



COMMONWEALTH of VIRGINIA

KAREN J. RAE
DIRECTOR

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION
1313 EAST MAIN STREET, SUITE 300
P.O. BOX 590
RICHMOND, VA 23218-0590

(804) 786-4440
FAX (804) 786-7286
VIRGINIA RELAY CENTER
1-800-828-1120 (TDD)

September 17, 2004

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

212034

ENTERED
Office of Proceedings

SEP 20 2004

Part of
Public Record

RE: STB Finance Docket No. 34495, Buckingham Branch Railroad Company – Lease-
CSX Transportation Inc. – Reply of the Commonwealth in Response to Comments

Dear Mr. Williams:

Enclosed please find and accept for filing the original and ten copies of the Reply of the Commonwealth of Virginia in Response to Comments Made in the subject proceeding.

Please find enclosed for filing an original, 10 paper copies, and one 3.5 inch disk containing the text of the Reply in Response to Comments in MS Word 9.0 format.

Respectfully submitted,

Karen J. Rae

Karen J. Rae

Enclosures



BEFORE THE
SURFACE TRANSPORTATION BOARD

212034

FINANCE DOCKET NO. 34495

BUCKINGHAM BRANCH RAILROAD COMPANY
- LEASE -
CSX TRANSPORTATION INC.

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REPLY OF THE COMMONWEALTH OF VIRGINIA
TO COMMENTS FILED BY
THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK),
THE NORFOLK SOUTHERN RAILWAY COMPANY,
AND
THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

Karen J. Rae
Director
Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond, VA 23218-0590

Director of the Virginia Department of Rail
and Public Transportation

Dated: September 17, 2004

Before the
Surface Transportation Board

Finance Docket No. 34495

Buckingham Branch Railroad Company
- Lease -
CSX Transportation Inc.

Reply of the Commonwealth of Virginia
to Comments Filed by
The National Railroad Passenger Corporation (Amtrak),
The Norfolk Southern Railway Company,
and
The Brotherhood of Maintenance of Way Employees

The Commonwealth of Virginia (Commonwealth), through its Department of Rail and Public Transportation (DRPT), as a party of record, submits the following reply to the comments filed by the National Railroad Passenger Corporation (Amtrak), the Norfolk Southern Railway Company (NS), and the Brotherhood of Maintenance of Way Employees (BMWE) in relation to the above captioned proceeding, in which the Buckingham Branch Railroad Company (BBRR) and CSX Transportation, Inc. (CSXT) seek the Board's approval for CSXT to lease BBRR an approximately 200-mile section of CSXT rail line extending from AM Junction (Richmond), VA, to JD Cabin (Clifton Forge), VA, including a 9.1 mile line section from Orange, VA to Gordonsville, VA identified by CSXT as a leased line from NS. Comments general or specific also includes acknowledgement of agreements of the Virginia Department of Transportation (VDOT) with CSXT lying on property in the above mentioned proceeding as they relate to road crossings, easements, and safety improvements to said highway facilities of the like.

General Comments in Reply to Responses Filed

The line section involved in this proceeding is important to the Commonwealth. In review of documents filed and responses made, and knowledge of discussions and the history of this line

segment in whole or in part, the Commonwealth feels that this transaction impacts the Northern Piedmont and Shenandoah Valley regions of Virginia. This line section serves the major population centers of Richmond, Charlottesville, Staunton, and Clifton Forge, Virginia. As mentioned in responses, the Commonwealth, through DRPT, provides state assistance for and is active in the preservation of rail lines, the continuation of freight rail service, the pursuit of industrial/economic development and, notwithstanding the comments, engages in efforts of developing existing or retired line segments for rail passenger service. Since the Commonwealth, by statute and/or by adopted policy, does not own nor operate railroad facilities, grant programs and related public funding resources are allocated to or passed through to private railroads or entities for improvements to rail freight facilities, rail passenger operations, and rail/highway safety improvements to at-grade road crossings. The majority of at-grade road crossing improvements are funded and administered by VDOT.

State Assistance - The Rail Preservation Program - Clarification

Freight rail assistance to railroads is administered through DRPT's Rail Preservation Program. Ten Class II and Class III railroads participate in this grant funding program to enhance, upgrade, or improve these lines due to the need for safety improvements at road crossings, poor facility conditions from deferred maintenance, rail system upgrades (286,000 pound nationwide rail car axle loadings), and the development of new business on those lines requiring major configuration of rail infrastructure to accommodate the new business.

