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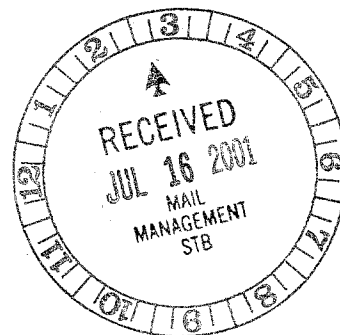
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July 16, 2001

BY HAND DELIVERYThe Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001**ENTERED**
Office of the Secretary

JUL 17 2001

Part of
Public Record

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
Finance Docket No. 33388

Dear Secretary Williams:

Enclosed please find the original and 26 copies of the Comments Of AES Eastern Energy With Respect To Decision No. 186, filed on behalf of AES Eastern Energy. A copy of the comments is also contained on the enclosed disk in WordPerfect format. As can be seen from the certificate of service, a copy of these comments has been served on all parties to the above-captioned proceeding.

Please acknowledge receipt and filing of the enclosed copies by stamping the 26th copies of this letter and the comments, enclosed for that purpose, and returning them to the person making this filing for return to me. If there are any questions concerning this matter, please call me.

Sincerely,

David C. Reeves

Enclosures

cc: AES Eastern Energy
All Parties of Record

202887

AESE-3

ENTERED
Office of the Secretary

JUL 17 2001

Part of
Public 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/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

**COMMENTS OF AES EASTERN ENERGY
WITH RESPECT TO DECISION NO. 186**

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**ATTORNEY FOR AES EASTERN
ENERGY**

July 16, 2001

**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/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

**COMMENTS OF AES EASTERN ENERGY
WITH RESPECT TO DECISION NO. 186**

AES Eastern Energy ("AESE") submits the following comments in response to Decision No. 186 of the Surface Transportation Board ("STB" or "Board") in this proceeding. AESE supports the position of Norfolk Southern Railway Company, *et al.* ("NS") that for the Board to order NS to continue the money-losing operation of the Hollidaysburg Car Shops ("Shops") would directly conflict with the Board's guiding principles - the National Rail Transportation Policy ("NRTTP").

Background

On March 28, 2001, a group of six rail unions and the Commonwealth of Pennsylvania (collectively, "Petitioners") petitioned the Board to order NS to continue (apparently indefinitely) to operate the Shops and to invest \$4 million in that facility, as projected in NS's application to acquire a portion of Conrail. A seventh union representing employees of the Shops joined the petition on April 13. NS replied to the petition on April 17. On April 25, U.S. Senator Arlen Specter filed comments supporting the petition.

On May 21, the Board issued Decision No. 186, directing NS to show cause why it should not be directed to keep the Shops open at present capacity for “a significant period of time.” The Board, however, declined consideration “at this time” of requiring NS to make the \$4 million capital investment at the Shops projected in NS’s earlier filings. Decision No. 186 at 8, n. 25. NS responded to the Board’s order on June 25, 2001.¹ NS’s filing, NS-84, detailed NS’s statements about the Shops before the Board and elsewhere, the changes in economic conditions affecting the viability and competitiveness of the Shops, and agreements made with various Petitioners which were the bases for their support for (or subsequent acquiescence in) the Conrail transaction.

Discussion

AESE agrees with the apparent premise of Decision No. 186 that merger applicants should be held to their on-the-record promises upon which other parties rely. However, the record here clearly shows that NS did not make such promises. To force NS to continue money-losing operations at the Shops until the Board determines that NS’s losses are severe enough to justify closing the Shops would conflict directly with the NRTP, which directs the Board to foster sound economic conditions in the rail industry.

NS’s June 25 filing demonstrates that the Shops are an underutilized facility with high overhead costs, operating at a significant economic loss despite NS’s insourcing efforts and diversion of work to the Shops from elsewhere on the NS system. NS’s testimony shows that considering all the work and all the costs of the Shops, operation of the facility left NS with at least a \$6.82 million loss in the year 2000. That result occurred despite NS having designated

¹ Filed pursuant to the due date extension contained in Decision No. 188, served June 8, 2001.

employees to “insource” car repair and rebuilding work for the Shops. Those employees’ efforts accounted for over half of the volume of cars handled at the Shops.

