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TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2994

William A. Mullins

202-274-2953

October 28, 1997

HAND DELIVERY
The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Room 711
Washington, D.C. 20423

-SUB35

RE: Finance Docket No. 33388, *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*

Dear Secretary Williams:

Enclosed for filing in the above captioned docket are the original and twenty-five copies of the Errata to the Responsive Application of New York State Electric and Gas Corporation (NYSEG-15). Please note that the attached pages 249A, 250A and 251A of Appendix 6 of the Application are Highly Confidential and are therefore only being served on the Board and those parties who have signed the Highly Confidential Protective Order.

The text of this pleading is contained on the enclosed 3.5-inch diskette. Please date stamp the enclosed extra copy of the pleading and return it to the messenger for our files.

Sincerely yours,

William A. Mullins
Attorney for New York State Electric & Gas

Enclosures
cc: The Honorable Jacob Leventhal
All Parties of Record

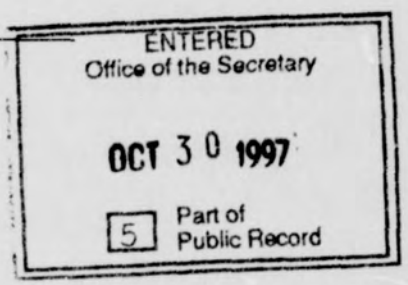
NYSEG - 15

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 35)

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

ERRATA TO THE RESPONSIVE APPLICATION OF NEW YORK STATE ELECTRIC AND GAS CORPORATION



DAVID C. REEVES
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202-274-2932 (PHONE)
202-274-2994 (FAX)

WILLIAM A. MULLINS
SANDRA L. BROWN
TROUTMAN SANDERS LLP
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202-274-2950 (PHONE)
202-274-2994 (FAX)

ATTORNEYS FOR NEW YORK STATE ELECTRIC AND GAS

October 28, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 35)

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

ERRATA TO THE
RESPONSIVE APPLICATION OF
NEW YORK STATE ELECTRIC AND GAS CORPORATION

New York State Electric and Gas Corporation ("NYSEG") hereby submits the following corrections to its Responsive Application filed in this proceeding on October 21, 1997 (NYSEG-14).

ERRATA

Page 2, chart, box 2:	Change "V.S. Sansom, Vol. 2A at 315-16, 332-33" to "V.S. Sansom, Vol. 2A at 315"
Page 3, chart, box 1:	Change "V.S. Edwards at 180" to "V.S. Edwards at 100"
Page 3, chart, box 2:	Change "This customized" to "That customized"
Page 3, chart, box 3:	Change "V.S. Kalt, Vol. 2A at 29-30" to "V.S. Kalt, Vol. 2A at 29"
Page 3, chart, box 4:	Change "V.S. Brady at 70" to "V.S. Brady at 67"
Page 3, chart, box 5:	Change "V.S. Mulligan at 55" to "V.S. Mulligan at 52"
Page 7, line 18:	Change "Prism Decisions Systems" to "PRISM Decision Systems"
Page 12, line 2:	Change "Sections 1180.6(a)(2)" to "Sections 1180.6(a)(2) and 1180.6(a)(2)(i)"
Page 16, lines 9 and 10	Change "V.S. Edwards at 82" to "V.S. Edwards at 81-82"

Page 22, footnote 19:	Change "CSX/NS-54 at 10" to "CSX/NS-35 at 10"
Page 23, footnote 22:	Change "CSX/NS-54 at 10" with "CSX/NS-35 at 10"
Page 25, line 13:	Change "V.S. Edwards at 96" to "V.S. Edwards at 96 and 98"
Page 27, line 11:	Change "V.S. Brady at 69" to "V.S. Brady at 68"
Page 28, line 7:	Change "V.S. Edwards at 52" to "V.S. Mulligan at 52"
Page 30, line 16:	Add punctuation after "Appendix 6"
Page 31, line 13:	Should read: "option of turning to one of its other plants served by CSXT as a source for power.' V.S. Fox, Vol. 2B"
Page 31, line 22:	Change "V.S. Mulligan at 42-44" to "V.S. Mulligan at 42-45"
Page 46, line 3:	Change "Nearly, $300 million" to "Nearly $300 million"
Page 61, line 14:	Change "NYSEG then" to NYSEG than"
Page 62, line 10:	Change "Conrail's Loveridge rail yard" to "Consol's Loveridge rail yard"
Page 63, line 3:	Change "perspective, the alliance" to "perspective, the Alliance"
Page 64, line 1:	Change "portion—if any—certain investments" to "portion—if any—of certain investments"
Page 64, footnote 3:	Change "42-megazwatt" to "42-megawatt"
Page 81, footnote 12:	Footnote 12 should appear on this page, not on page 82
Page 82, footnote 13:	Footnote 13 should appear on this page, not on page 83
Page 85, line 10:	Change "Milligan" to "Milliken"
Page 90, footnote 29:	Change "CSX/NS-54" to "CSX/NS-35"
Pages 186A-C:	Add coverpage and pages 192 and 193 of Sansom's deposition transcript
Pages 221-223A:	Replace pages of CSX/NS-54 with pages of CSX/NS-35
Pages 242A-C:	Add pages of NS-22

Respectfully submitted, this 28th day of October, 1997.

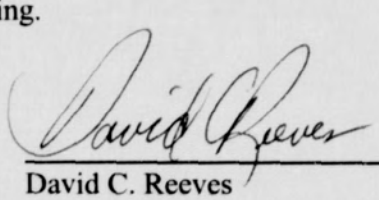
DAVID C. REEVES
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202 274-2932 (PHONE)
202-274-2994 (FAX)

WILLIAM A. MULLINS
SANDRA L. BROWN
TROUTMAN SANDERS LLP
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202 274-2950 (PHONE)
202-274-2994 (FAX)

ATTORNEYS FOR NEW YORK
STATE ELECTRIC AND GAS

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Errata to Responsive Application of New York State Electric and Gas Corporation" (NYSEG-15) was served this 28th day of October, 1997, by hand delivery to Applicants' representatives and to Judge Leventhal, and by first class mail to all parties of record in this proceeding.



David C. Reeves
Attorney for New York State Electric and Gas

BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Wednesday, August 27, 1997

Deposition of ROBERT L. SANSOM, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Arnold & Porter, 555 Twelfth Street, N.W., Washington, D.C., 20004-1202, at 10:05 a.m., Wednesday, August 27, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

entities as a threat to the volumes of coal that a carrier might deliver to a power plant.

Q. So how does that work on the OASIS system?

A. Well, the OASIS system is simply an information system that tells you the available transmission capacity on an hourly basis. So all the OASIS system does is to give more ready access to the information of the available transmission.

Q. They're going to have to reserve the transmission capability in order to have leverage, are they not?

A. No.

Q. Why not?

A. Because the issue is energy, not capacity. And the ability to acquire the electrons on an hourly basis can be distinguished from the requirement to reserve capacity on a long-term basis, because you're trying to influence the volumes so you can do it without a capacity commitment on the transmission system. You can be interruptible.

Q. So, as to their ability to serve their load on a firm basis, they would not be able to

rely on this kind of leverage?

A. That's correct.

Q. Turning to page 7, and in your bullet point area, just above the heading IV, the last sentence of the last bullet has a statement, very seldom are the interpool transmission lines into PJM, ECAR, and NPCC full. Now, when you used interpool you meant interarea as in NERC area?

A. I meant between NERC areas.

Q. So you have not conducted any analysis of the New York power pool's intertie capability with adjacent power pools in making that conclusion?

A. I have looked at the data on the hourly power movements between NYPOOL and PJM.

Q. And your testimony is that they frequently have excess transmission capability?

A. Yes.

Q. Have you reviewed the New York Public Service Commission order identifying load pockets within the New York power pool?

A. No.

Q. And I think you mentioned the NYPOOL, New York power pool. Have you studied any other power pool interties with the New York power

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

ERRATA TO PRIMARY APPLICATION

CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"),[1/] Norfolk Southern Corporation ("NSC"), and Norfolk Southern Railway Company ("NSR"),[2/] hereby file their errata to the Primary Application, with the exception of the errata to Volume 6 (Environmental Report), which will be filed separately.

1/ CSXC and CSXT are referred to collectively as "CSX."

2/ NSC and NSR are referred to collectively as "NS."

Explanation of Cleveland Terminal Routing Corrections

Three sets of routing corrections are required in the Cleveland terminal area:

(a) Some doublestack and high speed through trains moving between Chicago and Buffalo were improperly routed over Conrail's former NYC track through Cleveland, including over industrial track between Rockport and Cloggsville (via CP Short) that does not have adequate clearances for such trains. These trains are being rerouted via the proposed new connection at Vermillion onto NS' former Nickel Plate route through Cleveland.

(b) Two pairs of trains that were running overhead between Conway, PA and Decatur, IL or Sidney, IL were improperly routed via Youngstown and Ashtabula, OH, resulting in needless circuity (approximately 80 miles) and needless congestion on NS' former Nickel Plate line through Cleveland. These trains are being rerouted onto Conrail's higher capacity line through Cleveland to Butler, IN, where they will connect with NS to Decatur and the West.

(c) A number of trains running between Bellevue, OH and Conway, PA were improperly routed via Ashtabula, clogging the NS' former Nickel Plate line through Cleveland. These trains are being rerouted in two ways: (1) Two pairs of trains are being rerouted away from Cleveland via Conrail's Alliance to Crestline line, then via trackage rights on the Crestline to Bucyrus line (which will be operated by CSX), and then via NS' line north to Bellevue. (2) TCS and automotive trains are being rerouted Bellevue to Sandusky and then over Conrail's high capacity line from Sandusky to Pittsburgh.

These Cleveland area routing corrections are reflected in the following changes to the train density and volume charts:

461 Table **Rochester PA to Ashtabula OH:** Replace this segment with the following two segments (to reflect distinct traffic patterns) and insert entries for all eight columns (Miles; Base Case Psgr Trains/Day; Base Case Frt Trains/Day; Base Case Total Trains/Day; Post Acquisition Case Psgr Trains/Day; Post Acquisition Case Frt Trains/Day; Post Acquisition Case Total Trains/Day; Change in Trains) as follows:

Rochester PA to Youngstown OH

39	0.0	12.6	12.6	0.0	17.7	17.7	5.1

Youngstown OH to Ashtabula OH
59 0.0 11.7 11.7 0.0 23.8 23.8 12.1

462 Table **Alliance OH to Crestline OH:** Change entries for the last three columns (Post Acquisition Case: Frt Trains/Day; Total Trains/Day; Change in Trains)
from 6.6, 6.6, -12.6 to 4.1, 4.1, -15.0

Alliance OH to White OH: Change entries for the last three columns (Post Acquisition Case: Frt Trains/Day; Total Trains/Day; Change in Trains)
from 27.8, 29.8, 1.5 to 30.1, 32.1, 3.7

White OH to Cleveland OH: Change entries for the last three columns (Post Acquisition Case: Frt Trains/Day; Total Trains/Day; Change in Trains)
from 26.8, 28.8, 14.3 to 29.7, 31.7, 17.2

Cleveland OH to Shortline Jct OH: Change entries for the last three columns (Post Acquisition Case: Frt Trains/Day; Total Trains/Day; Change in Trains)
from 2.0, 2.0, 0.0 to 4.2, 4.2, 2.2

Cleveland OH to Vermillion OH: Change entries for the last three columns (Post Acquisition Case: Frt Trains/Day; Total Trains/Day; Change in Trains)
from 24.4, 28.4, -24.0 to 32.9, 36.9, -15.5

Vermillion OH to Oak Harbor OH: Change entries for the last three columns (Post Acquisition Case: Frt Trains/Day; Total Trains/Day; Change in Trains)
from 36.2, 40.2, -12.2 to 41.4, 45.4, -6.9

Oak Harbor OH to Airline OH: Replace this segment with the following two segments (to reflect distinct traffic patterns) and insert entries for all eight columns (Miles; Base Case Psgr Trains/Day; Base Case Frt Trains/Day; Base Case Total Trains/Day; Post Acquisition Case Psgr Trains/Day; Post Acquisition Case Frt Trains/Day; Post Acquisition Case Total Trains/Day; Change in Trains) as follows:

Oak Harbor OH to Miami OH:
22 4.0 48.0 52.0 4.0 61.5 65.5 13.5

Miami OH to Airline OH:
2 4.0 55.4 59.4 4.0 64.0 68.0 8.6

Airline OH to Butler IN: Change entries for the last three columns (Post Acquisition Case: Frt Trains/Day; Total Train /Day; Change in Trains)
from 43.8, 47.8, -6.6 to 48.2, 52.2, -2.2

468 Table **Bellevue OH to Sandusky Dock OH:** Change entries for the last three columns (Post Acquisition Case: Frt Trains/Day; Total Trains/Day; Change in Trains)
from 5.9, 5.9, 4.5 to 11.7, 11.7, 10.3

469 Table **Ashtabula OH to Cleveland OH:** Change entries for the last three columns (Post Acquisition Case: Frt Trains/Day; Total Trains/Day; Change in Trains)
from 35.2, 35.2, 22.2 to 36.7, 36.6, 23.6

Cleveland OH to Vermillion OH: Change entries for the last three columns (Post Acquisition Case: Frt Trains/Day; Total Trains/Day; Change in Trains)
from 37.8, 37.8, 24.3 to 34.1, 34.1, 20.6

Vermillion OH to Bellevue OH: Change entries for the last three columns (Post Acquisition Case: Frt Trains/Day; Total Trains/Day; Change in Trains)
from 31.8, 31.8, 16.2 to 27.0, 27.0, 11.4

Butler IN to Fort Wayne IN: Change entries for the last three columns (Post Acquisition Case: Frt Trains/Day; Total Trains/Day; Change in Trains)
from 22.4, 22.4, 8.8 to 27.3, 27.3, 13.7

473 Table **Rochester PA to Ashtabula OH:** Replace this segment with the following two segments and insert entries for all four columns (Miles; Base Case Total MGT; Post Acquisition Total MGT; % Change MGT) as follows:

FTC

NS-22

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

NORFOLK SOUTHERN'S AMENDED RESPONSE TO
NEW YORK STATE ELECTRIC AND GAS'
FIRST DISCOVERY REQUEST TO APPLICANTS (NYSEG-3)

Norfolk Southern[1/] hereby amends its response to Interrogatory No. 11 of the first set of discovery requests to Applicants served by New York State Electric and Gas as follows:

Interrogatory No. 11:

> Identify all track segments over 10 miles in length owned by NS (in whole or in part) over which both CSX and NS operate. You may exclude those segments constituting a part of the origin or destination.

Without waiving any objection, and subject to the objections stated in NS' previous response to Interrogatory No. 11, NS has identified the following line segments responsive to

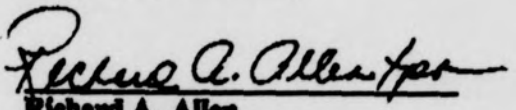
---

1/ "Norfolk Southern" refers collectively to Norfolk Southern Corporation and Norfolk Southern Railway Company

this request:

Origin	Destination
W. Knoxville, TN	Chattanooga, TN
Greenville, NC	Lee Creek, NC
Albany, GA	Oglethorp, GA
Milan, TN	Jackson, TN
Stone Coal Jct, WV	W. Gilbert, WV
Oliver Springs, TN	Harriman, TN
Charleston, SC	Pregnall, SC
Hyde, TN	Fondee, TN
Big Stone Gap, VA	Frisco Yard, TN

Respectfully submitted,



Richard A. Allen
John V. Edwards
Patricia E. Bruce
Zuckert, Scoutt & Rasenberger, LLP
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3939
(202) 298-8660

James C. Bishop, Jr.
William C. Wooldridge
J. Gary Lane
James L. Howe III
Robert J. Cooney
George A. Aspatore
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9241
(757) 629-2838

John M. Nannes
Scot B. Hutchins
Skadden, Arps, Slate, Meagher
& Flom LLP
440 New York Ave., N.W.
Washington, D.C. 20005-2111
(202) 371-7400

Counsel for Norfolk Southern Corporation and Norfolk Southern Railway Company

September 8, 1997

CERTIFICATE OF SERVICE

I, Patricia E. Bruce, certify that on September 8, 1997 I caused to be served by facsimile service a true and correct copy of the foregoing NS-22, Norfolk Southern's Amended Response to New York State Electric and Gas' First Discovery Requests to Applicants (NYSEG-3) on all parties that have submitted to the Applicants a Request to be Placed on the Restricted Service List in STB Finance Docket No. 33388.

Patricia E. Bruce

Dated: September 8, 1997

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NYSEG-14

443

ORIGINAL

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 35)

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

RESPONSIVE APPLICATION OF
NEW YORK STATE ELECTRIC AND GAS CORPORATION

DAVID C. REEVES
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202-274-2932 (PHONE)
202-274-2994 (FAX)

WILLIAM A. MULLINS
SANDRA L. BROWN
TROUTMAN SANDERS LLP
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202-274-2950 (PHONE)
202-274-2994 (FAX)

ATTORNEYS FOR NEW YORK STATE ELECTRIC AND GAS

October 21, 1997

182962 4/43

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2994

William A. Mullins

202-274-2953

October 21, 1997

HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
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Sub 35

RE: Finance Docket No. 33388, *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*

Dear Secretary Williams:

Enclosed for filing in the above captioned docket are the original and twenty-five copies of the Responsive Application of New York State Electric and Gas (NYSE&G-14). Please note that the Application has two versions: the Public version is redacted and the other version contains "Highly Confidential" information to be filed under seal pursuant to the Board's first Decision in this proceeding, served April 16, 1997. Each version is clearly marked. The Board is being provided with twenty-five copies of both versions.

Also enclosed is a check of $4,700 for the Application-Minor filing fee as required by 49 C.F.R. § 1002.

The text of this pleading is contained on the enclosed 3.5-inch diskette. Please date stamp the enclosed extra copy of the pleading and return it to the messenger for our files.

Sincerely yours,

William A. Mullins
Attorney for New York State Electric & Gas

Enclosures
cc: The Honorable Jacob Leventhal
All Parties of Record

NYSEG-14

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 35)

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

RESPONSIVE APPLICATION OF NEW YORK STATE ELECTRIC AND GAS CORPORATION

DAVID C. REEVES
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202-274-2932 (PHONE)
202-274-2994 (FAX)

WILLIAM A. MULLINS
SANDRA L. BROWN
TROUTMAN SANDERS LLP
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202-274-2950 (PHONE)
202-274-2994 (FAX)

ATTORNEYS FOR NEW YORK STATE ELECTRIC AND GAS

October 21, 1997

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TABLE OF AUTHORITIES

STATUTES

CODE OF FEDERAL REGULATIONS

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 35)

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

RESPONSIVE APPLICATION OF
NEW YORK STATE ELECTRIC AND GAS CORPORATION

New York State Electric and Gas Corporation ("NYSEG"), the largest New York-based rail shipper, hereby applies under 49 U.S.C. §§ 11323-11325, 49 C.F.R. Part 1180, and the Board's Decision No. 29,[1] for the grant of conditions upon the asset acquisition application filed in Finance Docket No. 33388, *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*, in which CSX Corporation and CSX Transportation, Inc. (collectively referred to as "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively referred to as "NS"), seek authority to (1) acquire control of Conrail, Inc. and Consolidated Rail Corporation (collectively

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[1] *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,* Finance Docket No. 33388, Decision No. 29 (STB served Sept. 10, 1997).

referred to as "Conrail"), and (2) divide Conrail's assets and the use thereof between them. (The application filed is herein called the "Primary Application").

While Applicants repeatedly urge that the Primary Application will benefit shippers in certain ways, NYSEG will receive none of those benefits.

CONSEQUENCES OF APPLICANTS' PLAN	
APPLICANTS CLAIM SHIPPERS WILL RECEIVE. . .	**BUT NYSEG WILL ACTUALLY RECEIVE. . .**
MORE SINGLE-LINE SERVICE • "The proposed division of Conrail will create new single-line service for coal shipments, benefiting coal producers and consumers ..." V.S. Snow, Vol. 1 at 312.	LESS SINGLE-LINE SERVICE • "[P]ost-transaction, Kintigh will lose single-line access to all NS exclusive mines, mines which today can deliver coal to Kintigh in single-line service." V.S. Mulligan at 50.
NEW AND IMPROVED ROUTES • "The transaction results in more efficient single-line hauls for northeastern and mid-Atlantic power plants that currently rely on inefficient, interline rail hauls..." V.S. Sansom, Vol. 2A at 315-316, 332-333.	INEFFICIENT, CONGESTED ROUTES • "Along with projected traffic increases on the MGA, and both carriers' unfamiliarity with the actual operation of the MGA, the potential for unmanageable traffic congestion is high." V.S. Edwards at 84-85.
MORE RELIABLE SERVICE • "Customers will benefit through more consistent on-time deliveries, the elimination of intermediate switching, reduced transit times and increased equipment availability and utilization." V.S. Tobias, Vol. 1 at 480.	LESS RELIABLE SERVICE • "Cycle performance of NYSEG trains also is likely to be harmed because carriers' rights, rather than shippers' rights, will affect loading priorities on the MGA." V.S. Edwards at 85.

CONSEQUENCES OF APPLICANTS' PLAN	
APPLICANTS CLAIM SHIPPERS WILL RECEIVE...	**BUT NYSEG WILL ACTUALLY RECEIVE...**
IMPROVED EQUIPMENT UTILIZATION AND AVAILABILITY • "Reductions in equipment cycle time and more efficient equipment utilization as a result of new single-line service also make a tremendous difference for all our customers." V.S. Snow, Vol. 1 at 313.	LESS EFFICIENT EQUIPMENT UTILIZATION • "NYSEG has worked extensively with Conrail to develop an efficient rail delivery system that allows effective utilization of SRC-owned equipment hauling all of the coal that Kintigh and Milliken presently need. The Applicants' plans would jeopardize much of that efficiency..." V.S. Edwards at 180.
REDUCED TERMINAL DELAYS • "Customers will benefit through more consistent on-time deliveries, the elimination of intermediate switching, reduced transit times and increased equipment availability and utilization." V.S. Tobias, Vol. 1 at 480.	INCREASED TRANSIT TIMES/DELAYS • "Conrail and NYSEG have developed an extremely customized system for the delivery of coal to Kintigh and Milliken. This customized system will be destroyed by the proposed transaction." V.S. Edwards at 75.
LOWER INVENTORY LEVELS AND SHORTER INVENTORY HOLDING TIMES • "[S]ervice attributes may translate into lower levels of inventories, shorter inventory holding times, greater consistency of delivery, better equipment utilization..." V.S. Kalt, Vol. 2A at 29-30.	HIGHER INVENTORIES NEEDED DUE TO DETERIORATED CYCLE PERFORMANCE • "Should Applicants be unable to maintain Conrail's cycle performance to Kintigh, Kintigh could have to increase its inventory." V.S. Edwards at 96.
INNOVATIVE DELIVERY ARRANGEMENTS • "[T]his integrated and customer-driven focus will lead to added rail traffic on the New NS system, and significant benefits for customers throughout the new system." V.S. Seale, Vol. 2B at 290.	INNOVATIVE ARRANGEMENT DESTROYED • "CSX and NS were unable to assure NYSEG that the benefits of the Alliance would be preserved." V.S. Brady at 70.
LOWER RATES/COST SAVINGS • "That new competition will certainly benefit shippers in many ways, including the rates they pay." V.S. Goode, Vol. 1 at 333.	INCREASED RATES • "[O]ur negotiating leverage will be significantly reduced and our delivery efficiencies will be significantly harmed. I believe these impacts will increase the rail delivery rates..." V.S. Mulligan at 55.

