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SURFACE TRANSPORTATION BOARD SUMMARIZES ACTIVITY TO DATE IN CONNECTION WITH PROPOSED "CSX-NS-CONRAIL" RAILROAD CONTROL TRANSACTION

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that, to date, over 70 written decisions have been issued in the CSX-NS-Conrail railroad control proceeding Docketed as 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, STB Finance Docket No. 33388., which began on April 10, 1997, when the primary applicants CSX Corporation and CSX Transportation, Inc., are referred to collectively as CSX. ï¿½Norfolk Southern Corporation and Norfolk Southern Railway Company are referred to collectively as NS. Conrail Inc. and Consolidated Rail Corporation are referred to collectively as Conrail (CR). ï¿½CSX, NS, and Conrail are referred to collectively as the applicants or, sometimes, the primary applicants. notified the Board that they would be filing a railroad control application. ï¿½That application The application is variously referred to as the application, the primary application, the CSX/NS/CR application, and the CSX/NS/CR primary application., which was filed on June 23, 1997, seeks Board approval and authorization under Sections 11321-25 of Title 49, United States Code (49 U.S.C. 11321-25) for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS. ï¿½Certain related filings submitted simultaneously with the CSX/NS/CR primary application seek relief contingent upon approval of that application including, among other things, authority to construct various connecting tracks.

The decisions issued to date can be divided into three categories: ï¿½the numbered decisions; certain unnumbered decisions respecting seven construction projects The seven construction projects have been docketed as STB Finance Docket No. 33388 (Sub-Nos. 1, 2, 3, 4, 5, 6, & 7).; and certain unnumbered environmental releases. ï¿½While the Board recognizes that some of the decisions described below are more routine than others, this listing will serve as a comprehensive digest of the numerous Board actions taken to date in this proceeding.

THE NUMBERED DECISIONS

In Decision No. 1 [served (issued to the public) April 16, 1997], the Board's Secretary: ï¿½(a) ordered the parties to this proceeding to comply with the protective order attached to Decision No. 1 as an appendix; and (b) assigned this proceeding to Administrative Law Judge Jacob Leventhal for the handling of all discovery matters and the initial resolution of all discovery disputes.

In Decision No. 2 (served April 21, 1997, and published that day in the Federalï¿½Registerï¿½at 62 FR 19390), the Board: (a) announced that applicants had notified the Board of their intent to file a railroad control application; (b) found that the transaction contemplated by applicants would be a "major transaction" as that term is defined in the Board's regulations; and (c) invited interested persons to submit comments on the

procedural schedule proposed by applicants.

In Decision No. 3 (served April 22, 1997), Judge Leventhal announced that oral argument would be heard on May 7, 1997, on a motion to compel responses to a discovery request that had been submitted to Conrail.

In Decision No. 4 (served May 2, 1997): ï¿½(a) the Board denied requests for reconsideration of Decision Nos. 1 and 2; and (b) modified the terms of the protective order that had been adopted in Decision No. 1.

In Decision No. 5 (served May 13, 1997, and published that day in the Federalï¿½Registerï¿½at 62 FR 26352), the Board: (a) announced that applicants had filed petitions seeking waiver of certain otherwise applicable requirements respecting the seven construction projects; and (b) invited interested persons to submit comments respecting the sought waivers.

In Decision No. 6 (served May 30, 1997, and published that day in the Federalï¿½Registerï¿½at 62 FR 29387), the Board adopted a 350-day procedural schedule to govern the processing of this proceeding. ï¿½That schedule, which was subsequently extended in Decision No. 52, provided that the Board would serve its "final decision" on the CSX/NS/CR primary application, and on all related matters, on the 350th day after the date upon which that application was filed with the Board Ultimately, that application was filed with the Board on June 23, 1997, which meant that, according to the schedule adopted in Decision No. 6, the Board's final decision was to have been served on June 8, 1998 (the 350th day after the date of filing). ï¿½In Decision No. 52, however, the Board extended the procedural schedule adopted in Decision No. 6. ï¿½The extension adopted in Decision No. 52 provides that the Board's final decision is to be served on July 23, 1998..

