

Surface Transportation Board Issues Decision in 3rd Annual "Conrail Merger" Oversight Proceeding

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision in the third annual round of its "Conrail merger" general oversight proceeding. The Board found that service problems resulting from the merger's implementation have not recurred, conditions imposed on the merger are working as intended, the merger has not resulted in any competitive or market power problems, and substantial progress has been made in implementing the various environmental conditions and settlement agreements.

Background. In a decision issued to the public on July 23, 1998, the Board approved, subject to certain conditions, the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, "Conrail") by CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"), and the division of Conrail's assets between CSX and NS (see Decision No. 89 in STB Finance Docket No. 33388 and Surface Transportation Board "News" release No. 98-44 also issued that date). The Board-imposed conditions included a five-year general oversight condition to allow the agency to assess the progress of the merger's implementation and the workings of other Board-imposed conditions. The Board retained jurisdiction to impose additional conditions and/or to take other action if, and to the extent, the agency deemed it necessary to address merger harms unforeseen at the time of the merger's approval.

Oversight Proceeding Initiated. In a decision issued on February 9, 2000, the Board initiated the Conrail general oversight proceeding to implement the general oversight condition, required CSX and NS to file progress reports on the merger and to make certain data available to interested persons, and requested comments from interested persons and parties on the progress of merger implementation and the workings of the various conditions imposed (see Decision No. 1 in STB Finance Docket No. 33388 (Sub-No. 91) and Surface Transportation Board "News" release No. 00-7 also issued that date).

First Annual Round Of Oversight. In a decision issued on February 2, 2001, the Board addressed issues raised in the first annual round of the Conrail general oversight proceeding (see Decision No. 5 in STB Finance Docket No. 33388 (Sub-No. 91) and Surface Transportation Board "News" release No. 01-4 also issued that date). The Board concluded that CSX and NS had made progress in resolving their transitional service problems, Board-imposed conditions were working as intended, no problems related to increased market power had been demonstrated, and CSX and NS had made significant progress in implementing various environmental conditions and settlement agreements.

Second Annual Round Of Oversight. In a decision issued on December 13, 2001, the Board addressed the issues that had been raised in the second annual round of the Conrail general oversight proceeding (see Decision No. 6 in STB Finance Docket No. 33388 (Sub-No. 91) and Surface Transportation Board "News" release No. 01-68 also issued that date). The Board concluded that CSX and NS had resolved the service problems resulting from the implementation of the Conrail merger transaction, Board-imposed conditions were working as intended, no competitive or market power problems stemming from the merger had been demonstrated, and CSX and NS continued to make significant progress in implementing the environmental conditions and settlement agreements the Board had imposed.

Third Annual Round Of Oversight. For the third annual round of the Conrail general oversight proceeding, the Board directed that progress reports were to be filed by CSX and NS by June 3, 2002; comments by interested parties were to be filed by July 17, 2002; and that replies were to be filed by August 7, 2002. In response to the June 3, 2002 progress reports filed by CSX and NS, the Board received comments from the following parties: the Susquehanna Economic Development Agency--Council of Governments Joint Rail Authority; the Wheeling & Lake Erie Railway Company; the American Chemistry Council; Indianapolis Power & Light Company; Cargill, Incorporated (Cargill); PPG Industries, Inc.; the New York City Economic Development Corporation; the Port Authority of New York and New Jersey; the State of

Maryland; the City of Cleveland; United States Representative Dennis J. Kucinich; and the United States Department of Transportation. Because CSX and NS and Cargill remain in negotiation in an attempt to privately resolve issues raised by Cargill, the Board indicated that it would address the Cargill issues in a separate decision.

Today's Decision. In the decision issued today, the Board, took into consideration the progress reports filed by CSX and NS, as well as the comments filed by the commenting parties, and found that service problems that arose in the immediate aftermath of the merger implementation have not recurred, conditions imposed on the merger are working as intended, the merger has not created any competitive or market power problems, and substantial progress has been made in implementing the various environmental conditions and settlement agreements. The Board concluded that the implementation of the Conrail merger transaction is now largely complete.

General Oversight Continued; Progress Reports Terminated. In regard to the question of whether oversight should be ended early or continued for the full five years, the Board noted that, although implementation is largely complete, the Conrail merger was perhaps the most complicated railroad merger transaction in American history, and that certain parties still have concerns about its future course. The Board therefore concluded that, given this background, oversight should continue with some adjustments in the oversight process. Specifically, the Board determined that CSX and NS would no longer be required to prepare and submit comprehensive progress reports to the agency on an annual basis, and that the fourth annual round of the general oversight proceeding would be conducted in accordance with the following schedule: comments by interested parties concerning oversight must be filed with the agency by **July 14, 2003**; and replies must be filed by **August 4, 2003**.

The Board issued its Conrail general oversight decision today in the case entitled *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. And Consolidated Rail Corporation (General Oversight)*, STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 10. Vice Chairman Burkes commented in a separate expression.

A printed copy of the decision is available for a fee by contacting **D~ 2 D~ Legal Copy Service, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via da2dalegal@earthlink.net. The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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