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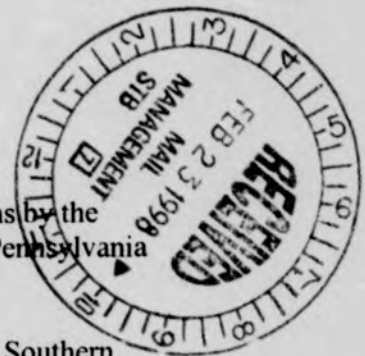
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February 23, 1998

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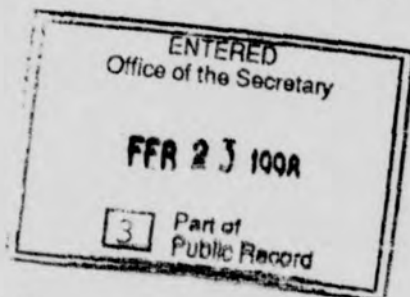


Re: Brief in Support of Comments and Request for Conditions by the
Pennsylvania House Transportation Committee and the Pennsylvania
Senate Transportation Committee

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

Dear Mr. Williams:

On behalf of the Transportation Committees of the Pennsylvania House and
Senate, I enclose for filing an original and twenty-five copies of PA House -3, Brief in
Support of Comments and Request for Conditions by the Pennsylvania House and Senate
Transportation Committees. Also enclosed is a 3.5" computer disk containing the
pleading in Microsoft Word 7.0 format. Should you have any questions regarding this
submission, please contact the undersigned.



Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson
Richard R. Wilson

RRW/klh
Enclosures

xc: The Honorable Jacob Leventhal
The Honorable J. Doyle Corman
The Honorable J. Barry Stout
The Honorable Richard A. Geist
The Honorable Richard Olasz
All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 33388

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

**BRIEF IN SUPPORT OF COMMENTS AND REQUEST
FOR CONDITIONS BY THE
PENNSYLVANIA HOUSE AND SENATE
TRANSPORTATION COMMITTEES**

Submitted by:
Richard R. Wilson, P.C.
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Attorney for Pennsylvania House and
Senate Transportation Committees

Date: February 23, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

I. INTRODUCTION AND SUMMARY

The acquisition of Consolidated Rail Corporation ("Conrail") by Norfolk Southern Corporation ("NS") and CSX Corporation ("CSX") is, in their own words, "a transaction unique in the history of rail combinations." (Applicants Rebuttal Vol. 1, P-13) Moreover, were this transaction not subject to the jurisdiction of the Surface Transportation Board and therefore exempt from antitrust laws, it is questionable whether such an allocation of markets by two competitors would survive Justice Department review.

Nonetheless, despite the unprecedented scope and nature of this transaction, Applicants contend throughout their initial filings and their rebuttal statements that the Board should apply policies and precedents from previous merger proceedings which in light of the UP and BNSF transactions, are of questionable merit. Accordingly, this unique transaction must be evaluated by the Board on its own merits and the Board must

respond to the numerous issues raised by participating parties with conditions or remedies based on the record in this proceeding. The Board should address the operational and competitive problems created by this unique transaction with new and innovative approaches, that will serve the competitive goals of the national transportation policy and the public interest.

The Pennsylvania House and Senate Transportation Committees ("Committees") believe that much of the proposed transaction will be of substantial benefit to the Commonwealth of Pennsylvania and the northeast United States. Indeed many of the concerns expressed in Committee Comments filed with the Board on October 16, 1997 have been addressed in whole or in part by the Applicants, although many of those arrangements remain confidential and it is difficult to assess whether they address merely the private interests of the parties involved or the public interest standard against which this application must be measured.

Finally, there remain concerns expressed by both Committees which the Applicants have either failed to address or have opposed outright. These include the lack of an Operating and Safety Plan for the Philadelphia/South Jersey Shared Asset Area, the reliability and accuracy of revenue projections derived from Applicants truck-rail diversion studies, and competitive access issues affecting shippers and regional or short line carriers within the Commonwealth. The failure of Applicants to adequately address these issues continues to be a source of serious concern to Committee members and their constituents. Accordingly, both Committees urge the Board to impose appropriate protective conditions to deal with these matters.

