

BEFORE THE
SURFACE TRANSPORTATION BOARD

211487



STB 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

COMMENTS OF UNION COUNTY, NJ
Office of Economic Development

ENTERED
Office of Proceedings

JUL - 1 2004

Part of
Public Record

Respectfully submitted,

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

Dated: July 1, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB 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

COMMENTS OF UNION COUNTY, NJ
Office of Economic Development

I.
INTRODUCTION

By decision served Jan. 21, 2004 (Decision No. 11), the Board initiated its fifth and final round in the annual Conrail "general oversight" proceedings. By decision dated February 12, 2004, the Board set March 26, 2004, as the deadline for filing preliminary written comments by interested parties and scheduled April 2, 2004, for a field hearing to take place in Trenton, NJ, for parties to address service provided by the Conrail Shared Assets Operation ("CSAO"). Decision No. 11 also set July 1, 2004, as the deadline for parties to submit written comments and August 2, 2004, as the deadline for the filing of reply comments.

Pursuant to that decision, Union County, NJ ("Union County") submits these comments. Briefly, it urges the Board to (1) continue this oversight proceeding for an additional two years, (2) require a continuation of the CSAO pending the changes

recommended in the attached verified statement of Union County representative James Daley and (3) hold transaction applicants CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway (collectively "the Applicants") to certain promises that were a predicate for Board approval of their acquisition of Consolidated Rail Corporation ("Conrail").

II.

BACKGROUND

Union County is a political subdivision of the State of New Jersey. It is located approximately 15 miles to the southeast of midtown Manhattan and occupies an area of 103 square miles. With a population of about 512,000 people, Union County is one the most densely populated counties in a very densely populated State. Union County is both heavily industrialized and residential. Like the rest of New Jersey, Union County is a "nonattainment area" under the Clean Air Act. Within its borders lie some of the most important transportation facilities in the country including the Port Newark/Elizabeth container terminals, a major international airport (Newark Liberty International Airport), the Garden State Park and the New Jersey Turnpike, Amtrak's Northeast Corridor, the "Chemical Coast" refineries, and major rail routes utilized by CSAO, CSXT, NSR, and New Jersey Transit ("NJT").

Union County is one political entity that has taken a

proactive role in transportation. On June 23, 2000, it signed an agreement with the New Jersey Department of Transportation to manage the resurrection of rail service on two abandoned rail corridors traversing the county. One route¹ extends from Summit to Cranford, NJ, where it connects with one of NJT's main passenger routes between Newark and Raritan, NJ. The other route extends from a connection with NJT in Cranford to a point near Linden.² Union County has entered into an Operating Agreement with a class III railroad, the Morristown & Erie Railway, Inc., to rehabilitate and operate these properties. The Board is familiar with this trackage, the subject of a recent decision by the Board docketed as FD No. 34054, Morristown & Erie Railway, Inc.-Modified Rail Certificate (served June 22, 2004).

Pursuant to Decision No. 11, Union County submitted its initial comments on March 29, 2004,³ and its Director of Economic Development James Daley testified before STB Chairman Nober at the April 2, hearing.

III.

COMMENTS

This proceeding represents the final chapter in the largest

¹ A line formerly owned and operated by the Rahway Valley Railroad.

² A Staten Island Railway line that formerly extended onto Staten Island, NY. The connection with Staten Island has been severed and would need to be rebuilt.

³ Pursuant to an extension granted by the Board.

railroad consolidation transaction in the history of American railroading after the 1976 consolidation of seven bankrupt eastern railroads into Conrail. On April 2, 2004, representatives of CSAO, CSXT, and NSR testified in Trenton that their companies had successfully integrated Conrail's former operations into those of the successor entities and urged an end to the STB's oversight of the Conrail transaction. Against this "hunky dory" picture, numerous parties from northern New Jersey painted a less than rosy picture of marketing failures, service problems, and broken promises. Based upon comments made by Chairman Nober at the hearing, Union County fears that the Board may have swallowed Applicants' story "hook, line, and sinker."

