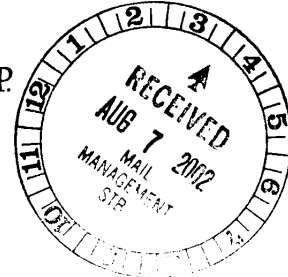


ZUCKERT SCOUTT & RASENBERGER, L.L.P.
ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309
Telephone [202] 298-8660 Fax [202] 342-0683
www.zsrlaw.com



DIRECT DIAL (202) 973-7929
smzimmerman@zsrlaw.com

SCOTT M. ZIMMERMAN

August 7, 2002

BY HAND DELIVERY

205999

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: CSX Corp. et al. – Control and Operating Leases/Agreements – Conrail
Inc. et al., Finance Docket No. 33388 (Sub-No. 91) (General Oversight)

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are the original and 25 copies of NS-9, the "Reply Of Norfolk Southern Corporation And Norfolk Southern Railway Company." Also enclosed is a 3.5-inch computer disk containing the text of NS-9 in WordPerfect 5.0 format.

Kindly date-stamp the enclosed additional 3 copies of NS-9 and return them to our messenger.

Sincerely,

Scott M. Zimmerman

Enclosures

cc: All parties of record

ENTERED
Office of Proceedings

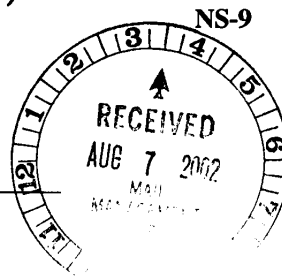
AUG 8 2002

Part of
Public Record

205999

BEFORE THE
SURFACE TRANSPORTATION BOARD

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 OF NORFOLK SOUTHERN CORPORATION
AND NORFOLK SOUTHERN RAILWAY COMPANY

Henry D. Light
James A. Squires
George A. Aspatore
Greg E. Summy
John V. Edwards
NORFOLK SOUTHERN CORPORATION
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2838

Richard A. Allen
Scott M. Zimmerman
**ZUCKERT, SCOUTT &
RASENBERGER, LLP**
888 Seventeenth Street, NW
Suite 700
Washington, D.C. 20006
(202) 298-8660

*Attorneys for Norfolk Southern Corporation
and Norfolk Southern Railway Company*

Date: August 7, 2002

ENTERED
Office of Proceedings

AUG 8 2002

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

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 OF NORFOLK SOUTHERN CORPORATION
AND NORFOLK SOUTHERN RAILWAY COMPANY**

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") hereby reply to the comments submitted by various parties in the third annual round of the Conrail general oversight proceeding.

This reply addresses the submissions of the following eleven parties: (1) the American Chemistry Council, (2) the City of Cleveland, (3) Congressman Dennis J. Kucinich, (4) Indianapolis Power & Light Company, (5) the New York City Economic Development Corporation, (6) the Port Authority of New York and New Jersey, (7) PPG Industries, Inc.,

(8) SEDA-COG Joint Rail Authority, (9) the State of Maryland, (10) the U.S. Department of Transportation, and (11) the Wheeling & Lake Erie Railway Company.¹

None of these parties ask the Board to impose any new conditions, and the comments provide no basis to suggest that any new relief or other action by the Board is necessary. We will briefly discuss each party's comments in turn. Because the question of the need for ongoing formal oversight is a common issue touched on by most of the commentators (and raised by the Board in its decision served June 11, 2002), NS will discuss that issue separately at the end.

American Chemistry Council

ACC asks that Board oversight of the transaction continue for the original five-year period, based on alleged "potential" threats to future competition and service in the Shared Assets Areas, particularly in North Jersey and South Jersey/Philadelphia. ACC, however, raises no specific issues requiring Board intervention and seeks no relief from the Board now.

Operations in the Shared Assets Areas remain generally smooth and within normal operating parameters. Norfolk Southern is, of course, well aware of its obligations under Decision No. 89 and its legal obligations generally, and will continue to conduct its business,

¹ Late in the afternoon of August 5, 2002, Cargill, Incorporated served a set of comments along with a separate motion for leave to file those comments out of time. NS does not oppose Cargill's motion for leave to file. However, due to the very short time between receipt of Cargill's comments and the deadline for filing this reply, NS has not had a reasonable opportunity to review and respond to Cargill's submission here. NS therefore respectfully requests that if the Board accepts Cargill's comments it permit NS to respond separately to Cargill, as appropriate, on or before August 25, 2002, consistent with the 20-day period generally permitted for responses to pleadings under 49 C.F.R. § 1104.13(a).

including its operations within the Shared Assets Areas, in compliance with both. As for the question of continuing the formal oversight proceeding, that issue is addressed further below.

