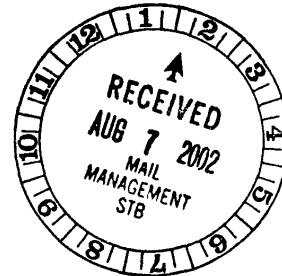


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August 7, 2002

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BY HAND

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
1925 K Street, NW
Washington, DC 20423-0001

Re: STB 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)

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of CSX-10, the “Reply Comments of Applicants CSX Corporation and CSX Transportation, Inc., to Comments Made on Their Third Submission” for filing in the above-referenced docket.

Please note that a 3.5-inch diskette containing a WordPerfect 5.1 formatted copy of this filing is also enclosed.

Kindly date-stamp the additional copy of this letter and the “Reply Comments” at the time of filing and return them to our messenger.

Thank you for your assistance in this matter. Please contact the undersigned at (202) 942-5858 if you have any questions.

Respectfully yours,

Dennis G. Lyons
*Counsel for CSX Corporation and
CSX Transportation, Inc.*

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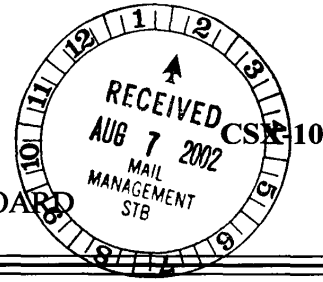
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Enclosures

Washington, DC New York Los Angeles Century City Denver London Northern Virginia

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BEFORE THE
SURFACE TRANSPORTATION BOARD



STB 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)

**REPLY COMMENTS OF APPLICANTS
CSX CORPORATION AND CSX TRANSPORTATION, INC.,
TO COMMENTS MADE ON THEIR THIRD SUBMISSION**

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Dated: August 7, 2002

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB 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)

REPLY COMMENTS OF APPLICANTS
CSX CORPORATION AND CSX TRANSPORTATION, INC.,
TO COMMENTS MADE ON THEIR THIRD SUBMISSION

INTRODUCTION

CSX Corporation and CSX Transportation, Inc. (collectively “CSX”), submit the following reply comments to the comments submitted by the public in the current (2002) round of this proceeding.

In this third round of formal oversight, only eleven timely comments were received. Only three shippers¹ and one shipper organization, and one smaller freight railroad filed public comments. The remaining comments, including initial

¹ IP&L only commented that it saw no purpose in further formal oversight. We count the SEDA-COG Joint Rail Authority (“SEDA”) comment as a shipper comment since it is joined in by a number of shippers. Like IP&L, they support the termination of formal oversight proceedings. They ask for no other action from the Board. PPG, the third shipper, seeks continuation of oversight but asks no other relief from the Board. See parts 4, 8 and 10, below.

comments from the U.S. Department of Transportation (“DOT”), were filed by governmental officials or bodies or nonprofit corporations affiliated with them.²

Interestingly, almost all of the commenters address only a single issue: whether these annual exchanges of formal reports, comments and reply comments should continue. The comments on that issue were in response to the Board’s Decision No. 7, served June 11, 2002, which invited parties commenting in this round of formal oversight to address whether the formal oversight process should continue. The Board had also made it plain that commenters also “may address all aspects of applicants’ progress in implementing the Conrail transaction” — the usual subject of such comments in an annual formal oversight proceeding. *Id.* at 2. Very few did.

The formal oversight process for the Conrail Transaction has consisted of several steps, which have been followed each year. First, relatively lengthy reports are filed by each of the two railroads and their parent companies which acquired and divided the use of the Conrail assets between them. Those reports have covered generally the implementation of the Conrail Transaction and certain specific topics required by the Board.³ Second, those reports are made the subject of comments from the general public, which are generally filed within 45 days. To

² Cargill, Incorporated (“Cargill”), on August 5, 2002, sought leave to file comments 19 days out of time. (CARG-4 and 5.) CSX will not reply at this time to Cargill, having just received their comments, but will respond in due course.