In Decision No. 7 (served May 30, 1997), the Board granted in part and denied in part requests by applicants for waiver or clarification of certain requirements of the Board's Railroad Consolidation Procedures at 49 CFR part 1180.

In Decision No. 8 (served June 9, 1997), Judge Leventhal announced that a conference would be held on June 17, 1997, to consider the setting of discovery guidelines.

In Decision No. 9 (served June 12, 1997), the Board granted applicants' petitions for waiver with respect to the seven construction projects, thus allowing applicants to seek expedited consideration of these projects in advance of the Board's consideration of the CSX/NS/CR primary application. ï¿½The Board emphasized, however, that its grant of these waivers did not, in any way, constitute approval of, or even indicate any consideration on the part of the Board respecting approval of, the CSX/NS/CR primary application.

In Decision No. 10 (served June 27, 1997), Judge Leventhal adopted Discovery Guidelines to govern the conduct of discovery in this proceeding.

In Decision No. 11 (served July 18, 1997), Judge Leventhal granted in part and denied in part a motion filed by the Ace Utilities Group Initially, the Ace Utilities Group consisted of Atlantic City Electric Company, American Electric Power, Delmarva Power and Light Company, and The Ohio Valley Coal Company. Subsequently, Indianapolis Power and Light Company joined the Ace Utilities Group. that sought to compel compliance by applicants with certain discovery requests that the Ace Utilities Group had made.

In Decision No. 12 (served July 23, 1997, and published that day in the Federalï¿½Registerï¿½at 62 FR 39577), the Board announced that it was accepting for consideration: ï¿½the CSX/NS/CR primary application, which had been filed by applicants on June 23, 1997;

and all of the related filings that applicants had also filed on June 23, 1997.

In Decision No. 13 (served July 25, 1997), the Board clarified that, under the rules applicable to this proceeding: except as otherwise provided by the Board with respect to any particular motion, any reply to any motion filed with the Board itself in the first instance must be filed within three working days of the date of filing of the motion.

In Decision No. 14 (served July 29, 1997), the Board denied a request that applicants be directed to file, on or before August 6, 1997, a supplement to the application that would either (a) identify the impact of the CSX/NS/CR transaction on the commuter rail operations conducted by New Jersey Transit Corporation (NJT), Virginia Railway Express (VRE), and Massachusetts Bay Transportation Authority (MBTA), or (b) provide supporting information for the claim that the CSX/NS/CR transaction will have no adverse impacts on the commuter rail operations conducted by NJT, VRE, and MBTA. ï¿½The Board noted that the various evidentiary sources already available were such as to allow NJT, VRE, and MBTA to make comprehensive submissions in support of the positions they intended to advocate.

In Decision No. 15 (served August 1, 1997), the Board modified the protective order that had been adopted in Decision No. 1 to allow in-house counsel for the United Transportation Union to review "highly confidential" material, provided that such in-house counsel agreed to execute the appropriate undertaking and otherwise abide by the terms of the protective order.

In Decision No. 16 (served August 1, 1997), the Board clarified that, under the rules applicable to this proceeding: for purposes of the requirement that any appeal to a decision issued by Judge Leventhal must be filed within three working days of the decision date, the date of the hearing at which such decision is announced from the bench shall be regarded as "the date" of such decision.

In Decision No. 17 (served August 1, 1997), the Board denied the petition for reconsideration of Decision No. 11 that had been filed by the Ace Utilities Group.

In Decision No. 18 (served August 5, 1997), the Board denied a request filed by Potomac Electric Power Company (PEPCO) that sought to modify the protective order adopted in Decision No. 1 to permit use in a pending rate complaint proceeding of confidential and highly confidential information that had been made available to PEPCO in the CSX/NS/CR control proceeding.

In Decision No. 19 (served August 7, 1997), the Board directed applicants to file, by August 29, 1997, train schedules with respect to all train service projected to be operated by applicants if the CSX/NS/CR transaction is approved and implemented.

