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August 4, 2003

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BY HAND

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



208608

Re: 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)

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of CSX-13, the “Reply Comments of Applicants CSX Corporation and CSX Transportation, Inc.” for filing in the above-referenced docket.

Please note that a 3.5-inch diskette containing a WordPerfect 5.1 formatted copy of this filing is also enclosed.

Kindly date-stamp the additional copy of this letter and the “Reply Comments” at the time of filing and return them to our messenger.

Thank you for your assistance in this matter. Please contact the undersigned at (202) 942-5773 if you have any questions.

Respectfully yours,

Mary Gabrielle Sprague

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Counsel for CSX Corporation and
CSX Transportation, Inc.

Enclosures

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New York

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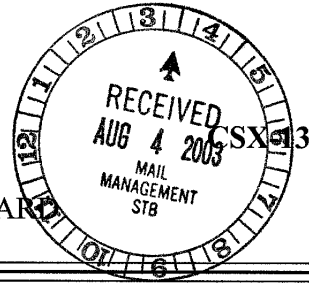
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BEFORE THE
SURFACE TRANSPORTATION BOARD



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)

REPLY COMMENTS OF APPLICANTS
CSX CORPORATION AND CSX TRANSPORTATION, INC.

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Dated: August 4, 2003

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SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY
COMPANY — CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
(GENERAL OVERSIGHT)

REPLY COMMENTS OF APPLICANTS
CSX CORPORATION AND CSX TRANSPORTATION, INC.,

INTRODUCTION

CSX Corporation and CSX Transportation, Inc. (collectively “CSX”), submit the following reply comments to the comments submitted by the public in the current (2003) round of this proceeding.

In this fourth round of formal oversight, only five comments were received: one from a shipper (National Lime and Stone Company), one from a joint rail authority (SEDA-COG Joint Rail Authority) which was joined by a number of shippers and a short line railroad, one from the State of New Jersey Department of Transportation, one from a New Jersey nonprofit corporation (the North Jersey Transportation Planning Organization, Inc.), and one from a group of rail commuters in northern New Jersey (Lackawanna Coalition). The first four

commenters have written simply to apprise the Board of ongoing discussions with CSX and/or NS regarding various issues of interest to them. CSX concurs with these commenters that there is no need for Board intervention as to any of these subjects at this time; CSX understands that the Board remains available, under its retained jurisdiction, to address any of these concerns that cannot be resolved through private discussions.¹ Only the Lackawanna Coalition has suggested any action by the Board at this time. As explained below, this commenter has provided no basis whatsoever for any action by the Board.

* * * * *

We will discuss briefly the five comments.

1. National Lime and Stone Company (“NL&S”) (NLS-3)

NL&S is a beneficiary of Condition No. 43, which, as amended in Decision No. 96, provides as follows:

As respects Wyandot and NL&S, CSX and NS: must adhere to their offer to provide single-line service for all existing movements of aggregates, provided that they are tendered in unit-trains or blocks of 40 or more cars; and in other circumstances including new movements, for shipments moving at least 75 miles, must arrange run-through operations (for shipments of 60 cars or more) and pre-blocking arrangements (for shipments of 10 to 60 cars). The requirements imposed on CSX and NS under the preceding sentence will expire at the end of the 5-year period commencing on Day One.

¹ CSX notes that the five-year period of retained jurisdiction provided for in the Board’s Oversight Condition expires on May 31, 2004, the end of the five-year period commencing with the “Split Date.” See *CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al.*, 3 S.T.B. 196, 365-66 (1998).

CSX Corp. et al.—Control and Operating Leases/Agreements—

Conrail Inc. et al., 3 S.T.B. 764, 789 (1998).

As originally set forth in Decision No. 89, Condition No. 43 did not include an expiration date. CSX and NS sought clarification of this condition, arguing that the Board's intent was to limit the condition to five years. The Board agreed, and in Decision No. 96 explained why permanent relief would be inappropriate:

[W]e believe that permanent relief is unnecessary, would be contrary to the public interest, and would be inconsistent with applicants' proffer. Accordingly, our condition will specifically include a 5-year term from Day 1, the term that was offered by applicants. This period should allow these shippers sufficient time to make adjustments to the altered business environment brought about by this transaction. . . . Permanent relief would unduly interfere with the operations of both applicants and impair their operating flexibility, which we believe is the real key to efficient, economical operations from which all shippers ultimately benefit.