³ See Decision No. 89 in Finance Dkt. No. 33388, served July 23, 1998 (“Decision No. 89”) at 20-21 (slip opinion), 3 S.T.B. 196, 217. We hereinafter cite Decision No. 89 first to the slip opinion page and then to the page in 3 S.T.B.

assist the general public in making comments, the railroads must make available on demand by those who have executed the appropriate protective order, 100% waybill information for the 12-month period ending at approximately the time the railroads' reports are filed. Third, after the public comments are filed, reply comments, generally by the railroads, but occasionally by others, are filed, with about three weeks allotted for that. While generally not provided for, further comments on the reply comments are often made, and the Board has been liberal in permitting these extra comments to be filed and in considering and analyzing them. Finally, the Board completes the process by issuing one or more decisions granting or denying specific relief sought by commenters, and generally giving its views on the matters discussed in the reports and the comments.

In 2000, the first year of the process, 32 parties filed comments, 20 of them coming from shippers or freight railroads. Many of these sought specific regulatory action by the Board in terms of conditions or otherwise. In 2001, the number of commenters declined precipitously. Moreover, no party asked for the waybill tapes from either railroad in the second or the current third round of comments.

In the current round (apart from the expression of concern by some commenters that the formal oversight procedure should continue)⁴ only one party

⁴ On the other hand, two commenters expressed the view that it should be discontinued; a third also recognized the difference between the Board's five-year retention of oversight jurisdiction and the particular exercise of that authority through formal proceedings.

(Congressman Kucinich) has discussed in any concrete detail a matter in which Board involvement was suggested to be part of a solution.⁵

To CSX this reduced activity suggests that formal oversight reporting has served its intended purpose and could be discontinued at this juncture. At the beginning of the consummation phase, this reporting and the operational monitoring afforded the interested public with timely and responsive data and resolution processes. Now with sustained improvements to service and the successful completion of so many of the implementation projects, it appears to CSX that the public, the Board and the Applicants would best be served by the elimination of this annual reporting mechanism.

In this regard, we note that the operational monitoring reporting requirements, to which the Applicants were subjected starting with the Control Date in August 1998 and further from the Split Date on June 1, 1999, was terminated by the Board in a communication from the Director of the Office of Compliance and Enforcement, issued and made public on June 17, 2002.

All of the commenters who oppose the suspension of the formal oversight procedure seem to confuse the formal oversight procedure with the Board's retained oversight powers over the Conrail Transaction. The formal oversight procedure is one, but hardly the only one, of the exercises, or potential exercises, of the powers reserved by the Board in Decision No. 89, at 173-74; 3 S.T.B.

⁵ And in that one case, the only relief requested was for the Board to inquire whether there was some eligibility for environmental mitigation in one community based on recent circumstances. *See* part 7, below.

at 385. Given the misconceptions of the commentors, it is worthwhile to quote the Board's reservation of powers: "The Board expressly reserves jurisdiction over the STB Finance Docket No. 33388 proceeding and all embraced proceedings in order to implement the 5-year oversight condition imposed in this decision and, if necessary, to impose additional conditions and/or to take other action if, and to the extent, we determine it is necessary to impose additional conditions and/or to take other action to address harms caused by the CSX/NS/CR transaction," *id.* at 173-74; 3 S.T.B. at 385. *See also id.* at 20-21; 3 S.T.B. at 217.

If the formal oversight procedure required by the Board for the past three years is discontinued, the Board's above-described powers will still remain in full force and effect pursuant to their terms. These powers can be exercised by the Board either on formal petition, on informal request to the Board, or on the Board's own motion. In almost all cases, this year's commenters have brought no specific requests before the Board. If commenters should have grievances that are appropriate for the Board to address, the Board can address those grievances under the five-year reservation of jurisdiction. Nothing the commenters have said justifies the continuation of the formal oversight proceedings as such. The commenters simply want the Board to continue to be available to address concerns that may arise in the future. The Board can do that without the formal oversight process.

