

**SURFACE TRANSPORTATION BOARD ISSUES DECISION IN 1ST ANNUAL "CONRAIL MERGER" OVERSIGHT PROCEEDING, SUMMARIZES OTHER ACTIVITY IN CONRAIL MERGER CASES**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision in the first annual round of the "Conrail Merger" general oversight proceeding. Overall, the Board found that the CSX[FOOTNOTE 1: CSX Corporation and CSX Transportation, Inc.] and Norfolk Southern (NS)[FOOTNOTE 2: Norfolk Southern Corporation and Norfolk Southern Railway Company.] railroads have substantially resolved their transitional service problems relative to the merger, that Board-imposed conditions are working as intended, that no problems related to increased market power have been demonstrated, and that, while negotiations to resolve outstanding environmental issues continue, CSX and NS have made significant progress in implementing various environmental conditions and settlement agreements.

**Background.** In a decision issued on July 23, 1998,[FOOTNOTE 3: The July 23, 1998 decision (Decision No. 89 in STB Finance Docket No. 33388) is discussed in "Surface Transportation Board News" release No. 98-44 (issued July 23, 1998).] the Board approved, subject to certain conditions, the acquisition of control of Conrail[FOOTNOTE 4: Conrail Inc. and Consolidated Rail Corporation.] by CSX and NS, and the division of Conrail's assets between CSX and NS. The Board-imposed conditions included a 5-year general oversight condition to allow the Board 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 Board deemed it necessary to address merger harms unforeseen at the time of its approval by the Board.

In a decision issued on February 9, 2000,[FOOTNOTE 5: The February 9, 2000 decision (Decision No. 1 in STB Finance Docket No. 33388 (Sub-No. 91)) is discussed in "Surface Transportation Board News" release No. 00-7 (issued February 9, 2000).] the Board announced that it was: initiating a Conrail general oversight proceeding to implement the general oversight condition; requiring CSX and NS to file progress reports on the merger and to make certain data available to interested persons; and requesting comments from interested persons on the progress of merger implementation and the workings of the various conditions imposed. The Board directed CSX and NS to file their progress reports by June 1, 2000, and gave interested persons until July 14, 2000 to file their comments. The Board received 35 comments responding to the progress reports, including comments from shippers, other railroads, passenger authorities and interests, industrial and regional development organizations, and Federal, state, and local interests.

**Today's Decision.** In the decision issued today,[FOOTNOTE 6: The *Conrail General Oversight* decision issued today is Decision No. 5 in STB Finance Docket No. 33388 (Sub-No. 91).] the Board found that the comments submitted, along with the Board's own operational monitoring, demonstrate that CSX and NS have substantially resolved their transitional operational and service problems, and that the railroads are in the process of successfully integrating, from an operational perspective, their respective portions of Conrail. The Board noted that, while certain parties raised concerns about the merger, several commenters complimented the progress thus far of CSX and NS in its implementation, and in particular with respect to safety. Regarding rail rates, the Board noted the American Chemistry Council's (ACC) comment that the division of Conrail and the resulting new rail-to-rail competition have resulted in reduced rates for a number of the ACC's members. The Board further noted that CSX's and NS' reports to the Board indicate that labor-relations issues involved in the merger have been resolved between the railroads and their unions in a mutually satisfactory manner, and that no comments have been filed by labor interests to the contrary. With respect to service, the Board noted that, although parties have complained generally about service problems encountered after the division of Conrail's assets, many also noted that service generally has improved significantly in recent months. In this regard, the Board emphasized that its primary focus in this general oversight proceeding is on remedying competitive harms. The Board stated that operational and service issues, other than those directly related to Board imposed conditions, generally would continue to be handled through operational monitoring and informal customer assistance provided by the Board's Office of Compliance and Enforcement.

The Board additionally concluded that, to date, there is no evidence that either the "acquisition premium" or purchase accounting rules have played any role in pricing decisions made by CSX or NS. The Board added that, although it will continue to monitor how the merger will affect jurisdictional thresholds for CSX and NS movements and revenue adequacy determinations, it is too early to determine exactly what those effects will be. Also, the Board addressed a number of specific requests for relief by certain commenting parties and found those requests not to merit further relief.

In its decision, the Board noted that 11 parties have raised environmental issues in their comments. The Board stated that, while some commenters were generally satisfied with the Board's environmental mitigation, others have raised concerns about the impacts of CSX and NS train operations on local communities. Some also complained that the railroads have failed to implement fully certain Board-imposed environmental conditions and voluntary agreements entered into with communities to address localized environmental issues. While certain of the environmental concerns raised are potentially significant, the Board found the oversight record to clearly indicate that CSX and NS are actively working with the affected communities to resolve outstanding environmental issues. The Board also found that the railroads are completing actions needed to implement the Board's environmental conditions and the voluntary agreements, even though implementation has not always occurred as quickly as some communities had hoped. The Board noted in this regard that CSX and NS, with the Board's strong encouragement, will continue to file quarterly reports reviewing the status of ongoing private-sector discussions to address outstanding environmental issues. Under these circumstances, the Board concluded that reopening this proceeding to impose supplemental environmental mitigation is unwarranted at this point. The Board emphasized, however, that it would continue to carefully monitor the situation and intervene in the future should it become appropriate to do so.