SECTION 1180.6(a)(1)
DESCRIPTION OF THE PROPOSED CONDITIONS

The proposed division of Conrail's assets will reduce the quality of NYSEG's services; create joint-line routes out of single-line routes; create new obstacles to efficient unit train operation; and increase NYSEG's operating costs. Accordingly, NYSEG hereby submits its Responsive Application to the Surface Transportation Board ("STB" or "Board") seeking, as a condition to any grant of the Primary Application, a grant of the following trackage rights:

1. On behalf of Norfolk Southern Railway Company,[2] or a third party carrier suitable to NYSEG,[3] trackage rights over the lines from Buffalo, NY to NYSEG's Kintigh Station; specifically, from the Niagara Branch MP 19.0 (CP-21) to the Tuscarora Wye, for approximately 4,200 feet, to Lockport Branch MP 69.6 (CP-69) to connection with Somerset Railroad Corporation at Lockport Branch MP 58.8 (CP-59). A total distance of approximately 11.2 miles.

OR

2. On behalf of CSX, or a third-party carrier suitable to NYSEG, over the lines between Buffalo, NY and NYSEG's Milliken, Goudey and Greenidge plants; specifically, from Chicago Line MP 1.7 (CP-DRAW) over the Bison Running Track to Southern Tier Line MP 419.8 to Binghamton MP 215.3 including Binghamton Running Track and #4 Yard Track with connections to: Vestal Industrial Track; on Vestal Industrial Track from MP 192.3 to MP 195.4; and connections to Lehigh Secondary at Southern Tier MP 255.2, Lehigh Secondary Track MP 269.5 to 271.6 and connection to Ithaca Secondary; Ithaca Secondary from MP 271.6 to the end of line at Milliken Station MP 321.0; connections to

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[2] If exercised by NS, modification of NS's trackage rights contained in the Primary Application over New York Central LLC ("NYC") and CSX, Inc., as shown on pages 220-252 and 329-335 of Volume 8B of the Primary Application, would also be required to eliminate any restrictions contained therein that would prevent transportation to NYSEG's Kintigh Station, including, but not confined to, limitations against interchanging with, or operating over, property of Somerset Railroad Corporation.

[3] If exercised by a third party carrier, these rights would include full access over the following: The Chicago Line between CP-2 and FW Tower (CP-437) and the Belt Line Branch owned by NYC and operated by CSX between the connection at FW Tower (CP-437), Buffalo, New York, at or near Milepost 0.0, and the connection with the Niagara Branch (CP-1) at or near Milepost 7.2, and the Niagara Branch operated by CSX between the connection with the Belt Line Branch, at or near milepost 7.5, and to Tuscarora Wye to CP-69 at MP 69.6 of the Lockport Branch to MP 58.8 (CP-59) and connection track to MP 0.0 of the Somerset Railroad Corporation. This would cover a total distance of approximately 33.2 miles.

Corning Secondary at Southern Tier Line MP 290.1 and 290.8, Corning Secondary from MP 70.6 (CP-Glass) and MP 70.9 (GP - Gibson/CP-Corning) to MP 0 (CP-335), including sidings, runarounds and passing tracks. A total distance of approximately 333.4 miles.[4]

SECTION 1180.6(a)(1)(i)
APPLICANT

The name, business address and telephone number of the responsive applicant is:

New York State Electric & Gas Corporation
Post Office Box 3607
4500 Vestal Parkway East
Binghamton, NY 13902-3607
(607) 762-4126.

The name and address of NYSEG's counsel to whom questions regarding this application can be addressed are:

William A. Mullins
Sandra L. Brown
TROUTMAN SANDERS LLP
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005-3314
Tel: (202) 274-2950
Fax: (202) 274-2994.

SECTION 1180.6(a)(1)(ii)
PROPOSED TIME SCHEDULE

NYSEG requests that if the Board approves the Primary Application the Board grant the requested trackage rights simultaneously. NYSEG recognizes, however, that under the terms of Decision No. 29 and the Board's precedent, a separate proceeding or Notice of Exemption would be required in order to fully implement any trackage rights and to resolve specific issues

[4] All milepost and control point (CP) designations taken from Conrail timetable, NS-21-CO-01120-01152.

concerning the carrier chosen to exercise the trackage rights that are herein requested by NYSEG.

SECTION 1180.6(a)(1)(iii)
PURPOSE

The purpose of the proposed trackage rights is to preserve efficient rail service to NYSEG's four plants. NYSEG currently shares in the benefits of having single carrier service via Conrail to all of its plants from all of its coal mine origins. The Conrail acquisition will significantly alter service to NYSEG's plants to a situation whereby one station, Kintigh, will be exclusively served by CSX, and three stations, Milliken, Goudey and Greenidge, will be exclusively served by NS. NYSEG is the only Conrail served utility in this entire transaction that will have its current Conrail served plants split between CSX and NS. Every other current Conrail served utility will have its Conrail service replaced by either CSX or NS and indeed, in some cases, some utilities will actually have some of their plants get service from both CSX and NS.

The proposed transaction essentially divides NYSEG coal deliveries in half, with roughly 1,700,000 tons to be delivered to Kintigh by CSX and approximately 1,300,000 tons to be delivered by NS to the other three plants. As a result, NYSEG will lose all of its bargaining advantages. Furthermore, NYSEG has worked extensively with Conrail and its coal producers to develop an efficient rail delivery system that allows effective utilization of NYSEG-owned equipment. Indeed, these efforts have actually resulted in the development of an "Alliance" between Conrail, NYSEG, and Consolidation Coal Company. By creating two-carrier movements out of current single-line service and by splitting NYSEG's plants between CSX and NS, the Applicants' plan jeopardizes the Alliance and many of the efficiencies NYSEG has achieved.

The Applicants' operating plans also demonstrate an unrealistic approach to serving NYSEG. NYSEG sees these operational issues causing serious problems with cycle and delivery times. These operational problems will cause additional financial impacts and will further harm the competitive position of NYSEG's plants.

While not a complete cure, giving either NS or CSX single carrier access to the four NYSEG plants - Kintigh, Milliken, Goudey and Greenidge - creates at least a greater opportunity for Applicants to replicate the efficiency of service which NYSEG has been able to achieve with Conrail. Loss of those efficiencies would be very costly to NYSEG and its ratepayers.

SECTION 1180.6(a)(1)(iv)
THE NATURE AND AMOUNT OF ANY NEW SECURITIES OR OTHER FINANCIAL ARRANGEMENTS

NYSEG will not issue any new securities to implement the requested trackage rights. Any other financial arrangements to be made between the tenant and the owning carriers would be upon such terms to which the tenant and owning carriers would agree.

SECTION 1180.6(a)(2)
PUBLIC INTEREST JUSTIFICATION

See Appendix 1 attached hereto and the Verified Statements of James Mulligan, Manager Central Area Plants, Sean D. Brady, President, Prism Decisions Systems, and Gary P. Edwards, Supervisor of Railroad Operations, Somerset Railroad Corporation, attached as Appendices 2, 3, and 4, respectively.

SECTION 1180.6(a)(2)(i)
EFFECTS ON COMPETITION

See Appendix 1 attached hereto and the Verified Statements of James Mulligan, Sean D. Brady, and Gary P. Edwards, attached as Appendices 2, 3, and 4, respectively.

SECTIONS 1180.6(a)(2)(ii)-(vi)
FINANCIAL CONSIDERATIONS, ETC.

These requirements were waived in Decision No. 29 because NYSEG is not an "applicant carrier."

SECTION 1180.6(a)(3)
OTHER SUPPORTING OR DESCRIPTIVE STATEMENTS

Attached as Appendices 2, 3, and 4 hereto, respectively, are the supporting witness statements of James Mulligan, Sean D. Brady, and Gary P. Edwards. Appendix 5 is NYSEG's Statement of No Significant Environmental Impact. Appendix 6 contains documents and copies of deposition transcripts, which are cited in Appendix 1 or any of the verified statements.

SECTION 1180.6(a)(4)
OPINION OF APPLICANTS' COUNSEL

This requirement was waived in Decision No. 29 because NYSEG is not an "applicant carrier."

SECTION 1180.6(a)(5)
LIST OF STATES

This requirement was waived in Decision No. 29 because NYSEG is not an "applicant carrier." Nonetheless, all trackage rights requested herein as part of this Responsive Application will be in the State of New York.

SECTION 1180.6(a)(6)
MAP

This requirement was waived in Decision No. 29 because NYSEG is not an "applicant carrier." Nonetheless, Appendix 1 contains maps showing the current (Map 1) and proposed (Map 2) rail routings to all of NYSEG's plants. It also contains maps (Maps 3 & 4) indicating the trackage rights that NYSEG is requesting as a condition. The Verified Statement of James

Mulligan contains other maps (Maps 5-8) showing the Applicants' proposed post-transaction routings to each of NYSEG's four plants.

SECTIONS 1180.6(a)(7)(i)
NATURE AND TERMS OF THE PROPOSED CONDITIONS

To the extent that this section has not been waived by Decision No. 29, the nature of the transaction at issue is a request for trackage rights to be granted a carrier to be identified later as more fully set forth in the section above entitled "Description of the Proposed Transaction" (complying with Section 1180.6(a)(1)).

SECTION 1180.6(a)(7)(ii)
AGREEMENTS

There is no agreement at this time covering the trackage rights requested. If the requested trackage rights conditions are granted, it will be necessary for the involved carriers to enter into a trackage rights agreement, which must eventually be submitted for approval or contained within a Notice of Exemption.

SECTION 1180.6(a)(7)(iii)
CONSOLIDATED COMPANY INFORMATION

This Responsive Application does not propose a consolidation or merger; therefore, Section 1180.6(a)(7)(iii) does not apply.

SECTION 1180.6(a)(7)(iv)
COURT ORDER

The applicant is the real party in interest; therefore Section 1180.6(a)(7)(iv) does not apply.

SECTION 1180.6(a)(7)(v)
PROPERTY INCLUDED IN THE PROPOSED CONDITIONS

The conditions requested by NYSEG in this Responsive Application involve rights over what is proposed to be the property of either NS or CSX as more fully set forth in the section entitled "Description of the Proposed Transaction" (complying with Section 1180.6(a)(1)).

SECTION 1180.6(a)(7)(vi)
DESCRIPTION OF LINES

This requirement was waived in Decision No. 29 because NYSEG is not an "applicant carrier." Nonetheless, all trackage rights requested herein as part of this Responsive Application are fully set forth in the section entitled "Description of the Proposed Transaction" (complying with Section 1180.6(a)(1)).

SECTION 1180.6(a)(7)(vii)
GOVERNMENTAL ASSISTANCE

No governmental financial assistance is contemplated or required.

SECTION 1180.6(a)(8)
ENVIRONMENTAL AND HISTORICAL DATA

NYSEG filed, on October 1, 1997 pursuant to the Board's Decision No. 29, a Verified Statement of Albert O. Beers certifying that NYSEG's trackage rights proposals met the exemption criteria of 49 C.F.R. § 1105.6(c)(2) (1996). A copy of that filing is Appendix 5 to this Application.

SECTIONS 1180.6(b)(1-6, 8) AND 1180.6(c)
INFORMATION REGARDING A MAJOR OR SIGNIFICANT TRANSACTION

NYSEG's Responsive Application is neither a major nor a significant transaction. Therefore, subsections (b)(1-8) and subsection (c) do not apply. *See* Decision No. 29.

SECTION 1180.6(b)(7)
APPLICANT'S RELATIONSHIPS TO PERSONS SUBJECT TO THE BOARD'S JURISDICTION

NYSEG is an investor owned utility in the business of producing electricity and of distributing electricity and natural gas, primarily within the State of New York. NYSEG was formed in 1852. NYSEG's major present and prospective activities which relate to transportation subject to the Board's jurisdiction are its ownership of Somerset Railroad Corporation ("SRC"), a Class III railroad. NYSEG is the 100 percent owner of the stock of SRC. SRC owns track and railcars, but has no locomotives and no employees. SRC's railcars are hauled by Conrail. Conrail operates over SRC via trackage rights and dispatches SRC's line.

SECTION 1180.7
MARKET ANALYSES

This requirement was waived in Decision No. 29 because NYSEG is not an "applicant carrier."

SECTION 1180.8
OPERATIONAL DATA

This requirement was waived in Decision No. 29 because NYSEG is not an "applicant carrier."

SECTION 1180.9
FINANCIAL INFORMATION

This requirement was waived in Decision No. 29 because NYSEG is not an "applicant carrier."

APPENDIX 1
SECTIONS 1180.6(a)(2)
PUBLIC INTEREST JUSTIFICATION
EFFECTS ON COMPETITION

I. THE BOARD'S ULTIMATE MANDATE IS TO PRESERVE EFFICIENT RAIL SERVICE TO NYSEG

A. The Transaction Must Be In The Public Interest

"The [Interstate Commerce] Act's single and essential standard of approval is that the Commission find the [transaction] to be 'consistent with the public interest.' 49 U.S.C. § 11344(c)." *Missouri-Kansas-Texas R. Co. v. United States*, 632 F.2d 392, 395 (5th Cir. 1980), *cert. denied*, 451 U.S. 1017 (1981). *See also Penn Central Merger Cases*, 389 U.S. 486, 498-499 (1968), and 49 U.S.C. § 11324(c). Adequacy of service to the public - shippers and consumers - is the first factor specified by statute that the Board must consider in determining whether to approve a transaction involving two Class I carriers filed under 49 U.S.C. § 11323. *See* 49 U.S.C. § 11324(b)(1)(A). "In a proceeding under this section, . . . the Board shall consider at least - (1) the effect of the proposed transaction on the adequacy of transportation to the public." *Id.*

The national rail transportation policy further defines the interests the Board must defend and foster in regulating rail carriers. *Norfolk Southern Corporation—Control—Norfolk and Western Railway Co. and Southern Railway Co.*, 366 I.C.C. 171, 190 (1982) ("*NS-Control-N&W*"). Those interests include, among others, "(3) to promote a safe and efficient rail transportation system . . . ." and "(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes." 49 U.S.C. § 10101.

B. The Board Has Broad Conditioning Power And Must Use That Power To Protect The Public Interest

The Board has "broad powers" to impose conditions on approval of an application filed under 49 U.S.C. § 11323. *See* 49 U.S.C. § 11324(c); 49 C.F.R. § 1180.1(d)(1) (1996); *Lamoille Valley Railroad Co. v. ICC*, 711 F.2d 295, 302 (D.C. Cir. 1983) ("*Lamoille Valley*"); *Southern Pacific Transportation Co. v. ICC*, 736 F.2d 708, 714 (D.C. Cir. 1984) ("*SP v. ICC*"). The Board's broad conditioning powers are intended to allow the Board to protect the public interest. *Grainbelt Corp. v. STB*, 109 F.3d 794, 796 (D.C. Cir. 1997) ("*Grainbelt*"); *SP v. ICC*, 736 F.2d at 712 ("In deciding whether and what conditions to impose, the Commission's guide is the public interest."). The power to grant conditions, including the power specifically granted the Board to authorize trackage rights, is contained in the same section that requires the Board to grant an application only if it serves the public interest - 49 U.S.C. § 11324(c). Accordingly, the Board's conditioning powers are intended to allow the Board to relieve public harm resulting from the transaction as proposed.

C. The Public Interest Includes Preventing Diminution Of The Quality And Efficiency Of Rail Service Provided To NYSEG

Protecting the public interest requires that merging carriers not be allowed to inflict on shippers, like NYSEG, lower quality services. "We are clearly concerned with the public's access to economical and reliable services." *Railroad Consolidation Procedures, General Policy Statement*, 363 I.C.C. 784, 788 (1981) ("*Consolidation Policy*"). "Public benefits" in a control transaction are defined "as efficiency gains which may or may not be shared with shippers and which include both cost reductions and service improvements." *Union Pacific Corporation, et al. –Control—Chicago & North Western Transportation Co.*, Finance Docket No. 32133, 1995 ICC Lexis 37 at 144 (ICC served March 7, 1995). On the other hand, private benefits, such as

those which "permit a carrier to . . . rais[e] rates without improving service, or by reducing service without a compensating reduction in rates . . . may harm the public interest." *NS-Control-N&W*, 366 I.C.C. at 193. *See generally Union Pacific Corporation, et al.—Control and Merger—Southern Pacific Rail Corp., et al.*, Finance Docket No. 32760, slip op. at 99 (STB served Aug. 12, 1996). Accordingly, if there is neither a cost reduction nor a service improvement, the transaction is not in the "public interest." In determining whether or not there has been a reduction in service, the Board must preserve NYSEG's most efficient routing options. *Grainbelt*, 109 F.3d at 800 ("Unless the difference in efficiency is minor, the public interest supports preserving the more efficient route."). *Accord*, 49 U.S.C. § 10101(3) (to promote an efficient rail system) & (5) (to foster effective coordination).

II. CONTRARY TO APPLICANTS' CLAIMS THAT THE TRANSACTION WILL IMPROVE OPERATING EFFICIENCIES AND CREATE SINGLE-LINE SERVICE, THE PROPOSED TRANSACTION WILL REDUCE NYSEG'S QUALITY OF SERVICE BY CREATING OPERATIONAL INEFFICIENCIES IN THE DELIVERY OF COAL TO NYSEG'S PLANTS

A. A Description Of NYSEG

NYSEG is an investor-owned public utility which serves approximately 1.8 million people in rural, suburban and urban settings throughout over 40% of New York State. NYSEG is New York's largest rail shipper. It operates four of the six most efficient coal-fired generating plants in New York. Together, NYSEG's plants employ 360 people and account for $19.5 million in county, town and school tax payments, which payments are vital to the economic competitiveness of Upstate New York.

NYSEG has four power plants in New York State which will be directly harmed by the proposed break-up of Conrail by CSX and NS: Goudey, Greenidge, Milliken and Kintigh. All four of these plants are coal burning stations which pulverize coal into a powdered state and then

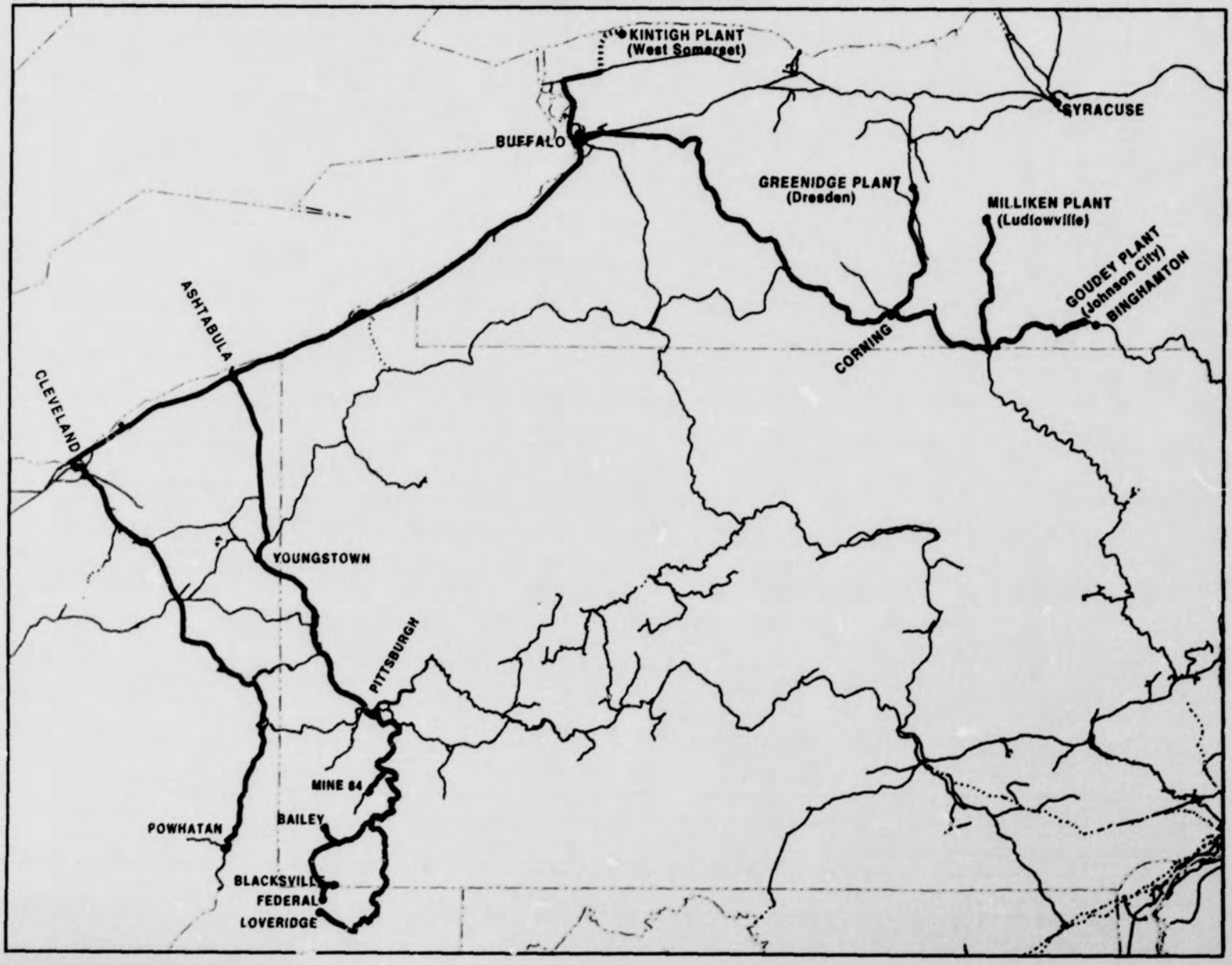
blow the coal into the boilers where it is burned. As the map on the next page (Map 1) clearly indicates, NYSEG currently shares in the benefits of having seamless, single-line service via Conrail to all of NYSEG's rail served plants from all of the mine origins NYSEG is capable of using. The acquisition will alter service to NYSEG's plants by making one station, Kintigh, served exclusively by CSX, and three stations, Milliken, Goudey and Greenidge, served exclusively by NS. (*See* Map 2 on the next page). In addition, maps showing the post-transaction rail service to each of the individual plants are contained in the Verified Statement of James Mulligan ("V.S. Mulligan"). As a result, the routing to NYSEG's plants after the proposed transaction will be over rail requiring trackage rights, new interconnections between NS and CSX that don't exist today, and in some cases, NYSEG's coal deliveries will become joint-line hauls in place of today's efficient single-line service. These operational issues will cause serious problems with cycle and delivery times and cause additional financial impacts, harming NYSEG's plants competitively.

