

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

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

209 039

SCOTT M. ZIMMERMAN

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

October 2, 2003

BY HAND DELIVERY

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

ENTERED
Office of Proceedings
OCT - 2 2003
Part of
Public Record



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-12, the "Reply Of Norfolk Southern Corporation And Norfolk Southern Railway Company To The 'Status Report And Comments of Cargill, Incorporated.'"

Please date-stamp the enclosed additional 3 copies of NS-12 and return them to our messenger. Many thanks for your assistance.

Sincerely,

Scott M. Zimmerman

Enclosures

209034
NS-12
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)

ENTERED
Office of Proceedings

OCT - 2 2003

Part of
Public Record

**REPLY OF NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY TO THE
“STATUS REPORT AND COMMENTS OF CARGILL, INCORPORATED”**

Norfolk Southern Corporation and Norfolk Southern Railway Company (together, “NS”) hereby respond to the “Status Report and Comments of Cargill, Incorporated” (CARG-8) dated September 25, 2003.

Cargill’s comments discuss the plan for serving Cargill’s plant at Sidney, Ohio described by NS and CSX Transportation, Inc. (“CSX”) in CSX/NS-4, the Joint Report of Norfolk Southern and CSX Regarding Cargill, Incorporated, filed with the Board on June 9, 2003.¹ Although Cargill expresses some concerns with that plan, it acknowledges

¹ To the extent that this response would otherwise be considered an impermissible “reply to a reply” under 49 CFR § 1104.13(c), NS requests that that rule be waived and this response accepted into the record, because the Cargill filing includes a new request for relief to which NS otherwise would have no opportunity to respond. See, e.g., *Union Pac. Corp. et al.—Control and Merger—Southern Pac. Rail Corp. et al.*, Finance Docket No. 32760, Decision No. 86 at n. 4 (served July 12, 1999).

that it is not being adversely affected at present and does not seek any present, substantive relief from the Board. Instead, Cargill asks the Board to “clarify” that the Board retains jurisdiction to address the situation at Sidney in the future and that the “original” 2-to-1 remedy proposed in the Conrail Application “remains available” to Cargill “in the event that the economic and operational issues become more favorable” at some time in the future. CARG-8 at 6.

NS submits that there is no need for the Board to clarify anything or take any other action with regard to this matter. First, NS does not dispute that the Board retains the authority to address possible future concerns about 2-to-1 issues arising from the Conrail transaction. There is no need for the Board to “clarify” that undisputed proposition.

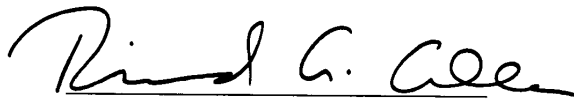
Furthermore, Cargill does not dispute that it is currently enjoying two-carrier access at its Sidney facility, and it admits that it is suffering no harm; indeed, Cargill is, in fact, using NS to serve the Sidney plant. NS does not agree with a number of assertions in Cargill’s filing, including, among others, its contention that the plan for serving the plant described in CSX/NS-4 does not preserve adequate two-carrier access to the plant, but that issue is entirely academic at the present, given Cargill’s admission that it is not presently suffering harm. If a situation were to develop in the future prompting Cargill to seek Board action to address an alleged actual, present harm (as opposed to a future, speculative one), the determination of what, if any, relief might be appropriate necessarily would depend upon evidence of the facts and circumstances that exist at the time. It therefore would be not only unnecessary, but

inappropriate, for the Board now to prejudge, or "clarify," what relief Cargill might or might not be entitled to should that situation arise.

Conclusion

For the foregoing reasons, NS requests that the Board decline to issue the "clarifications" that Cargill seeks.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard A. Allen". The signature is fluid and cursive, with the first name "Richard" being more prominent than the last name "Allen".

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*

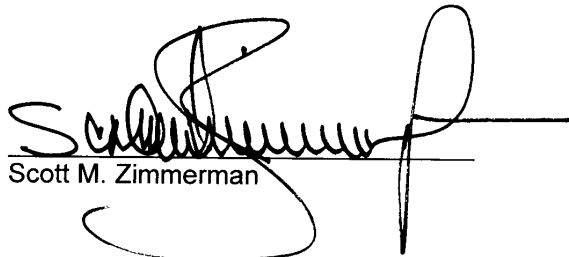
October 2, 2003

CERTIFICATE OF SERVICE

I certify that on October 2, 2003 a true copy was of NS-12 was served by hand delivery upon:

Jeffrey O. Moreno
Thompson Hine LLP
1920 N Street, NW
Suite 800
Washington, D.C. 20036
Attorney for Cargill, Incorporated

Mary Gabrielle Sprague
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206
*Attorney for CSX Corporation and
CSX Transportation, Inc.*



Scott M. Zimmerman