**General Oversight Continued.** The Board indicated that the second annual round of the Conrail general oversight proceeding will be conducted in **mid-2001**, in accordance with the following schedule: CSX and NS are to file progress reports by **June 1, 2001**; comments of interested parties will be due on **July 16, 2001**; and replies will be due on **August 6, 2001**. The Board added, however, that it was reserving the right to alter the filing schedule and/or to modify reporting requirements if, and to the extent, circumstances warrant.

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. 5. Vice Chairman Clyburn commented with a separate expression. A printed copy of today's decision in STB Finance Docket No. 33388 (Sub-No. 91) is available for a fee by contacting **D~To-D~ Office Solutions, Room 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 466-5530**. Today's decision is also available for viewing and downloading via the Board's Website at <http://www.stb.dot.gov>

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## **SUMMARY OF OTHER ACTIVITY IN THE CONRAIL MERGER DOCKETS**

The Board has previously compiled summaries of decisions it has issued in the various "Conrail Merger" dockets (see "Surface Transportation Board News" releases No. 97-103 (issued December 8, 1997); No. 98-86 (issued December 23, 1998); No. 99-22 (issued May 20, 1999); and No. 00-28 (issued June 9, 2000)). The following includes all decisions (except today's Conrail general oversight decision discussed above) issued in the various "Conrail Merger" proceedings after June 9, 2000 (which, including the general oversight decision, totals 29 decisions).

**Decisions Issued In STB Finance Docket No. 33388.** In Decision No. 158 (issued June 12, 2000), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between CSX and the City of Cuyahoga Heights, OH.

In Decision No. 159 (issued June 12, 2000), the Board revised two environmental conditions (Condition Nos. 11 and 51)

to reflect the terms of a negotiated agreement between CSX and the Village of Grafton, OH.

In Decision No. 160 (issued June 21, 2000), the Board revised two environmental conditions (Condition Nos. 8(A) and 51) to reflect the terms of a negotiated agreement between NS and the Indiana Department of Transportation.

In Decision No. 161 (issued June 28, 2000), the Board revised two environmental conditions (Condition Nos. 8(A) and 51) to reflect the terms of a negotiated agreement among NS, the Indiana Department of Transportation, and the Tippecanoe County Board of Commissioners.

In Decision No. 162 (issued July 27, 2000), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between CSX and the Village of Wellington, OH.

In Decision No. 163 (issued August 3, 2000), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between CSX and the Township of Forward, Monongahela, PA.

In Decision No. 164 (issued August 14, 2000), the Board approved, at the request of CSX, the Public Utilities Commission of Ohio (PUCO), and the Ohio Rail Development Commission (ORDC), an amendment to the CSX/PUCO/ORDC Railroad Corridor Agreement that the Board had previously addressed in Decision No. 129 (issued June 16, 1999).[FOOTNOTE 7: See "Surface Transportation Board News" release No. 00-28 (issued June 9, 2000).]

In Decision No. 165 (issued August 22, 2000), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between CSX and the Borough of Fayette City, PA.

In Decision No. 166 (issued August 22, 2000), the Board granted a 1-year extension (until August 22, 2001) of the deadline for CSX's and Conrail's compliance with the environmental condition (Condition No. 11) requiring the mitigation of train wayside noise at noise-sensitive receptor locations on certain rail line segments.

In Decision No. 167 (issued August 22, 2000), the Board granted a 1-year extension (until August 22, 2001) of the deadline for NS's compliance with the environmental condition (Condition No. 11) requiring the mitigation of train wayside noise at noise-sensitive receptor locations on certain rail line segments.

In Decision No. 168 (issued August 22, 2000), the Board granted a 6-month extension (until February 22, 2001) of the deadline for NS's compliance with an environmental condition (Condition No. 8(A)) relative to the Encks Mill Road at-grade crossing in Cumberland County, Mechanicsburg, PA.

In Decision No. 169 (issued September 5, 2000), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between CSX and the Borough of Lincoln, PA.

In Decision No. 170 (issued October 3, 2000), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between CSX and the Borough of Newell, PA.

In Decision No. 171 (issued October 3, 2000), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between CSX and the Borough of Glassport, PA.

In Decision No. 172 (issued October 13, 2000), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between CSX and the City of Perrysburg, OH.

In Decision No. 173 (issued October 31, 2000), the Board revised an environmental condition (Condition No. 51) to reflect the terms of a negotiated agreement between NS and the City of Erie, PA.