In Decision No. 20 (served August 15, 1997), Judge Leventhal modified a provision of the Discovery Guidelines that had been adopted in Decision No. 10.

In Decision No. 21 (served August 19, 1997), the Board's Secretary issued a service list compiled from the notices of intent to participate that had been filed in the CSX/NS/CR control proceeding.

In Decision No. 22 (served August 21, 1997), the Board modified the protective order that had been adopted in Decision No. 1 for the purpose of allowing in-house counsel for the Transportation Communications International Union to review "highly confidential" material, provided that such in-house counsel agreed to execute the appropriate undertaking and otherwise abide by the terms of the protective order.

In Decision No. 23 (served August 28, 1997), Judge Leventhal announced scheduling changes with respect to two discovery conferences to be held in September and October.

In Decision No. 24 (served August 28, 1997), the Board's Secretary announced that, for administrative convenience, and to avoid confusion, all descriptions of anticipated responsive applications and/or petitions for waiver or clarification with respect thereto that had been filed on or about August 22, 1997, would be docketed and processed under STB Finance Docket No. 33388.

In Decision No. 25 (served August 28, 1997), the Board granted a request for a brief extension of the due date for filing applicants' reply to an appeal that had been filed by the Allied Rail Unions (ARU). ï¿½The merits of that appeal--which sought to overturn Judge Leventhal's denial of ARU's motion to compel applicants to identify savings obtained by, and to explain how the public was benefitted by, five "consolidations" related to certain control transactions that had been approved in the early 1980s--were subsequently addressed in Decision No. 31.

In Decision No. 26 (served September 5, 1997), Judge Leventhal directed applicants to produce, without further delay, certain material that they had "redacted" from the discovery he had ordered them to make in Decision No. 11.

In Decision No. 27 (served September 8, 1997), the Board's Secretary corrected one item that had been listed incorrectly in the Decision No. 21 service list.

In Decision No. 28 (served September 11, 1997), the Board addressed the petitions for waiver or clarification that had been filed by Central Railroad Company of Indiana, Central Railroad Company of Indianapolis, Eastern Shore Railroad, Inc., Housatonic Railroad Company, Inc., Livonia, Avon & Lakeville Railroad Corporation, Louisville & Indiana Railroad Company, and Wabash & Western Railway Co., d/b/a (doing business as) Michigan Southern Railroad.

In Decision No. 29 (served September 11, 1997), the Board addressed the petitions for waiver or clarification that had been filed by the American Trucking Associations, Inc., Wisconsin Central Ltd., Kokomo Grain Co., Inc., New York State Electric and Gas, and the State of New York (by and through its Department of Transportation).

In Decision No. 30 (served September 11, 1997), the Board addressed the petitions for waiver or clarification that had been filed by Ann Arbor Railroad, Bessemer and Lake Erie Railroad Company, Canadian National Railway Company, Connecticut Southern Railroad, Elgin, Joliet and Eastern Railway Company, Indiana Southern Railroad, Inc., Indiana & Ohio Railway Company, New England Central Railroad, Inc., and the R. J. Corman Parties.

In Decision No. 31 (served September 11, 1997), the Board denied the appeal that had been filed by the Allied Rail Unions (ARU), pursuant to which ARU sought to overturn Judge Leventhal's denial of ARU's motion to compel CSX and NS to identify all savings that were obtained by, and to explain how the public was benefitted by, five "consolidations" related to certain control transactions that had been approved in the early 1980s.

In Decision No. 32 (served September 12, 1997), the Board denied the appeal filed by applicants, pursuant to which they sought to overturn Judge Leventhal's decisions directing applicants to produce, without further delay, certain material that they had "redacted" from the discovery he had ordered them to make in Decision No. 11.

In Decision No. 33 (served September 17, 1997), the Board addressed the petitions for waiver or clarification that had been filed by Buffalo & Pittsburgh Railroad, Inc., Allegheny & Eastern

Railroad, Inc., New Jersey Transit Corporation, New York City Economic Development Corporation, Philadelphia Belt Line Railroad, and Rochester & Southern Railroad, Inc., and also by Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission, co-owners of Virginia Railway Express.