B. For NYSEG, the Transaction Will Increase, Not Decrease, Inefficient Joint-Line Service

The Primary Application proposes to give CSX sole rights to serve Kintigh while giving NSR sole rights to serve Milliken, Goudey, and Greenidge. NSR will also receive sole rights to serve certain non-MGA mines utilized by NYSEG and the car repair shop SRC uses. Splitting Conrail in this fashion will disrupt the efficient, single-line service that NYSEG has developed with Conrail over the past fourteen years by creating joint-line routes out of single-line routes; creating new obstacles to efficient unit train operation; and increasing NYSEG's operating costs. Rather than receiving the transactional benefits touted by the Applicants, NYSEG will in many respects receive the exact opposite – increased operational inefficiency and increased transportation costs.

NYSEG Plants
Current Routes

Map 1

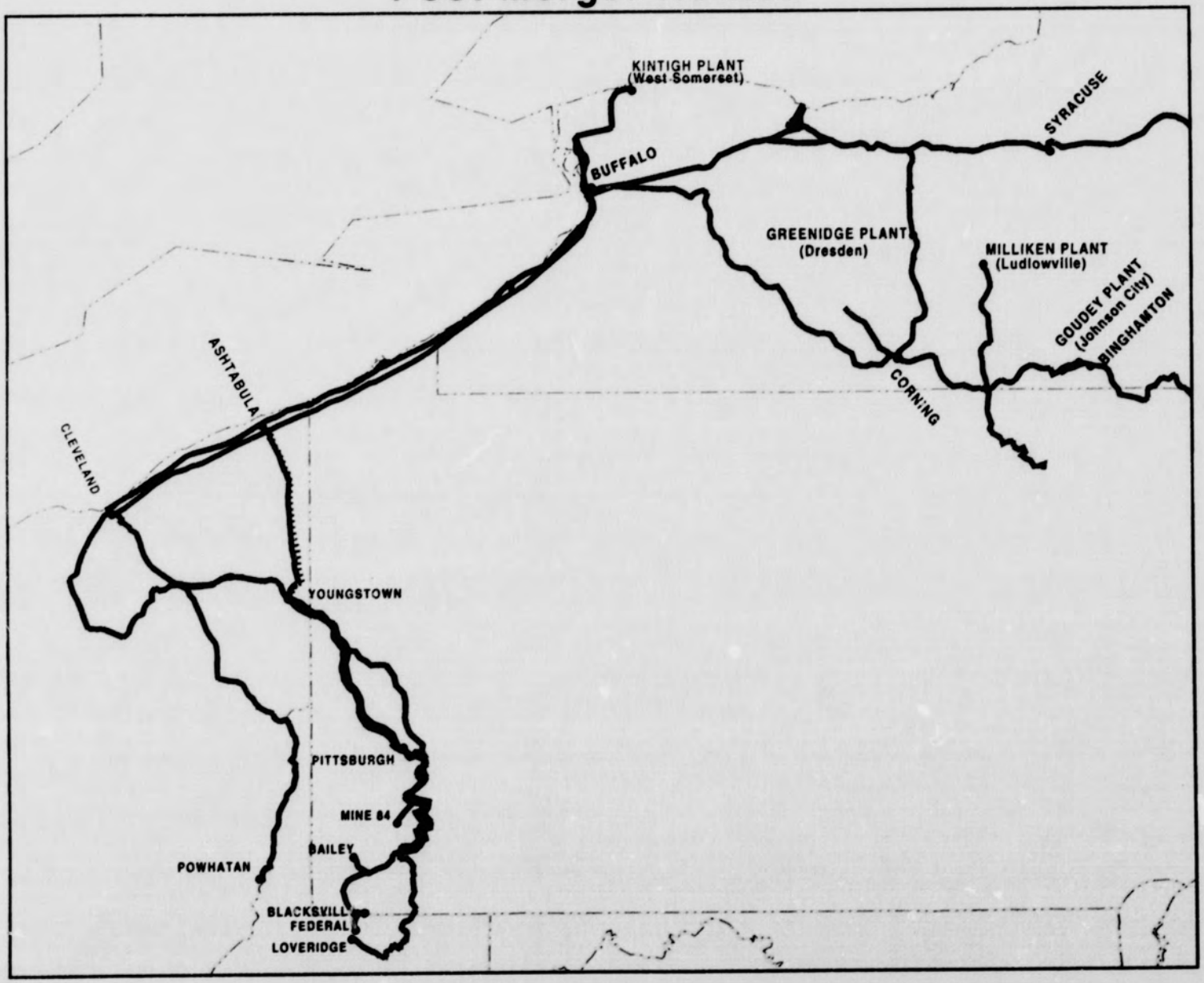


Conrail

Conrail Trackage Rights

Current Conrail Coal Routes

NYSEG Plants
Post Merger Routes



Map 2

1. Inefficient Utilization of Equipment

The transaction will result in the waste of almost an entire month's use of one SRC unit train set each year. To assure that adequate coal supplies are transported to both Kintigh and Milliken, SRC owns and oversees Conrail's operation of SRC's three 130-car unit trains. One of those train sets is dedicated to serving Kintigh Station and another to serving Milliken Station, while the third cycles between Kintigh and Milliken at least monthly.[1] Verified Statement of Gary P. Edwards at 82 ("V.S. Edwards"). Switching that third train set back and forth between service to Kintigh and service to Milliken post-transaction will require two interchanges between CSX and NS, resulting in an average of one day's delay on each interchange. V.S. Edwards at 82; Deposition Transcript of Raymond L. Sharp at 297-299 ("Sharp, Depo. Tr."). In all, nearly one month's use of SRC's third unit train will be wasted post-transaction by newly-created interchange delays. This will reduce the total number of unit train cycles which CSX and NS can provide using SRC's unit trains. Because of this reduction and in order to maintain the current cycling arrangements, SRC will either have to pay higher rates to transport needed coal in railroad-owned cars or will have to spend over $4.1 million to acquire enough additional unit train equipment to compensate for Applicants' inefficient use of SRC's third unit train. V.S. Edwards at 96-98.

2. The Creation of Joint-Line Movements in Place of Single-Line Movements

Coal mines that will become sole-served by NS post-transaction will be economically and operationally cut off from CSX-served Kintigh. Mine 84 and Powhatan #6 are two mines that

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[1] NYSEG also sometimes diverts a unit train destined for Milliken to unload at Kintigh instead. V.S. Edwards at 79. Such diversions may happen at any time, including while the train is en route. These movements, like the regular use of a Kintigh unit train to serve Milliken, will require multiple interchanges between NS and CSX in a post-transaction environment.

can supply the quantity and quality of coal ordinarily burned at Kintigh and are today single-line movements via Conrail. V.S. Mulligan at 46-47; 50. Under the Applicants' proposal, both of those mines will be solely accessible to NS, making a haul from those mines to Kintigh a joint-line movement.[2] Because, as Applicants admit[3] and as the ICC has found,[4] joint-line service is usually more costly and less efficient than single-line service.[5] Making service from Mine 84 and Powhatan #6 to Kintigh joint-line service will create additional economic and operational limitations,[6] making those mines less competitive on movements to Kintigh.

3. Decreased Loading and Maintenance Flexibility

Having single carrier access to all four of NYSEG's affected plants and coal origins, as Conrail has today, provides flexibility in loading at the mines. For example, if a unit train cycling to Kintigh is scheduled for loading ahead of the unit train cycling to Milliken, but is delayed arriving empty at Conrail's staging yard, Shire Oaks Yard, the Conrail Unit Train Desk can readily swap loading dates between the Kintigh and Milliken trains, moving the Milliken train in place of the Kintigh train's loading spot. However, with CSX and NS sharing the MGA

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[2] Deposition transcript of John W. Fox at 63, 65 ("Fox, Depo. Tr.").

[3] Deposition transcript of John W. Orrison ("Orrison, Depo. Tr."), 209, 398, 401; Deposition transcript of Donald W. Seale ("Seale, Depo. Tr."), 114, 117; Verified Statement of Donald W. Seale ("V.S. Seale"), Primary Application Vol. 2B at 287; Verified Statement of Darius W. Gaskins, Jr. ("V.S. Gaskins"), Primary Application Vol. 2A at 101.

[4] *E.g., CSX Corporation-Control-Chessie System, Inc. and Seaboard Coast Line Industries, Inc.*, 363 I.C.C. 521, 553 (1980) ("efficiencies inherent in single-line operations"); *Union Pacific Corporation, et al. –Control—Chicago & North Western Transportation Co.*, Finance Docket No. 32133, 1995 ICC Lexis 37, 109 (ICC served March 7, 1995); and *Union Pacific Corporation, et al.—Control and Merger—Southern Pacific Rail Corp., et al.*, Finance Docket No. 32760, slip op. at 107 (STB served Aug. 12, 1996).

[5] Fox, Depo. Tr. 33-34. *See generally* Seale, Depo. Tr. 127- 128 (stating that single carrier accountability for on-time performance enhances service).

[6] Deposition transcript of L.I. Prillaman at 38 ("Prillaman, Depo. Tr.") (single-line service avoids "bottlenecks in the interchange of traffic" and gives "direct control over the entire movement which means you can increase the utilization and efficiency of your equipment").

and NS handling dispatch of the MGA, NS would be more likely to move another empty non-NYSEG NS train into that loading spot in order to retain the rail revenue for NS, rather than moving the empty NYSEG/CSX train into the loading slot. V.S. Edwards at 85. Therefore, rather than being able to compensate for one NYSEG train being late by loading the other NYSEG train, NS would load someone else's train, causing unnecessary delay to both NYSEG trains.

NYSEG's costs of maintenance for its railcars will also increase as a result of the transaction. SRC does not own or operate car repair facilities for its fleet of 428 cars. Instead, SRC sends cars which need repair to a car repair shop. That shop is located on a Conrail line which will be allocated to NS under Applicants' proposal. V.S. Edwards at 80. Currently, SRC is able to send its cars to the repair shop using time-saving, single-line service. What's more, under its contract with Conrail, SRC cars in service to NYSEG are moved to and from the repair shop at no charge. V.S. Edwards at 80. However, if the transaction is implemented, moving any of the 260 SRC railcars that regularly serve Kintigh to SRC's contract repair shop will involve a two-line haul, with attendant delays caused by interchange between NS and CSX, and will in all likelihood result in charges for some portion of the car's movement. Accordingly, sending an SRC car from Kintigh service to the repair shop will become less efficient and more expensive. V.S. Edwards at 80.

Conrail currently fills all of the coal transportation needs of NYSEG's Kintigh and Milliken plants using railcars owned by NYSEG's railroad subsidiary, SRC. By creating these new joint-line routes, the transaction will reduce the operational efficiency of SRC's equipment and increase NYSEG's operational costs.

C. For NYSEG, Transportation Inefficiency, Not Efficiency, Will Increase

NS and CSX's operating plans evidence their unfamiliarity with serving NYSEG and with coordinating their own mutual operations. V.S. Edwards at 91. The reliability, safety, and efficiency of the current Conrail service will be destroyed. These new operational difficulties, principally on the MGA and the Youngstown-Ashtabula line, will result from limited line capacity, inadequate CSX yard facilities serving the MGA, and the need to coordinate two carriers' operations.[7] Together, these problems will reduce the operational efficiency of unit train service to NYSEG, which NYSEG and Conrail have worked for many years to optimize.

1. Increased Yard Congestion

Conrail presently serves the MGA from Shire Oaks Yard, handling about 10 loaded trains daily.[8] Conrail also has available to it West Brownsville Yard, which has additional track capacity. V.S. Edwards at 86. Nevertheless, Conrail has been refurbishing Shire Oaks Yard to provide additional capacity for serving the MGA.[9] The CSX operating plan, meanwhile, shows that CSX intends to move about half as many loaded trains per day from the MGA as Conrail presently handles.[10] However, CSX will use Newell Yard, which has far less capacity than the combined present capacity of Shire Oaks and West Brownsville Yards. V.S. Edwards at 86. That Conrail is upgrading its Shire Oaks Yard indicates that Conrail's current capacity to serve the MGA is not sufficient, yet CSX plans to use Newell Yard to handle half of Conrail's present MGA volume. With CSX's next nearest staging yard for the MGA being 8 hours away from

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7 *See* Deposition transcript of D. Michael Mohan at 419 ("Mohan, Depo. Tr.")

8 *See* CSX-21-P-008208.

9 Mohan, Depo. Tr. 415.

10 Primary Application, Vol. 3A at 439.

Newell Yard[11] and an absolute minimum of 17 to 21 hours away from MGA mines used by NYSEG,[12] NYSEG's unit train sets that are intended to be able to cycle 78 times per year between the MGA and Kintigh are likely to be delayed en route and to not arrive in time to fill their loading slot.[13] V.S. Edwards at 87.

2. Increased Use of Trackage Rights

In addition, a carrier which must operate on track it does not own, as CSX will have to do in operating on the MGA and the Youngstown-Ashtabula line in order to serve NYSEG, cannot remain competitive. On the MGA and between Youngstown and Ashtabula, CSX will have to operate on lines it does not own. In the words of its landlord on those lines, NS, a carrier cannot remain competitive in that situation:

> If you do not own your line, you do not control this investment, so you also lack control over safety, efficiency, and service. In short, you cannot stay competitive.
>
> Here is an anecdote which makes the point. Norfolk Southern has trackage rights over a CSX double-track main line in Cincinnati. We continually experienced delays and associated added costs and service failures in trying to move our trains over these trackage rights. One could attribute this to the capacity of the CSX line or to the malign influence of CSX, but in truth the problem was that CSX's priorities and self-interest are different from our priorities, and CSX owns and controls the track. . . .
>
> Another example is the CP's attempt to provide competitive intermodal service to the New York area over trackage rights on Conrail. It never really worked, and CP may withdraw from the market. The route could have been adequate, and in fact had offered effective competition in the pre-Conrail era. **But trackage rights over an**

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[11] *See* CSX/NS-67 at 17.

[12] CSX estimated 17 to 21 hours between arrival of a train at New Castle, PA, and placing that train in position for loading at an MGA mine, "assuming no delays in 'staging'." CSX/NS-106, 8.

[13] The merger of the Monongahela Railway Co. into Conrail was intended to improve the efficiency of MGA operations by removing the need to interchange at West Brownsville and by centralizing train and crew dispatch functions. *Consolidated Rail Corp.--Merger--Monongahela Railway Co.*, Finance Docket No. 31875, 1991 ICC LEXIS 234 at 3. Applicants' plan will largely undo these efficiencies.

unenthusiastic, competing owner did not suffice to give customers the service they wanted. (Emphasis added.)

See Appendix 6 (NS October 29, 1996 letter "To All Rail Shippers"). CSX's lack of control over portions of its service from the MGA to Kintigh will, in Applicants' own words, make CSX less efficient and less competitive. This will significantly harm NYSEG, which relies heavily on MGA to Kintigh service to maintain NYSEG's own competitiveness.

3. Increased Blockage of Road and Track Crossings

NS is not without its problems in operating between Youngstown and Ashtabula. NS cannot move a Milliken-bound coal train eastbound at Ashtabula without blocking one or more road crossings, plus probably blocking the NS mainline and perhaps the Youngstown-Ashtabula line for probably one to two hours.[14] There is no track structure allowing an NS train northbound on the Youngstown-Ashtabula line to move directly eastbound on the NS Cleveland to Buffalo line.[15] Instead, NS will have to move westbound on the Cleveland to Buffalo mainline and onto a siding there.[16] The locomotive then would have to uncouple from the west end of the train and run back and forth to the east end of the siding, using the main line, to set up the train for the eastbound move. This time-consuming operation will either block the NS main line, which NS projects to be heavily used, or will stretch out even further because the locomotives need to clear the main line for through trains to pass.[17] V.S. Edwards at 90. Thus, NS's operation of

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[14] A similar problem would exist in moving a westbound NS train southbound onto the Youngstown-Ashtabula line.

[15] *See* Mohan, Depo. Tr. 396, and NS Lake Division track chart, NS-21-CO-03684.

[16] *See* Mohan, Depo. Tr. 396.

[17]

NYSEG's Milliken-bound coal trains, as well as a portion of the other 12 to 16 trains per day which NS expects to operate over the Youngstown-Ashtabula line, will block for extended periods NS's own main line, perhaps the Youngstown-Ashtabula line, and two or more road crossings in Ashtabula. V.S. Edwards at 89. The possibility exists that such continued blockage of rail lines and road crossings will become operationally unfeasible and force NS to some other, less direct and likewise less efficient routing to serve Milliken.

4. Increased Need for Coordination Among Two Competing Carriers

Applicants' pro forma train schedules likewise evidence an unrealistic view of serving NYSEG, perhaps stemming from Applicants' frequent failure to consult each other and current Conrail employees in developing their operating plans. V.S. Edwards at 92. NS and CSX operations of the Youngstown-Ashtabula line already evidence lack of coordination, a failure which may indicate broader problems like the current UP operational debacle in Texas. NS's operating plan failed to account for trains that CSX would move over the Youngstown-Ashtabula line, even though that line is slated to be NS-owned and controlled.[18] The application errata show an almost 50% increase in number of trains operated on the Youngstown-Ashtabula line.[19] That huge increase, to almost twice the current level of use of that line, resulted from NS not knowing when it formulated its operating plan how many trains CSX planned to operate on that

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[18] Mohan, Depo. Tr. 390, 391.

[19] CSX/NS-54 at 10.

line.[20] CSX apparently also knew that NS did not know the intended extent of CSX operations on that NS line.[21]

Further concern about Applicants' ability to coordinate their joint use of the MGA and the Youngstown-Ashtabula line arises from Applicants' inexperience in coordinating such high volume operations. NYSEG requested Applicants to identify all lines more than 10 miles long[22]owned by NS over which CSX had trackage rights. In NS-22, Applicants identified only 9 such lines. In CSX/NS-106, supplemental responses to further NYSEG discovery, Applicants disclosed that CSX operates at most three trains per day in each direction over one of the NS lines over which CSX had trackage rights. The average CSX trackage rights operation over any of these NS lines was between one and two trains each direction each day. By contrast, the Applicants project an average of 24 trains per day on the Youngstown-Ashtabula line, as well as handling a heavy volume on the MGA. Applicants' lack of experience coordinating their operations over the same piece of track when the volumes involved are so high, coupled with the predominantly single-track nature of the MGA[23] and of the Youngstown-Ashtabula line, plus the additional complication of Applicants' need to use helper locomotives on the Youngstown-Ashtabula line,[24] make Applicants' operational coordination on those lines even more difficult.

Coordination of two-carrier operations makes providing on-time performance very difficult, as NS itself admits:

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20 Mohan, Depo. Tr. 390, 391.

21 Orrison, Depo. Tr. 216.

22 The Youngstown-Ashtabula line is 59 miles long, *see* CSX/NS-54 at 10, and the MGA altogether is about 123 miles long. V.S. Edwards at 83.

23 Mohan, Depo. Tr. 417.

24 CSX/NS-87 at 9; CSX/NS-106 at 11-13.

Q: You at one point in your statement say that there are advantages to single-carrier responsibility for on-time performance. What are those advantages?

A: Having one party to hold accountable, one party to establish the transit standards, one party to measure against those transit standards, basically the one-party accountability as opposed to having two parties to deal with.

Q: Is it also the case that it's easier for one party to control its own actions than to have to coordinate with another party so that they both achieve a single result?

A: I would think generally that's a correct statement.

Seale, Depo. Tr. 127-128. Applicants' plans for serving NYSEG are burdened with difficult coordination tasks, tasks that the Primary Application does not show that Applicants can manage.

Not knowing the extent to which there will be operating difficulties is indicative of the dangers of having two competing carriers whose "priorities and self-interest are different" operating over the same limited facilities like the MGA and the Youngstown-Ashtabula line. Such lack of coordination will impair the essential cycle performance of NYSEG's unit coal trains. V.S. Edwards at 84-85.

D. NYSEG's Transportation Costs Will Rise, Not Fall, Unless Conditions Are Granted

NYSEG's generating costs directly determine how much electricity NYSEG can sell. V.S. Mulligan at 47-48. Total fuel costs are a large portion of NYSEG's overall costs, and coal transportation costs are 36 to 40 percent of total fuel costs. V.S. Mulligan at 48. Therefore, coal transportation costs must be tightly controlled to maintain NYSEG's ability to market its product. V.S. Mulligan at 48; 51. Rail transportation of NYSEG's coal is the only cost-effective, environmentally sound method of transporting the coals which NYSEG uses to fuel NYSEG's Kintigh and Milliken plants. V.S. Edwards at 95; V.S. Mulligan at 51.

1. Increased Inventory Costs

Maintaining the requisite number of train cycles serving Kintigh and Milliken each year is crucial to controlling coal transportation cost. V.S. Edwards at 95. Because Applicants' proposal threatens to undermine essential cycle performance for NYSEG train sets, NYSEG may have to increase its coal inventories to protect against train cycle disruptions. This will cost NYSEG $.50 per month for each ton of increased coal inventory, or about $92,000 per year for holding merely one additional unit trainload of coal - a mere 4 days' burn at Kintigh.[25] V.S. Edwards at 96. Moreover, because SRC does not have enough equipment to maintain NYSEG's cycle times in a post-transaction environment (due to the fact that NS and CSX will require one more unit train than Conrail requires today), NYSEG will have to pay higher per ton transportation charges **REDACTED** for moving coal in railroad-owned equipment or will have to purchase its own additional equipment at a cost of $4.14 million. V.S. Edwards at 96.

2. Increased Equipment Costs

The transaction also affects NYSEG's investment in railcars. Presently, SRC is retaining 38 essentially surplus railcars to guard against the inefficiencies threatened by the Applicants' operating proposal. V.S. Edwards at 97. This is a present opportunity cost to NYSEG of the Applicants' proposal. What's more, should Applicants be unable to maintain NYSEG's historical cycle times, as NYSEG expects, SRC may have to invest another $4.14 million in additional railcars to make up another unit train to carry the coal that Applicants' inefficiency

[25] A comparable figure for Milliken would be an additional $76,000 per year per additional trainload of inventory added. V.S. Edwards at 96-97.

will prevent them from carrying in equipment that now is adequate to meet NYSEG's needs. V.S. Edwards at 98.

