

Surface Transportation Board Issues Decision in 2nd Annual "Conrail Merger" Oversight Proceeding; Summarizes Other Activity in the Conrail Merger Case

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision in the second annual round of the "Conrail merger" general oversight proceeding. The Board found that the CSX[FOOTNOTE 1: CSX Corporation and CSX Transportation, Inc.] and Norfolk Southern (NS)[FOOTNOTE 2: Norfolk Southern Corporation and Norfolk Southern Railway Company.] railroads have resolved the service problems resulting from the implementation of the merger, that there continue to be no competitive or market power problems stemming from it, and that, while negotiations to resolve outstanding environmental issues continue, CSX and NS continue to make significant progress in implementing various environmental conditions and settlement agreements.

Background. In a decision issued on July 23, 1998,[FOOTNOTE 3: The July 23, 1998 decision (Decision No. 89 in STB Finance Docket No. 33388) is discussed in Surface Transportation Board "News" release No. 98-44 issued July 23, 1998.] the Board approved, subject to certain conditions, the acquisition of control of Conrail[FOOTNOTE 4: Conrail Inc. and Consolidated Rail Corporation.] by CSX and NS, and the division of Conrail's assets between CSX and NS. The Board-imposed conditions included a 5-year general oversight condition to allow the Board to assess the progress of the merger's implementation and the workings of other Board-imposed conditions. The Board retained jurisdiction to impose additional conditions and/or take other action if, and to the extent, the Board deemed it necessary to address merger harms unforeseen at the time of its approval by the Board.

In a decision issued on February 9, 2000,[FOOTNOTE 5: The February 9, 2000 decision (Decision No. 1 in STB Finance Docket No. 33388 (Sub-No. 91)) is discussed in Surface Transportation Board "News" release No. 00-7 issued February 9, 2000.] the Board announced that it was: initiating a Conrail general oversight proceeding to implement the general oversight condition; requiring CSX and NS to file progress reports on the merger and to make certain data available to interested persons; and requesting comments from interested persons on the progress of merger implementation and the workings of the various conditions imposed.

First Annual Oversight. In the first annual round of the Conrail merger general oversight proceeding, the Board received 35 comments responding to the progress reports, including comments from shippers, other railroads, passenger authorities and interests, industrial and regional development organizations, and Federal, state, and local interests. In a decision issued on February 2, 2001,[FOONOTE 6: The February 2, 2001 decision (Decision No. 5 in STB Finance Docket No. 33388 (Sub-No. 91)) is discussed in Surface Transportation Board "News" release No. 01-4 issued February 2, 2001.] the Board found that the comments submitted, along with the Board's own operational monitoring, demonstrated that CSX and NS had substantially resolved their transitional operational and service problems, and that the railroads were in the process of successfully integrating, from an operational perspective, their respective portions of Conrail. The Board also noted that labor-relations issues appeared to have been resolved between the railroads and their unions in a mutually satisfactory manner. The Board emphasized that its primary focus in this general oversight proceeding is on remedying competitive harms and stated that operational and service issues, other than those directly related to Board-imposed conditions, generally would be handled through operational monitoring and informal customer assistance provided by the Board's Office of Compliance and Enforcement.

Relative to environmental issues, which were raised by 11 parties, the Board found CSX and NS actively working with the affected communities to resolve outstanding environmental issues and completing actions needed to implement the Board's environmental conditions and voluntary agreements. The Board concluded that reopening this proceeding to impose supplemental environmental mitigation was unwarranted at that point but emphasized that it would continue to carefully monitor the situation and intervene in the future should it become appropriate to do so.

Second Annual Oversight. For the second annual round of the Conrail general oversight proceeding, the Board directed CSX and NS to file progress reports by June 1, 2001; comments of interested parties to be filed by July 16, 2001; and replies to be filed by August 6, 2001, subject to any changes in the filing schedule and/or modification of reporting requirements as deemed warranted by the Board. In response to the June 1, 2001 progress reports filed by CSX and NS, the Board received comments from seven parties, five of which are governmental entities.