BBRR has been a recipient of Rail Preservation funds since 1991. During this period, DRPT has partnered with BBRR to assist in making improvements to a short line railroad that had, in years prior to the BBRR ownership and control of the line, seen a long break in service due to flooding severing a major river crossing. The BBRR's 17-mile line section is challenged with steep grades and frequent bridge crossings. This line section includes one major river crossing, a main line switch back, and 18 bridge or trestle crossings, all on wooden or wooden and steel combination trestles and bridges on a prevailing grade at times in excess of 1.8 percent. The lion's share of tonnage is outbound, downgrade. Although BBRR has applied for and received state assistance on an annual basis, all work to upgrade its bridges and roadway is conducted using BBRR forces, using contract labor on rare occasions. All employees of BBRR are cross

trained and BBRR is the only rail line funded by the Rail Preservation program that uses its own forces to conduct all of its major and minor railway and structure repairs. For a period of time, BBRR operated the Shenandoah Valley Railroad (SVRR) under contract, connecting to the CSXT line section within this filing at Staunton, VA. The SVRR is also a recipient of DRPT Rail Preservation program funds. While operating this line, BBRR built new on line business including hazardous materials (LP Gas, Ammonium Nitrate and Anhydrous Ammonia) as well as petroleum Naphta being received for printing ink processing. Day-to-day maintenance of the SVRR was conducted by BBRR forces operating the SVRR. Due to the ownership configuration of the SVRR, major infrastructure repairs and improvements were made by contracted forces utilizing, in part, grant funds provided by DRPT and the federal government.

In following the policies and procedures of the Rail Preservation Program, any Class II or Class III railroad with trackage at or below FRA Class 2 Safety Standards may apply for funding and any Class I may apply for loans under certain conditions. The next window of opportunity to apply for funds of this program will begin on or about January 2, 2005. No funds have been committed nor has DRPT been approached as to committing funding for the line section involved in the BBRR/CSXT filing. Notwithstanding, any railroad, as herein described, may apply for grant funds. The General Assembly of Virginia, as part of the annual budget process, appropriates grant funds. The Commonwealth Transportation Board, the governing body of DRPT, determines grant awards and allocation of funds. Once approved, funds become available July 1 of that given year. In recent history, DRPT has seen a small annual appropriation of \$3.0 million in funds to be administered through the Rail Preservation Program. Generally, the applications from ten rail operators substantially exceed the amount of annual appropriations.

State Assistance - Industrial Access Railroad Tracks Program - Clarification

Within DRPT's Industrial Access Railroad Tracks Program, state funds are used to assist public or private entities to defray the costs of rail improvements or new construction to provide rail access to new or existing businesses. This program has been in existence since 1987. New or expanding businesses, local jurisdictions, or railroads can apply for these grant funds. The

selection criteria process provides additional weighting to projects that contribute to the viability of a small railroad.

Public Agreements - VDOT Section 130 program/Agreements and permits - Clarification

VDOT has entered into agreements with CSXT, the present owner and operator of the rail line section. These agreements involve use of right-of-way, permits, the construction of grade crossings and signals, or other relationships at numerous locations. Both CSXT and BBRR recognize in the CSXT/BBRR filing (APPLICATION EXHIBIT E, pp. 78-83) that certain permits and contractual agreements exist, which relate to the Commonwealth and VDOT. The Commonwealth acknowledges that certain rights and responsibilities contained in these agreements will convey to the BBRR as part of this transaction. It is anticipated that additional agreements will be required in the future for public and private projects. Since CSXT retains ownership of the corridor right-of-way, they will have to participate in future agreements that affect their property.

Specific Response of the Commonwealth in Reply to Comments Filed

Response in Reply to Comments of the National Railroad Passenger Corporation (Amtrak) - "Cardinal" Service

DRPT has met with Amtrak and the principals of BBRR concerning the *Cardinal* service and the aspects of this proceeding and transaction. The *Cardinal* service is an asset to the population centers of Alexandria, Manassas, Charlottesville, Staunton, and Clifton Forge, VA. The *Cardinal* serves Charlottesville and Staunton on the Orange to Clifton Forge line. The Commonwealth wishes to express its desire for the retention and the improvement of rail passenger service on this line section. As stated by Amtrak, (pg. 3, bullet) the condition of the rail line is deteriorating. Amtrak further stated that the line speed of 60 mph for rail passenger trains is in peril with slow orders to 30 mph mounting east of Charlottesville and that further deterioration of the line section of this transaction that is used by Amtrak could result in discontinuance of train service altogether (pg. 4, continuation of bullet of pg. 3).