III. CONTRARY TO APPLICANTS' CLAIMS, THE PROPOSED TRANSACTION WILL NOT PROVIDE NYSEG WITH TWO CARRIER COMPETITION OR LOWER NYSEG'S COSTS, BUT WILL DESTROY ALL OF THE ECONOMIC BENEFITS NYSEG AND CONRAIL HAVE ACHIEVED

Contrary to the standard belief that "captive" utility shippers incur both price and service harm from having rail service from only one carrier, NYSEG instead actually benefits from having single carrier service via Conrail to all of its plants from all of its origins. *See* Verified Statement of Sean D. Brady at 61 ("V.S. Brady"). (The "competitive partnership [between NYSEG, Conrail and Consol] promoted the interests of all parties and gave Conrail a less antagonistic approach toward NYSEG than what would typically be expected by a railroad, especially toward a captive shipper."); V.S. Mulligan at 47. ("Having one transportation carrier who serves all of NYSEG's origins and all of NYSEG's destinations adds to the efficiency of NYSEG's coal deliveries and increases NYSEG's ability to benefit from origin competition among the various mines."); and V.S. Edwards at 79. ("Having a single railroad serving all of NYSEG's origins and destinations utilizing SRC dedicated equipment enables NYSEG to manage actual unit train operations to achieve optimal efficiency.") The acquisition, on the other hand, essentially divides NYSEG's coal deliveries in half, with roughly 1,700,000 tons to be delivered to Kintigh by CSX and approximately 1,300,000 tons to be delivered to the other three plants by NS. Because Conrail currently delivers coal from all of NYSEG's origins to all four NYSEG plants on a single-line basis, splitting NYSEG's plants between CSX and NS will significantly reduce NYSEG's importance and bargaining leverage, place NYSEG at risk of a rate increase, and destroy the unique relationship that NYSEG enjoys with its carrier.

A. NYSEG Will Lose The Benefits Of Being A Large Volume Shipper

For electric generating stations, such as NYSEG, the delivered coal price is the single most important variable in its competitive profile. As stated above, NYSEG currently purchases approximately 3 million tons of coal per year, all of which is delivered solely via Conrail. Overall, NYSEG's tonnage is approximately 6% of Conrail's approximate 51.5 million tons of coal it transports to utilities. Because NYSEG was such a large volume shipper on the Conrail system, Conrail was more willing to work with NYSEG in order to provide the delivery efficiencies necessary to keep NYSEG competitive. Indeed, being such a large volume shipper for Conrail was one of the key elements that led Conrail to form the Alliance, a cooperative venture between Conrail, NYSEG, and Consolidation Coal Company ("Consol"). V.S. Mulligan at 52; V.S. Brady at 69. The collaboration made possible by the Alliance has optimized the use of NYSEG's railcar fleet, resulting in a 31% delivery efficiency gain. V.S. Brady at 63.

In a post-transaction environment, NYSEG will be negotiating for the delivery of 1.7 million tons with CSX, whose post-transaction coal tonnage will be at least 205.6[26] million tons. This means NYSEG will only represent approximately eight-tenths of 1% of CSX's post-transaction coal movements in the eastern United States. NYSEG will then be required to negotiate with NS for the delivery of 1.3 million tons, whose post-transaction coal tonnage is projected to be 150.9[27] million tons. This means NYSEG will represent approximately eight-tenths of 1% of NS's post-transaction coal tonnage in the eastern United States. Clearly,

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[26] This figure was obtained from the fact that pre-transaction, CSX shipped a total of 180 million tons of coal, Primary Application Vol. 2A at 349, and CSX will get 49.7% of Conrail's coal traffic post-transaction. Primary Application Vol. 1 at 80.

[27] This figure was obtained from the fact that pre-transaction NS delivered 125 million tons of coal, Primary Application Vol. 2B at 264, and post-transaction NS will obtain 50.3% of Conrail's coal traffic. Primary Application Vol. 1 at 80.

NYSEG becomes a much less significant player to NS and CSX in a post-transaction environment than NYSEG was to Conrail in a pre-transaction environment. Being such a small player to CSX and NS would have made the Alliance impossible.[28] Instead of being a large captive shipper with significant negotiating leverage with its captive rail carrier, NYSEG will, post-transaction, be a relatively small captive shipper to NS and CSX and NYSEG's negotiating leverage will be significantly reduced, while at the same time, its delivery efficiencies will be destroyed. V.S. Edwards at 75; V.S. Edwards at 52.

The fact that volume plays a role in determining the willingness of a carrier to work with, rather than against, a utility shipper was confirmed by NS's Executive Vice President of Marketing, Ike Prillaman, who agreed that it is a benefit for NYSEG to have all of its plants served by one carrier with single-line service capabilities. Prillaman, Depo. Tr. 53. Furthermore, Mr. Prillaman believes that a utility's ability to use volume as a leverage in negotiating can be used to get a lower price for rail services. Prillaman, Depo. Tr. 58. Even the Board has recognized that "a sufficiently strong bargaining position [can] enable [a utility] to exert leverage over the destination carrier." *Union Pacific-Control-Missouri Pacific, et al.*, 366 I.C.C. 462, 539 (1982).

NYSEG's volumes were relatively large for Conrail, but the volumes will be extremely small for CSX and NS. In documents produced during discovery, both CSX and NS have shown that they do not view utilities with volume levels as low as NYSEG's to be significant shippers with corresponding bargaining leverage. Indeed, in a highly confidential and severely redacted document, **REDACTED**

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[28] NS witness Seale confirmed that having only one carrier to deal with rather than two is an advantage. Seale, Depo. Tr. 127-128.

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CSX-

41-HC-001049. NS's documents also show that the **REDACTED**

REDACTED NS-42-CO-

00476. Thus, CSX's and NS's own words prove that NYSEG will lose the competitive advantage it had gained from being Conrail's largest New York shipper.

B. NYSEG Will Not Benefit From Two Carrier Competition And Lower Rates, But Instead, Is At Risk Of A Rate Increase

CSX and NS allege in their Primary Application that utilities, such as NYSEG, will benefit because CSX and NS are fierce competitors. The verified statements of the Vice Presidents of Coal Marketing for both NS and CSX have each emphasized that utility companies will benefit from the introduction of CSX and NS as vigorous competitors in the eastern United States. Verified Statement of Raymond L. Sharp ("V.S. Sharp"), Primary Application, Vol. 2A at 353; Verified Statement of John W. Fox ("V.S. Fox"), Primary Application, Vol. 2B at 272. To test their arguments, NYSEG's counsel requested that Applicants produce documents which proved how CSX and NS compete against each other for rail traffic. NYSEG-3 Requests No. 1-5. After a long discovery battle which repeatedly narrowed the original requests, the Administrative Law Judge, The Honorable Jacob Leventhal, limited NYSEG's discovery to the CSX and NS files of three coal utility companies. Discovery Conference, Sept. 18, 1997, Tr. 64-67. These three companies currently have some of their plants served by CSX and some of their plants served by NS and thus most closely resemble the NYSEG post-transaction environment.

A review of those documents produced by CSX and NS has failed to yield one substantive document which shows CSX and NS competing against each other in a situation where CSX is the exclusive transportation provider to some of the plants of a utility company

and NS is the exclusive transportation provider to the other remaining plants of that same company, *i.e.* the NYSEG post-transaction environment. What these documents do show is that there is competition between NS and CSX (1) where a plant is dual served by the both of them; (2) where NS or CSX view themselves as competing against another carrier, trucks, barges, rail/barge, or rail/truck options; or (3) where a plant has a feasible option for a spur or build out to the other carrier. None of these factors are available to NYSEG. NYSEG's Kintigh plant will be captive to CSX and Milliken, Goudey, and Greenidge will be captive to NS, but none of these plants have truck, barge, or build-out options. V.S. Mulligan at 50-51; V.S. Edwards at 100. What the documents show is that CSX and NS will not compete against each other unless one of those three factors is present.[29]

The fact that none of the three factors necessary for CSX and NS to view each other as competitors are present for NYSEG means that CSX and NS can raise their rates to NYSEG without the fear that the other carrier will gain increased market share. Indeed, both CSX and NS have indicated that transportation prices for NYSEG's coal will go up as a result of the transaction. During preliminary negotiations with CSX in July 1997, Dan Green of CSX stated that NYSEG's rates would likely go up after the contracts lapse. *See* Appendix 6. In addition, John William Fox, NS's Vice President, Coal Marketing, has stated that any Conrail rate that can be raised will be raised. Fox, Depo. Tr. 118. Furthermore, both Mr. Fox and Raymond L. Sharp, CSX's Vice President, Coal Sales and Marketing, have stated that their job is to charge the highest rate possible. Fox, Depo. Tr. 99-100; Sharp, Depo. Tr. 43-44. Clearly, CSX and NS

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CSX-41-HC-001395.

have indicated their desire to raise rates, not lower them, and NYSEG stands to lose from any increase in its rail delivery costs.

C. NYSEG Will Not Benefit From Two Carrier Competition

Despite these clear indications that NS and CSX will attempt to actually increase NYSEG's rates, both CSX and NS have indicated that NYSEG will, nonetheless, benefit from two carrier competition. They claim that due to the fact that NS will serve some of NYSEG's plants and CSX will serve Kintigh, NYSEG will benefit from the competition between CSX and NS for their respective solely served plants. For example, CSX's economic consultant, Robert L. Sansom, asserts that the transaction itself will result in increased competition because CSX and NS will be seeking to increase rail volumes at their respective solely served plants, post-transaction. V.S. Sansom, Vol. 2A at 321. NS's witness, Mr. Fox, states even stronger that "[I]f a utility is not satisfied with the price or service provided by NS to a particular plant, it has the option of turning to one of its plants served by CSXT as a source of power." V.S. Fox, Vol. 2B at 272.

NYSEG does not dispute that some utilities may actually be able to gain a lower transportation rate at a CSX exclusive plant because of threat to shift generating capacity to the NS served plants within the same system (or vice-a-versa). However, NYSEG cannot effectively threaten to raise or lower its generating capacity at Kintigh (which will become exclusive CSX) or at Milliken, Goudey, or Greenidge (which will become NS served) in order to pit CSX and NS against each other in order to obtain lower rates. As shown in the Verified Statement of James Mulligan, NYSEG's plants are base loaded and run at between and capacity. V.S. Mulligan at 42-44. This means that NYSEG cannot increase capacity at its NS plants, for example, if CSX charges an exorbitant rate for transportation to Kintigh. In addition, as Mr. Fox

agreed in his deposition, NYSEG's ability to leverage by pitting one station against the other is dependent on the stations having unused generating capacity. Fox, Depo. Tr. 85-86; *Accord,* Sansom, Depo. Tr. 192-193 (base loaded plants have no leverage).

D. Instead Of Benefiting From Two Carrier Competition, The Transaction Destroys The Unique Relationship That NYSEG Has Developed With Conrail

Although NS's Executive Vice President of Marketing, L.I. Prillaman, states that "NS's strategy is to work closely with its customers to develop solutions that address specific transportation needs," V.S. Prillaman, Vol. 2B at 203, Mr. Fox stated that he could not remember any tri-party agreements like NYSEG currently enjoys. Fox, Depo. Tr. 51. In addition, nowhere in the Primary Application does CSX even discuss the importance of working with a specific shipper to develop mutually beneficial transportation strategies. This is further supported by the testimony of Mr. Sharp that **REDACTED**

Sharp, Depo. Tr. 273.

This predisposition of NS, and especially CSX, against building a long-term partnership with a shipper will further harm NYSEG. Not only will NYSEG not realize any of the benefits that the Applicants allege in the Primary Application, NYSEG stands to lose the benefits it currently receives from Conrail, both from an operational standpoint, *see* V.S. Edwards, and a business standpoint. *See* V.S. Mulligan and V.S. Brady. As noted earlier, NYSEG stands to lose its current partnership with Conrail and Consol which has been called the "Alliance." The Alliance was primarily intended to reduce costs and increase revenues by the parties working together as partners, instead of adversaries. This included coordinating efforts for the three components of coal which are necessary for NYSEG's electric generating business: production, transportation, and use. NYSEG believed that by working together with one coal producer and

its sole rail carrier, each party in the chain of production could achieve efficiencies and cost savings, which, in the end, would benefit everyone -- Consol would produce more coal, Conrail would deliver more coal, and NYSEG would produce more power at a lower delivered price, thereby lowering NYSEG's generating costs and increasing NYSEG's power output from its plants in an ever increasingly competitive generation market.

The Alliance worked. The collaboration made possible by the Alliance has optimized the use of NYSEG's railcar fleet, resulting in a 31% delivery efficiency gain. V.S. Brady at 63. At Kintigh, the Alliance eliminated 30 train cycles per year, which in turn, required 270 less crew starts and 3,840 less locomotive hours. Similarly, successful implementation of the Alliance at Milliken resulted in 27 less cycles per year, 324 less crew starts, and 1,872 less locomotive. V.S. Brady at 63. These changes resulted in significant savings to NYSEG and Conrail, saving NYSEG $1.6 million per year.

Also due to the Alliance, NYSEG was able to add an otherwise non-profitable generation unit to its portfolio and Conrail was able to deliver additional low incremental cost tonnage to an existing customer. Specifically, since reconnecting that unit, NYSEG burned more than 63,000 additional tons of coal and produced more than 130,000 megawatt-hours of electricity. This additional business resulted in approximately $800,000 of additional revenue to Conrail and increased NYSEG's wholesale revenues by approximately $2.8 million for the term of the agreement.[30]

This competitive partnership promoted the interests of all parties and gave Conrail a less antagonistic approach toward NYSEG than what would typically be expected by a "monopoly" railroad. The achievements were a direct result of being able to work with only one carrier

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[30] *See* V.S. Brady at 66.

instead of two. Because NYSEG will have to deal with two carriers in a post-transaction environment and because neither CSX nor NS has demonstrated a willingness to enter into such Alliance-type agreements, V.S. Brady at 67, the proposed transaction will likely destroy the win-win strategies that NYSEG has developed through the Alliance. V.S. Brady at 68.

IV. NYSEG'S SOLUTION PRODUCES A BALANCED RESULT THAT IS CONSISTENT WITH THE PUBLIC INTEREST

The power to grant conditions, including the power specifically granted the Board to authorize trackage rights, is contained in the same section that requires the Board to grant an application only if it serves the public interest - 49 U.S.C. § 11324(c). Accordingly, the Board's conditioning powers are intended to allow the Board to relieve public harm resulting from the transaction as proposed.

The Board will impose conditions on a proposed transaction only when workable conditions, sought to remedy a public harm caused by the proposal, are "designed to enable shippers to receive adequate service" and will provide benefits or relieve harm to a greater extent than any harm they may cause to the projected benefits of the transaction. 49 C.F.R. § 1180.1(d)(1) (1996). The condition must be "narrowly tailored" and designed not to put the shipper in a better position than before the merger. *Burlington Northern Inc., et al. -- Control and Merger -- Santa Fe Pacific Corp., et al.*, Finance Docket No. 32549, slip op. at 56 (ICC served Aug. 23, 1995).

The trackage rights conditions requested by NYSEG meet this test. While not perfect, the proposed trackage rights will preserve at least a portion of NYSEG's service quality and competitive position without detracting from the overall benefits of the proposed transaction. NYSEG has proposed a narrow solution tailored to minimize disruption of the Primary

Application, yet at the same time, remedy the harm that the transaction would cause NYSEG and its customers. Because NS, in a post-transaction environment, will operate through Buffalo to Niagara via trackage rights over what will become a CSX line, NS will come within 12 miles of the line owned by Somerset Railroad Corporation, which is owned by NYSEG and connects with Kintigh. *See* Map 3 on the next page. If the Board grants NS, or another carrier of NYSEG's choosing, trackage rights to the Kintigh plant, the proposal will extend NS's Buffalo to Niagara trackage rights a mere 11.2 miles over a lightly used branch line. This would allow NS to serve all of NYSEG's plants from all of NYSEG's coal mine origins in seamless, single-line service, replicating the pre-transaction operational and competitive situation.

As an alternative, NYSEG is requesting the Board to grant CSX (or a carrier of NYSEG's choosing) trackage rights from Buffalo over the Southern Tier lines, which will become NS lines, in order to serve Milliken, Goudey and Greenidge. This would also replicate the pre-transaction situation by allowing CSX to serve all of NYSEG's plants in single-line service.[31] *See* Map 4, which follows Map 3.

NYSEG's solution does not detract from the overall benefits of the merger. Indeed, at most, NYSEG's solution would divert revenues from hauling about 1.7 million tons of coal from CSX to NS or revenues for hauling 1.3 million tons from NS to CSX. That tonnage would be less than eight-tenths of one percent of either carrier's coal tonnage, and certainly would be an almost infinitesimally small portion of either carrier's overall tonnage and revenues.

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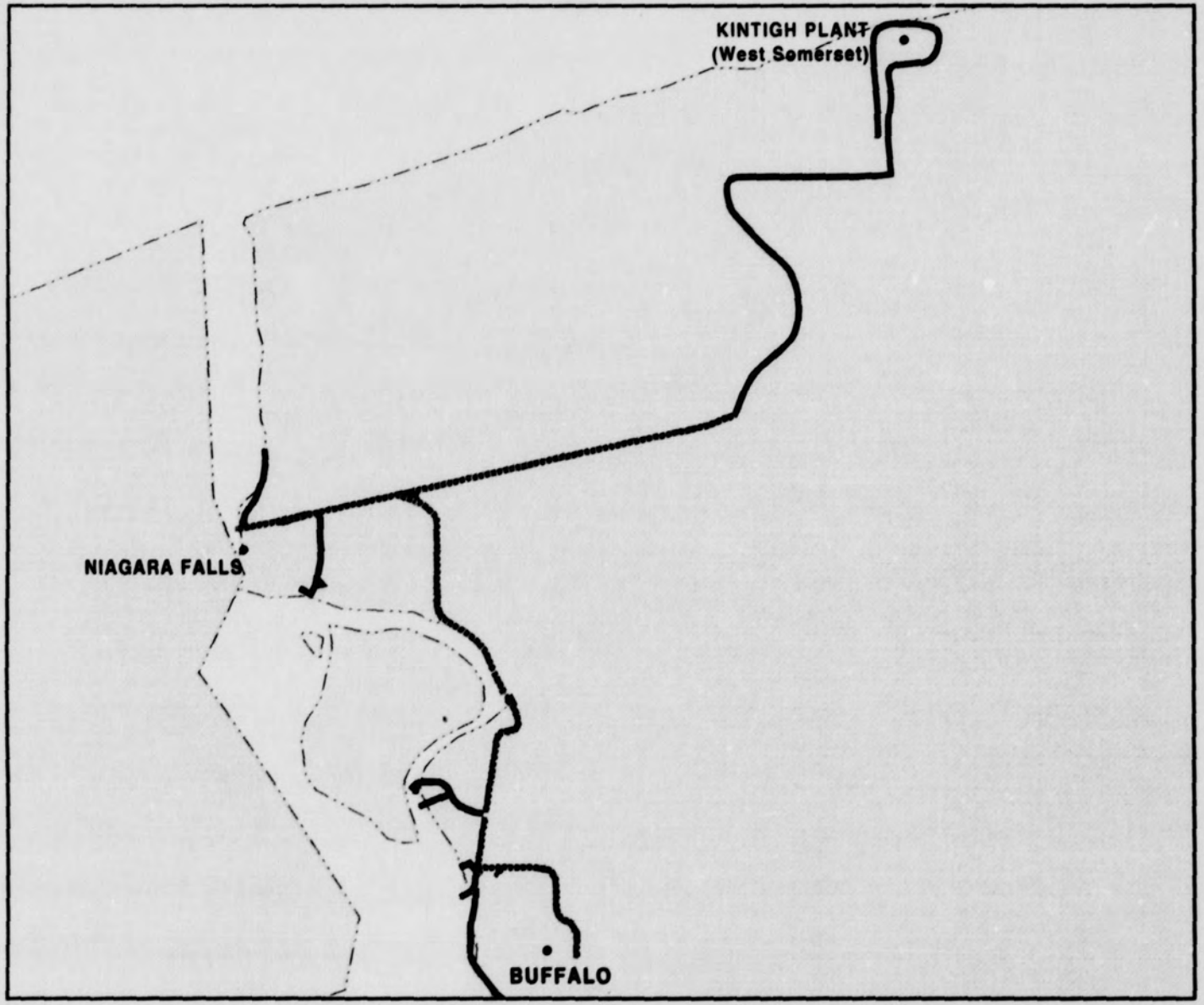
[31] Because NS has an advantage in operating to and from the MGA, V.S. Edwards at 98-99, granting trackage rights to NS may be the preferred choice between the two trackage rights proposals. If, however, the Board believes that granting CSX trackage rights to reach Milliken, Goudey and Greenidge better serves the public interest, that grant would also be narrowly focused because it would be limited to service to three NYSEG plants.

Trackage Rights to Kintigh



NYSEG Proposed NS Trackage Rights Over CSX Line

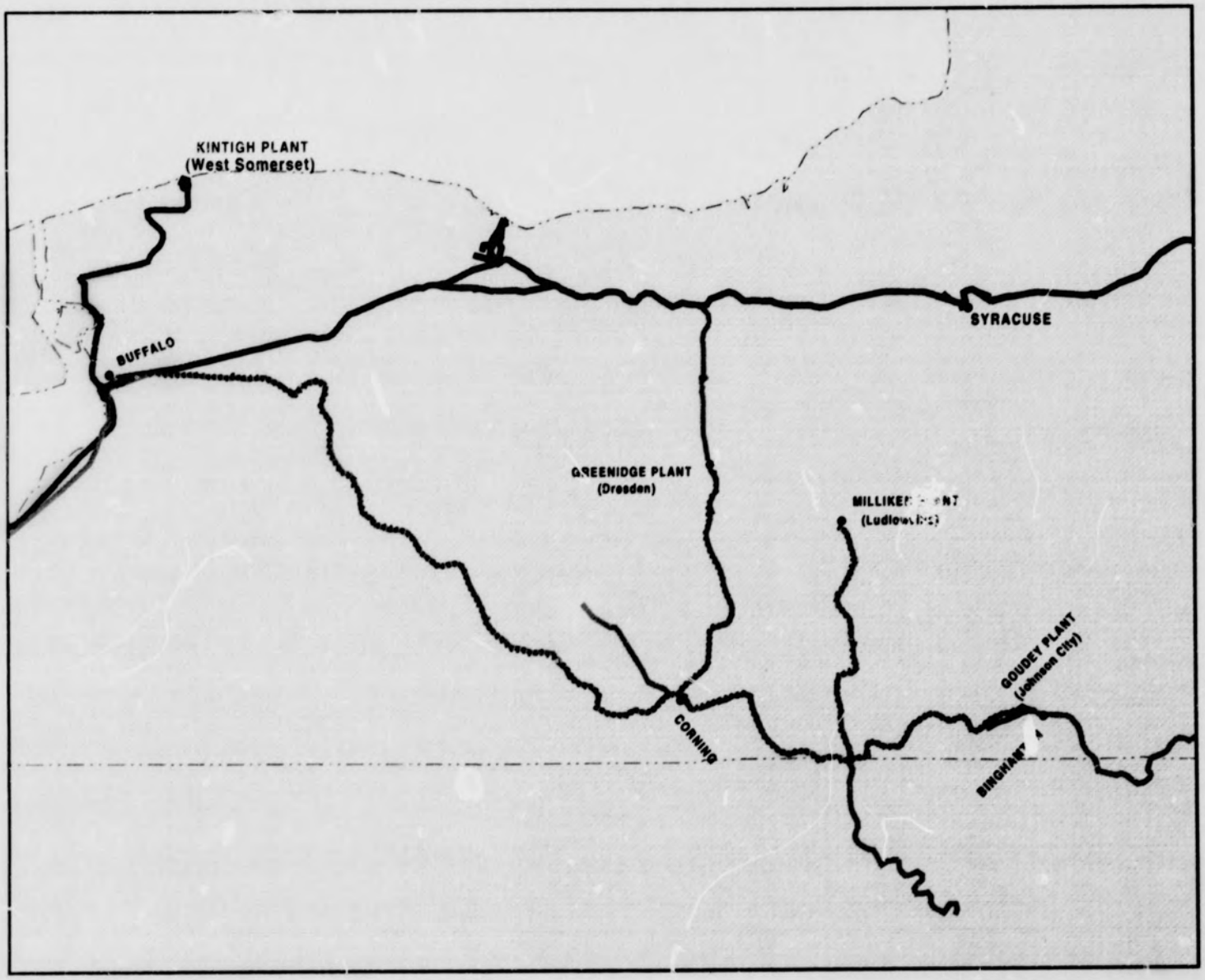
NS Trackage Rights On CSX Post-Transaction

Existing Somerset RR and Industry Track

CSX Lines Post-Transaction

Map 3

Trackage Rights To Milliken, Goudey and Greenidge



NYSEG Proposed CSX Trackage Rights Over NS Lines

Existing Somerset RR and Industry Track

NS Lines Post-Transaction

CSX Lines Post-Transaction

Map 4

Accordingly, whichever portion of NYSEG's trackage rights request the Board chooses to grant, doing so will not detract from the overall benefits of the transaction.

