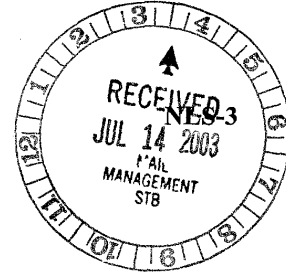


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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



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

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**COMMENTS OF
NATIONAL LIME AND STONE COMPANY**

Pursuant to the Surface Transportation Board's (Board) November 5, 2002 General Oversight Decision No. 10, National Lime and Stone Company (National) hereby submits these comments on the status of Condition No. 43 to the Conrail Transaction, as ordered by the Board in Decision No. 89 of the Conrail proceeding and modified in Decision No. 96.

I. Background

In Decision No. 89, the Board imposed on CSX Transportation, Inc. (CSX) and Norfolk Southern Railway Company (NS) Condition No. 43, which states that CSX and NS "must adhere to their offer to provide single-line service for all existing movements of aggregates, provided they are tendered in unit-trains or blocks of 40 cars or more[.]" In Decision No. 96, the Board held that Condition No. 43 would include a 5-year term from Day 1 (June 1, 1999), such that the condition would end on June 1, 2004. The Board stated: "Nonetheless, because of the uniqueness of these shippers, and because we do not as yet have any firm projections of the inefficiencies the relief we have crafted will impose on the nation's rail system and the public

interest, we will permit these shippers the opportunity, during the course of our oversight of this transaction, to keep us apprised of their need for continued single-line service as measured against the costs and inefficiencies this would impose on CSX and NS.” STB Finance Docket No. 33388, Decision No. 96, October 19, 1998, page 9.

In the first such annual review, National submitted a verified statement and a renewed request for an extension of the 5-year term of Condition No. 43. The Board stated that there had been “little opportunity to test NL&S’ claim that loss of single-line service will result in severe harm to it. Thus, NL&S provides no basis for modifying the 5-year term of the condition as it requests.” STB Finance Docket No 33388 (Sub-No. 91), Decision No. 5, February 2, 2001, page 16.

II. Comments

Throughout the past four years, National has relied on the service obtained through operation of Condition No. 43 to move limestone aggregate from National’s Bucyrus quarry to its sales yard in Wooster. The service is provided by CSX, which has the right pursuant to Condition No. 43 to operate on NS track near Bucyrus. As National explained in the first annual oversight proceeding, National invested over \$12 million at its Bucyrus and Wooster facilities. These investments were predicated on National’s ability to ship aggregates from its Bucyrus quarry to its Wooster sales yard using Conrail single-line service. The value of these investments would be severely diminished if National were unable to ship its aggregate products to these locations by means of single-line rail service.

During the four-year term of Condition No. 43, National has shipped approximately 225,000 tons per year of aggregate from its Bucyrus quarry to its Wooster sales yards. Sales from Wooster based on these shipments have generated approximately \$2.5 million per year in

revenues for National. Although these volumes have been depressed by the downturn in the economy, National anticipates that, as the economy regains strength, this traditional business will recover such that shipments of approximately 350,000 tons per year from Bucyrus to Wooster will be needed. In addition, through the integrated operations of its Bucyrus quarry and its Wooster sales yard, National is positioned to bid on three substantial new projects (two paving agreements and a highway relocation) from Wooster, which would require additional shipments of aggregates from Bucyrus to Wooster of approximately 650,000 tons per year over the next three years. Such integrated operations are impossible without the service National currently obtains from CSX pursuant to Condition No. 43.

National and CSX are negotiating a new service agreement to replace the service National presently receives under the auspices of Condition No. 43. CSX has represented that it is willing to continue providing such service to National. However, these negotiations with CSX are not yet complete, and the agreement of NS has not yet been obtained.

Based on the status of these discussions with CSX, National is hopeful that it will reach an agreement preserving adequate rail service and reasonable pricing between Bucyrus and Wooster. Nevertheless, National takes this opportunity to stress, once again, that this service and pricing is essential to National's business and operations and to enable National to compete effectively in the markets served by the Wooster sales yard. Termination of Condition No. 43 would impose a material economic hardship on National that is a direct result of the Conrail Transaction. As the Board recognized, joint-line service is inherently more costly than and inferior in quality to single-line service. Moreover, CSX and NS have not presented a scintilla of evidence that National's high-volume, single-line movement of aggregates from Bucyrus to Wooster imposes an operational burden on the railroads.

Rather than seek continuation of Condition No. 43 at this time, National believes that the appropriate step is for the parties to complete the negotiation of a business arrangement to replace Condition No. 43. However, to the extent that no such agreement can be reached prior to the expiration of Condition No. 43, National intends to request that the Commission issue a supplemental order pursuant to 49 U.S.C. 11327 revising Condition No. 43 so that the Condition would continue beyond its current 5-year term. *See Canadian National/Illinois Central Oversight*, STB Finance Docket No. 33556 (Sub-No. 4), Decision No. 3 (STB served Nov. 7, 2001), slip op. at 4 (“we have authority independent of the formal oversight process to enforce or revise merger conditions as warranted upon request or on our own initiative”); *Canadian National/Illinois Central Oversight*, STB Finance Docket No. 33556 (Sub-No. 4), Decision No. 4 (STB served Dec. 27, 2001).

Respectfully submitted,



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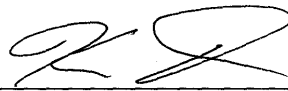
Counsel for
NATIONAL LIME & STONE COMPANY

July 14, 2003

CERTIFICATE OF SERVICE

I certify that I will cause today to be served a conformed copy of the foregoing
"Comments of National Lime and Stone Company" by first class mail, properly addressed with
postage prepaid, or more expeditious manner of delivery, upon all parties of record in Finance
Docket No. 33388 (Sub-No. 91).

Dated at Washington, D.C., this 14th day of July, 2003.

A handwritten signature in black ink, appearing to read 'KB Driver', is written above a horizontal line.

Kenneth B. Driver