In Decision No. 34 (served September 18, 1997), the Board ruled: ï¿½that, in appropriate instances, applicants (and, by implication, other parties as well) may assert in response to a document production request that, although a particular document is responsive to that request, it contains material that is not relevant to any matter properly at issue in this proceeding; that, if either the requesting party or Judge Leventhal accepts applicants' assertion, applicants are not required to produce that material; that, if the document contains only such material and nothing else, applicants are not required to produce the document; and that, if the document contains both irrelevant material and relevant material, applicants must produce the document, but can redact the irrelevant material.

In Decision No. 35 (served September 18, 1997), Board Chairman Linda J. Morgan addressed a recusal request that had been made by various rail labor organizations representing employees of the applicant carriers. ï¿½Chairman Morgan denied the recusal request.

In Decision No. 36 (served September 18, 1997), the Board addressed the petition for waiver or clarification that had been filed by Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited.

In Decision No. 37 (served September 18, 1997), the Board denied a request made by the Port Authority of New York and New Jersey (the Port Authority) that the protective order adopted in Decision No. 1 be modified to permit the Port Authority's in-house counsel to review Highly Confidential information to the same extent as, and under the same restrictions applicable to, outside counsel.

In Decision No. 38 (served September 18, 1997), the Board's Secretary reminded each party intending to file a responsive application that its "Responsive Environmental Report" or "Environmental Verified Statement" due by October 1, 1997, had to be filed under the sub-number reserved for the corresponding responsive application.

In Decision No. 39 (served September 18, 1997), the Board temporarily stayed an order previously entered by Judge Leventhal. ï¿½That order, had it not been stayed, would have required the immediate production, by applicants, of certain of the so-called "masking factors" that applicants had used in connection with their waybill samples The Waybill Sample, a weighted random sample of carload waybills for terminating shipments by rail carriers, is a comprehensive database on rail carload freight traffic flows and characteristics. ï¿½"Masking factors" are devices that are utilized to protect extremely confidential revenue data contained in the Waybill Sample. ï¿½Beginning with the 1987 Waybill Sample, railroads have been allowed to "mask" the revenues attributable to contract traffic, but any railroad applying masking factors to its waybill samples has been required to provide these masking factors to the Board (or, for periods prior to 1996, to the Board's predecessor, the Interstate Commerce Commission)..

In Decision No. 40 (served October 2, 1997), the Board: (a) explained which conditions that might be requested by parties opposing the CSX/NS/CR transaction required, and which did not require, that a party seeking such conditions file a responsive application; and (b) addressed petitions for clarification filed by the New York City Economic Development Corporation and Philadelphia Belt Line Railroad Company.

In Decision No. 41 (served October 2, 1997), the Board's Secretary

provided advice respecting the Board's policies and procedures concerning the filing of the opposition submissions that were scheduled to be filed in this proceeding on October 21, 1997.

In Decision No. 42 (served October 3, 1997), the Board addressed appeals filed by applicants and the Ace Utilities Group from a decision entered by Judge Leventhal that required applicants to produce some, but not all, of the "masking factors" that applicants had used during the past decade in connection with their waybill samples. ï¿½The Board ruled that, in view of the importance attached to maintaining the confidentiality of the masking factors, access to such factors could not be had through discovery.

In Decision No. 43 (served October 7, 1997), the Board's Secretary advised all parties that several changes had been made to the service list issued in Decision No. 21.

In Decision No. 44 (served October 15, 1997), the Board directed applicants to file, no later than October 29, 1997, more detailed operating plans describing the operations they intend to conduct in the so-called North Jersey Shared Assets Area. ï¿½The Board also ruled: ï¿½that comments on applicants' North Jersey Shared Assets Area operating plans may be filed by November 24, 1997; and that responses to such comments may be filed by December 15, 1997.