3 S.T.B. at 772.

Dissatisfied by the relief afforded by the Board, including the denial of permanent relief, and apparently unpersuaded by the Board's analysis, NL&S petitioned for judicial review. The Second Circuit denied NL&S's petition:

The record shows that the STB carefully considered the requests of the mineral shippers, granted most of the measures they sought, and reserved oversight authority concerning rail service for that industry. The STB's decision to deny more extensive remedies at this time was not an abuse of discretion.

Erie-Niagara Rail Steering Committee v. Surface Transportation Board, 247 F.3d 437, 447-48 (2d Cir. 2001).

NL&S states that it is in the process of negotiating a new transportation contract with CSX, which would also require the agreement of NS to an extension of trackage rights to CSX to provide “single-line” service. NL&S does not ask for any relief at this time, but advises the Board that, if a new agreement is not reached by June 1, 2004, it intends to ask the Board for a supplemental order under 49 U.S.C. 11327 revising Condition No. 43 to extend its terms.

As is the case with respect to all situations involving multiple carriers, if terms and conditions for the Bucyrus to Wooster movement make economic and operational sense for each of NL&S, CSX and NS, arrangements to continue the “single-line” service after June 1, 2004 will be reached. CSX and NS are, of course, in the business of serving the transportation needs of their customers. If there is no economic benefit for one of the three parties, the Board clearly contemplated that after that date, two-carrier service would be the result, absent an extraordinary showing by NL&S of an abuse by the carriers involved. The marketplace changes over time as producers and consumers change customers and suppliers with the ebb and flow of commercial transactions. The Board’s condition was sufficient to avoid disruption of then-existing commercial relationships. Once the five-year condition expires, the Board ought to leave the matter in the hands of the parties.

But the Board need not decide this matter at this time because NL&S does not seek any present relief from the Board. NL&S and CSX have made encouraging progress toward a single-line service package agreeable to the two of them and CSX understands that NS is considering it from the standpoint of the use of its trackage and the terms thereof.

2. SEDA-COG Joint Rail Authority (“SEDA”) (undesignated)

These comments by a municipal authority in Pennsylvania interested in the preservation of rail service in seven Pennsylvania counties address issues which relate to NS rather than CSX, and CSX assumes that they will be discussed by NS in its Reply Comments.

3. State of New Jersey Department of Transportation (“NJDOT”) (undesignated)

NJDOT’s letter expresses concerns about the North Jersey Shared Assets Area (“NJSAA”).² NJDOT recites several statements made by CSX and NS in the CSX/NS Operating Plan for the North Jersey Shared Assets Area and Supporting Statement (CSX/NS-119) (filed October 29, 1997), and then asserts that “the public benefits anticipated by CSX and NS have not come to fruition.” NJDOT has two items of complaint: (1) that NS is not actively competing in the NJSAA,

² No concerns were expressed relating to the South Jersey/Philadelphia Shared Assets Area (“SJ/PSAA”).

and (2) that CSX and NS have not yet provided and implemented “economic development plans to promote the development of rail traffic within the Port Authority of New York and New Jersey’s Port District, which covers virtually all of the NJSAA.”

CSX assumes that the first complaint will be addressed by NS in its Reply Comments. It appears to CSX, however, that there has been keen two-carrier competition for business in the area served by the NJSAA. As explained below, port traffic is growing and shippers have been willing to locate or expand their rail-served businesses at locations in northern New Jersey served by the NJSAA. Despite a lagging economy and the closing of two key auto plants in the area, traffic to and from customers served by the NJSAA continues to be strong, albeit somewhat down from prior high levels. Total rail traffic to the SJ/PSAA, which did not experience such major plant closings, is actually up.

The second complaint refers to a settlement which CSX and NS entered into with the Port Authority, notice of which was provided to the Board in Finance Docket No. 33388 on April 10, 1998 (NY/NJ-20). That Settlement Agreement included numerous agreements, including the referenced agreement regarding economic development plans:

5. CSX, NS and CSAO [the Conrail Shared Assets Operator] will provide and implement economic development programs designed to promote the development of rail traffic within the Port District. CSX and NS will consult with the Port Authority in the development of

such plans, and the Port Authority will apprise CSX and NS of opportunities for the development of rail traffic affecting the Port District. To the extent it deems appropriate, the Port Authority will seek input from CSX, NS and CSAO in its capital planning process.

