



**City of Cleveland**

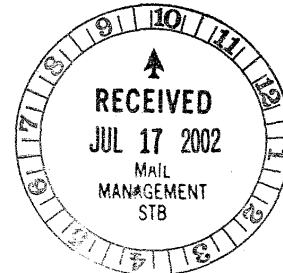
Jane L. Campbell, Mayor

**Department of Law**

Subodh Chandra, Director  
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216/664-2800 • Fax: 216/664-2663  
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205866

July 16, 2002



The Honorable Vernon Williams, Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, D.C. 20423

**ENTERED**  
**Office of Proceedings**

**JUL 17 2002**

Part of  
Public Record

RE: Finance Docket No. 33388 (Sub-No. 91)  
Comments of City of Cleveland to CSX Corporation and CSX  
Transportation's Third Submission to Limit Oversight of the Surface  
Transportation Board

Dear Secretary Williams:

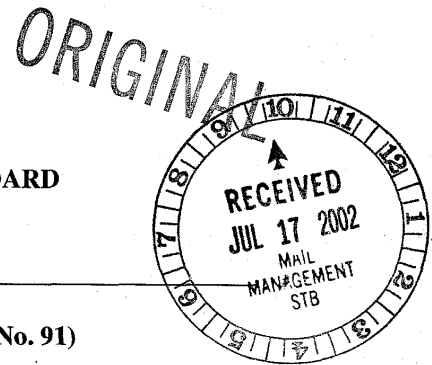
Enclosed for filing is the Original and 11 copies of the above referenced document. Please return the extra time-stamped copy to me in the self-addressed stamped envelope enclosed herein.

If you have any questions, please do not hesitate to contact me at (216) 664-4303.

Very truly yours,

Katie K. Novak  
Assistant Director of Law

Before the  
**SURFACE TRANSPORTATION BOARD**  
Washington, D.C. 20423



**FINANCE DOCKET NO. 33388 (Sub-No. 91)**

**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)**

**ENTERED**  
Office of Proceedings

**COMMENTS SUBMITTED BY  
THE CITY OF CLEVELAND, OHIO**

**JUL 17 2002**

Part of  
Public Record

**RE:  
THIRD SUBMISSION BY APPLICANTS CSX CORPORATION  
AND CSX TRANSPORTATION, INC.**

Communications with respect to this  
document should be addressed to:

Subodh Chandra  
Director of Law  
Richard F. Horvath  
Chief Corporate Counsel  
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Assistant Director of Law  
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Counsel for the City of Cleveland, Ohio  
Dated: July 16, 2002

Before the  
**SURFACE TRANSPORTATION BOARD**  
Washington, D.C. 20423



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**FINANCE DOCKET NO. 33388 (Sub-No. 91)**

**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)**

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**COMMENTS SUBMITTED BY  
THE CITY OF CLEVELAND, OHIO**

**RE:  
THIRD SUBMISSION BY APPLICANTS CSX CORPORATION  
AND CSX TRANSPORTATION, INC.**

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The City of Cleveland, Ohio ("Cleveland") respectfully submits its comments to the Surface Transportation Board ("Board") objecting to the request by CSX Corporation and CSX Transportation, Inc. (collectively, "CSXT") to limit the Board's oversight concerning the impact and implementation of the Conrail control transaction (the "Transaction") authorized by the Board in Decision No. 89 in Finance Docket No. 33388 (served July 23, 1998). Cleveland urges the Board to reject the request because CSXT has not honored its obligations to Cleveland to assist in noise mitigation and to provide critical train traffic data.

In Decision No. 89, the Board conditionally approved the applications by CSXT and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") to acquire control of Conrail, Inc. and Consolidated Rail Corporation (collectively, "Conrail") and to divide the operations of a portion of the assets of Conrail between CSXT and NS. In the course of that proceeding, Cleveland and CSXT entered into a settlement agreement (the "Negotiated Agreement") on June 4, 1998 to address various impacts on Cleveland arising from the Transaction.

On July 14, 2000, Cleveland submitted its comments to the statements made by CSXT and NS in the "First Submission By Applicants CSX Corporation and CSX Transportation, Inc.," filed with the Board on June 1, 2000, and the "First General Oversight Report of Norfolk Southern Corporation and Norfolk Southern Railway Corporation," filed with the Board on June 1, 2000.

Cleveland submitted comments concerning:

- the significant environmental impact on Cleveland resulting from the unexpectedly large volume of rail traffic following June 1, 1999 (the "Split Date"), and the lack of proper maintenance of railroad property by CSXT; and
- the status of NS and CSXT's compliance with their respective settlement agreements with Cleveland.

Cleveland's comments addressed various provisions of the Negotiated Agreement between Cleveland and CSXT that remained unfulfilled and required ongoing consultation between the parties, such as the construction of noise walls, expenditure of funds for

fencing and landscaping, and marketing of surplus properties. Cleveland noted that disagreements between the parties regarding these outstanding issues arose repeatedly, although both parties continued to make good-faith attempts to resolve the issues. On July 13, 2001, Cleveland submitted its comments to the statements made by CSXT in the "Second Submission By Applicants CSX Corporation and CSX Transportation, Inc.," filed with the Board on February 2, 2001.

Cleveland is submitting comments concerning various provisions of the Negotiated Agreement between Cleveland and CSXT that remain unfulfilled and require continued consultation between the parties. In preparing these comments, Cleveland has considered the statements made by CSXT in the "Third Submission By Applicants CSX Corporation and CSX Transportation, Inc.," filed with the Board on June 3, 2002, (the "CSXT Report").