Today's Decision. In the decision issued today,[FOOTNOTE 7: The *Conrail General Oversight* decision issued today is Decision No. 6 in STB Finance Docket No. 33388 (Sub-No. 91).] the Board found that its review of the record indicates that CSX and NS have resolved the service problems resulting from the implementation of the Conrail transaction, that there continue to be no competitive or market power problems arising from the merger, and that the Board-imposed conditions are working as intended. The Board noted, in fact, that the U.S. Department of Transportation pointed out that no party had continued to complain about ongoing transaction-related service disruptions. None of the commenting parties demonstrated that competition has been impaired by the transaction. Only one party, Indianapolis Power & Light Company (IP&L) (the only shipper to file comments), even made such an allegation and the Board found that the allegation was unwarranted. Most of the issues raised by IP&L related to the conditions that the Board imposed to protect competition at its Stout electric generating plant near Indianapolis, Indiana. The Board found that competition at Stout remained just as strong as it was before the merger and that those conditions were therefore functioning as intended. Also, the Board addressed several other specific requests for relief by certain commenting parties and found those requests not to merit further relief at this time.

The Board noted that not all local and environmental issues resulting from the transaction have been totally resolved, but the comments indicate that both CSX and NS are continuing to negotiate solutions, that progress is being made, and that no issue requires Board intervention at this time. In the decision, the Board stated that, even though it is pleased with the progress made in implementing the transaction over the past year, operational monitoring and oversight of competitive and environmental developments will continue to ensure that such favorable progress continues.

General Oversight Continued. The Board indicated that the third annual round of the Conrail general oversight proceeding will be conducted in **mid-2002**, in accordance with the following schedule: CSX and NS must file progress reports by **June 3, 2002**, and must make their 100 percent traffic waybill tapes available to interested persons by **June 17, 2002**; comments of interested parties concerning oversight will be due on **July 17, 2002**; and replies will be due on **August 7, 2002**. CSX and NS must continue to file **quarterly environmental status reports** for the duration of our oversight period.

The Board issued its Conrail general oversight decision today in the case entitled *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)*, STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 6. **A printed copy of today's decision in STB Finance Docket No. 33388 (Sub-No. 91) is available for a fee by contacting D~ 2 D~ Legal, Room 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776, or via [http://Da_To_Da@Hotmail.com](mailto:Da_To_Da@Hotmail.com).** The decision is also available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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ATTACHMENT

SUMMARY OF OTHER ACTIVITY IN THE CONRAIL MERGER DOCKET

The Board has previously compiled summaries of decisions it has issued in the various Conrail merger dockets (see Surface Transportation Board "News" releases No. 97-103 issued December 8, 1997; No. 98-86 issued December 23, 1998; No. 99-22 issued May 20, 1999; No. 00-28 issued June 9, 2000; and No. 01-4 issued February 2, 2001). The following includes all decisions (except today's decision addressing the reports and comments filed in the second annual

round of the Conrail general oversight proceeding, discussed above) issued in the Conrail merger proceeding after February 2, 2001 (which, including today's decision, totals 26 decisions).

Decisions issued in STB Finance Docket No. 33388. In Decision No. 179 (issued February 9, 2001), the Board added the negotiated agreement between NS and the City of Ashtabula, OH, to the NS Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89. Environmental Condition No. 25 was superseded by that agreement.

In Decision No. 180 (issued February 9, 2001), the Board added the negotiated agreement between NS and the City of Conneaut, OH, to the NS Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89. Environmental Condition No. 28 was superseded by that agreement.

In Decision No. 181 (issued March 2, 2001), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between CSX and the Village of Milton Center, OH.

In Decision No. 182 (issued March 2, 2001), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between CSX and the City of McKeesport, PA.

In Decision No. 183 (issued March 30, 2001), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between NS and the Town of Luray, VA.

In Decision No. 184 (issued April 12, 2001), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between Consolidated Rail Corporation (which administers the CSX/NS Shared Assets Areas) and Huron Township, New Boston, MI. The negotiated agreement was added to the "Shared" Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89.

In Decision No. 185 (issued April 20, 2001), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between NS and the Town of Grottoes, VA.