In earlier cases where annual formal oversight proceedings have been terminated, it has been the Board's practice to fully retain jurisdiction. In 2001, the Board terminated the requirement for annual formal oversight reports and

comments with respect to the Canadian National-Illinois Central transaction, but made it plain that it was retaining its five-year jurisdiction and powers under other merger conditions and the governing statute. The Board said, in its summary, that:

We are therefore [because there were no significant problems] concluding our formal oversight process in the CN/IC merger proceeding. We remain available, however, to enforce the conditions we imposed on the merger, as needed. Thus, the conclusion of the formal oversight process does not preclude any party from invoking our continuing jurisdiction to address merger-related concerns arising out of our conditions.

Canadian National Railway Company, et al. – Control – Illinois Central Corporation, et al., Finance Docket No. 33556 (Sub-No. 4), Decision No. 4, served December 27, 2001 at 1.

At greater length, the Board made the following observation:

Although we are concluding our formal oversight process for the CN/IC merger, we continue to have authority to enforce the conditions we imposed on the merger. Under 49 U.S.C. 11327, we have continuing authority to enter supplemental orders and to modify decisions entered in merger and control proceedings under 49 U.S.C. 11323, and the conclusion of the formal oversight process does not preclude any party from invoking our jurisdiction to address any merger-related concerns arising out of our conditions. *See, e.g., Union Pacific Corp.—Control & Merger—Southern Pacific Rail Corp.*, STB Finance Docket No. 32760 (Sub-No. 21), Decision No. 1 (STB served May 7, 1997), slip op. at 3 n.3; *CN/IC Oversight*, Decision No. 3 (STB served Nov. 7, 2001), slip op. at 4 (“we have authority independent of the formal oversight process to enforce or

revise merger conditions as warranted upon request or on our own initiative.”). (Footnote omitted.) *Id.* at 4.⁶

The commenters who oppose termination of the formal oversight proceedings ignore these basic distinctions between the reservation of authority and a particular mode of exercising it noted by the Board.

* * * * *

We will discuss briefly the comments of the eleven commenters.

1. **New York City Economic Development Corporation (“NYCEDC”)**
(NYC-4). — NYCEDC states that it has continued its dialogue with both CSX and NS concerning the implementation of the Conrail Transaction, notes that the railroads serving the New York City and the East of the Hudson market are willing to discuss service enhancements, and looks forward to continuing to work with the railroads to achieve further enhancement. NYC-4 at 1-2. (Indeed, three CSX filings to date have provided a history of enhancements of East of the Hudson service following the Split Date. CSX-1 at 88-94, CSX-4 at 66-71, CSX-9 at 44.)

NYCEDC, however, then errs by claiming that if the formal annual oversight is discontinued, there will be no forum left so that “a public agency or shipper” could ask the Board “to step in” and address concerns associated with the Transaction. NYC-4 at 2. For the reasons stated above, that is not so. The

⁶ A five-year oversight reservation of jurisdiction had been imposed in the Decision authorizing the CN-IC transaction. Decision No. 37, Finance Docket No. 33556, served May 25, 1999, Ordering Paragraph No. 1, at 36.

five-year retention of jurisdiction will remain in full force and effect and can be called upon as appropriate by any concerned entity.

NYCEDC also expresses concern that either the termination of the operational monitoring requirements, which occurred on June 17, 2002,⁷ or the proposed termination of the formal oversight procedure, might bring an end to the survey of origination, destination and routing by motor carriers serving Northern New Jersey and Massachusetts in conjunction with intermodal movements by rail, popularly called the “George Washington Bridge Survey.” The Board ordered that survey in Condition No. 22, Decision No. 89 at 177, 3 S.T.B. at 388, and the background is found at Decision No. 89 at 81-82, 3 S.T.B. at 282. Under Condition No. 22, the survey is performed on a quarterly basis. The survey commenced on January 1, 1999, prior to the “split” and has continued thereafter. The most recent report, filed July 26, 2002, covers the period of March through May 2002.