In Decision No. 45 (served October 16, 1997), the Board addressed an appeal filed by Transtar, Inc., Elgin, Joliet and Eastern Railway Company, and Wisconsin Central Ltd. from a discovery order issued by Judge Leventhal. ï¿½Because the Board was of the opinion that Judge Leventhal can properly insist upon compliance with the Discovery Guidelines adopted in Decision No. 10 and modified in Decision No. 20, the Board denied the appeal.

In Decision No. 46 (served October 17, 1997), the Board modified the protective order that had been adopted in Decision No. 1 for the purpose of allowing specified in-house personnel designated by the City of Cleveland, Ohio, to review certain "highly confidential" material, provided that such in-house personnel agreed to execute the appropriate undertaking and otherwise abide by the terms of the protective order.

In Decision No. 47 (served October 23, 1997), the Board directed New Jersey Transit Corporation to file, with respect to the operations it intends to conduct pursuant to the commuter rail operating rights it seeks as a condition to the primary application, either (i) a verified statement that the proposed operations will have no significant environmental impact, or (ii) an environmental report containing detailed environmental information regarding the proposed operations.

In Decision No. 48 (served October 23, 1997), the Board's Secretary, acting at the request of applicant NS, ordered the discontinuance of one of the several related abandonment proceedings that NS had filed along with the primary application. In the discontinued proceeding, NS had sought to abandon a 21.5-mile line between Dillon Junction, IN, and Michigan City, IN. ï¿½By notice filed October 6, 1997, however, NS had withdrawn its Dillon Junction-Michigan City abandonment petition, and had indicated that, if and when the Board approves the primary application, the Board will be asked to authorize the sale of the Dillon Junction-Michigan City line to the Chicago, SouthShore & South Bend Railroad for continued rail use.

In Decision No. 49 (served October 23, 1997), Judge Leventhal adopted a "protective order" to control the use of documents and information provided by applicant CSX to the Allied Rail Unions (ARU) in response to a particular ARU interrogatory The "protective order" adopted in Decision No. 49 is to be distinguished from the protective order adopted in Decision No. 1. ï¿½The protective order adopted in Decision No. 49 applies only

with respect to items provided by CSX in response to one specific interrogatory. ï¿½The protective order adopted in Decision No. 1 is more broadly applicable..

In Decision No. 50 (served October 24, 1997), the Board's Secretary granted two parties a 10-day extension of the deadline for filing responsive applications, comments, protests, requests for conditions, and other opposition evidence and argument.

In Decision No. 51 (served November 3, 1997), the Board considered a "motion in limine" that had been filed by Atlantic City Electric Company, American Electric Power, Delmarva Power and Light Company, and Indianapolis Power and Light Company. ï¿½The motion sought the issuance of an order limiting the evidence that applicants may include in their rebuttal submissions (due December 15, 1997). ï¿½The Board denied the motion in limine, but suggested that, if applicants include improper material in their rebuttal submissions, the moving parties may file, after December 15, 1997, a motion to strike.

In Decision No. 52 (served November 3, 1997), the Board directed applicants to file, by December 3, 1997, Safety Integration Plans (SIPs) that address certain concerns expressed by the United States Department of Transportation in its filing of October 21, 1997; stated that the SIPs will be made part of the environmental record and dealt with through the environmental review process; and indicated that the SIPs will be incorporated as a separate section of the Draft Environmental Impact Statement (EIS) to facilitate participation by commenters desiring to address only the adequacy of the SIPs. ï¿½The Board added that, to accommodate inclusion of the SIPs in the Draft EIS, service of the Draft EIS will not occur until the latter part of December 1997; that it is anticipated that the 45-day period for comment on the Draft EIS, which will commence upon service of the Draft EIS, will run through early February 1998; and that it is further anticipated that the Final EIS will be served in May 1998. ï¿½These anticipated EIS dates, the Board noted, required modification of the overall procedural schedule that had been adopted in Decision No. 6; and, for this reason, the Board modified that schedule to provide (a) that oral argument will be held on June 4, 1998, (b) that a voting conference will be held on June 8, 1998, and (c) that the Board's final written decision will be served on July 23, 1998.