In Decision No. 186 (issued May 21, 2001), [FOOTNOTE 8: The May 21, 2001 decision (Decision No. 186 in STB Finance Docket No. 33388) is discussed in Surface Transportation Board "News" release No. 01-23 issued May 21, 2001.] the Board directed NS to show, by pleading filed by June 11, 2001, why the Board should not order NS to cancel its proposed closing of its Hollidaysburg Car Shops (located in or near Hollidaysburg, PA), and to keep them open at least at present capacity for a significant period of time beyond September 1, 2001.

In Decision No. 187 (issued June 7, 2001), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between CSX and the City of Weston, OH.

In Decision No. 188 (issued June 8, 2001), the Board granted NS' request to extend the due date for the NS pleading referred to in Decision No. 186, ordering paragraph number 1, to June 25, 2001; the due date for any replies to the NS pleading was extended to July 16, 2001.

In Decision No. 189 (issued June 20, 2001), [FOOTNOTE 9: The June 20, 2001 decision (Decision No. 189 in STB Finance Docket No. 33388) is discussed in Surface Transportation Board "News" release No. 01-26 issued June 20, 2001.] the Board amended Item 10 of the CSX Subsection of Environmental Condition No. 51 to include the January 31, 2001 settlement agreement between CSX and the Cities of East Chicago, Hammond, Gary, and Whiting, IN (the Four City Consortium) that supplements the October 26, 1998 settlement agreement.

In Decision No. 190 (issued July 6, 2001), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between NS and the Town of Gauley Bridge, WV.

In Decision No. 191 (issued July 11, 2001), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between CSX and Perrysburg Township, Wood County, OH.

In Decision No. 192 (issued July 11, 2001), the Board added the negotiated agreement between NS and the Village of Oak Harbor, OH, to the NS Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89. Environmental Condition No. 36(B) was deleted because the mitigation requirement for that condition had been superseded by that agreement.

In Decision No. 193 (issued August 3, 2001), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between NS and Nicholas County, WV.

In Decision No. 194 (issued August 3, 2001), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a negotiated agreement between NS and Rockingham County, VA.

In Decision No. 195 (issued August 21, 2001), the Board granted CSX and Consolidated Rail Corporation a 6-month extension (until February 22, 2002) to meet the compliance deadline in Environmental Condition No. 11 requiring the mitigation of train wayside noise at noise-sensitive receptor locations on certain rail line segments.

In Decision No. 196 (issued August 21, 2001), the Board granted NS a 6-month extension (until February 22, 2002), with respect to rail line segments N-079 (Oak Harbor to Bellevue, OH) and N-085 (Bellevue to Sandusky Dock, OH), and a 9-month extension (until May 22, 2002), with respect to rail line segments N-100 (Riverton Junction to Roanoke, VA) and N-111 (Fola Mine to Deepwater, WV) to meet the compliance deadline in Environmental Condition No. 11.

In Decision No. 197 (issued August 22, 2001), the Board granted NS a 1-year extension (until August 22, 2002) to meet the compliance deadline in Environmental Condition No. 8(A) with respect to the Loomis Street at-grade crossing in the Town of Ripley, Chautauqua County, NY, and the York Road/SR 74 at-grade crossing in Mechanicsburg, Cumberland County, PA.

In Decision No. 198 (issued September 19, 2001), [FOOTNOTE 10: The September 19, 2001 decision (Decision No. 198 in STB Finance Docket No. 33388) is discussed in Surface Transportation Board "News" release No. 01-44 issued September 19, 2001.] the Board determined that it would not require NS to keep open its Hollidaysburg Car Shops (HCS) beyond October 1, 2001, but ordered that: (1) should NS proceed to close the HCS on or after October 1, 2001, NS must extend to all transferring HCS employees the "automatic certification" for *New York Dock* benefits that it previously negotiated with certain HCS employees, with remaining details to be worked out through negotiations between NS and the involved unions; (2) all current HCS employees who are not afforded the opportunity to transfer to a new position elsewhere on NS, or cannot exercise their seniority to claim such a position, are deemed to be eligible, upon their

dismissal, for dismissal allowances pursuant to the *New York Dock* conditions; and (3) NS must report on a periodic basis on its efforts to keep open the Juniata Locomotive Shop and on its efforts to work with the Altoona/Hollidaysburg area on alternative economic developments. Such reports will be due on a quarterly basis, on the first business day of each calendar quarter. The first such report will be due on January 2, 2002.