Neither the termination of the operational monitoring nor the termination of the formal oversight procedure would affect Condition No. 22, in CSX’s view. The issue of how long the George Washington Bridge Survey is to last is an entirely separate issue. Condition No. 22 does not prescribe any particular termination date. Presumably the survey was not to continue forever. It clearly

⁷ See p. 4, above.

is limited at the outside to the five years of Board retention of jurisdiction,⁸ but how long it is to last presents a separate issue for the Board.

In CSX's view, the Board should give attention to relieving the railroads' burden of collecting the survey data. The survey is not used by the railroads in their marketing or operational functions. According to NYCEDC (NYC-4 at 2-3), the data is obtained from the railroads on a continuing basis for the use of NYCEDC and other public authorities for planning purposes. The purpose of Condition No. 22 was not, as we read it, to assist in transportation planning, but to determine the extent to which the transaction would increase drayage over the George Washington Bridge (as opposed to the Tappan Zee Bridge), thereby possibly raising health issues (mainly as to the Bronx), as raised by Representative Nadler and a group of his congressional colleagues: "The Nadler Delegation is concerned about the impacts on air quality of additional drayage across the George Washington Bridge." Decision No. 89 at 81; 3 S.T.B. at 282. There was an issue as to how much of an increase the Transaction would cause, and the study was designed to resolve that issue. Decision No. 89 at 81-82, 3 S.T.B. at 282.

The purpose of the survey has been fulfilled, with five months' experience prior to the Split Date and thirty-six months thereafter. As the Board knows, the survey has not shown any adverse trends concerning its original purpose, and no one has contended that any such trends have been shown.

⁸ "[T]his matter will be specifically included in the 5-year oversight condition that we are imposing." Decision No. 89 at 82, 3 S.T.B. at 282.

NYCEDC now suggests a new purpose for the survey — transportation planning in the Greater New York area. While such planning is laudable, public agencies like the Port Authority and NYCEDC are currently engaged in it and perform or commission surveys pertinent to their planning needs. There is no reason why the railroads should be conscripted for this purpose, and CSX suggests that the time is ripe to relieve them of it.⁹

2. **American Chemistry Council (“ACC”) (ACC-3).** — Here again, the only relief requested is that the Board continue to have the annual formal oversight procedures for the entirety of the five-year retained oversight period. Like NYCEDC, ACC confuses the period of reservation of oversight authority (the authority to add additional conditions to those imposed in Decision No. 89) with the number of iterations of the annual formal report and comment oversight procedure. ACC makes the point that the Applicants’ original proposal, based on the NITL settlement, was for a three-year oversight retention period, but that the Board instead imposed a five-year period of retained oversight authority. ACC-3 at 1-3. That certainly is the case; but, as CSX understands it, no one is proposing to change the five-year retention of authority that the Board provided for in Decision No. 89. The only proposal is to suspend the annual procedures of reports, comments and reply comments, in the formal oversight proceedings.

⁹ NYCEDC ends with a brief statement that “[n]ot all” of the representations that CSX and NS made on the record during the Conrail proceeding have been honored. NYC-4 at 3. No specifics whatsoever are furnished, and accordingly, CSX is not in a position to respond.

ACC, which should understand quite well the difference between retained jurisdiction and formal oversight proceedings, seems unable to let go of the annual exchange of comments. So eager is it to hold on that it grossly overstates the implications of suspension of the annual procedures of reports, comments and reply comments. ACC falls back on a series of "what ifs" as it urges the Board to keep the annual reports.¹⁰ CSX appreciates the interest of shippers in the Shared Assets Areas, and understands their concern over ongoing operations there. But, with respect, those concerns and interests do not justify keeping the annual reports from the two applicants and the rounds of comments and replies.

