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Before the
Surface Transportation Board
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CSX Corp. and CSX Transportation, Inc.,)
Norfolk Southern Corp. and Norfolk Southern)
Railway Co. -- Control and Operating Leases/) Fin. Dkt. No. 33388 (Sub- No. 91)
Agreements -- Conrail, Inc. and Consolidated)
Rail Corp. (GENERAL OVERSIGHT))

Statement of the
United States Department of Transportation
May 3, 2004

The Conrail Transaction changed the landscape of railroading in the Eastern United States. Beginning with the filing of the initial application in 1997, and continuing through Decision No. 89 in 1998, the June 1999 "Split Date" and early implementation troubles, and five years of formal oversight, the Surface Transportation Board has considered and resolved an extremely broad array of issues: intramodal and intermodal competition, rate monitoring, fee and service prescriptions, shipper contracts, and environmental and community impacts. In coordination with the Board, the Federal Railroad Administration worked with CSX and Norfolk Southern (collectively, the Applicants) to ensure that all safety issues were addressed.

Through the terms of the original application, numerous settlement agreements, and far-ranging conditions, the Board has striven to make sure that this new landscape serves the public interest. An unprecedented increase in rail competition in the Shared Asset Areas and elsewhere, the reintroduction of rail service "East of the Hudson," and noise/pollution/congestion mitigation measures have all been put in place. Over the last five years the STB has monitored these and other conditions to determine whether they were working as intended and were complied with by the Applicants. See Fin. Dkt. No.

33388 (Sub-No. 91) General Oversight Decision No. 1 (STB served February 9, 2000) slip op. at 2.

The oversight process during that period has followed a familiar course. Initially, a relatively large number of parties raised serious issues about the Applicants' compliance with various conditions. As time passed, the number of active participants and issues raised in the annual oversight proceedings declined. Cf., e.g., General Oversight Decision No. 5 (STB served February 2, 2001) and General Oversight Decision No. 11 (STB served January 16, 2004). The Board also reduced the reporting burden imposed on Applicants. General Oversight Decision No. 10 (STB served November 11, 2002).

Nonetheless, complaints about the Applicants' compliance with conditions have continued, albeit at a low level. Allegations have most often focused on non-compliance with one condition in particular: that the Applicants "must adhere to all of the representations they have made during the course of this proceeding." CSX Corp., et al. - Control -- Conrail, Inc., et al., 3 S.T.B. 196 at 387(1998) (ordering paragraph 19).

Most parties claiming noncompliance with this condition have not sought specific relief from the Board because of continuing discussions with the Applicants. See General Oversight Decision No. 10, and General Oversight Decision No. 11, both *supra*. The STB has properly taken no affirmative action in these circumstances. *Id.* Now, however, the scheduled end of the oversight period, the reduced number and volume of complaints, and the interests of finality suggest that the time has come to resolve all remaining issues and end formal oversight.

Perhaps not surprisingly in so massive a transaction, the Applicants made a great many commitments to a great many parties in the course of this proceeding. By imposing adherence to these commitments as a condition of approval, the Board relied upon those representations to a major extent in meeting the "public interest" standard. The declining number of claims from individual parties indicates that the Applicants have by and large fulfilled their obligations in this respect. It is also clear from the presentations made earlier in New Jersey and from written statements submitted, however, that such issues remain. These encompass both representations made or conditions imposed for the benefit of individual parties as well as those of a more fundamental nature, such as whether the structure, funding, and decisional processes of Conrail allow it to function as intended in the Shared Asset Areas.

After five years it is time to resolve these lingering questions. The record compiled to date suggests that the Board's conditions have worked overall. What remains is for the Board to bring about an appropriate conclusion of the pending issues. Specifically, complaining parties should identify the specific representations made or other conditions imposed and allegedly unfulfilled, and present the evidence and arguments on which they rely to support their claims. The Applicants should be given an opportunity to present any rebuttal or other response.

The procedures now in place -- these oral hearings and the corresponding written statements, as well as the opportunity for written comments scheduled for July -- provide the proper framework. After that this proceeding should be closed. For any serious concerns that may subsequently arise, the Board has repeatedly emphasized its authority to take appropriate action without regard to the existence of a formal oversight

proceeding. See Fin. Dkt. No. 33556 (Sub-No. 4), Decision No. 4 (served December 27, 2001). Existing rules on reconsideration and reopening provide another safeguard for any subsequent serious concerns. 49 C.F.R. § 1115.4.