City of Cleveland

Cleveland's comments pertain solely to CSX, and NS therefore need not respond further to them.

Congressman Dennis J. Kucinich

Congressman Kucinich states that in general, he is "pleased" with the progress of issues affecting communities in his district, and particularly notes his approval of NS' efforts in Bay Village, Rocky River, Lakewood, Olmsted Falls and Olmsted Township. He raises no specific issues with respect to NS.

NS will continue to seek to work cooperatively with local officials on issues affecting the communities through which NS operates.

Indianapolis Power & Light Company

Although IP&L summarily asserts that the "concerns" it expressed in the first two rounds of oversight are "genuine and continuing," IP&L provides no new evidence or argument and requests no new relief regarding those "concerns." There is, therefore, nothing to which NS need reply, and no basis for the Board to impose any further conditions for IP&L's benefit.

As for the continuation of oversight, IP&L contends that the Board could forego the remaining two years of formal oversight, but “only if the Board indicates its willingness to entertain comments from parties at any time who assert that their circumstances require relief and are the result, in whole or in part, of this transaction as modified and approved by the Board.” Additionally, IP&L seems to assert that, if formal oversight is discontinued, the Board should create a separate, and lenient, standard of review as to any subsequent requests for relief by any party, such as IP&L itself, that the Board had specifically “invited to return,” and should waive any filing fee that otherwise would apply to any future request for relief.

NS responds more fully below to the general question of whether the formal oversight proceeding should continue. We note here only that, if the Board does decide to end the formal oversight process now, there is no basis for doing so in a way that gives any party or class of parties preferential standing vis-a-vis other parties for airing future concerns with the Board or a more lenient legal standard for obtaining future relief than that afforded to all parties generally under the Board’s governing statutes, regulations and precedents.

New York City Economic Development Corporation

NYCEDC’s comments are focused primarily on its request that the Board continue to require CSX and NS to monitor and report quarterly on the origins, destinations and routings for truck traffic at their intermodal terminals in Northern New Jersey and Massachusetts, a reporting requirement imposed by the Board in Decision No. 89 as part of the general

oversight process² to permit the Board to determine whether the transaction “has led to substantially increased truck traffic over the George Washington Bridge.” *Decision No. 89* at 177, 3 S.T.B. at 388, Ordering Paragraph No. 22. In any event, NYCEDC does not ask the Board to take any action or impose any affirmative relief except simply to request that oversight continue.

NS addresses the general issue of oversight below. As for the George Washington Bridge surveys, NS merely observes that, because they were initiated as part of the general oversight proceeding and for a specific, limited purpose, those reports should be continued only if the Board continues the formal oversight process, and even then only if the Board concludes that the reports continue to serve the specific transaction-related purpose for which it imposed the requirement.

Port Authority of New York and New Jersey

The Port Authority states that it “is pleased that many of the service problems that initially plagued the NJSAA have been resolved,” but also remarks that “[l]ocalized service problems still exist from time to time, and the carriers remain woefully short of capital to make investments in the NJSAA.” The Port Authority says that its continuing efforts to seek public funds for rail investments have been hampered by the September 11 attacks, but that it “expects to re-energize its efforts to provide public sector funds.”

² NYCEDC questions whether the quarterly reporting requirement was imposed as a component of the general oversight proceeding or as part of the operational monitoring separately required in *Decision No. 89*. *Decision No. 89* indicates it is the former. See *Decision No. 89* at 82 and 161, 3 S.T.B. at 282 and 366.

The Port Authority does not allege any problems calling for Board intervention nor seek any relief from the Board, except to assert that continuing oversight is needed. NS continues to invest in the North Jersey Shared Assets Area and the other SAAs, as described in NS' Third General Oversight Report (including, among other things, the ongoing Northern Branch project in the NJSAA). See NS-8 at 16. Additionally, as noted above in response to ACC, operations in the Shared Assets Areas remain within normal operating parameters. NS will continue to work to ensure smooth and reliable service in the SAAs and resolve any service issues as they arise.