The starting point for Union County's comments is the Conrail Control Application filed with the Board back in June 1997. There Applicants represented that the transaction would create new rail competition, most notably in the large New York/New Jersey area. Applicants asserted that shippers in these areas would gain dual carrier access for the first time since the creation of Conrail, thereby presenting them with "truly formidable alternatives" to trucks in lanes now dominated by trucks such as the I-95 corridor.⁴ The Board seized upon Applicants' 1977 representations of new competition and major truck-to-rail traffic diversions in the Northeast (including the

⁴ See, e.g., Vol I, Railroad Control Application at 4-5, 13, 17-8.

New York-Northern New Jersey Area) as both major public benefits of and a predicate for its approval of this transaction. CSX Corp. et al. - Control, Conrail Inc. et al., 3 S.T.B. 196, 333, 336 (1998). Moreover, in approving this transaction the Board repeatedly reminded the Applicants to adhere to the numerous promises made in the Application and supporting statements. Id. at 366.

By contrast to Applicants' rosy 1997 predictions and still optimistic 2004 assertions, Union County's Director of Economic Development James Daley presented a less glowing picture on April 2. Briefly, he testified that the Class I railroads serving the area have fallen far short in making rail freight play a significant policy role in improving the area's traffic congestion and quality of life. He stated that the structure of Applicants' service in northern New Jersey suffers five endemic problems that need to be addressed before the region will experience the sort of "rail renaissance" that will have a significant impact on the movement of freight.

- Because the Shared Asset Region is a cost center, not a profit center, Applicants minimize service levels
- Applicants' marketing and operating strategies miss significant opportunities for moving traffic by rail between ports and nearby distribution centers
- Applicants have not marketed their services to industries located in the Shared Asset Region and have failed to reach out to government and industry groups

- who can assist with those endeavors⁵
- Applicants have neglected to use local short line railroads to assist in developing traffic from small and medium size customers
- Applicants seek to relocate customers and intermodal facilities to points outside the Shared Assets Region.

As part of its comments here, Union County submits the written testimony of its Director of Economic Development James Daley. In elaborating upon his prior testimony, Mr. Daley makes several observations deserving attention here. First, he notes six goals that the Applicants had touted as transaction benefits.⁶ But, he states that these goals are at best "works in progress." Daley at 2. In fact, he observes that the Applicants have disinvested in New Jersey rail facilities in comparison with investments made in other states. While he notes that rail traffic to and from Northern New Jersey has increased, there is no indication that this increase is due to the Transaction instead of regional economic growth. Although Mr. Daley notes Applicants' plan to contribute funds on a 50/50 matching basis (along with area government agencies) towards upgrading key routes serving the Port of New York and New Jersey, they have yet

⁵ Union County notes with interest that Applicants agreed to establish a "Conrail Transaction Council" under the terms of the Conrail/NITL [National Industrial Transportation League] settlement agreement. Id. At 252.

⁶ Reduction in truck traffic; competitive access to the Port of New York and New Jersey by two class I railroads; full service industrial development departments that would work with local agencies to develop and redevelop industrial sites; work with NJT to expand passenger services on freight-only lines where appropriate; New Jersey short line railroads to have access to both Class I Railroads; and construction of new intermodal and transloading facilities to serve off-line customers.

to fulfill their commitment. Similarly, Applicants' industrial development efforts (in conjunction with those of economic development agencies in Union County) have been nonexistent. Id.

Next Mr. Daley addresses the disparate marketing and development efforts taken by CSXT and NSR, respectively, in the Shared Asset Region. While CSXT has made a major investment in converting the former Elizabethport rail yard into a successful transloading facility, NSR has not taken comparable actions on facilities located on or along its property. Id. at 3.

Despite Applicants' touting of competition as the primary transaction benefit, Mr. Daley laments that Applicants' promises have fallen short of reality. Outside of rail competition at the Port Newark/Port Elizabeth facilities, shippers have not experienced the vigorous competition they had sought and were promised. Rather CSXT and NSR appear to prefer relocating these industries to lines solely owned by them and not CSAO and located outside the Shared Asset Region. Similarly, he notes that Union County's own short line railroad, the M&E, presently lacks direct access to both CSXT and NSR contrary to representations made by the Applicants as a condition of the transaction.⁷ Id. at 3.

Perhaps the most telling of Mr. Daley's observations is his assertion that CSAO is flawed because of its high cost, "invisible switching operation" structure. While he acknowledges

⁷

M&E does have direct access to NSR and to the CSAO.

