



DEPARTMENT OF COMMUNITY
& ECONOMIC DEVELOPMENT

July 1, 2004

Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: FD 33388 Sub No. 91

Gentlemen:

On behalf of the Commonwealth of Pennsylvania Department of Community and Economic Development ("DCED"), and pursuant to this Board's Decision No. 12, [General Oversight], issued February 12, 2004, in *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*, F.C. 33311, Sub. No. 91, this will serve as an update to the Comments of DCED submitted April 26, 2004 (the "DCED Comments") and the Supplemental Submission of DCED filed May 20, 2004 in this matter (the "Supplemental Submission") and to the testimony of DCED presented at the hearing held May 3, 2004.

Shortly after the hearing May 3, 2004, Daniel Beren, Esq., Harrisburg counsel to Norfolk Southern Corporation ("Norfolk Southern") requested a meeting with the Secretary of Community and Economic Development to discuss Norfolk Southern's obligations arising from the letter agreement from Norfolk Southern dated October 21, 1997, addressed to the Governor of the Commonwealth of Pennsylvania and the Mayor of the City of Philadelphia (the "Letter Agreement"). A true and correct copy of the Letter Agreement was attached as Exhibit A to the DCED Comments. The Secretary's office advised Mr. Beren that this matter should initially be discussed with the Governor's Action Team and DCED counsel, who were closely familiar with this matter.

A meeting was held on June 3, 2004 between DCED and Norfolk Southern representatives to discuss this issue. Norfolk Southern's representatives focused on their desire for an improved overall working relationship with DCED. In response, DCED's representatives that we would also welcome an improved working relationship. However, the Governor of Pennsylvania had assigned DCED the urgent task of resolving the outstanding issues under the Letter Agreement. In the Commonwealth's view: the Letter Agreement is a binding contract, Norfolk Southern had failed to comply with it, and DCED would pursue its legal remedies unless the Letter Agreement were promptly revised in a manner acceptable to all parties. At the

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conclusion of the meeting, it was agreed to meet again, with the addition of representatives of the City of Philadelphia, which was also a party to the Letter Agreement, to attempt to negotiate a replacement for the Letter Agreement. Norfolk Southern's representatives undertook to schedule this meeting. However, to date no such meeting has been scheduled.

DCED has received no communication from CSX Corporation subsequent to DCED's filing of the Supplemental Submission May 20, which DCED had made in response to a request from counsel to CSX Transportation.

The slow pace of Norfolk Southern's response to our concerns and the absence of any follow-up on the part of CSX underscores DCED's belief that it is essential to have continued quarterly reporting to the Board on this specific issue so that the Board can monitor whether Norfolk Southern's expressed desire to try to improve the relationship with DCED will actually lead to a resolution of this issue and also monitor whether CSX will respond at all in the absence of commencement of formal proceedings against it.

Respectfully submitted this 1st day of July 2004.

s/ John M. Whitlock
John M. Whitlock
Deputy Chief Counsel

cc: Service List

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CSX CORPORATION AND CSX	)	
TRANSPORTATION, INC., NORFOLK	)	
SOUTHERN CORPORATION AND	)	
NORFOLK SOUTHERN RAILWAY	)	
COMPANY -- CONTROL AND OPERATING	)	Finance No. 33388 (Sub- No. 91)
LEASES/AGREEMENTS -- CONRAIL INC.	)	(General Oversight)
AND CONSOLIDATION RAIL CORPORATION	)	
	)	
	)	

CERTIFICATE OF SERVICE

This is to certify that on the 1st day of July, 2004, the undersigned caused a letter dated July 1, 2004 of the Commonwealth of Pennsylvania Acting by and Through its Department of Community and Economic Development to be served on the parties in the above-captioned proceeding, by electronic mail on those parties for whom a valid electronic mail address is listed in the service list for this matter, and by United States Mail, first class postage pre-paid, on the remaining parties:

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