PPG Industries, Inc.

PPG states that after initial post-Split difficulties, both CSX and NS "have strived to improve operations and should be commended for their efforts." PPG notes that "service has become more consistent," although it does not "always" meet pre-transaction levels.

In its brief comments, PPG raises no competitive concerns and seeks no specific relief from the Board, except to request that the oversight proceeding continue so that the carriers' service can be evaluated "after a sustained period of strong economic activity." Continuation of oversight is addressed generally below.

SEDA-COG Joint Rail Authority

The SEDA-COG Joint Rail Authority ("SEDA-COG"), owner of certain lines of railroad operated by the North Shore Railroad Company and its affiliates (collectively, "North Shore"), submits a verified statement by its Executive Director, Jeffrey K. Stover, along with

a "Joint Statement of Shippers" endorsed by certain shippers located on lines operated by North Shore, and a "Joint Statement of Rail Line Owners" by two other entities that own other rail lines operated by one of the North Shore affiliates.

Mr. Stover notes that NS' "transition problems have been resolved or they are being managed to the extent that they no longer present serious problems for [SEDA-COG]. For this reason [SEDA-COG] would support discontinuance of further oversight reporting requirements for NS." Mr. Stover also notes that "[n]ot all of our previously expressed concerns relating to service expectations arising out of pre-acquisition commitments have been resolved at this point," but that SEDA-COG is hopeful that "on-going efforts" among the parties "will produce long-term solutions." SEDA-COG therefore does not request any intervention or relief by the Board.

In the "Joint Statement of Shippers," various shippers assert concerns about what they understand to be the terms of a trackage rights agreement entered into between NS and North Shore in 2001, which implemented a June 10, 1997 agreement between NS and North Shore's President, Richard Robey. Even so, however, the shippers request no intervention or relief from the Board, but rather express support for further discussion among the parties. In the brief "Joint Statement of Rail Line Owners," the signing rail owners join the comments filed by SEDA-COG and support the shippers' comments regarding changes to the 2001 NS/North Shore trackage rights agreement; like the shippers, the rail owners advocate further discussions among the parties to resolve their concerns and do not request Board intervention.

Because neither SEDA-COG, the shippers, nor the other rail owners ask the Board to intervene or impose any relief, a lengthy reply is unnecessary, but a few brief comments are in

order. First, NS values its relationship with all of the involved entities — SEDA-COG, North Shore, the other rail line owners, and the shipper community. Indeed, NS is more than willing to continue discussing these issues with SEDA-COG, and to talk individually with any shipper or other party that asks us to do so.

Second, we simply note here that the June 10, 1997 settlement agreement (which, we assume, is what SEDA-COG alludes to in referring to NS' "interchange commitments" and "pre-acquisition commitments"), and the 2001 trackage rights agreement that implements it, are agreements between NS and *North Shore*; neither SEDA-COG, the other two line owners, nor any shipper are parties to either one. Indeed, neither SEDA-COG, the other two line owners nor the commenting shippers participated as parties in the underlying Conrail control proceeding.³

Thus, as the Board itself has already found in this proceeding, it is North Shore that is the real party in interest here. *See Decision No. 5* at 22 (served February 2, 2001). North Shore filed no comments in this round of oversight, nor, to NS' knowledge, has it raised with the Board in any other forum any problems with the trackage rights agreement it voluntarily entered into with NS.

³ Thus, the shippers' assertion ("Joint Shippers Statement" at 1) that "based on the [June 1997] settlement, SEDA-COG and various shippers also supported the transaction," is misleading. NS did not enter into a settlement with SEDA-COG, the other line owners, or the commenting shippers, and none of those parties filed statements of support for the transaction, whether "based on" the settlement with North Shore, or in exchange for any "commitments" to them by NS, or otherwise.

The State of Maryland

Maryland notes that NS has not completed various anticipated capital infrastructure improvements, and also asserts that NS (and CSX) have not fulfilled “numerous representations” made to the State.

Maryland does not ask the Board to impose any substantive relief, but rather notes that its Department of Transportation “has continued to work with both CSX and NS” to achieve the benefits for the State anticipated during the control proceeding, and requests that the oversight process continue for the full five-year period.