Under 49 U.S.C. § 11324(b)(1)(A), the Board is under an obligation to "consider at least - (1) the effect of the proposed transaction on the adequacy of transportation to the public." *Id.* *See also, CSX Corp., et al.--Control and Operating Leases/Agreements--Conrail Inc., et al.*, Finance Docket No. 33388, Decision 44, slip. op. at 4 (STB served Oct. 15, 1997) (The Board ordered the Applicants to provide more detailed operating plans because of the Board's concern and statutory obligations with respect to the adequacy of transportation to the public). If the Board approves this transaction, the Board must prevent CSX and NS from "raising rates without improving service" or from "reducing service without a compensating reduction in rates." *NS-Control-N&W*, 366 I.C.C. at 193. *See generally Union Pacific Corporation, et al.—Control and Merger—Southern Pacific Rail Corp., et al*, Finance Docket No. 32760, slip op. at 99 (STB served Aug. 12, 1996). The proposed transaction will reduce the quality of NYSEG's services; create joint-line routes out of single-line routes; create new obstacles to efficient unit train operation; and increase NYSEG's operating costs. Approving NYSEG's trackage rights request will preserve NYSEG's "adequacy of transportation" without detracting from the overall benefits of the merger.

Respectfully Submitted, this 21st day of October, 1997.

DAVID C. REEVES
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202-274-2932 (PHONE)
202-274-2994 (FAX)

WILLIAM A. MULLINS
SANDRA L. BROWN
TROUTMAN SANDERS LLP
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202-274-2950 (PHONE)
202-274-2994 (FAX)

ATTORNEYS FOR NEW YORK STATE ELECTRIC AND GAS

VERIFICATION

STATE OF NEW YORK)
) **ss.**
COUNTY OF BROOME)

I, Gary L. Sickles, being duly sworn, deposes and says that he is Vice President, Generation, of New York State Electric & Gas Corporation, Responsive Applicants herein; that he has been duly authorized and designated by New York State Electric & Gas to sign, verify, and file the foregoing Responsive Application with the Surface Transportation Board; that he has examined all of the statements contained in said Responsive Application; that he has knowledge of the matters contained in that Responsive Application insofar as those matters relate to New York State Electric & Gas Corporation; and that all such statements made and matters set forth herein with respect to New York State Electric & Gas Corporation are true and correct to the best of his knowledge, information and belief.

Gary L. Sickles

Subscribed and sworn to
before me this 16 day of
October, 1997.

Notary Public of the State of New York

My commission expires:

DEBORAH S. BENZI
Notary Public, State of New York
No. 01BE5083165
Residing in Broome County
My Commission expires Aug 4, 1999

CERTIFICATION

STATE OF NEW YORK)
)
COUNTY OF BROOME)

ss.

I, Daniel Farley, hereby certify that I am Secretary of New York State Electric & Gas, Applicants herein; and I hereby certify that Gary L. Sickles is the Vice President, Generation, of New York State Electric & Gas Corporation, and is duly authorized and designated by New York State Electric & Gas Corporation to sign, verify, and file the foregoing Responsive Application on behalf of New York State Electric & Gas Corporation.

Daniel Farley, Secretary

Subscribed and sworn to
before me this 16th day of
October, 1997

Nancy M Santucci

Notary Public of the State of New York

My Commission expires: 6/1/99

NANCY M. SANTUCCI
Notary Public, State of New York
No. 4892554
Residing in Broome Co.
My commission expires June 1, 1999

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 35)

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

VERIFIED STATEMENT
OF JAMES MULLIGAN

VERIFIED STATEMENT

OF

JAMES MULLIGAN

A. Background and Experience

My name is James Mulligan and I am Manager-Central Area Plants for New York State Electric & Gas Corporation (NYSEG). I hold a Bachelors of Science Degree in Mechanical Engineering from New York Institute of Technology and have attended various continuing education programs over the years at SUNY, Binghamton.

I have been with NYSEG since 1975 when I started as a Field Engineer assigned to the Milliken Station. I was then assigned to the Corporate Engineering group and later promoted into various supervisory positions. I returned to plant operations in 1986 and worked in a number of managerial positions at NYSEG's plants in central New York. Between 1986 and 1996, I had various responsibilities ranging from operations, maintenance, coal handling and overall plant management. In 1996, I was promoted to my present position in which I have responsibility for the central area plants, including Goudey and Greenidge Stations.

In my current position I direct a staff of approximately 160 people and develop business plans for the central area plants. Since being assigned to plant operations, I have worked on a variety of issues related to improving each station's competitive position in the market-place, including the Conrail Alliance,[1] IBEW negotiations, development of alternate fuels for our boilers, optimizing operations and maintenance staffing and practices, work simplification of various processes, and utilization of coal combustion by-products.

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[1] The Alliance, periodically mentioned in my statement, is discussed in more detail in the Verified Statement of Sean D. Brady, PRISM Decision Systems.

B. Purpose of Statement

The purpose of this statement is to introduce each of NYSEG's power plants, describe the current coal mine supply and competitive situation, and describe some of the harm that NYSEG will realize as a result of the Conrail acquisition. For the reasons explained in this statement, I believe that the Conrail acquisition will place NYSEG's generating stations at competitive risk and will cause numerous operational problems.[2]

NYSEG currently shares in the benefits of having single carrier service via Conrail to all its plants from all of its mine origins. (*See*, Map 1 showing the current routings from all of our mines to all of our plants which follows page 15 in Appendix 1 of the Responsive Application). The acquisition will alter service to NYSEG's plants to a situation whereby one station, Kintigh, will be served by CSX, and three stations, Milliken, Goudey and Greenidge will be served by NS. (*See*, Map 2 showing the post-transaction routings from all of our mines to all of our plants which follows page 15 in Appendix 1 of the Responsive Application).

Post-transaction, NYSEG's coal deliveries are essentially divided in half, with roughly 1,700,000 tons to be delivered to Kintigh and approximately 1,300,000 tons to the other three plants. Conrail currently delivers coal to all four stations on a single-line haul. Because our stations will be divided in half, NYSEG will lose the benefits of being a large volume shipper on the Conrail system. We are also partners with Conrail in a business Alliance utilizing the benefits drawn from delivery synergies between Milliken and Kintigh, which will also be lost due to the currently planned Conrail acquisition.

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[2] While I occasionally mention the operational problems in my statement, the specifics of the operational problems NYSEG will face as a result of this transaction are addressed in the Verified Statement of Gary P. Edwards, Supervisor of Railroad Operations of Somerset Railroad Corporation.

Finally, on the Conrail owned Monongahela Railroad (MGA), which serves the mines where we currently get most of our coal, the routing to our plants, after the proposed transaction, will be over rail requiring trackage rights, interconnections between NS and CSX, and, in some cases, will become joint-line service in place of today's efficient single-line service. We see these operational issues causing serious problems with cycle and delivery times. These operational problems will cause additional financial impacts and will further harm our plants' competitive position.

C. Description of NYSEG's Power Plants

NYSEG has four[3] power plants in New York State which will be directly harmed by the proposed break-up of Conrail by CSX and NS: Goudey, Greenidge, Milliken and Kintigh. All four of these plants are coal burning stations which pulverize coal into a powdered state and then blow the coal into the boilers where it is burned.

Overall, NYSEG serves approximately 1.8 million people in rural, suburban and urban settings throughout 40% of New York State's total area. Together, NYSEG's plants employ 360 people and account for $19.5 million in county, town and school tax payments, which payments are vital to the economic competitiveness of Upstate New York. NYSEG's generating plants are connected by more than 5,300 miles of high-voltage transmission lines through which electricity flows to where it is needed. Our generating stations are dispatched by the New York Power Pool which coordinates the exchange of electricity in order to increase the economy and dependability of the overall electric supply. In addition, as described in the description of each individual

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[3] NYSEG also has two older plants in the central area, Hickling and Jennison, which were placed in service in the 1940's. These plants will not ultimately be impacted by the Conrail acquisition since these two plants are not expected to be in service beyond 1999. In addition, NYSEG is a half owner with Penn-Elec/GPU in a plant in Homer City, Pennsylvania, which is served solely by truck and has no rail facilities.

plant, NYSEG leads New York State and, indeed, the country in environmental friendly pollution control systems.

1. Goudey Plant

The Goudey Station has a maximum generating capacity of 128 megawatts and currently runs at of capacity. The plant is located near the town of Johnson City, approximately 5 miles west of Binghamton and receives rail service from Conrail utilizing the Southern Tier rail line running through central New York. Post-transaction, Goudey will receive rail service from NS as shown in Map 5 on the next page.

The Goudey Station consists of two operating turbine generators, named Unit #7 and Unit #8. Unit is operated seasonally, while Unit is base loaded.[4] The two units at Goudey went into service in 1944. The Goudey Station's pollution control system was installed in 1973.

The facilities at Goudey have the ability to store approximately 80,000 tons of coal. However, Goudey typically stores approximately 25,000 tons of coal in its inventory, which is the equivalent of a 23 day supply. NYSEG strives to keep as little coal as possible in inventory because the cost of storing coal is 50 cents per ton per month.

On average, both units combined burn approximately 300,000 tons of coal annually. Goudey obtains most of its coal from Peabody Coal Company's Federal Mine near Miracle Run, West Virginia, which is located on the MGA. Goudey Station employs 40 people total and is solely served by Conrail. Trains are scheduled to arrive, on average, every other week. The main body of the train is delivered to Binghamton then brought to the plant from Binghamton, in

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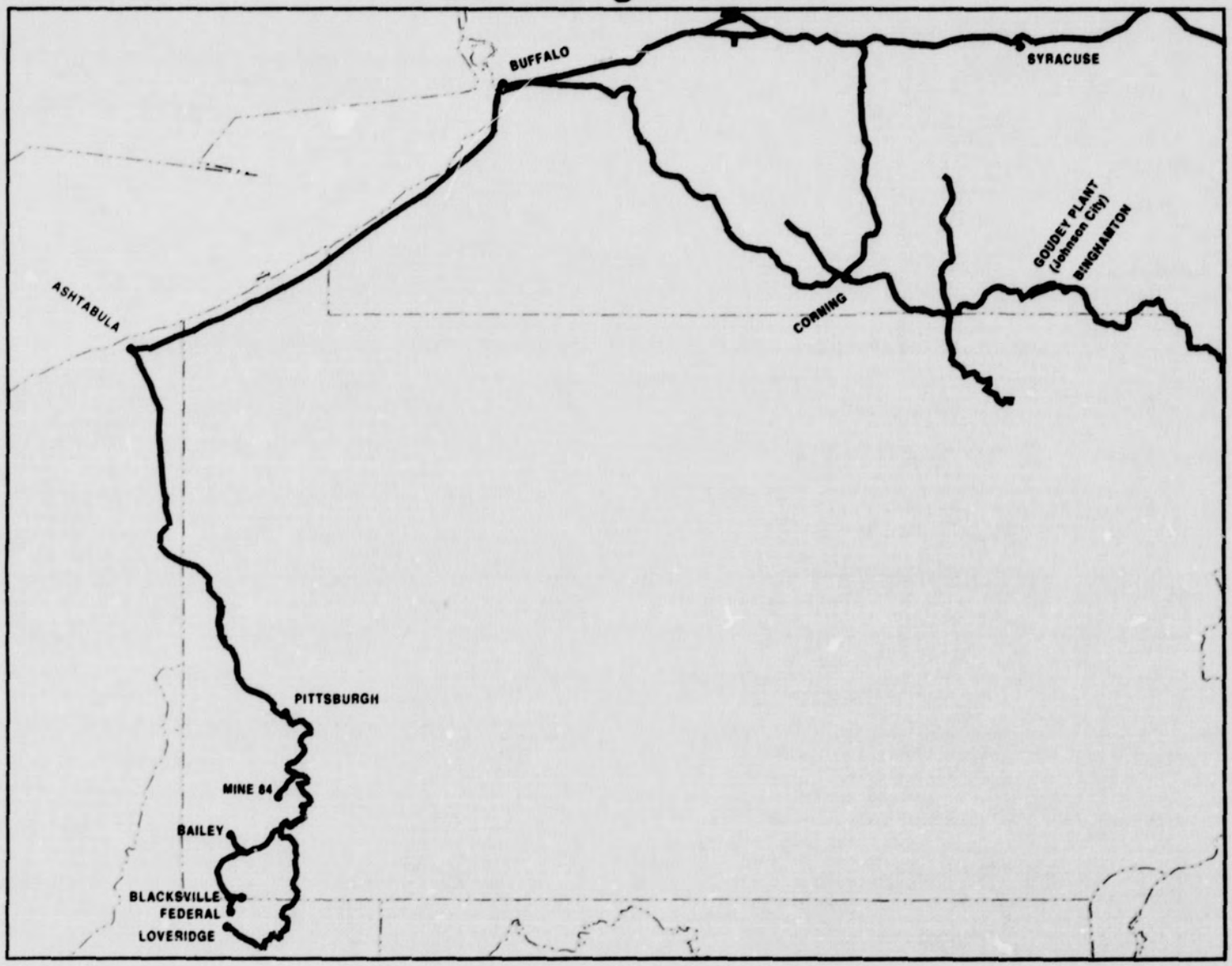
[4] A plant that is base loaded means that it is running all the time in order to serve its native load or required service area. A base loaded plant has little, if any, excess capacity. Accordingly, it would be impossible for NYSEG to reduce generation at one of its plants in order to switch that generation to another plant that is base loaded.

NYSEG Goudey Plant
Post Merger Route



NS Lines
CSXT Lines
Joint Area

Map 5

two sections. About half of the cars are unloaded by the end of the second day and the balance of cars are brought to the station and unloaded by the end of the fourth day.

2. Greenidge Plant

The Greenidge Station has a maximum generating capacity of 160 megawatts and currently runs at approximately of capacity. The facility is located in the town of Dresden, approximately 50 miles southeast of Rochester and is located on Conrail's Corning Secondary branch of the Southern Tier rail line. Post-transaction, Greenidge will be served by NS as shown in Map 6 on the next page.

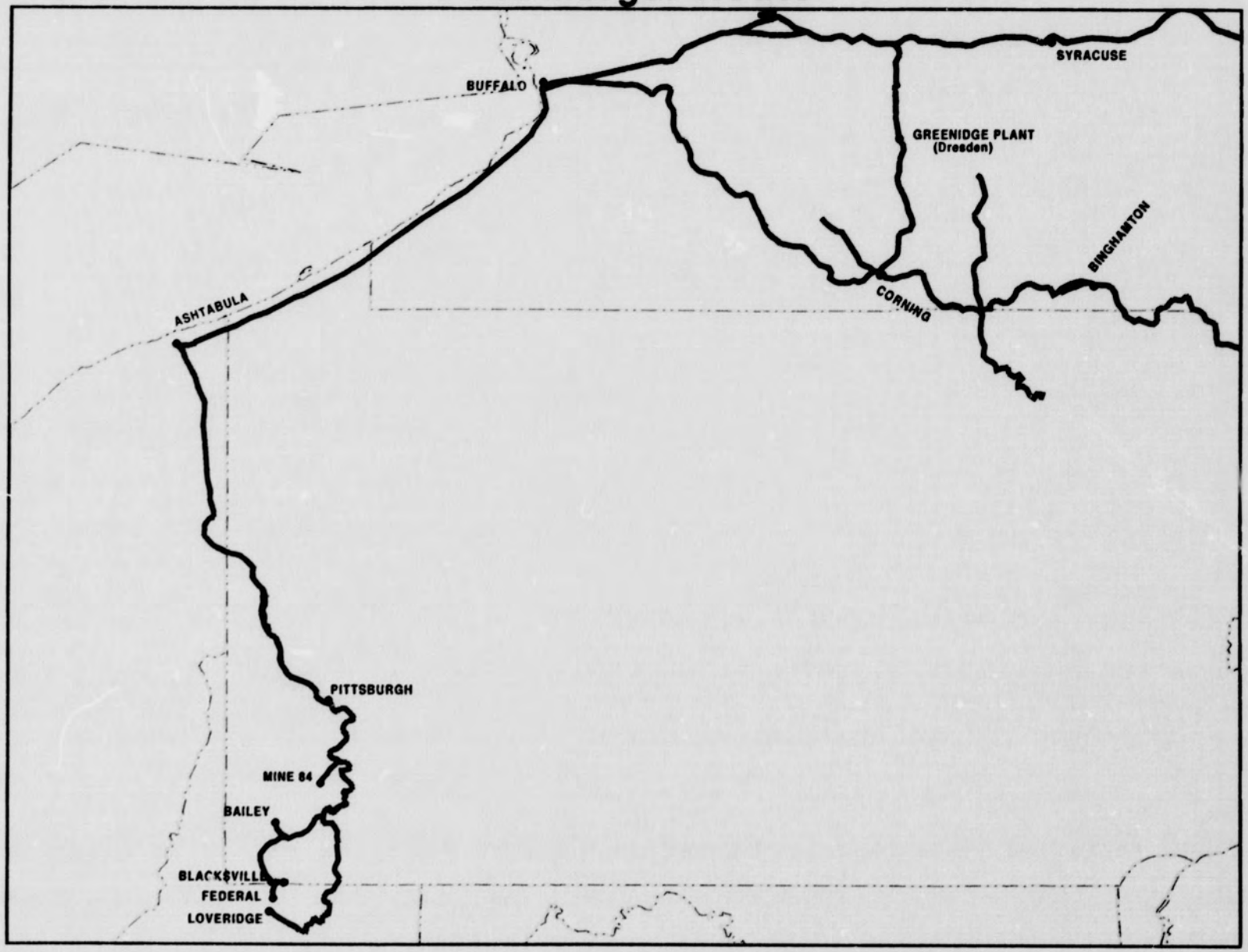
Greenidge Station consists of two operating units, #3 and #4. These operating units went into service in 1950. On average these units together burn approximately 400,000 tons per year. As with Goudey Station, unit is operated seasonally, while unit is base loaded. Also similar to Goudey, NYSEG installed a pollution control system at Greenidge in 1975.

The facilities at Greenidge have the ability to store approximately 90,000 tons of coal. However, Greenidge typically only stores 25,000 tons of coal in its inventory, which is the equivalent of a 17 day supply. As stated previously, NYSEG strives to keep coal inventory low because of the high storage cost.

Greenidge Station obtains most of its coal from United Eastern Coal Company's Mine 84 in Bethlehem, Pennsylvania and Peabody's Federal Mine which are both on the MGA. The Greenidge Station, like NYSEG's other plants, is solely served by Conrail from mine origin to plant destination and does not have a truck or barge option. Greenidge's coal unloading system is limited by low conveyor flow rate so that it takes six shifts to unload a 100 car train.

The unit trains arrive in the nearby town of Dresden and then are delivered to Greenidge in two sections of 45 cars each. While the first portion is being unloaded, the balance of the train

NYSEG Greenidge Plant
Post Merger Route



NS Lines
CSXT Lines
Joint Area

Map 6

is stored in the Dresden yard. After the first portion is unloaded, the empties are pulled and the second portion is placed for unloading. Typically, it takes four days to unload the entire train at the Greenidge Station.

3. Milliken Plant

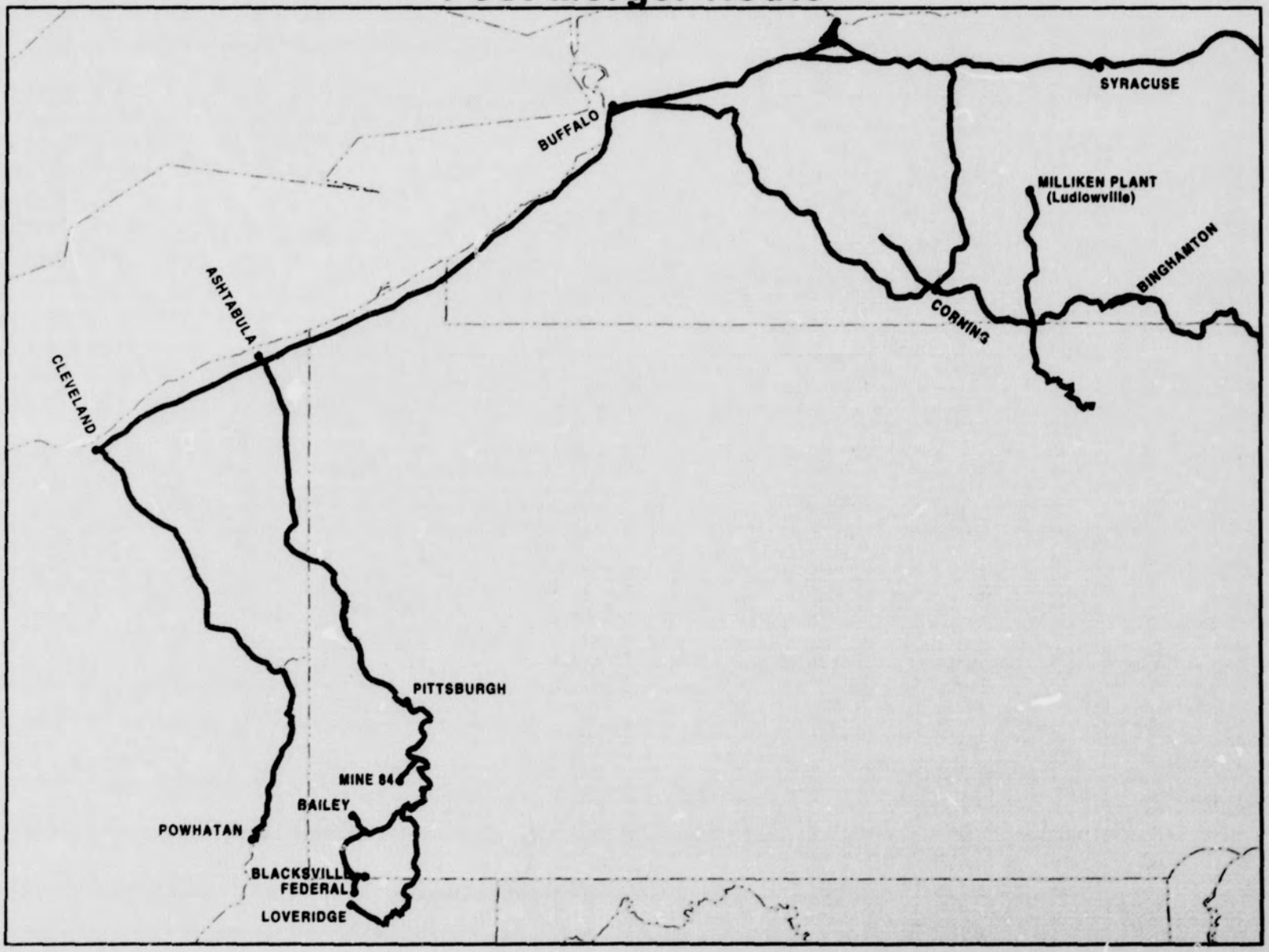
The Milliken Station has a maximum generating capacity of 320 megawatts. The facility is located near the town of Ludlowville, approximately 15 miles northeast of Ithaca and is located on Conrail's Ithaca Secondary branch of the Southern Tier rail line. Post-transaction, Milliken will be served by NS as shown in Map 7 on the next page.