In Decision No. 53 (served November 10, 1997), the Board denied an appeal by Transtar, Inc., Elgin, Joliet & Eastern Railway Company, and Wisconsin Central Ltd. from a discovery order issued by Judge Leventhal, that had denied a motion to compel Conrail to produce certain information within the possession or custody of Indiana Harbor Belt Railroad Company.

In Decision No. 54 (served November 20, 1997, and published that day in the Federalï¿½Registerï¿½at 62 FR 62107), the Board announced that it was accepting for consideration the responsive applications filed: ï¿½by New York State Electric and Gas Corporation; jointly by Elgin, Joliet & Eastern Railway Company, Transtar, Inc., and I & M Rail Link, LLC; by Livonia, Avon & Lakeville Railroad Corporation; by Wisconsin Central Ltd.; by Bessemer and Lake Erie Railroad Company; by Illinois Central Railroad Company; by R.J. Corman Railroad Company/Western Ohio Line; jointly by (a) the State of New York, acting by and through its Department of Transportation, and (b) the New York City Economic Development Corporation; jointly by the Belvidere & Delaware River Railway and the Black River & Western Railroad; by New England Central Railroad, Inc.; by Indiana Southern Railroad, Inc.; by Indiana & Ohio Railway Company; by Ann Arbor Acquisition Corporation, d/b/a Ann Arbor Railroad; by Wheeling & Lake Erie Railway Company; and jointly by Canadian National Railway Company and Grand Trunk Western Railroad Incorporated.

In Decision No. 55 (served November 20, 1997), the Board denied in part and granted in part motions filed by applicants that asked

that certain responsive applications be treated as if they were merely comments, protests, or requests for conditions. The motions were denied with respect to any responsive application focused on by applicants that had been accepted for consideration in Decision No. 54. ï¿½The motions were granted with respect to all other so-called responsive applications focused on by applicants.

In Decision No. 56 (served November 28, 1997), the Board denied a petition by Steel Warehouse Company, Inc. (SW) for leave to file comments on the primary application, which were due by October 21, 1997. ï¿½The Board found that SW's petition and comments, which were filed almost one month after the established deadline, were much too late to be accepted into the record.

In Decision No. 57 (served December 5, 1997), the Board's Secretary made further additions and corrections to the service list.

In Decision No. 58 (served December 5, 1997), the Board addressed an appeal filed by CSX and NS from discovery rulings by Judge Leventhal that denied CSX and NS access to: (a) information regarding past purchase offers and inquiries for rail assets sought by Illinois Central Railroad Company and Wisconsin Central, Ltd. in their responsive applications; and (b) information with respect to the timing of discussions regarding the joinder of I&M Rail Link, LLC with Transtar, Inc., and Elgin, Joliet and Eastern Railway in their responsive application filed in this proceeding. ï¿½The Board denied the appeal, finding that CSX and NS had failed to meet the standards for reversing the Judge's decision. ï¿½

THE SEVEN CONSTRUCTION PROJECTS

In a decision served July 11, 1997 (and published that day in the Federalï¿½Registerï¿½at 62 FR 37331), the Director of the Board's Office of Proceedings announced that applicants had filed a class exemption notice respecting the Sub-No. 1 construction project (a connection track at Crestline, OH), and that the exemption respecting this project would be effective on September 19, 1997, unless stayed.

In six decisions served July 23, 1997 (and published that day in the Federalï¿½Register, beginning at 62 FR 39591), the Board invited interested persons to submit, by August 22, 1997, comments respecting the Sub-Nos. 2, 3, 4, 5, 6, & 7 construction projects (connection tracks at Willow Creek, IN, Greenwich, OH, Sidney Junction, OH, Sidney, IL, Alexandria, IN, and Bucyrus, OH, respectively).

In a decision served September 16, 1997, Chairman Morgan stayed the effectiveness of the Sub-No. 1 exemption pending further action of the Board with respect to environmental review.

