

LAW OFFICE

MCLEOD, WATKINSON & MILLER

MICHAEL R. MCLEOD
WAYNE R. WATKINSON
MARC E. MILLER
RICHARD T. ROSSIER
CHARLES A. SPITULNIK
RICHARD PASCO
ALEX MENENDEZ
ELIZABETH A. HAWS**
AMY B. JONES***

ONE MASSACHUSETTS AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20001-1401
(202) 842-2345
TELECOPY (202) 408-7763

KATHRYN A. KLEIMAN*
OF COUNSEL
(*Admitted in Virginia only)

ROBERT RANDALL GREEN
LAURA L. PHELPS
GOVERNMENT RELATIONS

(**Admitted in Ohio only)
(***)Admitted in New York only)

July 17, 2002

Hon. Vernon A. Williams
Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Finance Docket No. 33388 (Sub-No. 91)
1925 K Street, N.W.
Washington, D.C. 20423-0001



ENTERED
Office of Proceedings

JUL 17 2002

Part of
Public Record

Re: Finance Docket No. 33388 (Sub-No. 91)

Dear Sir:

I am enclosing for filing the original and twenty-five (25) copies of the Comments of the New York City Economic Development Corporation (NYC-4) in this proceeding. I am also enclosing a 3.5 inch diskette with this document.

In addition, I am enclosing one additional copy of this document which I ask that you date stamp and return to our messenger.

Sincerely,

Charles A. Spitulnik

cc: Julia Farr, Esquire
All parties of record in F. D. No. 33388 (Sub-No. 91)

NYC-4

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

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**

JUL 17 2002

**COMMENTS OF
THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

**Part of
Public Record**

Pursuant to Decision No. 7 (Service Date June 11, 2002) in this Oversight Proceeding, the New York City Economic Development Corporation acting on behalf of the City of New York, New York ("NYCEDC") hereby submits its comments on the progress reports filed by CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") (CSX and NS are collectively referred to in these Comments as "Applicants") on June 3, 2002.

NYCEDC has continued its dialog with both CSX and NS about issues related to the implementation of the transactions approved in F. D. No. 33388 (Sub-No. 1), *et al.*, CSX Corporation, *et al.* – Control and Operating Leases/Agreements - - Conrail, Inc., *et al.*, Decision No. 89 (Service Date July 23, 1998). There remain possibilities for enhancing the service offerings and opportunities available to the shipping public in New York City and on the east side of the Hudson River. Happily, the railroads that serve the market appear willing to discuss

those enhancements and NYCEDC looks forward to continuing to work with them to find ways to achieve them.

In Decision No. 7, the STB specifically raised the question whether the parties believe that this Oversight Proceeding remains of value. For NYCEDC, the answer is clearly "yes". Work remains to be done, the effects of this transaction continue to unfold, and the potential remains that either a public agency or a shipper may need to ask this Board to step in to determine that "additional conditions are necessary to address unforeseen harms caused by the transaction." *Decision No. 89* at 160.

In addition, *Decision No. 89* requires CSX and NS to provide regular reports of origins, destinations and routings for motor carrier traffic at their intermodal terminals in Northern New Jersey and Massachusetts. *Id.* at 82. Decision No. 5 in this Oversight Proceeding (Service Date February 2, 2001) required the railroads to continue providing those reports directly to NYCEDC's representatives. (*Id.* at 32 n.55.)¹ This information remains valuable to NYCEDC. It provides important data on the volume of intermodal traffic that is off-loaded from rail to truck for direct transport to the east-of-the-Hudson market. This is useful for understanding the volume of truck traffic and the environmental consequences of this traffic for the region. The market trend information derived from these data is critical to informing feasibility analyses of many publicly owned rail freight facilities in that market. This trend information will continue to

¹ It is not clear to NYCEDC whether NS and CSX are preparing and submitting this information as part of the Operational Monitoring that is part of the ongoing obligation following the approval of the proposed transactions, or of the reporting related to this Oversight Proceeding. If the reporting is part of this Oversight Proceeding, then the reporting should be continued for the remaining two years of this Proceeding. If it is part of the Operational Monitoring, then the decision of Melvin F. Clemens, Jr., Director of the STB's Office of Compliance and Enforcement, dated June 17, 2002, to permit the railroads to discontinue the weekly and monthly operating reports effective with the weekly report for the week ending June 28, 2002 and the monthly report for the month ending June 30, 2002, should be rescinded, at least to the extent that it applies to this intermodal traffic information. That decision was made without notice and comment to the public that might have an interest in the information provided, and, should be reversed to the extent that it is contrary to the interests of parties that rely on the data who do not have recourse to the information from other sources.

be important after completion of the Cross Harbor Freight Movement Project Environmental Impact Statement that relates to funding Cross Harbor Improvements. The intermodal operational reporting is also needed to help transportation agencies assess multimodal use of the Hudson River crossings, as congestion increases over time.

Moreover, both CSX and NS made numerous representations both to NYCEDC and to the shippers during the course of the initial approval proceedings, and this Oversight Proceeding is intended to ensure "applicants' adherence to the various representations that they have made on the record during the course of this proceeding." *Id.* at 161. Not all have been fulfilled. In order to preserve the incentive to CSX and NS that is created by the presence of this continuing oversight, NYCEDC asks this Board to continue for the full five years originally contemplated in *Decision No. 89*.

Dated: July 17, 2002

Respectfully submitted,



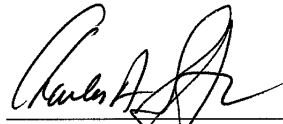
Charles A. Spitulnik
Alex Menendez
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001
(202) 842-2345

Counsel for the New York City
Economic Development Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing
Comments of the New York City Economic Development Corporation to be served by first class
mail upon all parties of record on the service list of this Oversight Proceeding (F. D. No. 33388
(Sub-No.91)).

Dated this 17th day of July, 2002.



Charles A. Spitulnik