Milliken Station consists of two operating units, #1 and #2. The first unit went into service in 1955 and the second in 1958. On average, these units together burn 800,000 tons of coal annually. Most of this coal is supplied by Consol's Blacksville Mine near Wana, West Virginia, located on the MGA, and is exclusively delivered to Milliken by Conrail. While Milliken did utilize trucks for some of its coal deliveries prior to 1992, Milliken has not used trucks since, and indeed, truck transportation would be unfeasible. Milliken does not have barge or other transportation alternatives.

Milliken stores approximately 70,000 tons of coal in its coal pile inventory, which is approximately a 28-30 day supply. The storage cost of this coal is also 50 cents per ton per month.

Both units at Milliken are base loaded and run at approximately of capacity. In addition, Milliken has historically been among the top ten performers in the country from an efficiency standpoint, as rated by the number of megawatts generated per Btu burned. Furthermore, Milliken was the first U.S. power plant of its kind to use the latest in clean coal technology. In 1991, as part of the Department of Energy's Clean Coal Technology Program, a

NYSEG Milliken Plant
Post Merger Route



NS Lines
CSXT Lines
Joint Area

Map 7

German process for flue gas desulfurization (FGD)[5] was built to remove sulfur dioxide and special burners were installed to reduce nitrogen oxides.

Under the Alliance, 130 car unit trains are delivered to Milliken. The railcars are owned by the Somerset Railroad Corporation (SRC),[6] a wholly owned subsidiary of NYSEG that owns railcars but does not provide any locomotive power or crews. The unit train to Milliken is placed on several yard tracks at the south end of the station. The unit train is unloaded in three and a half shifts and then cycled back to the mines. Under the Alliance, Milliken also has the ability to divert a train to Kintigh Station adding to efficient utilization of the rail equipment.

4. Kintigh Plant

Kintigh Station has a maximum generating capacity of 688 megawatts. The facility is located in the Town of West Somerset in western New York, approximately 45 miles northeast of Buffalo. Kintigh is served exclusively by Conrail via trackage rights over Somerset Railroad's 15.59 mile stretch of mainline, which connects with Conrail's line in Lockport, New York. Post-transaction, Kintigh will receive its coal from CSX as shown in Map 8 on the next page. Kintigh cannot receive coal from barge or truck.

Kintigh Station consists of one operating unit which burns approximately 1,700,000 tons of coal per year. This unit is base loaded and is the most efficient coal burning plant in the state. Nationally, Kintigh ranks in the top ten units for efficiency. Furthermore, Kintigh currently runs at of capacity.

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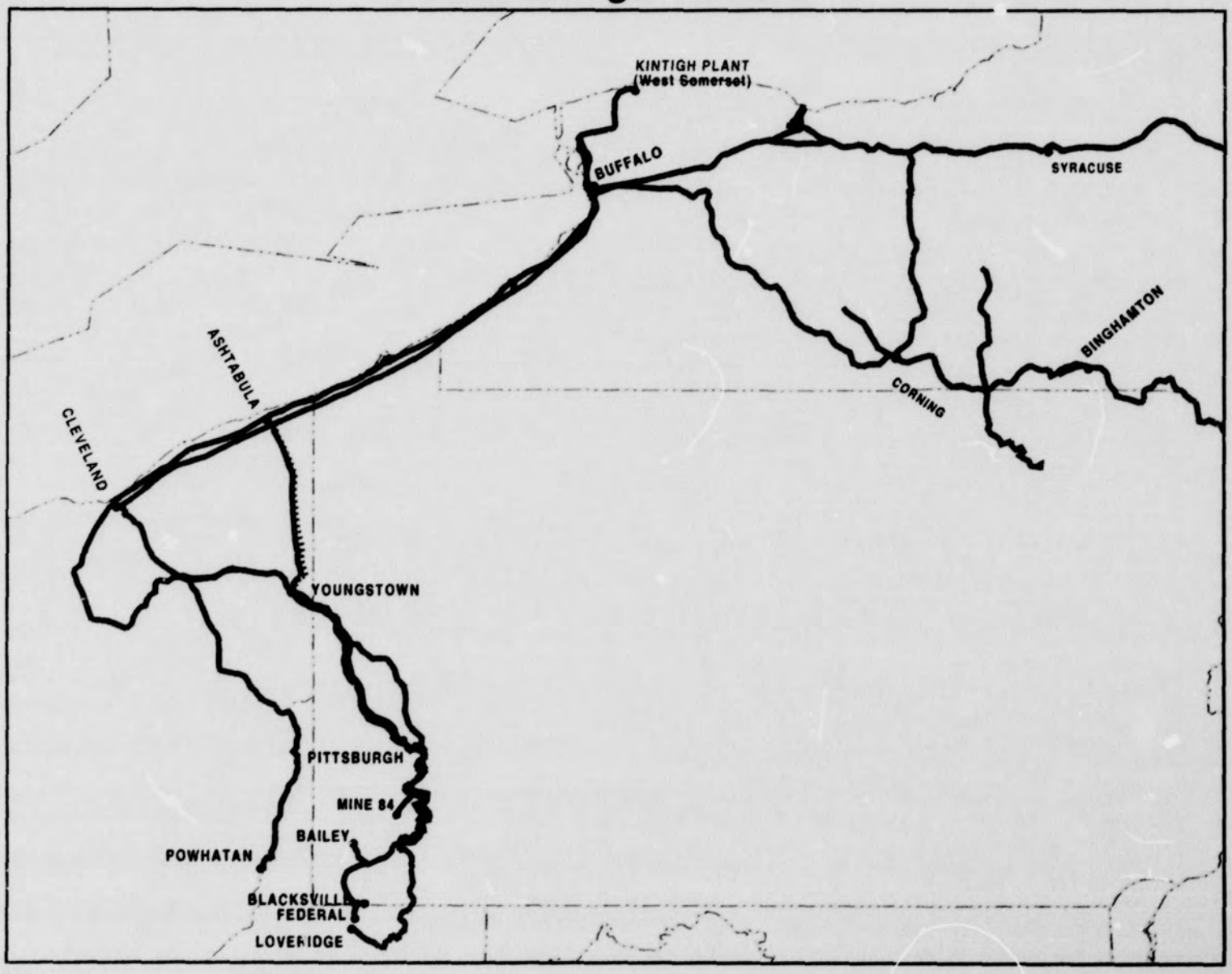
[5] Milliken's success rate for pollution control exceeds all federal regulations. The environmental processes remove up to 98% of the sulfur dioxide emissions and up to 40% of the nitrogen oxides emissions. The FGD system, or scrubber, is a zero-wastewater discharge system, and, unlike most scrubbers, our process results in marketable byproducts – gypsum and calcium chloride.

[6] SRC owns a total of 428 cars which are used to make up the 130 car unit trains. The SRC is described in more detail in the Verified Statement of Gary P. Edwards.

NYSEG Kintigh Plant
Post Merger Route

Map 8



CSXT Lines
CSXT Trackage Rights
NS Lines
Joint Area

Note: Powhatan and Mine 84 are accessible by NS only. Kintigh Plant is accessible by CSXT only.

Kintigh's first concrete was poured in 1981 and went into service in 1984. Prior to 1981, NYSEG went through more than five years of planning, studies, and hearings to obtain the necessary licenses and environmental permits. Nearly, $300 million of Kintigh's $1 billion overall cost was spent on environmental systems.

Kintigh, like Milliken, uses the FGD process to eliminate sulfur. In addition, Kintigh utilizes electrostatic precipitators to collect fly ash particulates, underground tunnels to draw cooling water from more than one-half mile offshore, dust suppression spraying, waste water treatment, and a 625 foot chimney to minimize the impact of exhausts at ground level for environmental protection. Furthermore, the Electric Power Research Institute[7] (EPRI) chose Kintigh as its site to construct a High Sulfur Test Center (HSTC) which focused on ways to limit emission of sulfur dioxide, oxides of nitrogen, and particulates, which are all produced when coal is burned.

Most of Kintigh's coal comes from Consol's Blacksville Mine located on the MGA. Kintigh's and Milliken's coal deliveries are under the same contract, as discussed further in Part D. Kintigh's coal is delivered solely by Conrail in SRC's 130 car train sets via Conrail's Falls Road line to Lockport, where Conrail then continues via trackage rights over SRC's line. The coal is unloaded at the Kintigh Station in approximately 5 hours.

D. NYSEG's Current Coal Supply Contracts

NYSEG currently has contracts with three major coal suppliers: Consol, Peabody Coal Company, and United Eastern Associated Coal Company, with a majority of coal coming from Consol. Nevertheless, in the bidding process, NYSEG considers rates from Consol's

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[7] The EPRI is one of the largest and oldest research consortia created by the electric utilities to develop innovative solutions to the world's toughest energy problems.

Blacksville, Loveridge and Bailey Mines; Peabody's Federal Mine; United Eastern's Mine 84; Cyprus Amax Coal Company's Emerald Mine; and Ohio Valley Coal Company's Powhatan 6 Mine. All of NYSEG's coal is then transported to NYSEG's four plants via a contract with Conrail.

Having one transportation carrier who serves all of NYSEG's origins and all of NYSEG's destinations adds to the efficiency of NYSEG's coal deliveries and increases NYSEG's ability to benefit from origin competition among the various mines. Because of the partnership between Conrail and NYSEG, NYSEG has benefited in its rate for transportation costs. One example of this is that NYSEG has a "postage stamp" rate with Conrail for all the mine origins on the MGA. This means that Conrail charges the same delivery rate for any mine on the MGA. This allows NYSEG to bid the MGA mines against each other and benefit from origin competition.

The coal NYSEG uses at its plants is classified as an eastern bituminous (soft), low sulfur coal with high heating value and volatility and low ash. The process of selecting a coal is to first calculate the production cost for a dollars per megawatt-hour comparison. This evaluated cost looks at fuel quality factors such as sulfur, heat, and fly ash content, as well as maintenance factors and impacts on boiler performance. Added to this production price is the transportation costs. Changes in any of these factors will change the output obtained from an equal amount of coal. All these numbers, including transportation costs, are then manipulated with boiler efficiency and projected consumption in order to determine the final dollars per megawatt-hour figure. This number is called the dispatch price and essentially determines dispatch rank of the operating unit. The lower your dispatch price, the more power you will produce and sell vis-a-vis other utility companies.

The coal with the lowest projected dispatch price is chosen to supply the respective stations. Transportation usually accounts for 36-40% of the total delivered fuel price in the NYSEG system. For example, Consol, which typically supplies approximately 2.3 million tons of coal annually to the Kintigh and Milliken Stations, represents approximately $ million in total fuel costs for the two stations, with transportation costs representing $ million. These statistics show why a coal utility, like NYSEG, is especially concerned about the competitive harm that will result from the break-up of Conrail.

NYSEG gets most of its coal from the "Pittsburgh Seam" coals located on the MGA. These coals come from the mines around Pittsburgh and extend from Pennsylvania into Ohio and West Virginia. These mines are served by Conrail and because Conrail offers NYSEG the same transportation rate from the MGA coal fields, regardless of which coal mine is supplying the coal, NYSEG selects the mine that has the most favorable bus bar, Btu and sulfur ratings.

1. Goudey Station

The Goudey Station is essentially supplied by the Peabody Coal Company. This contract expires in **REDACTED** and provides an annual supply of 300,000 tons. That contract has a fixed volume and price for the term of the contract. The selection process to determine the bus bar rate is the same as with Kintigh and Milliken. Transportation rates for Goudey are generally higher on a per ton basis and account for 40% of the total price because Goudey uses Conrail supplied equipment and is further away from the mines.

REDACTED

to the Alliance, local Conrail and NYSEG personnel work closely to reduce both companies'

costs. At Goudey, this is illustrated by the lack of any demurrage charges being assessed in the last 5 years, primarily due to both companies' interest in reducing costs and optimizing equipment. NYSEG plant staff at Goudey, as well as at the other plants, strive to unload as quickly as possible, which also furthers Conrail's interests.

2. Greenidge Station

Greenidge Station is supplied by a contract with United Eastern Associated Coal Company, which expires in The contract calls for an annual amount of 200,000 tons, plus or minus 50,000 tons, at a fixed price. The variable portion of 50,000 tons provides the ability to utilize the spot market as appropriate. As with Goudey, Greenidge Station transportation costs are higher and account for 40% of the total price. Once again, the coal selection process is the same as for all four stations.

REDACTED

As at Goudey, there have been no demurrage charges in the last 5 years.

3. Kintigh and Milliken Stations

NYSEG's current contract with Consol provides coal for both Kintigh and Milliken Stations.

REDACTED

Importantly, as a result of the savings inherent with the 130 car set, Conrail, during Alliance

negotiations, agreed to forego a transportation contract rate escalator for both Kintigh and Milliken, thereby saving NYSEG approximately $1.6 million annually.

4. Spot Market Coal Purchases

NYSEG also utilizes its contract option to purchase coal on the spot market for any of its plants. Using the spot coal market permits NYSEG to take advantage of changing market conditions, to supplement inventories, to test a different coal in a specific boiler and to "keep the suppliers honest." Typically, spot market coal bids are from either Powhatan Mine in eastern Ohio or Mine 84 in Pennsylvania or other central Pennsylvania mines. Post-transaction, NYSEG will effectively lose these mines for spot market bidding because these mines will become joint-line movements and thus more expensive to Kintigh Station. Indeed, post-transaction, Kintigh will lose single-line access to all NS exclusive mines, mines which today can deliver coal to Kintigh in single-line service.

Occasionally, NYSEG "tests" the spot market for coal that would be transported by truck. NYSEG has consistently found rail origin mines significantly less expensive than truck origins. Approximately 5 to 10 years ago, NYSEG received 25% to 50% of the total fuel requirements at Goudey and Greenidge by truck, but Kintigh Station has never received coal by truck. Today, truck transportation has essentially been lost due to the closure of many of the smaller mines in Central Pennsylvania, which had been the mines with the potential to be close enough to Goudey and Greenidge to effectively compete with Conrail.

The Pittsburgh Seam coals from where NYSEG receives most of its coal are approximately 400 miles from Goudey, Greenidge and Milliken and as such, truck rates have been consistently at least 25% greater than rail rates. For example, NYSEG has found that the final delivered price of coal, which is transported by truck 10 to 20 miles, costs as much as the

final delivered price of coal which is transported by rail 400 miles. This does not even take into account that the Pittsburgh Seam coals are higher quality and more cost effective and efficient to burn. Accordingly, today, none of our four plants can receive coal by truck.

E. Harmful Impacts of the Transaction on NYSEG Operations

As proposed, the breakup of Conrail by CSX and NS will divide the service to NYSEG plants, with Kintigh being served by CSX, and Goudey, Greenidge and Milliken being served by NS. We have major concerns with this arrangement. First, we are faced with competitive harms such as the loss of bargaining power that NYSEG enjoyed as Conrail's largest coal shipper. Second, the transaction will destroy many of the benefits achieved by the Alliance. And third, significant operational harms will be created by the proposed transaction.

NYSEG is New York state's single largest rail shipper. For a generating company such as NYSEG, the delivered coal price is the single most important variable in its competitive profile. NYSEG currently purchases approximately 3 million tons of coal, which is delivered solely via Conrail. Overall, NYSEG's tonnage is approximately 6% of Conrail's approximate 51.5 million tons of coal it transports to utilities. Post-transaction, NYSEG will be negotiating for the delivery of 1.7 million tons with CSX, whose post-transaction coal tonnage will be at least 205.6[8] million tons. This means NYSEG will only represent approximately eight-tenths of 1% of CSX's post-transaction coal movements in the Eastern United States. NYSEG will then be required to negotiate with NS for the delivery of 1.3 million tons in comparison to NS's

[8] This figure was obtained from the fact that pre-transaction, CSX shipped a total of 180 million tons of coal, Primary Application Vol. 2A at 349, and CSX will get 49.7% of Conrail's coal traffic post-transaction. Primary Application Vol. 1 at 80.

overall delivery of 150.9[9] million tons of coal. This will place NYSEG at approximately eight-tenths of 1% of NS's post-transaction coal tonnage in the Eastern United States.

Under the transaction, NYSEG becomes a much less significant player to NS and CSX than NYSEG was to Conrail. Instead of being a large captive shipper with significant negotiating leverage with our captive rail carrier, we are now a relatively small captive shipper to NS and CSX and our negotiating leverage will be significantly reduced and our delivery efficiencies will be significantly harmed. I believe these impacts will increase the rail delivery rates and raise the production cost for a kilowatt hour of electricity, as well as reduce the competitiveness of our fossil fuel generating stations and our ability to delivery low-cost wholesale electricity to New York consumers.

This opinion regarding the use of volume as a leverage is shared by others. NS's Executive Vice President of Marketing, Ike Prillaman, agrees that it is a benefit to NYSEG to have all of its plants served by one carrier with single-line service. Prillaman, Depo. Tr. 53. Furthermore, Mr. Prillaman believes that a utility's ability to use volume as a leverage in negotiating can be used to get a lower price for the cost of rail services. Prillaman, Depo. Tr. 58. Therefore, NYSEG will be competitively harmed by the fact that our tonnage will be split post transaction and we will lose our "importance" as a shipper.

As a result of the competitive situation NYSEG enjoys now and the fact that NYSEG is Conrail's largest coal shipper in New York, we were able to exert significant bargaining influence and were able to develop a unique business relationship with Conrail by forming the Alliance. NYSEG has been able to build a successful partnership with Conrail for a number of

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[9] This figure was obtained from the fact that pre-transaction NS delivered 125 million tons of coal, Primary Application Vol. 2B at 264, and post-transaction NS will obtain 50.3% of Conrail's coal traffic. Primary Application Vol. 1 at 80.

reasons. First, with the onset of must-run Qualified Facilities,[10] highly efficient low cost combined-cycle gas turbines, and the over supply of power in New York, Conrail realized coal-fired generation could be at competitive risk.

Furthermore, the transition to a competitive utility market and unprecedented changes in the electric utility business, which Conrail itself acknowledges, and which are still unfolding, essentially pushed Conrail into a less antagonistic approach and more toward the development of a partnership.

When a railroad views a captive utility, such as NYSEG, as simply a customer from which the highest price can be obtained, then the railroad and the utility are like enemies who each try to out do and get the most they can from the other. However, if the railroad alters its view of its captive utility, and instead sees the utility as a friend, almost as joint venture partners, then the railroad and the utility can find win-win benefits. For NYSEG and Conrail, the latter was the case and our negotiations lead to the Alliance. *See* V.S. Brady for details on the Alliance.

Essentially, the Alliance was formed to minimize and reduce costs for both parties. Savings from the Alliance are shared between the parties to create win-win results. The Alliance has already resulted in efficiency improvements exceeding 30% for the Kintigh and Milliken plants and has held delivery costs constant for those plants. As noted above, the Alliance has directly resulted in the restart of **REDACTED** generator from its cold standby status. This

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[10] These facilities were created during President Carter's Administration and by law are generators designated as facilities that "must-run." In addition, under this law, utilities such as NYSEG were forced to enter into contracts with the must-run Qualified Facility and purchase power at a pre-set cost, typically higher than the cost for NYSEG to produce the power itself.

was accomplished under the Alliance through Conrail's innovative pricing for coal deliveries to

The Alliance also promotes NYSEG's ability to utilize trains at both Kintigh and Milliken, thus giving a great deal of flexibility in terms of inventory control, maintenance issues and unloading schedules. Goudey and Greenidge also have the ability to frequently swap or split trains. For example, a train can be diverted to Kintigh if Milliken is undergoing maintenance, which maintenance would have prevented the train from unloading at Milliken. During this time, Milliken would burn some of their inventory coal while Kintigh would build a bigger inventory with the diverted train. Then, after Milliken's maintenance is completed, a Kintigh train would be utilized for a Milliken loading to replenish Milliken's inventory while Kintigh burns its surplus inventory. This operational flexibility, which results in purchasing efficiencies and increased train efficiencies, will be lost under the proposed transaction because Kintigh and Milliken will be served by two different carriers. In summary, the Alliance has helped NYSEG maintain the lowest generating costs in the state.

The proposed breakup of Conrail threatens the future competitiveness—and therefore the very viability—of NYSEG's fossil fuel generating stations. In order for NYSEG to survive, the marginal cost to produce electricity must be reduced. This encompasses reducing the cost of rail delivery. However, the proposed transaction leaves Kintigh captive to CSX and Milliken, Goudey and Greenidge captive to NS, thereby splitting our three million ton coal business between CSX and NS.

The laws behind the must run qualified facilities have recently been repealed, but the contracts already entered into are valid for their respective terms.

Furthermore, rather than having our rates decreased, as Applicants claim the transaction will do for all shippers, it is more likely that NYSEG's rates will go up. Indeed, both CSX and NS have indicated that transportation prices for NYSEG's coal will go up, not down as a result of the transaction. During preliminary negotiations with CSX in July 1997, Dan Green of CSX stated that our rates would likely go up after the contracts lapse. *See* memorandum summarizing meeting minutes, contained in Appendix 6. In addition, John W. Fox, NS's Vice President for Coal Marketing, has stated that any Conrail rate that can be raised will be raised. Fox, Depo. Tr. 118. Furthermore, both Mr. Fox and Raymond L. Sharp, CSX's Vice President of Coal Sales and Marketing, have stated that their job is to charge the highest rate possible. Fox, Depo. Tr. 99-100; Sharp, Depo. Tr. 43-44. Clearly, CSX and NS have indicated their desire to raise rates wherever they can, not lower them, and NYSEG stands to lose from any increase in its rail delivery costs.