Based on review of Amtrak's comments and discussions, the Commonwealth expresses the importance of this rail passenger corridor and the impact of this line section on the *Cardinal's* continued viability and existence. In addition to Amtrak's comments, it is noted that the *Cardinal's* east and west bound trains occupy this line section simultaneously and meet on line, adding to the complication of shared rail freight and rail passenger operations. The applicants state that the logistics of rail freight and rail passenger operations potentially operating over "dark" territory will be considered under a separate process. The Commonwealth recognizes that retirement of the train control system will be a future contemplation and a proceeding for consideration by the Federal Railroad Administration, and at that time will express concern in the potential loss of the train control system in relation to this transaction.

Response in Reply to Comments of Norfolk Southern Railway Company

In a general comment to the NS response, the Commonwealth acknowledges that changing rail operations over the past 100 years have diluted the importance of the NS owned and CSXT operated 9.1 miles of track between Orange and Gordonsville. However, in the spirit of the Commonwealth's response to Amtrak's comments, the Commonwealth again expresses its desire to see continuing Amtrak service over this line section and further continues to state that this line section adds to the ability to attract potential economic growth in the region by continuing freight operations on this line section. The Commonwealth encourages CSXT and NS to engage in renegotiating its agreement dated December 23, 1890 (pg. 6, last paragraph and continued) and to address the interlocking agreement for Charlottesville, VA, dated October 1, 1907 (pg. 9, third paragraph last sentence).

Response in Reply to Comments of the Brotherhood of Maintenance of Way Employees

The Commonwealth has reviewed comments filed by and met with representatives of the Brotherhood of Maintenance of Way Employees (BMWE) concerning this proceeding. The Commonwealth acknowledges the concerns of BMWE both in loss of union jobs and the reported general condition of the line section. In reply, based on prior experience, the Commonwealth is generally aware that the lines which have been transferred to others or rationalized have not been in the best of condition at the time of the transaction. As stated in the BMWE comments (pg. 3, paragraph 2) the line section is in need of major repairs that can be

corrected by a track production gang. DRPT has not inspected these line sections. The determination of classification of such lines is a federal area of responsibility. However, it appears that the BMW (pg. 3, paragraph 2) comments and those of Amtrak (pg. 3, bullet) show concern for current track conditions and the potential for those conditions to continue at the day of crossover. Although the Federal Railroad Administration has jurisdiction of track safety standards and the compliance therewith, the Commonwealth encourages the Board to take into consideration that the Board, as a condition of this transaction, require that all of the deficiencies on the line section of this proceeding be corrected prior to date of crossover.

Conclusion of the Commonwealth in Reply to Responses

The Commonwealth believes that this line is a vital part of its transportation system. The Commonwealth does not oppose this transaction; however, it is believed that certain conditions of the Board need to be imposed to ensure the long-term viability of this line section. It is in the interest of the Commonwealth to convey to the Board for consideration the following comments that are pertinent to the proceeding at hand:

- ***This transaction's implication in a broader sense***

The line section involved in this proceeding is important to the Commonwealth and its rail network. Amtrak states that this proposed transaction has broader implications (pg. 4, last paragraph and continued) to transactions that may follow contributing to the rationalization of miles of the rail system due to a number of reasons for failure, ultimately relying on lack of available capital necessary to maintain them. The Commonwealth has found that the infusion of state funds to offset costs of core line freight rail improvements with rail passenger benefits have come with great difficulty. Following State appropriation of \$65.0 million, DRPT has been in negotiations with CSXT for over four years attempting to make improvements to its Richmond, VA to Washington, D.C. corridor. These improvements to a rail freight facility will increase the efficiency of both rail freight and rail passenger operations. To date, the construction agreement has been executed; however, other issues continue to block its implementation. Further negotiations are being required to deal with the obstacles raised by the railroad as a condition for proceeding with the projects. DRPT must also comment that even with an infusion of public

funding to improve rail infrastructure, those improvements are only as successful as the willingness of the recipient railroad to allow the improvements to be made.