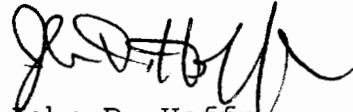
that the CSAO generally functions well as a neutral switching operation, the CSAO fails in the respects that it does little to advance industrial development and is not suited to serve the small to medium size customer. Id. at 4.

So what action should the Board take? Union County recommends the following:

- Continued STB oversight for two more years
- STB to recommend corrective legislation or Congressional oversight to the extent the agency believes the solution lies beyond its jurisdiction.
- Reduce the CSAO in size with yards and lines serving the Port Areas to be transferred to the Port Authority of New York and New Jersey and light density lines to be transferred to area short line railroads

Union County appreciates the opportunity to present its views in this proceeding.

Respectfully submitted,



John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

Dated: July 1, 2004

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that I have this 2nd day of July, 2004, served copies of the foregoing comments of Union Couty, NJ, on all parties of record, by United States Postal Service, First Class Mail, postage prepaid.


John D. Heffner

**Written Testimony Submitted to the Surface Transportation Board
July 1, 2004
Oversight of the Split-up and Merger of Conrail**

INTRODUCTION

The state of Union County's freight infrastructure is critical to the local, regional and national economy. Thus, Union County continues to take a proactive role in response to the Surface Transportation Board's call for input on the workings of the split and merger of Conrail, particularly in how the Conrail Shared Assets Area Organization (CSAO) is functioning in New Jersey.

There exists a serious capacity problem and compatibility issue on the area's network. Host to the largest seaport on the East Coast (Port Newark/Port Elizabeth) of North America combined with being located at the center of the world's richest consumer market, the County of Union has actively pursued alternatives to the truck only transportation of goods. Fundamental to that effort has been the tracking of the split and merger of Conrail into Norfolk Southern and CSX.

The County of Union submitted written testimony to the STB as well as presented oral testimony at the April 2, 2004 hearing held in Trenton, New Jersey. Copies of both the written and oral testimony are on record at the STB. Several issues were raised and policy recommendations were made in those respective venues.

Presented herein is supplemental testimony on the key issues regarding the merger and its impact on Union County and the region and our recommendations for STB action.

Major Issues Remain Unresolved

We recommend the continued oversight of the Conrail merger in general, but in particular the oversight of the Conrail Shared Assets Area in New Jersey.

Prior to the 1998 merger, a concerted effort by the Class I Railroads NS and CSX was made to meet with government agencies in the counties impacted by the merger. We met with railroad officials as well as hosted two public forums in conjunction with the Union County Transportation Advisory Board at which representatives of the NS and CSX expounded on the benefits of the merger.

Also, the North Jersey Transportation Planning Authority (NJTPA) conducted a due diligence study of the merger impacts. Union County participated and monitored this effort and continues to work closely with the NJTPA on freight issues as a member of its standing Freight Committee.

The benefits of the merger as put forth by both Class I Railroads at the time included but were not limited to the following:

1. Reduction in truck traffic, perhaps as much as a million truck trips a year.

2. Competitive access to the Port of New York and New Jersey by two Class I railroads. This option would maintain port growth.
3. Full service industrial development departments that would work with local agencies to develop and redevelop rail served industrial sites.
4. Work with NJ Transit to expand passenger services on Freight only lines where appropriate. In Union County, preserving the former Central Railroad of New Jersey right-of-way between Cranford and Elizabethport for future passenger service.
5. New Jersey shortline railroads would have access to both Class I Railroads.
6. Construction of New intermodal and transloading facilities to serve off line customers.

To date, we believe at best these goals represent works in progress. However, in some areas there has been little effort taken to achieve these goals. In fact, one may argue that there has been a relative disinvestment in New Jersey in comparison to investments in neighboring states. For example, NS has closed its roadrailer facility at portside in Elizabeth/Newark and constructed major intermodal facilities in Harrisburg and Bethlehem/Allentown. This has encouraged off loading in Pennsylvania and trucking to New Jersey.