II. LEGAL ARGUMENT

A. Have the Applicants adequately addressed issues raised by the House and Senate Transportation Committees?

The Comments filed by the Pennsylvania House and Senate Transportation Committees identified specific constituent concerns regarding the impact of the proposed transaction on the Commonwealth of Pennsylvania. These included:

- The failure of Applicants to submit a detailed Operating and Safety Plan for the South Jersey/Philadelphia Shared Asset Area.
- The impact of this proposal on Amtrak, SEPTA and New Jersey Transit commuter operations in the Philadelphia and south Jersey area.
- Job reduction and relocation resulting in the loss of over 2,000 jobs for the Commonwealth.
- The accuracy and reliability of intermodal diversion revenue projections resulting from this transaction.
- Retention of competitive routing options available to shippers and regional or short line railroads throughout the Commonwealth of Pennsylvania.
- Applicants commitment to capitol improvement projects.

The House and Senate Transportation Committees note that as this proceeding has advanced, many parties have expressed similar concerns and reservations regarding the proposed transaction. As a consequence, Applicants have entered into various settlement agreements with other parties. The Board has recognized the critical importance of detailed operational and safety plans for this transaction and has extended the procedural schedule an additional 45 days in order to address these concerns. Some progress has been achieved by Applicants and commuter rail agencies on integrating freight and passenger operations in Philadelphia and the Northeast Corridor, but important operational and safety issues pertaining to joint use of SEPTA commuter lines have yet to

resolved. In addition, the Applicants have negotiated a comprehensive agreement with the National Industrial Transportation League which provides modest but necessary protections to shippers and establishes an informal avenue for discussion and dispute resolution between shippers and the Applicants. Furthermore, Applicants have negotiated a significant agreement with the United Transportation Union which provides additional protections and security to UTU members adversely impacted by this transaction. A number of regional and short line carriers have negotiated trackage agreements, access arrangements and other agreements to address operational and competitive routing concerns. The Committees applaud this progress on the part of Applicants and other parties to address these many important issues.

Moreover, on October 22, 1997 NS entered into a Public-Private Partnership Agreement with Philadelphia and the Commonwealth of Pennsylvania to create new economic development programs to attract rail served businesses to Philadelphia and across Pennsylvania. NS promised to make a substantial investment over five years to help bring a major Norwegian ship builder, Kvaerner ASA, to locate a facility at the former Philadelphia Naval Shipyard. NS also committed to buy land and construct industrial and rail facilities to encourage rail served businesses to locate in Pennsylvania. Under an agreement to be signed with the Delaware River Port Authority, NS will operate a new intermodal facility which the Authority will build at the AmeriPort intermodal terminal at the former naval shipyard, now called the Philadelphia Naval Business Center. The Committees are pleased to see the commitments announced by NS in its merger application reduced to contractual commitments which will benefit the residents of Pennsylvania and the communities in which they live.

Thus, Applicants have addressed many of the concerns raised by the Committees in their initial filing with the Board.

However, several critical concerns voiced by the Committees remain unresolved and must be addressed by the Board if Applicants and those parties are unable to negotiate private settlement agreements.

- 1) Applicants have not resolved regional and short line competitive access issues. These include:
 - a) Access by Bessemer & Lake Erie Railroad Company to the Monongahela coal fields through trackage rights and appropriate haulage arrangements with NS and/or CSX.
 - b) The elimination of interchange restrictions which presently preclude the Reading & Northern Railroad Company from freely interchanging with CP Rail.
 - c) The grant to Wheeling & Lake Erie Railway Company of reasonable access trackage rights to competing carriers and gateway interchanges in order to insure W&LE's ability to provide essential services to western Pennsylvania shippers.

These competitive access conditions are particularly important because Applicants propose to restructure long established traffic patterns and route relationships in ways that may be fundamentally anticompetitive. As noted in our initial filing, Conrail had a near monopoly on rail service in Pennsylvania. Yet it served as a neutral carrier vis a vis CSX and NS in providing service to the southeast and southwestern United States. Following this transaction, however, the neutrality of Conrail in such traffic flows will be replaced by NS. Pennsylvania shippers and short lines are concerned this change in relationship will adversely affect traffic flowing between CSX points and various shippers in Pennsylvania. In particular, where NS and CSX competed for traffic originated on Conrail to destinations in the south and southeast, this competition will terminate upon

approval of this merger. Those traffic patterns originating on lines to be acquired by NS will move on NS routes, because NS will not short haul itself to destinations in the south, thereby precluding CSX competition for this traffic. The only effective and efficient way to counter this reduction in competition is to grant regional and shortline railroads competitive access to carriers other than NS so that shipper options and opportunities can be created to insure continued rail to rail competition between Applicants.