On page 54, section XI.1.d of the CSXT Report, CSXT states that it is in compliance with the terms of its Negotiated Agreements. Unfortunately, CSXT is not in compliance with the terms of the Negotiated Agreement entered into between CSXT and Cleveland. Although the parties have resolved many of the issues surrounding the various rights and obligations of the parties contained in the Negotiated Agreement, continued oversight of the Board has been invaluable in promoting the cooperation of CSXT to achieve resolution of these issues. Cleveland is skeptical that without this Board's continued oversight, any outstanding issues will ever be resolved.

**A. Noise Mitigation Structures**

Paragraph 1. H. of the Negotiated Agreement states:

To the extent that any noise mitigation structures are to be constructed or installed on CSX's right of way or other CSX property, the City shall be required to consult with CSX and to obtain CSX's concurrence with respect to the design, schedule for construction and/or installation, and, to the extent permitted by law, the identity of individuals or entities performing the construction and/or installation. *CSX agrees not to unreasonably withhold such concurrence.* The City understands that all noise mitigation structures or landscaping constructed and/or installed on CSX's right of way and/or property must be in compliance with any applicable federal law or regulations governing railroads, including but not limited to the regulations of the Federal Railroad Administration, and *must conform with any applicable engineering and other standards of CSX.* CSX shall grant the City such easements or licenses as may be necessary for construction and/or installation of such noise mitigation structures and landscaping.

(emphasis added).

Under the quoted provision of the Negotiated Agreement, CSXT agreed it would not unreasonably withhold concurrence with the design, schedule for construction and/or installation of any noise mitigation structures. Nevertheless, to this date, CSXT has failed to approve plans for noise walls that were delivered to CSXT in August 2000. Although Cleveland has always been responsive to the requests of CSXT engineers, CSXT has been uncooperative and untimely in providing approvals, significantly impairing Cleveland's ability to provide noise mitigation structures to its citizens.

In Cleveland's comments to the statements made by CSXT in the "Second Submission By Applicants CSX Corporation and CSX Transportation, Inc.," filed with the Board on February 2, 2001, Cleveland listed the construction of the noise walls as an

unresolved issue in the Negotiated Agreement. The noise wall construction issue remains unresolved to this date.

Because of the long delays caused by the lack of approvals on the part of CSXT, it is unlikely that Cleveland will be able to commence the noise walls project this construction season. If oversight of this Board is terminated, it is unlikely that the noise mitigation structure project will be completed without additional significant delays caused by CSXT's withholding of review and approval of designs.

**B. Lakeshore Line Study**

After ongoing efforts by Cleveland that nearly escalated into a lawsuit, CSXT produced the Lakeshore Line Study ("Study") in March 2001. The Study was to be provided to Cleveland in December 1999 under Paragraph 11 of the Negotiated Agreement. The Study's purpose was to determine whether it was feasible for CSX to divert two trains from the CSX Short Line to the NS Lakeshore Line, in an attempt to alleviate some of the greatly increased train traffic.

Prior to receiving the Study, Cleveland determined that a much greater amount of train traffic was occurring on the CSXT Short Line than CSXT had represented. Since the scope of Cleveland's noise mitigation efforts depends on the number of trains traveling on the Short Line, and since CSXT claims that train diversion is not feasible, CSXT agreed to provide Cleveland with train count data on an ongoing basis. Negotiations are underway to supplement the Negotiated Agreement with the requirement that CSXT continue to provide the train-count data.

Given the extraordinary efforts required to obtain information from CSXT, oversight by the Board on this issue is essential.

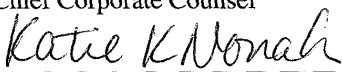
The Transaction has had an enormous impact upon the City of Cleveland and has imposed burdens on its citizens neighboring the CSXT and NS rail lines. Cleveland does not believe that CSXT is currently meeting its commitments under the Negotiated Agreement, and that the risk is great that the outstanding issues will remain unresolved if the Board does not retain oversight. Issues that existed last year at the time Cleveland submitted its comments to CSXT's second submission to limit oversight have not yet been resolved. Cleveland respectfully requests that the Board continue to oversee compliance by CSXT of its obligations under the Negotiated Agreement.

Respectfully submitted,

Subodh Chandra  
Director of Law

Richard F. Horvath  
Chief Corporate Counsel

By:

  
Katie K. Novak  
Assistant Director of Law  
City of Cleveland  
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knovak@city.cleveland.oh.us  
Counsel for the City of Cleveland, Ohio

Dated: July 16, 2002

**VERIFICATION**

STATE OF OHIO

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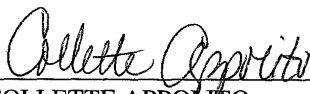
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SS:

CITY OF CLEVELAND

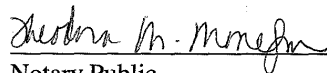
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I, COLLETTE APPOLITO, being duly sworn, depose and say that I am qualified and authorized to file this Verification, and that I have read the foregoing submittal by the City of Cleveland, know the factual contents thereof, and that the factual statements contained therein are true as stated to the best of my knowledge, information and belief.

  
COLLETTE APPOLITO



Subscribed and sworn to  
before me this 16  
day of July, 2002.

  
Notary Public

My Commission expires:

\_\_\_\_\_  
THEODORA M. MONEGAN, Attorney-At-Law  
Notary Public - State of Ohio  
My Commission has no expiration date  
Sec. 147.03 R.C.

**CERTIFICATE OF SERVICE**

I hereby certify that on July 16, 2002, a copy of the Comments Submitted by the City of Cleveland, Ohio was served by first class mail, postage prepaid, or more expedited method, upon the counsel for Applicant CSXT and upon all parties of record.

Katie K. Novak

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