Decision No. 89 imposed numerous conditions on the Applicants that are protective of the basic and fundamental structures of the Shared Assets Areas. Among them are Condition No. 6, "No change or modification shall be made in the terms and conditions approved in the authorized application without the prior approval of the Board"; No. 19, "Applicants must adhere to all of the representations they made during the course of this proceeding, whether or not such representations are specifically referenced in this decision"; No. 20, "Applicants must adhere to all of the terms of the NITL agreement, subject to the modifications made in this decision"; and others. Terminating the annual formal

¹⁰ The only concrete change mentioned appears to be the transfer of Conrail police functions to CSX and NS, reported at NS-8 at 18-19. ACC finds no fault with this rearrangement of labor responsibilities; if in some unimaginable way this action infringed on the rights of ACC or its members, they would not be without their remedies before the Board, whether annual reports were still being required from the Applicants or not under the present subdocket.

reports, comments and reply comments procedure will suspend none of these basic conditions. The conditions we have quoted are permanent unless modified by the Board in an open formal procedure. Statutory provisions, such as 49 U.S.C. § 11323(a), also provide protection. It should go without saying that, were CSX and NS to propose changes relating to the Shared Assets Areas that either conflicted with a condition imposed on the transaction, or that rose to the level of requiring Board approval under the governing statute, the two carriers would be obligated to bring the matter to the Board's attention and the legitimate interests of shippers would be well protected.¹¹

3. **Port Authority of New York and New Jersey ("Port Authority") (NY/NJ-3).** — The Port Authority's comments provide a brief history of the activities of the Port Authority in the Conrail Transaction and in the present formal oversight proceeding. NY/NJ-3 at 1-4. The comments review the conditions sought by the Port Authority during the 1997-98 proceedings, which were accepted by the Applicants, providing for information exchanges and consultation of various sorts between the Applicants — CSX, NS and Conrail — and the Port Authority. The Port Authority presents a brief history of the initial difficulties experienced in the Transaction in the areas served by the Port Authority, despite the fact that the Applicants "have labored mightily to improve service." *Id.* at 4. Next, the Port

¹¹ We also note that although the Board has lifted most of the operating report obligations, it has continued reports on the Shared Assets Areas operations. *See* the letter from the Director of the Office of Compliance and Enforcement referred to at page 4, above.

Authority expresses pleasure that “many of the service problems that initially plagued the NJSAA (North Jersey Shared Assets Areas) have been resolved,” although “[l]ocalized service problems still exist from time to time, and the carriers remain woefully short of capital to make investments in the NJSAA.” *Id.* at 4. The Port Authority briefly discusses its efforts to seek public sector funding to provide additional infrastructure in the area, observing, however, that these efforts have been hampered by the events of September 11, 2001. *Id.* Pursuant to arrangements agreed to by CSX and NS, the Port Authority states that it obtains information from the carriers which may be useful in a revived effort to obtain public funding. *Id.*

The Port Authority also questions whether annual formal oversight proceedings should continue, describing the issue as “the need for continued oversight.” *Id.* Again, this confuses a formal oversight proceeding with the Board’s continued five-year retention of oversight authority over the Transaction, and, indeed, its continuing powers to enforce the merger conditions. The Port Authority proffers two reasons in support of continued annual oversight: In the first place, it says that traffic volumes moving through the Port Authority on its own “on-dock ExpressRail facility are reaching record levels on a regular basis,” with, in one sample period, an increase of 27.8% over the corresponding period in 2001. *Id.* at 4-5. Given present economic conditions, one would think that such a statistic would indicate the success of the Conrail Transaction in bringing competitive rail service to the North Jersey Area from two major railroads; but

without explanation, the Port Authority cites this as a reason for continued annual formal oversight proceedings.

As its second reason, the Port Authority very briefly echoes ACC's comments, saying that "the Port Authority, and other parties, have heard persistent rumors that the carriers might seek to fundamentally alter the nature of operations within the NJSAA." *Id.* at 5. The Port Authority gives no specifics. Its comments, however, seem to argue that unless the Board continues the annual formal oversight proceedings, the railroads could make major changes in the Shared Assets Area without Board consideration or approval. Our discussion of ACC's comments in part 2 above answered that assertion, pointing to the continuing five-year oversight of the Board that will survive any termination of the annual formal report and comment filings, the various permanent conditions imposed by the Board on the Transaction, and the statute administered by the Board itself. The very arrangements for the sharing of information between the two carriers and the Port Authority discussed in the Port Authority's comments are, as the comments indicate, in place, so the Port Authority would not seem to be dependent on an annual report to the STB to obtain pertinent information.¹² The Port Authority's comments do not make a case for the continuation of the formal