2. Applicants have failed to demonstrate that revenue gains from projected intermodal traffic diversions are credible.

In its initial statements, the Committees expressed concern that this entire transaction is financially justified on the basis of increased revenues to be derived from the diversion of substantial volumes of motor carrier traffic to intermodal trains. The Committees expressed doubt as to the ability of Applicants to realize these revenue gains from the diversion of intermodal traffic. In particular, the Committees expressed concern that the evidence of such diversions submitted by the Applicants failed to provide adequate sensitivity analysis to evaluate the impact of economic downturns or changes in equipment availability in years two-five of this transaction.

Surprisingly, Applicants in their reply acknowledge the validity of this concern:

While the possibility of business downturns was not expressly considered, the diversion traffic studies were undertaken in conformity with accepted standards for such studies. (Reb. Stat. p. 552) (Emphasis added)

NS thus admits that its diversion studies were not subject to sensitivity analysis for economic downturn or varying levels of equipment availability. This admission is truly significant because the acquisition premium paid by CSX and NS for Conrail cannot be justified without the diverted intermodal revenues projected for this transaction.

It is simply incomprehensible that Applicants would submit a diversion study to the Board for a transaction of this magnitude and importance without explicitly evaluating and presenting evidence on varying economic scenarios in which the Applicants will be required to provide rail service in the future. The Board, in its determination of public interest, cannot simply accept the Applicants' rosy assumption that economic conditions as they exist today will continue to exist unchanged into the future. Indeed, the turmoil and economic dislocations in the Far East and cyclical economic history suggest that a prudent course of action would be to carefully examine the variability of intermodal diversion revenues in an economic downturn. Without such analysis, a most important component of the Applicant's justification for this transaction lacks sufficient evidentiary support. Applicants, after all, have the burden to prove the claims they make for this transaction and appropriate sensitivity analysis for intermodal diversion revenues is an elementary and essential part of any study supporting the reliability of such revenue projections.

3. Applicants have mischaracterized Governor Ridge's support for this transaction.

In its rebuttal statements, Applicants contend that Governor Ridge supports approval of the transaction without conditions. (NS Reb. P.-147) While the Governor did not ask for conditions, this statement on the part of Applicants mischaracterizes Governor Ridge's statement. That statement, as filed with the Board, contains the following important caveat:

We expect the Applicants to adhere to all commitments made in the Control Application. Comments of Commonwealth of Pennsylvania Governor Thomas J. Ridge and the Pennsylvania Department of Transportation p.4. (Emphasis added)

Thus, while Governor Ridge did not explicitly ask that the economic development projects proposed by NS and CSX be made a condition of the merger, he nonetheless expressed his confidence in the Applicants' representations and indicated that his support for the transaction was based on a clear understanding that the Applicants' commitments to the Commonwealth would be honored.

Since many of the projects proposed by Applicants for the Commonwealth involve the construction and development of intermodal service facilities, the Committees seek to impose these commitments as conditions of the merger, particularly in light of the absence of any sensitivity analysis and the consequent uncertainty of Applicants' projection of intermodal diversion revenues. The Committees are simply unwilling to place themselves in a position three years hence to be without recourse in the event that Applicants decide to postpone or cancel development of intermodal facilities promised in this proceeding simply because they over estimated revenue diversions and actual intermodal revenue cannot sustain those projects. It is entirely appropriate and proper for NS and its shareholders to assume the business risk of their projections but in so doing, they should not be able to avoid commitments made to the Commonwealth in seeking approval of this transaction before the Board.

4. CSX and SEPTA have not resolved important operational and safety issues regarding joint use of commuter rail lines in Philadelphia and surrounding counties.

Comments filed by SEPTA to the draft EIS and SIP reveal that proposed operations by CSX on SEPTA commuter lines will create operation impediments to efficient and safe commuter rail service from Montgomery County stations to Philadelphia. SEPTA has identified specific, detailed operational deficiencies in CSX's

proposed freight service. Despite past discussions between the parties, CSX has not responded to efforts by SEPTA to negotiate these issues. This lack of progress is of extreme concern to the Committees because of the obvious operational and safety implications that flow from these negotiations.