NS’s witnesses also refute various allegations by Petitioners concerning other car repair work that allegedly was to have been performed at the Shops but which never materialized. While Petitioners attribute these instances to some shortcoming on NS’s part, NS’s testimony shows that various business prospects did not materialize for a variety of reasons having nothing to do with an alleged lack of business development efforts on NS’s part.

In short, NS’s testimony shows that the Shops are a huge facility, used at only about one-third of its capacity, despite NS’s best efforts to generate additional business for the facility. NS’s evidence further shows that work on NS’s own fleet has been diverted to the Shops in an effort to improve their viability, probably at the expense of facilities such as NS’s Roanoke shops. Despite these significant efforts by NS, the Shops have continued to operate at a major economic loss. Petitioners request that the Board order NS to continue to incur those losses.

The Board should not force NS to continue losing large amounts of money on operation of the Shops. The NRTP specifies that the Board should “foster sound economic conditions in transportation” and “promote a safe and efficient rail transportation by allowing rail carriers to earn adequate revenues.” 49 U.S.C. §10101(3 & 5). Forcing NS to continue losing nearly \$7 million per year for “a significant period of time” clearly would harm, rather than solidify, economic conditions in the rail industry and would not help NS to earn adequate revenues. Similarly, the Board’s proposed unique intervention in this matter would not “minimize the need for Federal regulatory control over the rail transportation system.” 49 U.S.C. §10101(2). Indeed, quite the opposite would occur as the Board would step into an unprecedented role of making rail management decisions on the efficient allocation of rail car work among NS’s many facilities.

And finally, it would not serve the goal of “encourag[ing] honest and efficient management of railroads,” 49 U.S.C. §10101(9), to deliberately prevent NS from making an efficient allocation of its assets.

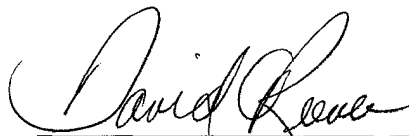
The action Petitioners have requested of the Board would fly in the face of the most important principle underlying the Staggers Act - that allowing railroads greater opportunities to eliminate unnecessary inefficiencies is a principal means of improving their capacity to serve their customers. Had parties relied on explicit promises by NS on the record in this case² about keeping the Shops open for a set period of time and had NS then violated those promises, Petitioners would have a significant grievance that the Board should deal with sternly. But that is not the case here. Rather, NS projected restoring the Shops to fuller use, but found that despite its best efforts at insourcing work and diverting in-house work to the Shops, the economics of the Shops in an economic downturn created a significant drain on NS’s finances.

Conclusion

Having made a significant effort for over two years at preserving the Shops, NS should not be ordered to continue losing large sums of money or to operate inefficiently to comply with the hopeful projections in its application about restoring the Shops to levels of activity of which they may be capable, but which they have not seen for many years. The Board should deny the Petitioners’ requests.

² As Decision No. 186 states, the Board said in approving the Conrail transaction, “We think it appropriate to note, and to emphasize, that CSX and NS will be required to adhere to all of the representations *made on the record during the course of this proceeding . . .*” (emphasis added). *Id.* at 4.

Respectfully submitted, this 16th day of July, 2001.

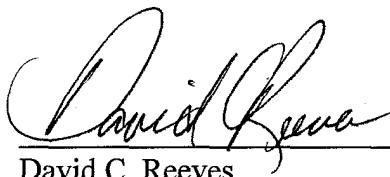
A handwritten signature in cursive script, appearing to read "David C. Reeves", is written over a horizontal line.

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ENERGY

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing comments has been served the 16th day of July, 2001, by first class mail or more expedited form of service upon all parties of record in this proceeding.

A handwritten signature in cursive script, appearing to read "David C. Reeves", is written over a horizontal line.

David C. Reeves

Attorney for AES Eastern Energy