Over the past year, NS personnel have continued to work with Port and Maryland officials to keep the Port of Baltimore competitive and to increase NS’ business in Maryland. We have expanded our premium transcontinental and regional intermodal offerings to include Baltimore as an origin and a destination on specialty services. Further, we continue to work with the Port to develop the benefits from the development of Rutherford Yard.

As NS reported last year, certain contemplated infrastructure improvement projects have not been implemented, primarily because of higher than anticipated costs. NS, however, has continued to discuss these projects with Maryland officials and will continue to work with the State in this regard.

Additionally, NS personnel are participating, in conjunction with CSX, Amtrak, FRA and Maryland, in the so-called *Baltimore Study*; and in conjunction with CSX, Amtrak, Delaware, Maryland, New Jersey, Pennsylvania and Virginia, in the *Mid-Atlantic Rail Operating Study* (MAROPS). These parallel efforts are addressing ways to increase rail capacity and performance in the mid-Atlantic rail corridor, including to/from the City and Port

of Baltimore and the Delmarva Peninsula. NS has been a financial supporter of the MAROPS effort and continues to provide in-kind resources and professional advice to both efforts. NS officials also recently participated in a "Rail Summit on the Delmarva," the goal of which is to provide a forum for the three Delmarva states (Delaware, Maryland, and Virginia), railroads, and community interests to work together on rail infrastructure and operations issues of regional importance and promote economic growth on the Delmarva Peninsula to support continued investment in the regional railroad infrastructure.

U.S. Department of Transportation

As in past years, DOT indicates that it will submit its substantive oversight comments in reply after reviewing the comments of other parties, and therefore presently takes no position on any of the substantive issues in the proceeding, including whether formal oversight should end earlier than originally contemplated. Accordingly, NS respectfully reserves the right, as in the past, to submit a response to DOT's reply comments as appropriate.

DOT does, however, discuss the safety aspects of the transaction, including FRA's periodic reports to the Board. It notes that the fourth FRA report will be submitted "in the very near future;" that report will "conclude the formal safety oversight of this transaction and its aftermath," and will "confirm that the Applicants have successfully completed the safe integration of Conrail for all practical purposes." The only "noteworthy concern" involves the "apparent decline in capital investment by both railroads, which is important to long-term safety."

As demonstrated by NS' recent receipt of its 13th consecutive Harriman Award for being the safest Class I railroad, safety is Norfolk Southern's first priority, and NS will continue to provide the necessary resources and dedicate itself every day to demonstrating its ongoing commitment to safety.

Wheeling & Lake Erie Railway Company

In its comments, W&LE does not dispute NS' discussion of the status of negotiations between the parties, and, like NS, does not ask the Board to step in to impose any final arrangement. Thus, no action by the Board in that regard is necessary or warranted. Wheeling merely asks that formal oversight of the state of affairs between W&LE and NS continue for the full five-year period originally contemplated or until NS and W&LE reach a final agreement.

Regarding continued formal oversight, contrary to W&LE's assertion (*see* W&LE Comments at 2) that NS "is of the same viewpoint" as W&LE, NS' reference, in its June 3, 2002 general oversight report, to the possibility of seeking relief from the Board at some point in the future does not mean that NS agrees it is necessary to continue the Sub-No. 91 oversight proceeding. To that issue we now turn.

CONTINUATION OF THE FORMAL GENERAL OVERSIGHT PROCEEDING

In a decision served June 11, 2002, the Board invited comment on whether the formal oversight proceeding should be continued or discontinued. As discussed above, many of the

commenting parties (but not all) have asked that the oversight proceeding continue for the originally-contemplated five-year period.

NS believes that the record of the oversight process to date indicates that discontinuing the formal Sub-No. 91 proceeding now would not prejudice any party. In contrast to the scores of parties that formally participated in the original control proceeding (and thousands more whose support statements were included in the control application), participation in the oversight proceeding has been extraordinarily light; indeed, only fourteen different parties submitted comments in the second and third years of oversight *combined*. Moreover, in the first two years of oversight, no party presented any dispute requiring the Board to intervene and impose any additional conditions; this year no party even *proposes* any new condition, and only one party – Cargill – asks the Board to act affirmatively to protect it from alleged transaction-related harm.⁴ Further, there are no ongoing issues or disputes of note with respect to any of the general issues that the Board in Decision No. 89 said the general oversight proceeding was to cover. *See Decision No. 89, slip op.* at 160-161, 3 S.T.B. at 365-66.