Conrail and SEPTA have safely and successfully conducted joint operations on commuter lines in Philadelphia and surrounding communities for years by maintaining close and continual communications. The conduct of CSX, to date, does not bode well for coordination of future freight and commuter operations. This is particularly disturbing because CSX knows too well the importance of addressing commuter rail safety issues in the wake of last years' CSX-MARC commuter train accident in Silver Springs, MA in which 11 people were killed and 26 people were injured. See NTSB Report PB 97-916302, June 17, 1997. Failure on the part of CSX to reach a negotiated resolution of these issues with SEPTA is simply unacceptable and contrary to the public interest. Without such an agreement the Board cannot approve the SIP submitted by CSX for its proposed joint operations with SEPTA in Philadelphia and surrounding counties.

The Committees urge CSX to reinstitute negotiations with SEPTA to resolve their differences. If this does not occur, the Committees request the Board to deny CSX authorization to proceed with its proposed freight operations over any rail lines in Philadelphia and surrounding counties also used by SEPTA for commuter rail operations.

The Board cannot allow these important public safety issues to be buried in the mass of pleadings and paper submitted in this proceeding. Failure to deal with these issues can have deadly consequences for SEPTA commuters who look to and reasonably

expect that the Board will only approve joint use arrangements for commuter lines which will not jeopardize public safety.

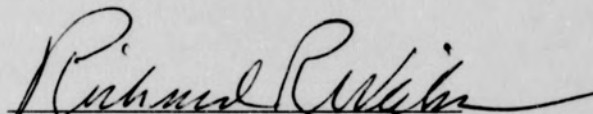
III. CONCLUSION

Accordingly, the Committees continue to urge the Board to impose those conditions sought in their initial Comments which address competitive access for regional and short line railroads, intermodal diversion revenue projections and economic development projects promised by the Commission. In addition, the Board must address the important operational and safety issues required for coordinated joint rail operations by CSX and SEPTA on rail lines in Philadelphia and surrounding counties.

Respectfully submitted:

RICHARD R. WILSON, P.C.

By:



Richard R. Wilson
Attorney for Pennsylvania House
and Senate Transportation
Committees

Date: February 23, 1998

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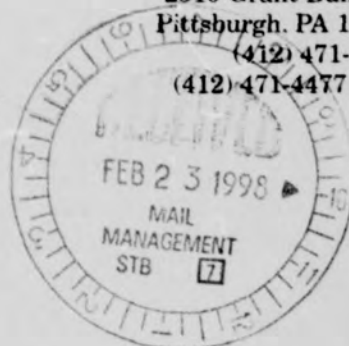
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Vernon A. Williams, Secretary
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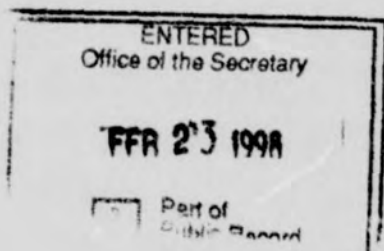


Re: Brief in Support of Request for Protective Conditions by
Durham Transport, Inc.

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

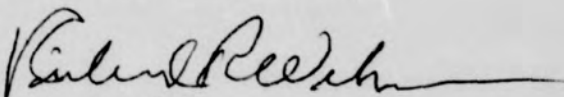
Dear Mr. Williams:

On behalf of Durham Transport, Inc. I enclose for filing an original and twenty-five copies of our Brief in Support of Request for Protective Conditions by Durham Transport, Inc. Also enclosed is a 3.5" computer disk containing the pleading in Microsoft Word 7.0 format. Should you have any questions regarding this submission, please contact the undersigned.



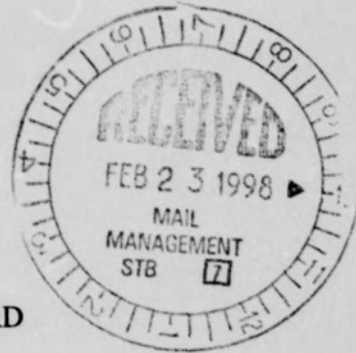
Very truly yours,

RICHARD R. WILSON, P.C.