¹² The Port Authority's conditions, in paragraph 5 (quoted at NY/NJ-3 at 3), give the Port Authority standing to seek relief from the Board "during such time as the Board maintains oversight following approval of the transaction." CSX construes this as applying to the five-year period, not to the period of existence of formal oversight proceedings.

oversight procedures, only for the retention of powers that in any event will be retained.

4. **Indianapolis Power & Light ("IPL") (undesigned).** — IPL seeks no relief from the Board, contenting itself with its efforts to overturn the Board's Decision No. 6, which IPL is pursuing in the United States Court of Appeals for the District of Columbia Circuit.

IPL does support the Board's suggestion that the formal oversight procedures be terminated. CSX agrees, but not for the reasons given by IPL.

5. **State of Maryland ("Maryland") (MD-4).** — The State of Maryland, through its Department of Transportation ("MDOT"), suggests that the Board continue the formal oversight proceeding for five years because not all the representations made by CSX and NS to the State during the Conrail proceeding have been fulfilled at present. MDOT does not, however, ask the Board to involve itself in any particular matter, and reports that it "has continued to work with both CSX and NS to achieve the benefits for the State" of the Conrail Transaction. Our discussion of the distinction between retention of oversight jurisdiction and continuation of the formal oversight proceeding is addressed above and need not be repeated here.

With respect to CSX, MDOT addresses only one specific issue — MARC service. MDOT acknowledges the "marked improvement" during the past year in MARC service on the Camden Line, but complains of "a continuing intermittent problem on the Brunswick line." Although intermittent problems occur in any

ongoing operation, CSX believes that overall it has improved the Brunswick service and has addressed intermittent problems as they arise.

The "Brunswick" service includes MARC's service to Brunswick, MD, Frederick, MD, and Martinsburg, WV. On-time performance for the Brunswick service averaged 94% for the period January 1, 2002 through May 31, 2002. The average for this period would have been even higher — 96% — but for one day in May when bad weather caused significant delays on the line. CSX does not believe that intermittent delays, caused largely by bad weather, provide any basis for regulation by the Board. Contributing to the overall Brunswick service and capacity picture is MARC's new Frederick service (six trains per day which operate on this line between Union Station and Point of Rocks, MD where the line to Frederick connects). This new service, which commenced on December 17, 2001, has been very popular with Maryland residents. Also, service and safety will benefit from the substantial capital improvement project presently underway on the line, which is described in our June 3, 2002 submission.

CSX will continue to work with MDOT with respect to the ongoing implementation of its 1997 settlement with the State, as well as with regard to other transportation issues of interest to MDOT and CSX as they arise.

6. **City of Cleveland ("Cleveland") (undesigned)**. — The City of Cleveland similarly requests that the Board continue the formal oversight proceeding because, it asserts, CSX has not yet fulfilled its obligations to Cleveland. CSX respectfully disagrees with both the general assertion that the formal oversight proceeding is required to ensure the success of the ongoing

consultations between Cleveland and CSX, and with the specific complaints regarding (1) CSX approval of the noise walls to be built by Cleveland and (2) the details of the provision of train count data for the Short Line.

Concerning the noise walls, Cleveland claims (at 5) that CSX has "failed to approve plans for noise walls that were delivered to CSXT in August 2000." In fact, the "plans" that were delivered by the City to CSX in August 2000 were only preliminary plans, on which CSX did offer its comments. CSX first received detailed noise wall plans in May 2001. CSX engineers promptly reviewed those plans and commenced a series of written and verbal communications on the plans with the City's contractor. Revised plans, reflecting CSX's concerns, were forwarded by the City's contractor to CSX in late December 2001. As reported to the Board in several CSX quarterly community status reports, CSX conditionally approved these final designs subject to the completion of various agreements with respect to the construction of the walls, described next.

