



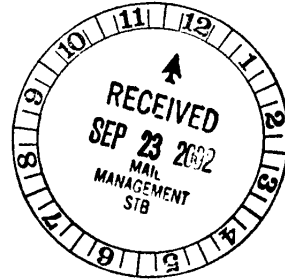
U.S. Department of
Transportation

General Counsel

400 Seventh St., S.W.
Washington, D.C. 20590

206257

September 23, 2002



Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Fin. Dkt. No. 33388 (Sub-No. 90)

Dear Secretary Williams:

Enclosed herewith are the original and ten copies of the Initial Comments of the United States Department of Transportation in the above-referenced proceeding. There is also a computer diskette of this document, convertible into Word Perfect. I have included as well an additional copy of the Department's comments that I request be date-stamped and returned with the messenger.

Respectfully submitted,

Paul Samuel Smith
Senior Trial Attorney

Enclosures

cc: Parties of Record

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Transportation

General Counsel

400 Seventh St., S.W.
Washington, D.C. 20590

September 23, 2002

Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, DC 20423-0001

Re: CSX Corporation and CSX Transportation, Inc. and Norfolk Southern
Corporation and Norfolk Southern Railway Company—Control and Operating
Leases/Agreements—Conrail Inc. and Consolidated Rail Corp. (Buffalo Rate Study)
Finance Docket No. 33388 (Sub-No. 90)

Dear Secretary Williams:

In Finance Docket No. 33388, the Surface Transportation Board (“STB” or “Board”) approved the acquisition of Conrail by the Norfolk Southern (“NS”) and CSX railroads. Decision No. 89 (served July 23, 1998). One condition of this approval was a three-year study of post-transaction rail rates in the geographic area in and around Buffalo, New York. Id. at 88. By Decision No. 1 (served December 15, 1999) in the above-referenced docket, the Board initiated the instant proceeding in fulfillment of this condition.

In the first year of the study the STB found that for the twelve months following the “split date” on which CSX and NS began to operate in the former Conrail territory, *i.e.*, from June 1, 1999 to May 31, 2000, rail rates in the affected area had declined overall relative to rates for comparable movements in the prior year. Decision No. 6 (served February 2, 2001). Last year the Board found that for the second twelve months of operations after the “split date,” *i.e.*, from June 1, 2000 to May 31, 2001, the relevant rail rates “had not changed significantly” and were overall “somewhat lower” than those in effect prior to the division of Conrail’s assets. Decision No. 7 (served December 14, 2001). The current phase of the rate study covers the third twelve months of operations after the “split date,” *i.e.*, from June 1, 2001 to May 31, 2002.

The United States Department of Transportation (“DOT” or “Department”) has always been very interested in the competitive consequences of the NS/CSX/Conrail transaction, both generally and in the Buffalo, New York, area. Accordingly, this year we have again reviewed the reports submitted by NS and CSX for the relevant period. NS-6 and CSX-

8, respectively. DOT also obtained from CSX and NS their 100% waybill files for moves in and out of Buffalo. Our analysis of these materials proceeds apace. However, at this time no party other than these carriers has submitted comments or evidence, and we are unwilling to take a position on important issues when the record is in this incomplete state. Pursuant to our past practice in this and in similar cases, therefore, the Department will first review the submissions of other interested parties and will offer substantive views in our reply comments.¹ Should there be no significant comments from other parties, we anticipate being able to provide DOT's position on the merits prior to the date set for reply comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kirk K. Van Tine", written in a cursive style.

KIRK K. VAN TINE
General Counsel

cc: Service List, F.D. Dkt. No. 33388 (Sub-No. 90)

¹/ The procedural schedule specifies that comments from parties "other" than CSX and NS are due September 23, 2002, and that "CSX and NS replies" to these comments are due October 11, 2002. Decision No. 7, *supra*, at 9. The procedural schedule for the last two years established a similar sequence, but the STB has always permitted the Department to follow its traditional approach of submitting substantive views after considering the submissions of other parties. DOT appreciates this flexibility, and wishes to emphasize, as in the past, that we would not object were the Board again to provide an opportunity for CSX and NS to respond to DOT's reply comments.