In a decision served October 9, 1997, the Board: (a) conditionally exempted applicants' construction of the Sub-Nos. 2, 3, 4, 5, 6, & 7 construction projects, subject to further consideration of the anticipated environmental impacts of these projects Notice of the Board's decision respecting the Sub-Nos. 2, 3, 4, 5, 6, & 7 construction projects was published in the Federalï¿½Registerï¿½on October 9, 1997, at 62 FR 52807.; and (b) denied a petition that sought to stay the Sub-No. 1 construction project pending action by the Board on the CSX/NS/CR primary application. ï¿½The Board emphasized again, as it had in Decisions Nos. 5 and 9 in the STB Finance Docket No. 33388 docket, that its action with respect to the seven construction projects did not, in any way, constitute approval of, or even indicate any consideration of, the CSX/NS/CR primary application. ï¿½The Board also emphasized its understanding that applicants have assumed the risk that the Board may deny the primary application, or may approve it subject to conditions unacceptable to applicants, or may approve it but deny applicants' request for authority to operate over any or all of the connection tracks involved in the seven construction projects.

In a decision served November 25, 1997, the Board concluded that, subject to the imposition of the mitigation measures recommended by the Board's Section of Environmental Analysis, the physical construction of the seven construction projects will neither cause nor contribute to significant environmental impacts. ï¿½In accordance with this conclusion, the Board: (a) exempted applicants' construction of the Sub-Nos. 2, 3, 4, 5, 6, & 7 construction projects, subject to the condition that applicants comply with certain specified mitigation measures; and (b) lifted the stay of the Sub-No. 1 construction project, subject to the condition that CSX comply with certain specified mitigation measures. ï¿½The Board emphasized once again: ï¿½that its action with respect to the seven construction projects did not, in any way, constitute approval of, or even indicate any consideration of, the CSX/NS/CR primary application; and that applicants have assumed the risk that the Board may deny the primary application, or may approve it subject to conditions unacceptable to applicants, or may approve it but deny applicants' request for authority to operate over any or all of the connection tracks involved in the seven construction projects.

ENVIRONMENTAL RELEASES

In a notice served July 3, 1997 (which was published July 7, 1997, in the Federalï¿½Registerï¿½at 62 FR 36332), the Chief of the Board's Section of Environmental Analysis (SEA): ï¿½(a) announced that, due to the nature and scope of the environmental issues that might arise in connection with the CSX/NS/CR primary application and related filings, SEA would prepare an Environmental Impact Statement (EIS) respecting the environmental impacts of the CSX/NS/CR control transaction; and (b) invited interested persons to submit comments respecting the scope of the Draft EIS.

In a notice served October 1, 1997 (which was published that day in the Federalï¿½Registerï¿½at 62 FR 51500), the Chief of the Board's Section of Environmental Analysis notified interested persons of the "final scope" of the EIS that will be prepared in this proceeding.

On October 7, 1997, the Chief of the Board's Section of Environmental Analysis issued seven Environmental Assessments (EAs) respecting the seven construction projects. ï¿½A notice respecting the EAs was published in the Federalï¿½Registerï¿½on October 7, 1997, at 62 FR 52373. ï¿½Interested persons had until October 27, 1997, to comment on any or all of these EAs.

By notice served October 9, 1997, the Board's Secretary advised all parties: ï¿½that, due to an administrative oversight, the EAs served on October 7, 1997, had not been properly served that day on all parties on the service list; and that any person receiving a late-served EA could request to file comments thereon at an appropriately later date.

On November 12, 1997, the Chief of the Board's Section of Environmental Analysis (SEA) issued seven Post Environmental Assessments (Post EAs) respecting the seven construction projects. ï¿½In each Post EA: ï¿½SEA determined that the corresponding EA had adequately identified and assessed potential environmental impacts; SEA recommended appropriate environmental mitigation measures to address the environmental concerns that had been raised; and SEA concluded that, with the imposition of the recommended environmental mitigation measures, there would be no significant environmental impacts resulting from the proposed construction project.

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