Most of the parties that request continued formal oversight do so generally because, they assert, circumstances *might* develop in the future requiring Board attention or intervention. NS acknowledges the need to ensure that the Board remain available to interested parties who may believe that Board intervention is warranted to address legitimate, transaction-related issues that might arise in the future. But continuing the formal Sub-No. 91 proceeding, with its annual reporting and comment schedule, is not necessary for that purpose. In Decision

⁴ As noted above, because Cargill's comments were submitted very recently, NS will respond separately to those comments at a later date.

No. 89, the Board expressly reserved to itself jurisdiction over Finance Docket No. 33388 for five years in order to, if necessary, "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." *Decision No. 89, slip op.* at 173-74, 3 S.T.B. at 385. There is no reason, therefore, why the Board cannot terminate the formal Sub-No. 91 proceeding, with its annual reporting requirement and comment schedule, while at the same time making clear that its 5-year oversight *jurisdiction* under Decision No. 89 continues, so as to permit parties to come before it with transaction-related issues on an as-needed basis.⁵

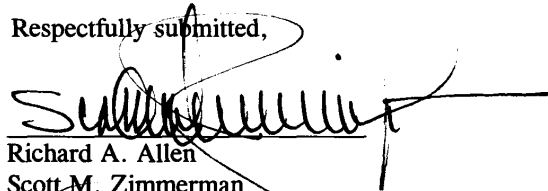
While a separate, formal proceeding like Sub-No. 91 may be useful in soliciting, marshalling and collectively airing and resolving issues if there is a demonstrated, ongoing and significant volume of problems or issues requiring active Board intervention, the record of this proceeding shows that that is simply not the case here. The Board's ongoing oversight authority, and the mechanisms that already exist apart from this formal proceeding, are fully sufficient to afford parties an avenue of redress on an as-needed basis with regard to any perceived transaction-related issue that may arise in the future. NS submits, however, that continuing the Sub-No. 91 proceeding, with its annual schedule of reports, comments, and replies, is not necessary.

⁵ Although NS will respond separately to the substance of the comments raised by Cargill, we note here that, with respect to the issue of continuing the Sub-No. 91 proceeding, Cargill's comments do not suggest, and provide no basis for concluding, that the proceeding needs to be continued. Terminating the formal proceeding would not prevent parties from coming to the Board on an as-needed basis under the Board's reserved oversight jurisdiction, and the absence of a formal proceeding may, in fact, permit and encourage them to refrain from doing so unless and until private resolution has been fully explored first.

CONCLUSION

NS' implementation of the Conrail transaction is proceeding steadily and satisfactorily, and none of the commenting parties seek new conditions from the Board. Further, the record shows that the formal Sub-No. 91 oversight proceeding and its reporting requirements are no longer necessary, and termination now will not prejudice any party.

Respectfully submitted,



Richard A. Allen

Scott M. Zimmerman

ZUCKERT, SCOUTT &

RASENBERGER, LLP

888 Seventeenth Street, NW

Suite 700

Washington, D.C. 20006

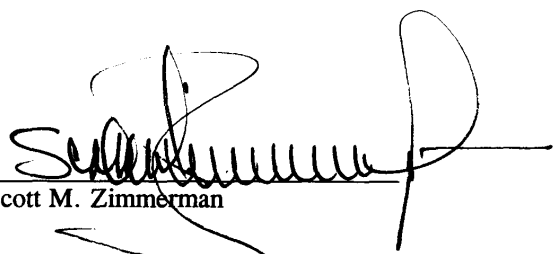
(202) 298-8660

Henry D. Light
James A. Squires
George A. Aspatore
Greg E. Summy
John V. Edwards
NORFOLK SOUTHERN CORPORATION
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2838

August 7, 2002

CERTIFICATE OF SERVICE

I certify that on August 7, 2002 a true copy of NS-9 was served by first class U.S. Mail, postage prepaid, or by more expeditious means, upon all known parties of record in Finance Docket No. 33388 (Sub-No. 91).



Scott M. Zimmerman