In Decision No. 174 (issued November 7, 2000), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between CSX and the Village of Rochester, OH.

In Decision No. 175 (issued November 16, 2000), the Board revised an environmental condition (Condition No. 51) to reflect the terms of a negotiated agreement among NS, the Ohio Rail Development Commission, and the Public Utilities Commission of Ohio.

In Decision No. 176 (issued November 28, 2000), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between CSX and Lorain County, OH.

In Decision No. 177 (issued December 5, 2000), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between NS and the Town of Stanley, VA.

In Decision No. 178 (issued December 14, 2000), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between NS and the Town of Elkton, VA.

**Decisions Issued In STB Finance Docket No. 33388 (Sub-No. 90).** In Decision No. 4 (issued July 7, 2000), [FOOTNOTE 8: See "Surface Transportation Board News" release No. 00-31 (issued July 7, 2000).] the Board, completing the initial phase of its 3-year Buffalo Rate Study, concluded that, through the first 6 months following the division of Conrail, rail line-haul rates for traffic moving to and from the Buffalo area had, on average, been reduced.

In Decision No. 5 (issued August 10, 2000), the Board's Secretary modified the procedural schedule applicable to comments to be filed in connection with the first full-year review to be undertaken as part of the Buffalo Rate Study by extending, to September 13, 2000, the due date for the filing of comments by parties other than CSX and NS.

In Decision No. 6 (issued February 2, 2001), the Board completed the first annual round of its 3-year Buffalo Rate Study. The Board concluded that, on the whole, rail line haul rates on traffic transported by CSX and NS to and from the Buffalo area in the first full year following the June 1, 1999 division of Conrail's assets declined relative to rates for comparable movements in the prior year. The Board further concluded that CSX and NS are in compliance with the conditions related to switching imposed in the Buffalo area. The Board indicated that the Buffalo Rate Study proceeding will continue, in accordance with the following schedule: CSX and NS are to submit comprehensive filings by **August 20, 2001**; comments from other parties are due by **September 24, 2001**; and replies by CSX and NS to any comments are due by **October 12, 2001** (see "Surface Transportation Board News" release No. 01-5, which is being issued simultaneously with this news release).

**Decisions Issued In STB Finance Docket No. 33388 (Sub-No. 91).** In Decision No. 3 (issued November 30, 2000), [FOOTNOTE 9: See "Surface Transportation Board News" release No. 00-45 (issued November 30, 2000).] the Board denied a request by Indianapolis Power and Light Company for the imposition of additional conditions on the 1998 Conrail transaction. The Board found that, because previously imposed conditions have preserved IP&L's transportation options, no further Board action is necessary.

In Decision No. 4 (issued January 29, 2001), [FOOTNOTE 10: The printed copy of Decision No. 4 is marked (incorrectly) as "Decision No. 3."] the Board's Secretary announced that IP&L had instituted, on or about January 4, 2001, a court action involving the Board decision (Decision No. 3) issued on November 30, 2000.

**Decision Issued in STB Finance Docket No. 33388 (Sub-No. 92).** In a decision issued January 26, 2001, the Board denied a union's petition to vacate a 1999 arbitration award on the ground that an arbitrator had pleaded guilty to a tax-law violation. The Board concluded that the arbitrator's violation had no connection whatsoever with the subject matter of the arbitration; the pertinent conviction, the Board added, involved the arbitrator's personal financial affairs, not railway labor issues. Furthermore, as the arbitration award formed the basis for the privately negotiated agreement between the union and management, the Board concluded that vacating the award would inappropriately interfere with a private-sector resolution.

**Decision Issued in STB Finance Docket No. 33388 (Sub-No. 93).** In a decision issued February 2, 2001, the Board, noting that CSX and NS have demonstrated that they have invested substantial amounts on infrastructure to improve rail service in the immediate Buffalo area and in the rail network connected to it, discontinued its Buffalo Area Infrastructure proceeding. The Board commended CSX and NS for working closely with local groups and business interests to identify additional projects involving upgrades in capital improvements, and urged CSX and NS to continue these efforts in the future. The Board also urged CSX and NS to continue cooperating with the Canadian Pacific and Canadian National railroads to improve the movement of international traffic through Buffalo, and with Canadian National in finding an alternative to the current congestion at CP Draw (a heavily used, CSX-controlled Buffalo River rail drawbridge). The Board added, however, that, although it was discontinuing the Buffalo Area Infrastructure proceeding as a separate proceeding, it intends to continue to monitor, in the Conrail general oversight proceeding, CSX's and NS' capital investments for improving rail service in the Buffalo area. The Board thus directed CSX and NS to include pertinent updates in their oversight filings (see "Surface Transportation Board News" release No. 01-5, issued simultaneously with this news release ).

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