From Amtrak's and the comments above, DRPT concurs with the concern of the general condition of the national railroad system and operations. If CSXT fails to reverse the degradation of customer service to its shippers and passenger rail customers, the Commonwealth stands ready to be a party to discussions regarding the stabilization and improvement of both rail freight and rail passenger service in the Virginia.

- ***Lease Concept***

The concept of leasing lines is not new in the Commonwealth. Under the authority of the ICC/STB, NS has leased three line sections in Virginia to short line operators under a twenty-year lease arrangement. What is new to the Commonwealth through this application is the retention by CSXT rights to operate trains over the leased line section. This approach is seen by DRPT as an ability for CSXT to have better control of cross line train movements and by retaining the ability to originate unit train traffic on the line that interfaces with a larger train control network, and retain as many CSXT jobs as possible post transaction. DRPT feels that the CSXT retention of rights will in essence create a revenue stream for BBRR.

It is becoming apparent that this nation is seeking creatively to find solutions as to how its transportation infrastructure will renew itself. Without a solution, further infrastructure will continue to deteriorate or cease to exist. The Board should take into consideration that this line section has been reviewed on numerous occasions for rationalization. This main line section, in part, was previously granted abandonment (ICC Docket No. AB-55 (Sub-No. 498X) abandonment Brown Street, Richmond, VA to Ruffin, Henrico, VA - 3.1 miles 4/13/95) but not exercised by CSXT.

- ***Existing Deficiencies***

The Commonwealth shares concern with previous statements of BMW (pg.3, paragraph 2) and those of Amtrak (pg. 3, bullet) which show concern for the current track conditions and the current probability that they will continue at the day of crossover. Although the Federal Railroad

Administration has jurisdiction of track safety standards and the compliance therewith, the Commonwealth encourages the Board to take into consideration that the Board, as a condition of this transaction, require that all of the deficiencies on the line section of this proceeding be corrected prior to date of crossover. If conveyed in an appropriate condition, this 200-mile line section could see improvements of service and efficiency of operations for the next twenty years.

- ***Continuation of Rail Passenger Service***

Amtrak's *Cardinal* service is the only east west intercity route through Virginia. The Commonwealth encourages the Board to take steps within its authority to assure that the safety and efficiency of operations of the *Cardinal* over this line segment are protected.

Respectfully submitted,



Karen J. Rae
Director
Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
Richmond, VA 23218-0590

Director of the Department of Rail and Public
Transportation

Dated: September 17, 2004

Certificate of Service

I hereby certify that on this 17th day of September 2004, I caused to be served by first class mail, postage prepaid, true and accurate copies of *Reply of the Commonwealth of Virginia to comments filed by The National Railroad Passenger Corporation (Amtrak), The Norfolk Southern Railway Company, and The Brotherhood of Maintenance of Way Employees in STB Finance Docket No. 34495*, on the following:

Honorable John Ashcroft
Attorney General of the United States
C/o Assistant Attorney General, Antitrust
Division, Room 3645
U.S. Department of Justice
Washington, DC 20530

Ronnie D. Conway
Plant Manager, Montpelier Mine & Mill
U.S. Silica
PO box 187
Berkeley Springs, WV 25411

Louis E. Gitomer
Ball Janik LLP
1455 F Street NW
Suite 225
Washington, DC 20005

Honorable Norman Y. Mineta, Secretary
U.S. Department of Transportation
400 Seventh Street SW
Washington, DC 20590

John D. Heffner
John D. Heffner PLC
1920 N Street NW Suite 800
Washington, DC 20036

R. Curtis Steele, Jr
McVitty Executive Center
2758 Electric Road Suite A
Roanoke, VA 24018

Richard S. Edelman
O'Donnell, Schwartz & Anderson, PC
1900 L Street NW
Suite 225
Washington, DC 20036

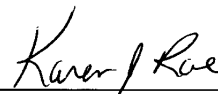
Peter J. Shudtz
CSX Corporation
1331 Pennsylvania Avenue NW
Suite 560
Washington, DC 20004

Frederick C. Ohly
Amtrak – Law Department
60 Massachusetts Avenue, N.E.
Washington, DC 20590

Keith G. O'Brien
Rea, Cross & Auchincloss
1707L Street NW Suite 570
Washington, DC 20036

Sally S. Kainmauff, President
Virginia Central Railroad, Limited
762 Lexington Avenue
Charlottesville, VA 22902

James R. Paschall, General Attorney
Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, VA 23510



Karen J. Rae