Simultaneous with the review of the noise wall plans, the parties engaged in negotiations with respect to a license agreement that would permit the construction of the noise walls on CSX property and a warranty agreement that would extend to CSX the benefits of warranties that the City would obtain from its contractor and one of its suppliers. Both parties understood that completion of these agreements, both of which raised numerous unique issues, was a necessary precondition to construction of the noise walls. Those negotiations were successfully concluded in June 2002. CSX submitted copies of these agreements executed by CSX to

Cleveland's attorney on June 27, 2002. Cleveland executed the agreements on July 25, 2002, and the agreements are accordingly now in effect.

During the course of discussion of the license and warranty agreements, the City requested that CSX provide written approval of the City's final noise wall designs. CSX forwarded a draft of such an approval letter to the City's attorney on June 12, 2002. Following discussions with the City's attorney, CSX revised that written approval letter to meet the City's concerns and a final, executed letter was dispatched to the City on July 23, 2002. CSX believes that it has worked with the City of Cleveland diligently and in good faith throughout this process. In any event, CSX understands that the City is now ready to seek bids on a contract to construct the noise walls. These negotiations have been successfully concluded and there is no need for any intervention by the Board.

The City also contends (at 6) that it "determined that a much greater amount of train traffic was occurring on the CSXT Short Line than CSXT had represented" and that "CSXT agreed to provide Cleveland with train count data on an ongoing basis" but has not yet done so. We do not believe that Cleveland's discussion of this issue offers a complete picture. The Lakeshore Line Study that CSX provided to Cleveland in March 2001 demonstrated, with train count data, that CSX was not in fact operating more trains on the Short Line than had been projected in CSX's operating plan filed in the Conrail transaction. Nonetheless, Cleveland has requested that CSX provide additional Short Line train counts on a continuing basis, information that the City acknowledges CSX is under no present obligation to provide.

CSX has offered voluntarily to conduct such train counts for a period of time as part of an overall understanding on several matters. However, the City and CSX have not reached agreement on an overall understanding, and the City has not pursued this matter further with CSX in recent months. Should the City wish to resume consultations on this matter, CSX remains prepared to discuss an arrangement under which train count data would be provided.

Consistent with the Board's policy favoring negotiated solutions, CSX fully expects that this issue can be resolved through negotiation. CSX understands that Cleveland may present specific issues to the Board for its resolution, whether or not the formal oversight proceeding is continued, in the event that the parties cannot resolve this issue through negotiation. This issue does not warrant the continuation of the formal oversight process.

7. **Congressman Dennis Kucinich ("Congressman")**
(undesignated). — Congressman Kucinich wrote to express his pleasure with the efforts of CSX and NS in Bay Village, Rocky River, Lakewood, Olmsted Falls, Olmsted Township and Berea, Ohio. With respect to Brooklyn, Ohio, Congressman Kucinich reported that he had received complaints from residents and elected officials regarding noise impacts to residences on one street in Brooklyn. The Congressman asked the Board and CSX to work with his office and the City of Brooklyn to determine whether these homes may be eligible for noise mitigation under the criteria of the Final Environmental Impact Statement, as approved in Decision No. 89.

The residents of Brooklyn have previously expressed their disappointment to Congressman Kucinich that they were not eligible for noise mitigation under the Board's criteria, and CSX has previously worked with Congressman Kucinich's office to respond to this concern. CSX is not aware of any material change in facts or circumstances during the past year. CSX is prepared to consult with Congressman Kucinich's office and to report to the Board on those consultations, as it has done in the past, regarding these most recent communications from his constituents in Brooklyn.

8. SEDA-COG Joint Rail Authority ("SEDA") (undesignated). —

These comments by a municipal authority in Pennsylvania interested in the preservation of rail service in seven Pennsylvania counties address issues which relate to NS rather than CSX, and CSX assumes that they will be discussed by NS in its Reply Comments.

