

Voting Conference, January 19, 2005

Statement of Paul Markoff  
Staff Attorney, STB Office of Proceedings

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 to Approve Settlement Agreement and  
Exempt Embraced Transactions]  
STB Finance Docket No. 33388 (Sub-No. 95) et al.

Chairman Nober, Vice Chairman Buttrey, Commissioner Mulvey, good morning.

The Conrail Transaction that the Board approved in 1998 was subject to a number of conditions. Two of these conditions concern the Wheeling & Lake Erie Railway Company, a regional railroad that argued during the course of the Conrail Proceeding that it would be affected quite severely by the division of Conrail contemplated by CSX and Norfolk Southern. The Board, acting in response to this argument, imposed conditions that required Norfolk Southern (1) to grant the Wheeling & Lake Erie overhead haulage or trackage rights access to Toledo, OH, and (2) to extend the Wheeling & Lake Erie's lease at, and trackage rights access to, Norfolk Southern's Huron Dock.

Since the June 1, 1999 Split Date, Norfolk Southern and the Wheeling & Lake Erie have had in place an interim arrangement and have engaged in negotiations intended to result in a more permanent arrangement. The two railroads have now negotiated a Settlement Agreement that will implement, on a permanent basis, the two conditions, and they have asked the Board to approve the Settlement Agreement and to find that the Settlement Agreement is consistent with and reasonably implements the conditions the Board imposed in 1998.

The Settlement Agreement includes seven elements. Two elements implement the Toledo Access condition; two elements implement the Huron Dock condition; and the remaining three elements implement other arrangements that have been agreed upon by the two railroads. Because six of the elements would be either wholly or at least partially subject to the jurisdiction of the Board even outside the Conrail Transaction context, Norfolk Southern and the Wheeling & Lake Erie have filed, in addition to their Settlement Agreement approval request in the lead docket, five notices and one petition in the six embraced dockets.

We recommend that the Board take action as follows. First, because the Wheeling & Lake Erie, the party for whose benefit the Toledo Access and Huron Dock conditions were imposed, believes that the Settlement Agreement will protect its interests, we recommend that

the Board find that the elements of the Settlement Agreement that implement the Toledo Access and Huron Dock conditions are consistent with, and provide for a reasonable implementation of, those conditions. Second, because the elements of the Settlement Agreement represented by the embraced petition for exemption and the five embraced notices of exemption meet the applicable exemption criteria, we recommend that the Board grant the exemption authority sought in the embraced dockets.

We would be happy to take any questions.