F. Conclusion

NYSEG currently enjoys the competitive benefits from having a single carrier serve all its plants. This has resulted in NYSEG being able to use volume as a leverage and has resulted in a partnership with Conrail through a business Alliance utilizing the benefits drawn from delivery synergies between NYSEG's plants. These benefits will be lost due to the currently planned Conrail acquisition. In addition, the operational problems NYSEG will face as a result of the breakup will cause additional financial impacts and will further harm our plants' competitive position.

NYSEG does not seek to be put at a competitive advantage as a result of this transaction. All that NYSEG seeks is that they be permitted to retain the status quo. NYSEG's request that either NS obtain trackage rights to Kintigh or CSX obtain trackage rights to Goudey, Greenidge

and Milliken will ensure that NYSEG maintains the competitive ability to survive and will not put NYSEG in a better position post-transaction than it was pre-transaction, but simply maintain the status quo. Based on NYSEG's track record of efficiency and environmental concerns, clearly, this benefits the State of New York and the overall public interest.

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF BROOME)

I, James Mulligan, being first duly sworn, upon my oath state that I have read the foregoing verified statement and the contents thereof are true as stated.

James Mulligan

Subscribed and sworn to before me this 11th day of October, 1997.

Notary Public
NANCY M. SANTUCCI
Notary Public, State of New York
No. 4893554
Residing in Broome Co.
My commission expires June 1, 1999

My Commission Expires: 6/1/99

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 35)

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

VERIFIED STATEMENT
OF SEAN D. BRADY

VERIFIED STATEMENT

OF

SEAN D. BRADY

A. Background and Experience

My name is Sean D. Brady and I am currently engaged in the consulting business under my own company as PRISM Decision Systems. Prior to launching my own business, I was an employee of New York State Electric & Gas Corporation (NYSEG). My full tenure at NYSEG spanned from July 15, 1991 to August 15, 1997. On July 1, 1995, I was promoted to manager of strategic planning for NYSEG's electric generating business. I remained in that position until my departure from NYSEG.

As the manager of strategic planning for NYSEG, I was responsible for the coordination of various activities for the generation business including looking for ways to reduce generating costs, such as lower fuel procurement prices and enhanced fuel delivery methods. Specifically, I managed the development of an agreement between NYSEG, Consolidated Rail Corporation (Conrail) and Consolidation Coal Company (Consol).[1] The negotiations, implementation, and formalization of that agreement is commonly known by the parties as the "Alliance." Throughout the development of this agreement, I acted as the facilitator for all but a few of the Alliance meetings. I am, therefore, familiar with the history, terms and conditions of the NYSEG, Conrail and Consol Alliance relationship.

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[1] Consol is a corporation primarily involved in the ownership and production of coal at various coal mines and in various coal regions. Consol owns the Blacksville, Loveridge, and Bailey mines in the Pittsburgh Seam region, a region which is also known as the Monongahela region.

B. Purpose of Statement

The purpose of my testimony is first, to describe the nature of the Alliance agreement between Conrail, Consol and NYSEG and its importance to NYSEG; and second, to explain some of the reasons why the proposed purchase by CSX and NS of the Conrail tracks and facilities will destroy the benefits achieved by the Alliance, thereby causing competitive and operational harm to NYSEG.

C. Overview and History

Negotiations for the Alliance began c **REDACTED** culminated in a formal agreement, which was consummated o **REDACTED** The agreement between NYSEG, Conrail and Consol established what the three companies have termed the "Alliance." *See* Memorandum of Understanding contained in Appendix 6. The Alliance was primarily intended to reduce costs and increase revenues by the parties working together as partners, instead of adversaries. This included coordinating our efforts for the three components of coal which are necessary for NYSEG's electric generating business: production, transportation, and use. NYSEG believed that by working together with one coal producer and its sole rail carrier each party in the chain of production could achieve efficiencies and cost savings, which, in the end, would benefit everyone. Consol would produce more coal, Conrail would deliver more coal, and NYSEG would produce more power at a lower delivered price, thereby lowering NYSEG's generating costs and increasing NYSEG's power output from its plants in an ever increasingly competitive generation market.

As mentioned above, the Alliance discussions began on **REDACTED** at NYSEG's offices in **REDACTED** . Attendees at this preliminary meeting included various executives from Conrail, NYSEG and Consol. This initial group of attendees established an

executive oversight committee and several other working groups comprised of knowledgeable employees from all three organizations.

At their initial meeting, the three companies agreed that any Alliance agreement should promote situations where all three parties would achieve incremental business growth and all partners would achieve some sort of financial gain, or at the very least, two parties would benefit and the third would be held harmless. The important factor was a mutual agreement that action would only be taken when all three of the parties agreed.

Starting discussions under this umbrella of friendship and partnership allowed the parties to concentrate on their desire to develop mutual win-win strategies. This created an atmosphere of collegiality, instead of the typical atmosphere where railroads and shippers see each other as enemies. Friends will see each other's growth as interdependent, but enemies will seek to obtain their growth at the detriment of the other person. Therefore, this competitive partnership promoted the interests of all parties and gave Conrail a less antagonistic approach toward NYSEG then what would typically be expected by a railroad, especially toward a captive shipper. Instead, neither CSX nor NS have demonstrated a willingness to enter into such tri-party agreements and the proposed transaction will destroy the win-win strategies that we have developed with Conrail and Consol.

The parties further agreed that the Alliance should be a continuing activity that would not end upon the achievement of one or even a few of the initial objectives. Instead, the Alliance established multiple long term phases. Each incremental phase would be accomplished before moving on to the next phase.

Consistent with a desire to develop a "win-win" for all partners, the parties agreed that the first phase objective of the Alliance was to equitably share in the savings and profits resulting

from a reduction in total costs and from investigating and pursuing opportunities for increased sales. In simple terms, all three companies w[illegible] motivated by the desire to reduce costs and/or increase revenues.[2]

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[2] The three companies acknowledged that contractual business and Alliance business to be somewhat distinct. The Alliance is not in lieu of current contracts and vigorous, competitive bidding, but was meant to be a broad umbrella arrangement that would help to create win/win situations for all three companies within the current framework and structures. Contractual terms

D. Alliance Results

1. Incremental Savings

From both a plant and rail carrier perspective, the alliance has resulted in a number of win-win situations, results that could not have been achieved if NYSEG had been required to work with two carriers instead of one. The operating efficiencies are extensive. While the details of the operational efficiencies achieved by the Alliance are set out in the verified statement of Mr. Gary P. Edwards, I nonetheless can categorically state that the collaboration made possible by the Alliance has optimized the use of the railcar fleet of NYSEG's wholly-owned subsidiary railroad, resulting in a 31% delivery efficiency gain. Just at one plant, Plant Kintigh, successful implementation of the 286,000 pound gross rail lading capability and the 130-car super trains has resulted in significant savings. Due to the Alliance, these operational changes for service to Kintigh have eliminated 30 train cycles per year, which in turn, required 270 less crew starts and 3,840 less locomotive hours. Similarly, successful implementation of the 270,000 pound gross rail lading and 130-car super trains at Plant Milliken resulted in 27 less cycles per year, 324 less crew starts, and 1,872 less locomotive hours. These changes resulted in significant savings to NYSEG and Conrail.

Naturally, these operational changes, aimed at efficiency, required some up front investments. Negotiations covering who was to pay for the initial investments and then, in turn, how the significant savings resulting from the train asset optimization strategy at Kintigh and Milliken would be shared were long and complex. There was considerable dispute over what

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and conditions have not changed and all contractual issues are resolved within the framework of the applicable contract, unless otherwise agreed to as part of the Alliance activity.

portion--if any--certain investments were necessary to implement an Alliance goal and then whether or not the specific investment should be reimbursed by Alliance savings.

Despite these difficulties, on **REDACTED**, the three companies finally agreed to the following sharing of costs and savings: (1) NYSEG would pay for the $95,250 capital investment to upgrade the Kintigh dumper; (2) NYSEG would pay Consol $75,183 for its upgrade to Loveridge Yard; (3) Conrail would waive its contractual right to a cents per ton rate increase at Kintigh and a cent per ton rate increase at Milliken under the contract escalator to yield a total savings to NYSEG of $1.6 million annually; and (4) Conrail would retain the balance of the savings from the operational efficiencies including the ability to use its freed up crews and assets to earn additional revenues.

Clearly, this phase of the Alliance agreement was a win-win for all three parties. Consol and Conrail benefited, and while NYSEG paid some up front capital investments, the rate freeze agreed to by Conrail resulted in approximately $1.6 million annual savings to NYSEG. Over the term of the Conrail contract, these savings will total $8 million to NYSEG.

2. Incremental Revenues

Not only was the Alliance successful at achieving costs savings, the Alliance also looked for ways to increase revenues and to grow everyone's market share. One of the most successful ways in which the Alliance was able to do this was by obtaining a per-ton rate reduction for the

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NYSEG management had decided back in the Spring of 1994 that the then current and projected market conditions would not support the full time REDACTED

REDACTED The boilers and turbine were conditioned for long-term lay-up and the turbine rotor was disconnected so the generator could be used as a synchronous condenser to provide system transmission support. Throughout 1995 and 1996, NYSEG's generation business pursued and achieved aggressive operation and maintenance expense reductions at all of its stations. In light of this cost-cutting, NYSEG determined in the Spring of 1996 that REDACTED as a short-term, marginal unit. In other words, NYSEG believed that REDACTED able to operate profitably during specific periods of peak market conditions. However, management determined that due to the fixed costs of labor and the fixed expense of reconnecting the unit rotor for generation, including the loss of the unit as a synchronous condenser during low market conditions if the rotor were reconnected, it would not be prudent without further reducing operating costs.

At one of the Alliance meetings, NYSEG, Consol and Conrail discussed various alternatives aimed at reducing the risk to NYSEG if it committed REDACTED seasonal operation. NYSEG asked whether Consol would be willing to sell coal and whether Conrail would deliver it at reduced costs. After evaluating its options, Consol decided not to provide special discounts for its coal. However, Conrail showed interest in delivering coal to **REDACTED** rate.

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This Alliance agreement was a win-win for both companies. NYSEG was able to add an otherwise non-profitable generation unit to its portfolio and Conrail was able to deliver additional low incremental cost tonnage to an existing customer. Specifically, since reconnecting

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E. Alliance: Current Status

With the pending break-up of Conrail and the current renegotiation of the NYSEG coal contract with Consol, the overall Alliance discussions have lost momentum. This loss of momentum has jeopardized a long-term agreement. In fact,

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[4] *Power Markets Week* is a weekly newsletter which includes published indexes of wholesale power prices in the U.S.

[5] The PJM power pool includes New Jersey, Delaware and parts of Pennsylvania and Maryland. The PJM is where NYSEG sold most of this power.

REDACTED Accordingly, NYSEG will be faced with a harm resulting from the transaction even before the Surface Transportation Board has issued its decision on the transaction. Thus, NYSEG is already seeing a change in philosophy away from the notion of win-win and toward the more confrontational stands of the past. This change in philosophy is a direct result of the actions of CSX and NS.

Most importantly, throughout NYSEG's discussions with CSX and NS prior to entering this proceeding, CSX and NS were unable to assure NYSEG that the benefits of the Alliance would be preserved. To the contrary, I have found that CSX places little value on alliances. Indeed, CSX's Vice President for Coal Marketing, Raymond Sharp, stated that he **REDACTED** Sharp, Depo Tr. 273. While NS may have a slightly better view on the value of alliances, NS's Vice President of coal marketing, John Fox stated that he could not think of one tri-party arrangement that included the coal producer and Norfolk Southern and the utility. Fox, Depo Tr. 51. The inability or unwillingness of NS and CSX to preserve Alliance benefits will result in the loss of efficiency gains at Kintigh and Milliken worth $8 million over the term of NYSEG's current five year contract with Conrail.

Furthermore, a 1996 study produced by Electric Power Research Institute (EPRI) **REDACTED** yet, both CSX and NS have not undertaken this strategy. EPRI found that

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findings directly translate into the fact that NYSEG will sustain substantial competitive harm post-transaction as a result of destruction of the Alliance.

F. Conclusion

I believe that neither the MOU, nor the Alliance as a whole, would have been possible if NYSEG's plants were split between CSX and NS as currently proposed by CSX and NS. The operational efficiencies which developed out of the Alliance, including having a single point of contact and having single-line service from all of NYSEG's origins to all of its destinations, coupled with Conrail's eagerness to enter into alliances,[6] created an efficient and mutually beneficial competitive situation that will be destroyed by the proposed CSX and NS plan. The break up of Conrail seriously jeopardizes the $8 million of efficiency savings at Kintigh and Milliken Stations. This operational harm thus translates into significant competitive harm. The break-up of Conrail also jeopardizes **REDACTED** its resulting millions of dollars in annual revenues. Considering the increasing competitive nature of the wholesale electricity market, the break-up of Conrail threatens the very viability of NYSEG's generating stations.

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[6] Conrail's eagerness to enter into alliances can best be shown by their own documents. *See* CR-01-P-000127 and CR-01-P-000140, attached in Appendix 6.

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF BROOME)

I, Sean D. Brady, being first duly sworn, upon my oath state that I have read the foregoing verified statement and the contents thereof are true as stated.

Sean D. Brady

Subscribed and sworn to before me this 16th day of October, 1997.

Notary Public

My Commission Expires:

MARIA R. KRAUSE
Notary Public, State of New York
No. 4748888
Residing in Broome Co.
My Commission Expires Dec. 31, 1997

0005947.01

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 35)

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

VERIFIED STATEMENT
OF GARY P. EDWARDS

VERIFIED STATEMENT

OF

GARY P. EDWARDS

I. SUMMARY OF STATEMENT AND BACKGROUND

A. Summary Of Statement

My name is Gary P. Edwards. I am the Supervisor of Railroad Operations of Somerset Railroad Corporation ("SRC"), a federally-licensed Class III railroad that is a wholly-owned subsidiary of New York State Electric & Gas Corporation ("NYSEG"). The purpose of my testimony is to discuss present railroad operations serving NYSEG's Kintigh and Milliken generating stations, and the damaging disruptions of that service threatened by the split up of Consolidated Rail Corporation ("Conrail") proposed in the Primary Application.

Splitting Conrail between Norfolk Southern Railway Co. ("NS") and CSX Transportation, Inc. ("CSX") will disrupt the efficient, single-line service that NYSEG has developed with Conrail over the past fourteen years. Those disruptions will result mainly from:

- The creation of inefficient joint-line hauls due to the fact that (a) Conrail today provides seamless single-line service moving SRC-owned train sets back and forth between Kintigh and Milliken, but post-transaction, Kintigh and Milliken will no longer be served by the same carrier, and (b) some of NYSEG's coal origins will become exclusively served by NS but the coal will be delivered to Kintigh, which will be exclusively served by CSX.
- Newly-created operational difficulties on the MGA and the Youngstown-Ashtabula line caused by physical constraints of the lines, inadequate CSX yard facilities serving the MGA, and the need to coordinate two carriers' operations while handling increased volumes of traffic.

- Applicants'[1] failure to design realistic service schedules that account for actual conditions in serving NYSEG.

All of these disruptions threaten Applicants' ability to cycle SRC-owned equipment from mines serving NYSEG to the Kintigh and Milliken plants often enough to transport all of the needed coal in SRC-owned equipment, as Conrail now does. If Applicants cannot provide enough cycles with SRC-owned equipment, not only will that equipment, acquired at a cost of over $18 million, be inefficiently utilized, but NYSEG will have to pay higher rates to transport additional tonnage in railroad owned cars.[2] Furthermore, because the proposed transaction creates significant operational problems, NYSEG's service levels will decline and NYSEG will lose significant efficiencies. As a result, the cost of transportation is likely to increase in a post-transaction environment.

B. Qualifications, Background And Experience Of Witness

I have held my current position with NYSEG since January 1984. Prior to that, from November 1981 through December 1983, I was NYSEG's Project Engineer responsible for construction of SRC. The new rail line became operational in November 1983.[3] Two months later, I became Supervisor of Railroad Operations, overseeing the daily activities of the new railroad.[4]

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[1] As used in this statement, "Applicants" means NS and CSX.

[2] In this statement, "railroad-owned equipment" and "railroad-owned cars" refer to railcars owned by a railroad other than SRC.

[3] Construction of SRC was approved by the Interstate Commerce Commission ("ICC") in Finance Docket No. 29254, *Somerset Railroad Corporation—Construction and Operation—of a Line of Railroad in Niagara County, NY* (ICC decided March 29, 1982).

[4] SRC has no employees. SRC operations are managed by NYSEG personnel, such as myself, who are assigned to oversee SRC's activities. SRC also owns no locomotives. Operations on SRC's line are conducted and dispatched by Conrail. SRC's assets were designed and acquired to achieve maximum productivity and efficiency in the transportation of coal to

Before I came to work for NYSEG, I was employed by Conrail. Between June 1976 and November 1981, I held positions with Conrail as Engineering Management Trainee, Youngstown, Ohio; Assistant Track Supervisor, Dewitt, NY; Track Supervisor, Buffalo, NY; and Assistant Division Engineer, Buffalo, NY. These were positions of progressively greater responsibility dealing primarily with track construction, maintenance and repair. In order to understand the goals that my engineering and design efforts were intended to serve, these positions also necessitated that I learn a good bit about how Conrail used the tracks. Through those positions and from my experience since, I have gained considerable familiarity with the rail lines and rail operations utilized by Conrail in serving NYSEG's Kintigh and Milliken plants.

I hold a Bachelor of Science degree in Civil and Environmental Engineering from Clarkson College, Potsdam, NY. I am also a member of the American Railway Engineering Association. I have attended continuing education classes at George Washington University and the University of Wisconsin for bridge rating, inspection and maintenance. I am President of Regional Railroads of New York, an association of short line railroads headquartered and/or operating in New York State. I also am President of the Western New York Transportation Council.

In preparing for this statement, I thoroughly reviewed the operating plans presented in Volumes 3A and 3B of the Primary Application.[5] I also read Volumes 1, 2A and 2B of the Primary Application. After reviewing the operating plans presented in Volumes 3A and 3B of the Primary Application, I traveled to eastern Ohio to view the existing Conrail facilities between

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NYSEG's coal-fired Kintigh and Milliken generating stations. While SRC owns rail assets and is a licensed carrier, it does not run trains or own any locomotives.

[5] As used here, the term "Primary Application" means the application in STB Finance Docket No. 33388 by which CSX Corporation and Norfolk Southern Corporation, and their affiliates, seek to divide the properties of Conrail.

Youngstown and Ashtabula (the "Youngstown-Ashtabula line") and their current operation. The Primary Application calls for NS to own that line, with CSX having trackage rights over it. I looked primarily at the junctions where CSX trains would move onto the Youngstown-Ashtabula line and the point at Ashtabula where NS trains would leave that line to travel toward Buffalo.[6]

II. CONRAIL'S COAL DELIVERIES TO NYSEG ARE EXTREMELY CUSTOMIZED AND EFFICIENT

NYSEG is the highest volume New York-based rail shipper. Coal is the life blood of that volume and of NYSEG's generating system. NYSEG must receive a high volume, steady stream of coal delivered by rail in order to meet the burn requirements at NYSEG's Kintigh and Milliken stations. Kintigh burns approximately 1.7 million tons of coal each year. Milliken consumes approximately 800,000 tons of coal each year. As a regulated public utility these volume requirements must be met to satisfy NYSEG's service and sales obligations.

These high volumes of coal must also be delivered at a steady pace, not haphazardly or at the railroad's convenience. A steady, reliable flow of coal enables NYSEG to minimize coal inventory costs by maintaining the minimum operationally necessary coal inventory at each plant. That, in turn, benefits NYSEG ratepayers. Also, a steady flow of coal trains avoids bunching of trains for loading or unloading. Bunching can congest rail lines and overburden loading or unloading facilities. Maintaining regular, efficient cycles for SRC's unit train equipment is the key to keeping NYSEG's essential flow of coal moving.

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[6] I also executed the "Confidential" undertaking prescribed in this case by the Surface Transportation Board ("Board" or "STB") and, pursuant to that undertaking, have reviewed various materials marked "Confidential," such as track charts and the Applicants' proposed train schedules, that either were retrieved from the Applicants' document depository or which were provided to NYSEG through discovery or otherwise. I also reviewed other documents from the depository and reviewed portions of the deposition transcripts mentioned in this statement.

Efficient, reliable transit times are the key component of efficient train operation. Transit time is by far the largest portion of the cycle time for coal shipments to Kintigh and Milliken. Seventy-five percent of the expected train cycle time to Kintigh, and about 63 percent of the anticipated cycle time to Milliken, is allotted to transit time. Because transit time is such a large portion of each cycle to Kintigh and Milliken, sub-standard transportation performance can easily ruin overall operational efficiency. Delays in train cycles reduce the hauling capacity of SRC's fleet by cutting the number of cycles each train set can make each year. That diminishes the ability of SRC's fleet to meet station fuel requirements at Kintigh and Milliken. When equipment not owned by SRC must be used to make up for train cycles lost to inefficiency, significantly higher transportation costs are incurred. Accordingly, to achieve efficiencies, maintain transit times, avoid congestion and cycling problems, and lower NYSEG's inventory costs, Conrail and NYSEG have developed an extremely customized system for the delivery of coal to Kintigh and Milliken. That customized system will be destroyed by the proposed transaction.

A. Conrail's And SRC's Operations Are Specifically Designed To Meet NYSEG's Needs

The Kintigh plant was designed to be rail-served. The environmental permitting of the plant calls for rail delivery of coal. Accordingly, when Kintigh was constructed, the construction included 15.59 miles of SRC track connecting the plant to Conrail's Lockport Branch northeast of Buffalo. In addition to its 15.59-mile rail line and due to its various arrangements with Conrail, SRC also now owns 428 rotary coupler gondola railcars, which are dedicated to Conrail for its use in serving NYSEG.[7]

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[7] Rotary coupler cars rotate around the axis of the coupler when they are being dumped so the cars do not have to be uncoupled to be dumped. The high-efficiency dumper at Kintigh,

NYSEG has worked hard with Conrail over the past fourteen years to optimize utilization of SRC-owned rail cars and to reduce operating costs for Conrail in handling those cars. SRC has invested more than $18 million in rail cars based on Conrail's ability to maintain a designated number of cycles for SRC's fleet. Properly utilized, that fleet can meet the burn requirements of Kintigh and Milliken.

The size of SRC's initial fleet of rolling stock was based on the projected annual coal burn at Kintigh and the number of train cycles Conrail would commit to. During its construction, the plant was projected to burn 1.3 million tons of coal annually. NYSEG negotiated with Conrail extensively to arrive at a realistic expectation of the number of train cycles Conrail could reliably provide each year for unit trains of SRC-owned equipment operating between Kintigh and Pittsburgh Seam mines.