Reduction in Truck Traffic has not been quantified by the carriers. While rail freight into and out of Northern New Jersey has increased, it has not been demonstrated that this is the result of the merger or that it reflects a growing trend of increased rail usage nationwide as the economy expands. It has yet to be demonstrated that rail traffic is expanding at a greater rate than other modes to make a difference in truck trips.

Competitive access to the Port of New York and New Jersey has been achieved by the creation of the Conrail Shared Assets Area, giving both carriers "neutral" access to the Port Newark/Port Elizabeth facilities. It should be noted that port growth continues to exceed projections, but how much can be attributed to the merger has not been demonstrated.

In addition, the major investments to keep the port competitive have been made by the Port of New York and New Jersey, the owner of the on dock facilities, not the Class I's. A plan is in place to have the railroads provide a 50% match to the Port Authority of New York and New Jersey and the State of New Jersey funds to improve several key routes into the port area, but this has not been consummated. The Port Authority and the State of New Jersey continue to make significant investments in the rail freight infrastructure and are likely to be the primary investors in the near and long term.

Thus far, industrial development in conjunction with countywide economic development agencies has been nonexistent. Numerous brownfields and underutilized industrial sites abut rail lines in Union County. These tracts are large enough to support rail-oriented

businesses. Many still have the remnants of former rail sidings. No efforts have been made to bring in the Class I's industrial development departments to work in Union County. There exists a well known area of more than 400 acres of former industrial and underutilized industrial sites east of the New Jersey Turnpike. Neither NS nor CSX have worked in conjunction with the County to redevelop this well known area collectively known as Tremley Point in the City of Linden.

In regard to intermodal facility and transloading facility investment, CSX has made a major investment in the conversion of the former Elizabethport rail yard into a transloading yard. A complimentary property owned by NS remains largely abandoned with the exception of a lumber and steel transloading operation that preceeded their acquisition of Conrail. Intermodal facilities primarily for container or trailer transfer have been confined to the port facilities.

While there is little room to built large intermodal yards for truck or container transfer, there are opportunities to build transloading and cross dock facilities for off loading of carload commodities. This is a growth area in the rail industry and would compliment the effort to reduce truck traffic in the County and northeast New Jersey. This effort does not seem to have a high priority or is discouraged on Conrail Shared Assets Lines.

While competition has been hailed as the primary benefit of the merger, this has not been the case on the Conrail Shared Assets Lines, the exception being the Port Newark/Port Elizabeth facilities which are owned by the Port Authority of New York and New Jersey. NS and CSX appear to want to locate industries on lines solely owned by them and not on the Conrail Shared Assets Area.

All of Union County's freight lines are located within the Conrail Shared Assets Area with two exceptions: the New Jersey Transit Gladstone Branch is operated by Norfolk Southern and two former short lines, the Rahway Valley and Staten Island Railroads, which are owned by the State of New Jersey and operated by the Morristown & Erie Railway under contract with the County of Union.

At this time, the Morristown & Erie Railway is the competitive alternative in markets that are not being served by the Class I's and the only alternative to develop rail based underutilized and former industrial cites. However, the Morristown & Erie requires access to both Class I railroads in order to be an effective competitive alternative in the Shared Assets Area. This was the promise given to all short lines in New Jersey as a condition of the merger. The County is extremely supportive of this goal. It is the only way our small to medium sized businesses, an extremely important segment of the regional economy, will be afforded direct rail transportation options.

With regard to the issue of preserving the former Central Railroad of New Jersey rail line between Elizabethport and Cranford for the reinstitution of passenger service, only a portion of that goal has been achieved to date. This goal was memorialized in a document between former New Jersey Department of Transportation Commissioner John Haley and the Class I Railroads. To date, CSX has worked with the County to provide a double track Right-of-way along the southern edge of the Elizabethport Yard for a future

passenger line. The remaining right-of-way is under the jurisdiction of Conrail, CSX and NS. Negotiation on both these segments has yet to begin.

Summary

In calling attention to the shortcomings of the merger as well as the unfulfilled commitments to date, our purpose is to seek the most effective and efficient means to achieve the six primary goals outlined above. It is not just our intent to hold the Class I's accountable to the merger conditions, but to seek relief from what we see as endemic problems inherent in the merger overall, particularly those directly related to the creation of the Conrail Shared Assets Area.