However, with respect to the issue of the continuation of formal oversight proceedings, we note that the verified statement of Jeffery Stover, forming the major portion of the SEDA comments, affirmatively "support[s] discontinuance of further oversight reporting requirements for NS" [its only major connecting railroad; SEDA has never commented on CSX]. *See Stover V.S. at 2.*

Mr. Stover's statement indicates that, unlike many of the other commentors, he appreciates the difference between suspending formal oversight reporting and comment procedures and terminating the five-year reservation of authority. *See also* the attached "Joint Statement of Shippers" at 3 (noting that conditions remain in force "whether or not the formal oversight proceeding is continued").

9. **Wheeling & Lake Erie Railway Company (“W&LE”)**

(undesignated). — W&LE has filed a brief letter as its comments and they simply address an issue that W&LE has with NS to which we assume NS will make a response. As to the continuation of formal oversight, W&LE recognizes the difference between conducting a formal oversight procedure with response and comments every year and the retention of oversight authority for the full five years, that the Board effected in Decision No. 89. This distinction is discussed at length in the Introduction to these Reply Comments. The number and nature of ongoing issues that have been identified is so small as not to justify the continuation of the formal procedures.

10. **PPG Industries, Inc. (“PPG”) (undesignated)**. — PPG, through its Manager of Logistics Services, has filed a brief comment. The comment states that “PPG remains concerned about the future quality of its rail service” and asks that the Board “continue its general oversight of the Conrail transaction over the initial 5-year period.” The concern is that if the economy expands, and with it the use of rail service, there may be operational and service problems.

The comments, once again, appear to reflect the error made by other commenters requesting that formal oversight proceedings continue, in that it confuses the cessation of the formal procedures with a sort of abandonment of the shippers by the Board. Nothing of the sort is under consideration, as we develop above. The Board’s powers will be the same whether or not the Board suspends the annual formal oversight procedures this year. Moreover, the PPG comments appear to be in the area of operating oversight, and the letter from the Director of

the Office of Compliance and Enforcement, made public on June 17, 2002, makes plain that the Board is retaining its powers with respect to the monitoring of rail operations.

11. **U.S. Department of Transportation ("DOT") (DOT-5).** — Except for a discussion of safety, as to which the comments give a preview of the FRA's Fourth and Final Report, DOT reserves its comments until it has seen the comments of other parties commenting in the July 17 round of comments (*i.e.*, the comments discussed above).

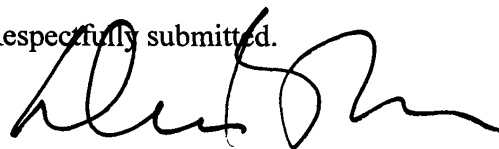
As to safety, the DOT says that its Fourth Report "will confirm that the Applicants have successfully completed the safe integration of Conrail for all practical purposes." DOT-5 at 4. It is terminating its formal safety study of the Transaction. *Id.* at 5. DOT mentions in passing some concerns over the level of CSX and NS capital investments. There is little to be said in response except that CSX believes that it is expending its available capital prudently, with its first priority being the maintenance of a safe operating network. Railroading is an industry with tremendous capital requirements, and it is clear that the long-term future of the industry depends on the ability of every railroad, not just CSX and NS, to achieve adequate revenue levels.

CONCLUSION

After three years of operations, the Conrail Transaction has clearly justified the Board's finding that the Transaction is in the public interest. No commenter this year seeks any substantive action from the Board. While preserving its

five-year retention of authority — and all the permanent conditions the Board has imposed — the Board should suspend the formal oversight annual rounds of report and comment.

Respectfully submitted.



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Dated: August 7, 2002

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CERTIFICATE OF SERVICE

The undersigned counsel for CSX Corporation and CSX Transportation, Inc. hereby certifies that on this 7th day of August, 2002, a copy of the foregoing "Reply Comments of Applicants CSX Corporation and CSX Transportation, Inc., to Comments Made on Their Third Submission" were served on all parties of record by first-class mail, postage prepaid, or more expedited method.



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