CSX and NS have been consulting with the Port Authority on an ongoing basis with respect to economic development opportunities and other issues of common interest, and CSX does not understand that the Port Authority is of the view that CSX's cooperation has been lacking.³ The Port Authority has not sought the Board's assistance in this regard, even though the Port Authority well knows how to do so. The Port Authority was an active participant in Finance Docket No. 33388, and indeed was the driving force behind the Board's order that CSX and NS prepare a special Operating Plan for the NJSAA. It has continued to be an active participant in this General Oversight proceeding, submitting comments in the first and third rounds (NY/NJ-2 filed July 14, 2000 and NY/NJ-3 filed July 17, 2002 respectively).

In last year's Comments, the Port Authority expressly referenced the importance of ongoing communications with the carriers, but made no complaint about the level of those communications. It stated that it was reviving its efforts to

³ NJDOT apparently misconstrues CSX's commitment to share its plans (lowercase) with the Port Authority – that is, communicating to the Port Authority what it is doing and what it intends to do – with some sort of formal "Plan" (uppercase) – the kind of planning document that a government or quasi-government agency would prepare.

obtain public sector funding to provide additional infrastructure in the area, and that the carriers provide useful information to this end in their regular meetings. NY/NJ-3 at 4. The Port Authority also noted that “the volumes of traffic moving through the Port Authority on-dock ExpressRail facility are reaching record levels on a regular basis.” *Id.* NJDOT’s present charges of weak competition in the NJSAA are belied by this increase in traffic, given the availability of other Atlantic ports available to shippers.

During the past year, CSX, NS and Conrail have continued their discussions with the Port Authority, NJDOT and NJ Transit regarding the need for additional rail infrastructure to handle the growth in cargo through the ports, and have made significant progress. A prioritized list of potential projects has now been developed. CSX, NS, Conrail, the Port Authority and NJDOT have agreed that these projects will be funded through a combination of railroad and public contributions. Negotiations are ongoing, and some important issues are yet to be resolved, but CSX and the other parties are committed to continuing the process. CSX is optimistic that the priority rail projects will be completed in timely fashion.⁴ In addition to these concrete capital projects to improve NJPort competitiveness in future years, CSX, NS, and Conrail have actively contributed to

⁴ CSX also helped the Port Authority reestablish documents and records destroyed on September 11, 2001.

various studies and capital planning efforts of the Port Authority and State of New Jersey.

Much progress has already been made. CSX has made many capital improvements in the vicinity of the NJSAA following the Conrail Transaction, as detailed in this General Oversight proceeding in the First Submission by Applicants CSX Corporation and CSX Transportation, Inc. (CSX-1) at 13-19, 50-52 (filed June 1, 2000); Second Submission by Applicants CSX Corporation and CSX Transportation, Inc. (CSX-4) at 10-18, 42 (filed June 1, 2001); and Third Submission by Applicants CSX Corporation and CSX Transportation, Inc. (CSX-9) at 9-13, 24-25, 30-31 (filed June 3, 2002). During the past year, CSX undertook the following projects:

- Installed a second main line track between North Bergen, NJ and Ridgefield Park, NJ and completed a major tie renewal project between these points
- Made drainage improvements at Bogota, NJ
- Replaced UG Bridge at Ridgefield Park, NJ
- Installed capacity yard tracks at Elizabeth Port Yard and commenced construction of a TRANSFLO terminal to load containerized waste onto railcars (including the rehabilitation of one yard track, the construction of a second track, paving of an operating area, and construction of various access roads, yard crossings, and support facilities).

Conrail has also made many capital improvements in the NJSAA following the Conrail Transaction. As we have previously reported, substantial resources

have been invested in information technology upgrades and planned cyclical renewal of rail and rail ties, as well as the following significant projects:

- Adding two new, high capacity yard tracks at Port Reading Yard in Woodbridge, NJ (CSX-1 at 19)
- Adding a new connection to NYS&W near Croxton Yard (CSX-1 at 19)
- Installation of 7.1 miles of welded rail, primarily in Oak Island Classification Yard and Pavonia Receiving Yard (CSX-4 at 18)
- Addition of two new tracks at Bayline Yard at Newark, NJ (CSX-4 at 18)
- Rehabilitation of the bridge at Bayonne, NY (CSX-9 at 12)
- Installation of second main track between Jersey City, NJ and North Bergen, NJ (during past year)
- Signal improvements at various locations in NJSAA (during past year).

The rail infrastructure is supporting economic development in the NJSAA area. Following the Conrail Transaction, over 20 companies served or to be served by the NJSAA (or short lines connecting to the NJSAA) announced expansions or start-ups of operations that represent over \$90 million of private capital investment in the area and are expected to provide over 600 jobs. CSX expects over 16,000 carloads of business annually from these expanded or new customers, and NS can reach these same customers via the CSAO in accordance with the terms of the North Jersey Shared Assets Area Operating Agreement. Other expansions and/or start-ups are expected in the coming year. A number of these expansions and start-

ups were facilitated through the involvement of state and local economic development officials. CSX has been actively engaged with these New Jersey officials, and believes that they have been an important factor in past economic successes and will continue to be an important factor in business growth in the northern New Jersey area.

