

comments, a 49 U.S.C. 11327¹⁶ “supplemental order” finding the proposed transaction to be consistent with the public interest, and authorizing it pursuant to 49 U.S.C. 11321–27, subject to a condition requiring petitioners to resolve through negotiations any issues pertaining to the Conrail debtholders’ required consents, or, in the alternative, to propose further proceedings before the Board to determine whether the treatment of the Conrail debtholders under the terms of the proposed transaction is fair, just, and reasonable. Petitioners add that the requested order is appropriate to ensure compliance with Decision No. 89’s Ordering Paragraph 6¹⁷ and to confirm that CSX and NS are fully authorized to carry out the proposed transaction under 49 U.S.C. 11323–24.

(3) Petitioners ask that the Board find that CRC will continue to be a rail common carrier under 49 U.S.C. 10102(5) following the consummation of the proposed transaction. See Decision No. 89, 3 S.T.B. at 374 (“We further find that, after the Closing Date, CRC will remain a ‘rail carrier’ as defined at 49 U.S.C. 10102(5).”).¹⁸

(4) Petitioners advise that, if potential issues regarding the debtholders’ consents cannot be resolved through negotiations: (a) Petitioners will propose further proceedings to resolve any such issues before the Board on the basis that (in petitioners’ view) the treatment of the Conrail debtholders under the terms of the proposed transaction is fair, just, and reasonable, see *Schwabacher v. United States*, 334 U.S. 192 (1948); and (b) petitioners will seek a ruling from the Board confirming that the 49 U.S.C. 11321(a) exemption “from all other law” (including contractual restrictions) will permit consummation of the proposed transaction without the consent of the holders of Conrail’s outstanding debt obligations, and that immunity under 11321(a) from contractual consent requirements related to Conrail’s outstanding debt obligations is necessary to permit petitioners to carry out the proposed transaction.

Procedural Schedule Adopted by the Board

The Board has arranged to publish this decision in the **Federal Register** on July 16, 2003, to provide notice to interested persons that petitioners seek the relief contemplated in their petition. The Board, however, is adopting a procedural schedule somewhat different from the schedule suggested by petitioners.

Clarification Required. Petitioners will have until July 17, 2003, to clarify whether the proposed debt restructuring applies to Conrail’s *preexisting* debt obligations (*i.e.*, the obligations that existed on the Split Date and that continue to exist today) or to Conrail’s *current* debt obligations (*i.e.*, the obligations that existed on the Split Date and that continue to exist today, and, in addition, any post-Split Date obligations incurred by Conrail). It may be that the two sets of obligations are the same, and, even if the two sets of obligations are not precisely the same, it is quite likely that preexisting obligations comprise the vast majority of current obligations. Nevertheless, given certain ambiguities in the petition respecting this matter, it seems appropriate to require petitioners to submit clarification.

Service on Various Persons Required. To ensure that the petition is brought to the attention of those persons most likely to be affected by the proposed transaction, petitioners will have until July 29, 2003, to serve copies of this decision, and to certify in writing that such service has been accomplished, on all parties of record in STB Finance Docket No. 33388 and on all known holders of Conrail’s relevant (*i.e.*, either preexisting or current) debt and equipment lease obligations (as those terms are used in this decision).¹⁹ Petitioners’ certification should be sent to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. Petitioners should also submit, on a 3.5-inch IBM-compatible floppy disk or a CD, an electronic copy (in, or compatible with, WordPerfect 10.0) of all textual materials included in their certification.

Petition Available to Interested Persons. Interested persons may view the petition and/or the requested clarification on the Board’s Web site at <http://www.stb.dot.gov>, at the “Filings” button. The petition was filed on June 4, 2003 (“06/04/2003”), and may be viewed with the filings for that date.

¹⁹ For purposes of this decision, a “known” holder of a Conrail debt obligation is a holder whose identity and mailing address are known to, or readily ascertainable by, petitioners.

The clarification will be posted to the Board’s Web site shortly after it is filed.

Any person wishing to obtain a paper copy of the petition and/or the clarification may request a copy in writing or by phone from any of petitioners’ representatives (who, as previously noted, are Mr. G. Paul Moates, Mr. Peter J. Shudtz, Mr. Henry D. Light, and Mr. Jonathan M. Broder). (1) Mr. Moates’ mailing address is: G. Paul Moates, Sidley Austin Brown & Wood LLP, 1501 K Street, NW., Washington, DC 20005. Mr. Moates’ telephone number is: 202–736–8000. (2) Mr. Shudtz’s mailing address is: Peter J. Shudtz, CSX Corporation, Suite 560, 1331 Pennsylvania Ave., NW., Washington, DC 20004. Mr. Shudtz’s telephone number is: 202–783–8124. (3) Mr. Light’s mailing address is: Henry D. Light, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–9241. Mr. Light’s telephone number is: 757–629–2600. (4) Mr. Broder’s mailing address is: Jonathan M. Broder, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, Philadelphia, PA 19103. Mr. Broder’s telephone number is: 215–209–5020.

Comments of Interested Persons. Any person (including, but not limited to, persons served with copies of this decision) who wishes to file comments respecting the petition must file such comments by August 28, 2003. Comments (an original and 10 copies), referencing STB Finance Docket No. 33388 (Sub-No. 94), should be sent to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. Comments should also be served (one copy each) on all of petitioners’ representatives (at the addresses given in the preceding paragraph). Any person submitting comments must also submit, on a 3.5-inch IBM-compatible floppy disk or a CD, an electronic copy (in, or compatible with, WordPerfect 10.0) of all textual materials included in the comments.²⁰

Reply by Petitioners. Petitioners will have until September 25, 2003, to reply to any comments filed by interested persons. Replies (an original and 10 copies) should be sent to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. Replies should also be served (one copy each) on each commenting party. Petitioners must also submit, on a 3.5-inch IBM-compatible floppy disk or a CD, an electronic copy (in, or compatible with, WordPerfect 10.0) of

²⁰ Parties unable to comply with the electronic submission requirement can seek a waiver from the Board.

¹⁶ 49 U.S.C. 11327 provides: “When cause exists, the Board may make appropriate orders supplemental to an order made in a proceeding under sections 11322 through 11326 of this title.”

¹⁷ Decision No. 89’s Ordering Paragraph 6 provides: “No change or modification shall be made in the terms and conditions approved in the authorized application without the prior approval of the Board.” Decision No. 89, 3 S.T.B. at 385.

¹⁸ The date referred to in this decision as the Split Date (June 1, 1999) has previously been referred to as the Closing Date and Day One. See Decision No. 89, 3 S.T.B. at 213 n.27.