In Decision No. 199 (issued September 28, 2001), the Board ordered that any interested person that intends to submit a written reply to the stay motion is directed to file that reply with the Board no later than 5:00 p.m. on Tuesday, October 2, 2001. The Board took this action in response to a motion filed September 27, 2001, by the Commonwealth of Pennsylvania, the Transport Workers Union of America, the National Council of Firemen and Oilers/SEU, the International Association of Machinists and Aerospace Workers, the International Brotherhood of Boilermakers and Blacksmiths, the International Brotherhood of Electrical Workers, the Sheet Metal Workers International Association, and the Transportation•Communications International Union (collectively, movants). Movants requested that the Board stay the effectiveness of Decision No. 198 pending judicial review and that the Board establish an expedited schedule, under which replies to the stay motion would be due October 2, 2001, and under which the Board would issue its decision on the merits of the stay motion by October 4, 2001. Movants indicated that an expedited schedule was needed in order to enable movants to know of the Board's ruling on the merits of the stay motion in time to seek, if necessary, a judicial stay from the United States Court of Appeals, prior to the date when NS would close the Hollidaysburg Car Shops.

In Decision No. 200 (served October 4, 2001), [FOOTNOTE 11: The October 4, 2001 decision (Decision No. 200 in STB Finance Docket No. 33388) is discussed in Surface Transportation Board "News" release No. 01-47 issued October 4, 2001.] the Board denied a motion of the Commonwealth of Pennsylvania and rail labor interests to stay its September 19, 2001 decision that declined to order NS to keep open the Hollidaysburg Car Shops.

In Decision No. 201 (served October 11, 2001), [FOOTNOTE 12: The October 11, 2001 decision (Decision No. 201 in STB Finance Docket No. 33388) is discussed in Surface Transportation Board "News" release No. 01-48 issued October 11, 2001.] the Board's Secretary issued a decision dismissing a petition filed September 24, 2001, by the Transportation•Communications International Union (TCU) asking the Board to clarify certain details relative to the enhanced labor protection that the Board recently imposed in Decision No. 198 for employees of the Norfolk Southern Corporation and the Norfolk Southern Railway Company's Hollidaysburg Car Shops, should NS proceed to close the shops. The dismissal request was based on the parties' private resolution of the matters raised in the TCU petition.

In Decision No. 202 (served October 19, 2001), the Board addressed the September 18, 2001 letter filed by CSX, pertaining to the evaluation of the West Boundary Street crossing in Perrysburg, OH, by the Ohio Rail Development Commission and the City of Perrysburg. The Board agreed that, in view of the parties' development of mutually satisfactory alternate safety improvements in the City of Perrysburg, CSX's upgrade of the Mulberry Street (155822R) and Maple Street (155832N) crossings to flashing lights and gates, in lieu of upgrading the West Boundary Street crossing (155821J), will satisfy CSX's obligations under the Railroad Corridor Agreement, dated May 17, 1999, and therefore under Environmental Condition No. 51 of Appendix Q of Decision No. 89.

In Decision No. 203 (served November 2, 2001), the Board addressed the September 27, 2001 letter filed by NS, pertaining to the preferred alternative safety upgrading for the SR 7 at-grade crossing in Clarke County, Berryville, VA, as proposed in plans that NS provided to the Virginia Department of Rail and Public Transportation (VADRPT) on November 3, 2000. The Board agreed that, in view of NS' completion of the safety upgrading work at the SR 7 at-grade crossing, DOT: 468 599F, in Clarke County, Berryville, VA, in a manner satisfactory to VADRPT, Environmental Condition No. 8(A) of Appendix Q of Decision No. 89 has been satisfied with respect to the SR 7 at-grade crossing.