Richard R. Wilson

RRW/klh
Enclosures

xc: The Honorable Jacob Leventhal
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All Parties of Record

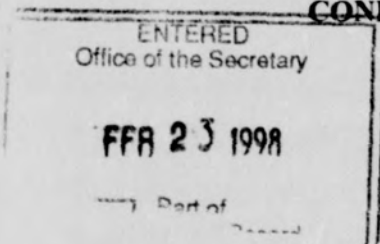


BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

**BRIEF IN SUPPORT OF REQUEST FOR PROTECTIVE
CONDITIONS BY DURHAM TRANSPORT, INC.**



Submitted by:
Richard R. Wilson, P.C.
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(814) 944-5302
Attorney for Durham Transport, Inc.

Dated: February 23, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

**BRIEF IN SUPPORT OF REQUEST FOR PROTECTIVE
CONDITIONS BY DURHAM TRANSPORT, INC.**

On November 25, 1997 Durham Transport, Inc. ("Durham") filed a Petition for Leave to Late File Comments and Request for Protective Conditions pertaining to the need for coordinated rail operations by Durham and Consolidated Rail Corporation ("Conrail") as the shared asset operator in the North Jersey/New York Shared Asset Area. In its comments, Durham sought clarification from Applicants regarding various discrepancies on the Conrail System Map showing the proposed allocation of Conrail lines which improperly identified rail assets within the Raritan Center Industrial Park as owned and operated by Conrail as part of the North Jersey Shared Asset Area.

On October 29, 1997 Applicants filed a Supplemental Operating Plan for the North Jersey Shared Asset Area which raised further concerns on the part of Durham that the operations described at Metuchen Yard omitted any reference to interchange

operations with Durham and the coordinated joint use of lead tracks within the Raritan Center Industrial Park.

On December 5, 1997 counsel for Durham received a letter signed jointly by counsel for Norfolk Southern ("NS") and CSX Transportation, Inc. ("CSX") acknowledging the inaccuracy of the Conrail System Map previously submitted to the Board and stating that both NS and CSX would honor Durham's Interchange Agreement with Conrail. (Exhibit A)

However, the letter from Applicants' counsel failed to address the primary condition sought by Durham in its November 25, 1997 filing with the Board: a trackage agreement for the joint use of the GSA Lead (track 223). Under the terms of the Operating Plan submitted by the Applicants, the shared asset operator will conduct rail operations from Metuchan Yard over the GSA Lead (track 223) to reach the Raritan Industrial Track in order to serve shippers located both east and west of Raritan Center. Durham presently operates on the GSA Lead to serve its shippers within the Raritan Center Industrial Park. Joint use of the GSA Lead Track within the Raritan Industrial Park is not presently addressed in any of the interchange or other agreements between Durham and Conrail. Accordingly, joint use of the GSA Lead requires an agreement between Durham and the shared asset operator to govern and coordinate use of GSA Lead thereby ensuring safe and efficient rail operations.

On December 11, 1997 counsel for Durham requested that such an agreement be negotiated but to date we have received no response from Applicants' counsel. (Exhibit B)

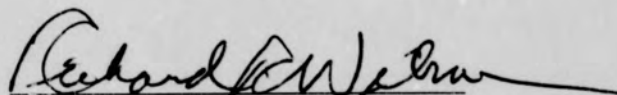
Furthermore, Durham's request for conditions was not addressed by Applicants in their rebuttal filing on December 16, 1997. Accordingly, the comments submitted by

Durham constitute the only evidence of record with respect to the imposition of the protective conditions requested by Durham. Indeed Applicants do not even acknowledge that Durham filed comments in response to the North Jersey Shared Asset Plan. (See App. Reb.Vol. 1 p.172) Durham appreciates that the condition sought in its comments regarding an agreement for the joint use of the GSA Lead is but a small detail in this massive proceeding. Nonetheless, it is an important operational and safety issue for Durham and one which is completely consistent with the public interest. Applicants have voiced no objection to the condition requested by Durham and it is evident from the record that this condition is consistent with the public interest and will promote the safe and efficient operation of rail service within the Raritan Industrial Park. Accordingly, Durham requests that the Board condition its approval of this merger transaction upon the negotiation of a satisfactory joint use agreement between the Applicants and Durham for the use of the GSA Lead Track.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By:

A handwritten signature in dark ink, appearing to read "Richard R. Wilson", with a long horizontal flourish extending to the right.

Richard R. Wilson
Counsel for Durham Transport, Inc.