What has been identified as an experiment, the Shared Assets Area is an anomaly in the railroad industry. The CSAO is not a traditional terminal railroad in the likes of the Belt Railway of Chicago or the Terminal Railroad Association of St. Louis. It neither markets nor has the independence or neutrality from its joint owners NS and CSX. It is an invisible switching operation operating over an extensive terminal area in Northern and Southern New Jersey. In fact, there is evidence that this is a high cost operation for the Class I's and cutting costs takes favor over expanding services.

It functions well, with some exceptions, as a neutral switching operation, but for the reasons elaborated on above, it fails as a major force in industrial development and it is not geared to serve the smaller to medium size customer nor interface with short line operations since both of these functions are at the behest of its joint owners. Neither CSAO, CSX or NS provide any marketing of their services in northern New Jersey in general, or Union County in particular.

RECOMMENDATIONS

- **Oversight should continue for two more years**

In consideration of the above referenced facts and issues, the County of Union urges the STB to continue its oversight role for an additional two years. Without oversight, there is little assurance the CSX or NJ will fulfill their pledges and agreements made as a condition of their purchase of Conrail.

All of New Jersey is now classified as a non-attainment area under the Clean Air Act as amended. For this reason alone the STB establish a method of monitoring the actual growth in rail freight as compared to the growth or reduction in truck movements as a result of the merger. Analysis tools need to be developed for use by all agencies responsible to monitor the impact of modal shifts of freight.

- **Establishment of a joint select congressional committee on rail freight in the former Conrail Region (Northeast and Midwest)**

Should the STB feel that the issues raised as part of your hearings are not best served by STB oversight suggest a form of Congressional oversight be established. This could take

the form of establishing a Congressional oversight committee and the convening of public hearings. Ultimately, this would result in the issuance of a report to Congress embodying recommendations for restructuring and reinvestment as put forth herein.

- **The Conrail Shared Assets Area should be restructured and placed under the Aegis of A New Operating Entity.**

The Conrail Shared Assets Area operates the major rail freight infrastructure in Northeastern New Jersey. This includes major rail yards as well as mainline operation.

We recommend that CSAO Facilities within service area of the Port Authority of New York and New Jersey be transferred to that agency for operation. These facilities can be upgraded for intermodal and transload facilities related to Port Activity and used for the development of the Port Inland Distribution System (PIDN).

The PIDN is a short haul system for the inland movement of port traffic to key freight nodes for unloading and reloading for local distribution. This short haul system is outside the realm of the Class I's service structure but very much desirous of the Port Authority of New York and New Jersey and the short line operators of Northern New Jersey. Only the financial resources of the Port Authority and its experience as an operator or subcontractor of intermodal facilities make it the most logical and suitable entity to achieve this goal.

CONCLUSIONS

The STB should undertake this reexamination during the next two years and have initial recommendations ready for presentation at the proposed North American Rail Summit to be held in Chicago in May 2005.

VERIFICATION

STATE OF NEW JERSEY)
)
COUNTY OF UNION) SS

I, James Daley, being duly sworn according to law, hereby deposes and states that I am authorized to make the Verification. My office address is County of Union, Administration Building, Elizabethtown Plaza, Elizabeth, New Jersey, 07207. I am submitting the attached document pursuant to STB FD No. 33388 (Sub-No. 91) on behalf of Union County in my capacity as Director, Department of Economic Development. In that capacity, my duties include overseeing the development and implementation of a comprehensive economic development plan for the County. Under my jurisdiction are land use planning, transportation planning, housing, and community development efforts. As part of my work for the county, I have followed the Conrail oversight proceedings. I have submitted preliminary written comments to the STB pursuant to CD No. 33388 (Sub-No. 91) in March 2004 and presented oral comments at the April 2, 2004 hearing in Trenton, New Jersey. Also, I was the Union County official largely responsible for negotiating the Operating Agreement with the Morristown & Erie Railway for restoration of service on the Rahway Valley and Staten Island Railroad lines.

James Daley

Subscribed and sworn to before me, a Notary Public, in and for the County of Union in the State of New Jersey, this 1st day of July 2004.

Cheryl A. Pantina
Notary Public

My Commission Expires:

May 16, 2008