**4. North Jersey Transportation Planning Authority (“NJTPA”)
(undesignated)**

The NJTPA writes separately to note its concurrence with NJDOT’s views and concerns, and similarly expresses the view that the Board should await the outcome of discussions among the parties interested in the NJSAA. In the event those discussions fail, however, NJTPA expresses the view that the Board should reorganize the CSAO (a branch of the continuing Conrail) into an entity that would “market [its] services, quote rates, engage in economic development, [and] operate as a profit center.”

The Board should reject this suggestion at the outset. It runs directly counter to a fundamental premise of the Board’s approval of the Conrail Transaction – that the Shared Assets Areas covering the critical markets in North Jersey, South Jersey/Philadelphia and Detroit should be operated neutrally by an entity (the CSAO) owned by both carriers, and used by its joint owners for the pickup and delivery of their line-haul freight. There is simply no justification, five years after the Board’s approval of the Transaction and four years after Split Date, for the

Board even to contemplate such a forced radical restructuring of the Transaction at the suggestion of a nonprofit corporation, unsupported by any shipper or anyone else with an economic interest in the matter. The NJTPA's suggestions should be rejected.

5. Lackawanna Coalition (undesignated)

This organization consists of rail commuters who were riders on the New Jersey Transit ("NJT") Boonton Line until NJT discontinued that service in September 2002. NJT operated this service over a former Conrail track (now PRR track) that was allocated in the Conrail Transaction for operation by NS. Contrary to the statement made by the Lackawanna Coalition, the former NJT Boonton service did not utilize any track operated by the CSAO within the NJSAA. CSX understands that, pursuant to NJT's long-term plan, NJT discontinued the Boonton service in favor of service on a parallel rail line, which NJT apparently concluded some time ago would better serve the public interest. CSX does not have a direct interest in the operation of commuter service over a Conrail line operated by NS, and CSX assumes that NS will respond to the comments of the Lackawanna Coalition regarding commuter service in more detail.

However, CSX must provide a general response to the Lackawanna Coalition's unsupported proposals intended to increase freight traffic over the Boonton line, including a proposal to grant one or more competing freight railroads

rights to use this line and the NJSA, assets for which they have not paid. The Coalition impermissibly proposes to confiscate private freight rail assets. And, putting to the side the questionable notion that increasing freight traffic would in fact help the Coalition achieve its goal of restoring its members' preferred local commuter service, the Coalition's comments reflect a fundamental misunderstanding of the relationship between commuter operations over lines owned by freight railroads and the freight railroad hosts. If and when this group of local commuters has a concrete plan for financing and operating a new service to replace the one NJT found to be unsupportable, it is free to negotiate with NS -- the allocated operator of the line -- for rights to use the line, subject of course to mutually agreeable terms.⁵

In any case, what we have here is a statement of disagreement by a group of local commuters with a decision of *NJT* to terminate their preferred local rail service, and an expression of frustration that they have no immediate plan for financing and operating a replacement service. No basis whatsoever has been provided for the Board to involve itself in this matter.

⁵ In addition, rail lines can be bought and sold where parties bargain at arm's length and fair value is given. For example, as we reported in our First Submission by Applicants CSX Corporation and CSX Transportation, Inc. (CSX-1) (filed June 1, 2000), Conrail (with the approval of CSX and NS) sold its Bordentown Secondary to NJT for construction of a light rail line between Trenton and Camden. CSX-1 at 62.

CONCLUSION

After four years of operations, the Conrail Transaction has clearly justified the Board's finding that the Transaction is in the public interest. This conclusion is further demonstrated by the fact that no commenter this year provides any basis for any action by the Board.

Respectfully submitted.



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CSX Corporation and
CSX Transportation, Inc.

Dated: August 4, 2003

CERTIFICATE OF SERVICE

The undersigned counsel for CSX Corporation and CSX Transportation, Inc. hereby certifies that on this 4th day of August, 2003, a copy of the foregoing "Reply Comments of Applicants CSX Corporation and CSX Transportation, Inc." were served on all parties of record by first-class mail, postage prepaid, or more expedited method.

A handwritten signature in cursive script, reading "Mary Gabrielle Sprague", followed by a horizontal line.

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