of interest, and following analysis of the offer, Conrail's Board approved the transaction. Accordingly, Conrail has incurred a single "post-Split Date" debt obligation that has a remaining principal balance of \$2.6 million and is now set to mature in February 2005. Petitioners plan to serve the

Vernon A. Williams

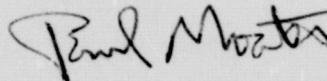
July 17, 2003

Page 2

known holders of that "post-Split Date" debt with Decision No. 1 in the same manner as contemplated for known holders of Conrail's "preexisting debt obligations".

Petitioners are taking appropriate steps to comply with ordering paragraph number two of Decision No. 1 and will report to the Board on those efforts by July 29, 2003.

Sincerely,

A handwritten signature in dark ink, appearing to read "G. Paul Moates". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

G. Paul Moates

Paul A. Hemmersbaugh