Comparing the projected number of annual train cycles, car capacity, loading factors,[8] and estimated equipment availability with estimated plant burn, it was determined that SRC should acquire a fleet of 190 cars.[9] Initially, these were used to create two 95-car unit trains. Together, those two train sets, loaded to approximately the Conrail-imposed maximum of 11,000

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which can unload a 130-car unit train in five hours, requires this type of car. Conrail, NS, and CSX together do not own enough of the type of rail cars required to serve Kintigh. In response to discovery requests from NYSEG, Conrail stated that it owned or had under long term lease 200 rotary coupler gondola cars. CSX/NS-67 at 16. CSX and NS each admitted that they do not operate any such cars. Id., and NS-23 at 2. Two hundred and sixty rotary coupler gondola cars are presently used in serving Kintigh.

[8] Actual mine loading is typically between 95% and 98% of car design capacity. Mines often do not load a car to full capacity in order to avoid the risk of penalties associated with overloading.

[9]

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tons per train and operating the agreed number of cycles per year, satisfied Kintigh's projected annual burn of 1.3 million tons.

Kintigh's operations quickly showed greater generating efficiency than had been expected. This meant that the net generation for the plant would be higher than the initial design criteria of 625 MW. Increased generation necessitated increased coal supply. Actual operations at Kintigh resulted in average annual fuel consumption of approximately 1.7 million tons. As a result, SRC's fleet was supplemented with Conrail-supplied unit trains, referred to as random trains, to meet the increased burns albeit at higher costs than if SRC equipment were being exclusively used.

By 1988, NYSEG's cost of utilizing Conrail-supplied coal cars had REDACTED ton. That increase made it economically desirable for SRC to acquire 26 additional cars for inclusion in SRC's unit trains. These cars were obtained at a **REDACTED** for a total expe **REDACTED** including tax. Because NYSEG continued to be limited to a maximum of 11,000 tons of coal per train the additional cars still left NYSEG with a shortfall in train capacity vs. station consumption. This left a continuing need to utilize higher-cost transportation provided in railroad-owned cars.

In 1992, NYSEG negotiated new rate arrangements with Conrail. Because of the new contract arrangements, it became economically attractive for SRC to acquire 231 aluminum rotary coupler gondolas for use at Kintigh Station. These cars, acquired at a total cost of appr **REDACTED** including tax, were placed in service during the first quarter of 1993. Again, this fleet was sized based on Conrail's commitment to provide a minimum of 75 cycles per unit train annually. Additional arrangements were made to allow the use of SRC-supplied equipment to service Milliken Station and the existing equipment, 197 steel rotary

coupler gondola cars, was then diverted for use at Milliken Station. The change to aluminum cars alone increased carrying capacity about 7 tons per car. Conrail also agreed to increase the maximum net weight limitation per train on shipments to Kintigh over nine percent, to 12,000 tons.

In 1997, an Alliance agreement was reached between NYSEG, Conrail and NYSEG's mines on operational changes that would substantially increase equipment utilization efficiency and ensure a reliable source of coal deliveries. The initial phase of the Alliance agreement was

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The collaboration made possible by the Alliance has optimized the use of the railcar fleet of NYSEG's wholly-owned subsidiary railroad, resulting in a 31% delivery efficiency gain. Just at one plant, Kintigh Station, successful implementation of the 286,000 pound gross rail lading capability and the 130-car super trains has resulted in significant savings. Due to the Alliance, these operational changes for service to Kintigh eliminated 30 train cycles per year, which in turn, required 270 less crew starts and 3,840 less locomotive hours. Similarly, successful implementation of the 270,000 pound gross rail lading and 130-car super trains at Milliken Station resulted in 27 less cycles per year, 324 less crew starts, and 1,872 less locomotive hours. These changes resulted in significant savings to NYSEG and Conrail.

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[10] GRL means the combined weight of the car and its lading.

B. Benefits of Current Single Carrier Service

As explained herein and also in the Verified Statements of James Mulligan and Sean Brady, NYSEG's cycle times have been significantly reduced, its inventory carrying costs have been cut, and service reliability has dramatically increased as a direct result of these fourteen years of negotiation, capital investment, and customization of rail service. To achieve this, one SRC-owned train set is dedicated to provide service to Kintigh Station, one set is dedicated to serving Milliken, and the third cycles between Kintigh and Milliken, depending upon need.

Having a single railroad serving all of NYSEG's origins and destinations utilizing SRC dedicated equipment enables NYSEG to manage actual unit train operations to achieve optimal efficiency. Single carrier service was the key factor that made the Alliance possible. For example, a unique element of our Alliance arrangement with Conrail (an element that could only efficiently occur if NYSEG continues to have all plants accessible to a single carrier) allows NYSEG to divert a train that is scheduled to load for one destination and move it to another destination based on current requirements and loading options. These diversions may occur at almost any point in the movement, including diversions en route. Because the same carrier serves all the mines, as well as both Kintigh and Milliken, no interchange between carriers is required and no other type of operational coordination between two carriers is needed, nor are supplemental charges applied. This single-line diversion capability will be lost under the proposed transaction.

Having single carrier access to all of our plants and destinations, such as Conrail has today, also provides flexibility in loading at the mine mouth and in moves to car repair shops. For example, if the A train for Kintigh is delayed arriving empty at Shire Oaks and the C train for Milliken has arrived, but is not scheduled for loading until after the A train, the Unit Train Desk

can readily swap loading dates since they control movement of both train sets. As another example, All SRC cars are periodically diverted to a repair shop to assure equipment reliability and availability. SRC currently utilizes contract repair shops located on the Conrail system, partly because the transportation contract with Conrail provides for free moves of cars in NYSEG service into and out of contract repair shops located on a Conrail line. In addition, being able to move these cars to and from the shop using a single carrier greatly improves the efficiency of those moves.[11] As noted previously, the availability of equipment impacts the fleet's overall capacity. Maintaining a high equipment availability rate improves fleet capacity.

III. THE PROPOSED TRANSACTION, WHEREBY CSX WILL SERVE KINTIGH AND NS WILL SERVE MILLIKEN, WILL DESTROY THE OPERATIONAL EFFICIENCIES THAT HAVE BEEN GAINED OVER THE PAST FOURTEEN YEARS

It is imperative that NS and CSX maintain the historical transit times for trains being delivered to NYSEG's power plants if the Primary Application in this proceeding is approved. NYSEG's principal concern on that score is whether NS and CSX will coordinate their competing operations to emulate the current single-minded, seamless service NYSEG receives from Conrail. My review of the Primary Application and related information does not show that NS and CSX will be able to provide the coordinated, timely service that NYSEG needs. Instead, the Primary Application and related materials show that Applicants' plans for service are not well coordinated.

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[11] Because the repair shop SRC uses is located on a line that the Primary Application allocates to NS, cars normally in Kintigh service, which will become exclusively CSX served, will have to move in a joint-line move to and from that shop, and may incur transportation charges not now incurred by SRC and NYSEG.

A. The Transaction Will Destroy The Benefits NYSEG Currently Enjoys From Single Line Service, Creating Inefficient And Costly Joint-Line Service

The Primary Application creates new operational coordination problems by creating new interline movements for SRC-owned unit trains, which today are single-line movements. The Primary Application calls for CSX to serve Kintigh while NS serves Milliken.[12] That makes joint-line service out of the following current single-line Conrail services:

- Deliveries to CSX-served Kintigh from every NS served mine, including Mine 84 and Powhatan # 6, will become joint-line moves.
- Diverting a train from Milliken to Kintigh becomes a joint-line move.
- Periodic use of a train that normally serves Kintigh to serve Milliken becomes a joint-line movement requiring two interchanges.

In my experience, joint-line service generally is less efficient than single-line service. The need to coordinate schedules between two carriers almost inevitably creates delays in handling interline traffic and increases costs. From the Primary Application, it appears that the Applicants agree that joint-line service ordinarily is less efficient. The Primary Application is filled with statements that the major benefit of the Applicants' proposal is the creation of new single-line services. Donald W. Seale, Vice President of Merchandise Marketing for NS stated that an average one-day increase in transit time could be expected to result from interchange of traffic. Seale, Depo. Tr. 130. CSX's General Manager of Field Operations Development, John W. Orrison, likewise agreed that single-line service provides better coordination of service than does joint-line service. Orrison, Depo. Tr. 209.

Delays caused by newly-created NS-CSX interchanges will significantly hinder the carriers' ability to provide the requisite number of train cycles to Kintigh and Milliken. NYSEG

regularly utilizes capacity of one train set at both Kintigh and Milliken. With Conrail providing service to both of those facilities, as well as to NYSEG's current origins, this change in destination of a train did not impose additional delays. Under the proposed operations, however, this move will require two actual interchanges of the train set - the first from CSX to NS to make the train available to serve Milliken and a second interchange back to CSX to return the train to Kintigh service.

Anytime train sets are interchanged there are inherent delays. An interchange would normally involve a change out of locomotive power and a change of the End of Train Telemetry device ("EOT").[13] An interchange inspection also would be conducted each and every time this occurred. Each of these activities requires time - **time that is not now needed by Conrail because it serves both Kintigh and Milliken**. Because it will be necessary to interchange an SRC train set back and forth between NS and CSX, at least monthly, to assure that adequate coal supplies are transported to both Milliken and Kintigh, NYSEG sees the risk of train cycle delays increasing drastically, reducing service reliability to NYSEG. Movements of coal to Kintigh from mines that are slated to become NS-served mines, such as Mine 84 on the Ellsworth Secondary just north of the MGA and Powhatan #6 of the Ohio Valley Coal Co., on the River Line in eastern Ohio, will all become joint-line moves under the Applicants' plan. While some of these mines presently are not principal sources of coal for Milliken or Kintigh, they are sources for some spot purchases. In addition, all of these mines bid in competition with NYSEG's current suppliers when portions of NYSEG's coal requirements are put out for competitive bid each year. Making service from those mines joint-line service will pose

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[12] NS would also serve NYSEG's Greenidge and Goudey Stations.

additional operational limitations which may make those mines non-competitive on movements to Kintigh.

By creating new joint-line service to NYSEG, Applicants are inevitably reducing service efficiency to NYSEG. NYSEG has worked hard with Conrail for over fourteen years to optimize efficiency in handling SRC-owned unit trains. Making new joint-line services out of that service will, according to the Primary Application itself and deposition testimony, almost inevitably disrupt service efficiency and increase costs.

B. CSX's and NS's Joint Use Of Certain Trackage Will Hinder Service To NYSEG

The Primary Application requires NS and CSX to share the Youngstown-Ashtabula line and the MGA lines, both line segments that would be used to move coal to Kintigh and Milliken. Because those lines each have limited capacity, the need to share those critical facilities will require tight coordination and cooperation between CSX and NS. I doubt that such coordination can be achieved.

The MGA is, for the most part, single track. The lines comprising the MGA are essentially a pair of long, stub-ended branches, except that CSX has access over the East Branch of the MGA from the south. The west branch of the MGA, comprised of the "Mon Line" and the Waynesburg Branch, extends about 52 miles south from West Brownsville, the point chosen by NS and CSX as the northern terminus of the shared MGA property. The east branch extends about 71 miles south from West Brownsville. The Primary Application calls for NS to own and dispatch the MGA but for CSX to have "equal access" to it. Primary Application, Vol. 1 at 50.

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[13] This device is placed at the rear of the train to monitor air brake pressure at the end of the train and to relay that information to the engineer.

Similarly, the Youngstown-Ashtabula line will be owned by NS and used by CSX under presently-existing trackage rights. CSX/NS-87 at 8-9. A large portion of the line is single main track. The line includes steep grades where current Conrail operations call for the use of helper locomotives. *Id.* Under the Applicants' operating plans, NS will control dispatching on the line. CSX will route unit trains to Kintigh over the Youngstown-Ashtabula line under its trackage rights on that line. CSX/NS-67 at 12-13. NS apparently will use the line for NYSEG trains as well.[14]

NS control and CSX use of the MGA and the Youngstown-Ashtabula line will require a high degree of coordination between the two carriers' operations. Most traffic on the MGA, including apparently all NS traffic, will have to enter and exit the MGA through West Brownsville. NS will stage trains for the MGA at the Shire Oaks Yard, currently used by Conrail for that purpose. CSX, on the other hand, will stage trains for the MGA at Newell Yard, just north of the MGA, at New Castle Yard, seven hours from West Brownsville,[15] and at Cumberland, MD, eleven hours from West Brownsville. CSX/NS-67 at 17. NS, as the dispatcher of the lines, will need to coordinate trains operated by itself and CSX from four different yards onto what are, for the most part, single main, stub-ended branch lines that allow operation in only one direction at a time. Along with projected traffic increases on the MGA,

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[14] Mohan, Depo. Tr. 408-411. *See also* NS train schedules for movements to Milliken, NS-19, Book 4 of 4 at 560, showing train movements from the MGA moving over lines from Rochester, PA to Ashtabula, OH.

[15] All of the CSX train schedules in CSX-21 for transportation from MGA mines, however, show an 8 hour transit time from Newell Yard to New Castle, PA, not 7 hours.

and both carriers' unfamiliarity with the actual operation of the MGA,[16] the potential for unmanageable traffic congestion is high.

Cycle performance of NYSEG trains also is likely to be harmed because carriers' rights, rather than shippers' rights, will affect loading priorities on the MGA. For example, if CSX has a NYSEG train at Newell Yard ready to load and there is a loading slot at an MGA mine which was intended for an NS-handled NYSEG train, if the NS train has been delayed and is not available to load, then NS, which will dispatch the MGA, is likely to dispatch another NS train, one not destined to NYSEG, to load in that spot rather than dispatching the NYSEG/CSX train. Currently, Conrail would dispatch the other NYSEG train to the loading slot because Conrail will earn the revenue regardless of whether a Milligan or a Kintigh train loads. However, with CSX and NS sharing the MGA, NYSEG believes NS would be more likely to move another empty non-NYSEG NS train into that loading spot, in order to retain the rail revenue, rather than moving a NYSEG/CSX train into the loading slot. Therefore, rather than being able to compensate for one NYSEG train being late by loading the other NYSEG train, NS will load someone else's train, causing unnecessary delay to both NYSEG trains.

1. CSX will have special problems serving Kintigh from the MGA

Even though it is slated to be the exclusive rail carrier serving Kintigh, CSX will have special difficulties serving Kintigh from the MGA because of yard limitations and coordination problems. These problems, which are not faced by Conrail today, will hinder CSX from maintaining current cycle performance on SRC-owned equipment destined to Kintigh. Newell Yard, CSX's primary staging point for the MGA and CSX's only staging point in close

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[16] NS stated that it did not utilize current Conrail personnel in developing operating plans for the MGA. Mohan, Depo. Tr. 399-401.

proximity to the MGA, is presently scheduled for upgrading. Even with that upgrading, Newell Yard's limited capacity will adversely affect NYSEG's Kintigh-bound unit trains. Conrail's

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Conrail has been refurbishing Shire Oaks Yard to provide additional capacity for serving the MGA. Conrail's current loaded train volume for this territory averages about 10 trains per day.[20] The CSX operating plan,[21] meanwhile, shows that CSX intends to move 10.8 trains per day between Sinns and Brownsville, PA, the CSX line north of Newell Yard. Assuming half of the CSX trains to be loaded, the CSX volume would be about half the volume handled by Conrail through Shire Oaks Yard presently.

Even though Shire Oaks Yard is much larger than Newell Yard and even though Conrail also had West Brownsville Yard available, Conrail still felt the need to upgrade Shire Oaks Yard to handle MGA traffic. CSX is proposing to handle half of Conrail's volume through Newell Yard, which has far less than half as many tracks as Shire Oaks and West Brownsville Yards. To me, this says that Newell Yard is not adequate to handle the traffic CSX proposes to use it to handle.

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17 *See* CSX-21-CO-004634.

18 *See* CSX-21-CO-004653.

19 *See* Primary Application, Vol. 3A at 335, and CSX/NS-106 at 7-8.

20 *See* CSX-21-P-008208.

21 Primary Application, Vol. 3A at 439.

The inadequacy of Newell Yard will delay cycles on NYSEG's two unit trains serving Kintigh. Because Newell Yard will be undersized, NYSEG trains may be delayed in being staged for the MGA because there is not enough available yard space at Newell Yard. With CSX's nearest alternate staging yard for the MGA - New Castle, PA - being over seven hours and one crew change away from the MGA,[22] the possibility of trains staged there being delayed en route and not arriving in time to fill their loading slot is increased.[23]

In addition, because CSX will have to rely totally on NS to dispatch CSX trains on the MGA, CSX will have less control over the service it can provide than will NS. Applicants' officials agree that they prefer operating their trains on their own tracks because it gives them better control of their assets. Tobias, Depo. Tr. 220-221. To me, this clearly indicates that CSX would expect to be disadvantaged by operating on the NS-owned, NS-dispatched MGA.

Furthermore, CSX's problems serving Kintigh from the MGA will be compounded by CSX trains having to move back and forth between CSX and NS-dispatched lines. On the MGA, CSX will operate under NS dispatch. CSX then will move onto its own lines for the movement from West Brownsville, PA to Youngstown, OH. There, CSX must switch back again to NS dispatch. Moreover, near Youngstown, the CSX trains will need the assistance of helper locomotives,[24] if such assistance is available,[25] adding an additional coordination problem. Finally, at Ashtabula, it will change once more, back to CSX dispatch.

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[22] *See* CSX/NS-67 at 17.

[23] CSX estimated 17 to 21 hours between arrival of a train at New Castle, PA, and placing that train in position for loading at an MGA mine, "assuming no delays in 'staging'." CSX/NS-106 at 8.

[24] *See* CSX/NS-106 at 11-13.

[25] *See* CSX/NS-106 at 11-12.

These changes create difficulties in schedule coordination. For example, while NS can take account of trains operating on its tracks under its control, it will be more difficult for NS to plan to accommodate trains moving from outside NS control into NS dispatched territory. This difficulty creates additional potential for CSX-operated trains to be delayed at these points of control change between the MGA and Kintigh.

2. NS's cumbersome interchange at Ashtabula can delay MGA-origin traffic

NS is not without its problems in operating between Youngstown and Ashtabula. My inspection of Conrail facilities in the Ashtabula area and of related Conrail and NS documents showed that where the Youngstown-Ashtabula line joins the NS Cleveland to Buffalo main line, NS cannot move a Milliken-bound coal train eastbound without blocking one or more road crossings. This includes the probability that the NS main line and perhaps the Youngstown-Ashtabula line would be blocked for a significant period of time.

There is no track structure allowing an NS train northbound on the Youngstown-Ashtabula line to move directly eastbound on the NS Cleveland to Buffalo line.[26] Instead, NS will have to move westbound on the Cleveland to Buffalo main line and onto a siding there.[27] The locomotive then would have to uncouple from the west end of the train and run around, using the main line track, to the east end. Unless NS posts an employee with a spare EOT at the siding to wait for the train's arrival, the train crew will have to move the EOT to the west end of the train, then return to the east end of the train to begin the move toward Buffalo.[28]

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[26] *See* Mohan, Depo. Tr. 396, and NS Lake Division track chart, NS-21-CO-03684.

[27] *See* Mohan, Depo. Tr. 396.

[28] *See* Mohan, Depo. Tr. 397.

This operation would block both roads and the rail lines involved. According to NS track

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within about one tenth of a mile of the western end of the crossing. NYSEG's 130-car unit coal trains would block at least two of these crossings during the entire time that NS was repositioning the EOT and locomotive to head east toward Buffalo. NYSEG's 130-car unit trains are approximately 7,000 feet long, since each of the 130 cars is 53 feet - 1½ inches long, while each locomotive would be about 60 feet long, depending on size and type. Altogether, the train is about 1.3 miles long. Even if the train were moved to the western end of the siding, it still would likely block the two westernmost grade crossings. If stopped further to the east, it could conceivably block up to five crossings at once.

This blockage of at least two grade crossings normally would continue for at least an hour. NS's witness Michael Mohan estimated the time needed at 30 to 40 minutes. Mohan, Depo. Tr. 396-397. That is an absolute "best case" scenario. From my inspection of this area in A[illegible]abula, it appeared to me that the switches to the siding are power switches, controlled by the dispatcher for the track. Therefore, the train crew would have to have the cooperation and virtually the full time attention of the dispatcher to make these movements. The dispatcher would have to align the switches so that the train could enter the siding from the east end and the locomotives could exit at the west end after coming to a halt, setting the brakes, and uncoupling from the train. With the switches set in this position, a train could not pass on the main line. Once the locomotives uncoupled, they would pull out from the siding past the home signal so the dispatcher could realign the switch to allow the locomotives to proceed eastbound to get the

EOT. Then, the engineer would have to obtain permission from the dispatcher to back up along the main line to the west end of the siding, for placement of the EOT on the west end of the train. The engineer would then require permission to proceed east. The locomotives would pull past the home signal for the east end of the siding to allow the dispatcher to realign the switch so that the locomotives could return to the train on the siding. Because the east end of the siding is so close to the Youngstown-Ashtabula line, this movement also would block movement on the Youngstown-Ashtabula line.[29] Once the locomotives were west of the eastbound signal, the dispatcher would possibly realign the switch again to allow trains to pass on the main line while the train crew coupled the locomotives to the east end of the train. After the locomotives were attached and an initial terminal air test was performed, to assure that the brakes were functioning properly, permission would be required from the dispatcher (and perhaps another realigning of the switch) to pull onto the main line and head east.

The purpose of this long explanation is to show that the train crew operations needed to head an NS train east, conducted back and forth over a two-mile section of track, would be quite time consuming. If it was necessary for the locomotives to clear the main line, the time would stretch out even further. And throughout the process, at least two grade crossings, and perhaps both the NS main and the Youngstown-Ashtabula line would be blocked. I think it more reasonable to expect that this operation would take at least 1 to two hours - **time Conrail does not now have to spend** - to complete. The operation would lengthen NYSEG's cycle times, and

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[29] The main line would remain blocked throughout this series of movements. Because NS projects operating over 36 trains per day on this segment, see CSX/NS-54 (errata filing) at 11, the company's ability to tolerate having this line blocked each time NS has to move a coal train eastward from the Youngstown-Ashtabula line is questionable. However, if NS is not willing to have the main blocked, then the movement will take longer because of the need for the locomotives to clear the main line, necessitating realigning the switches at each end of the siding twice each time the locomotives move on and off the siding.

block other traffic, both rail, auto and truck. Moreover, NYSEG's trains would not be unique in needing this extra handling, as at least some of the other 12 to sixteen trains NS projects handling daily on the Youngstown-Ashtabula line[30] would also have to move east from Ashtabula, experiencing this same problem.

The number of train cycles per year that NYSEG receives is critical to the company's operation. Accordingly, NYSEG is greatly concerned with the foregoing problems, each of which can diminish cycle performance on MGA-originated shipments. Should NYSEG lose train cycles as a result of such problems, NYSEG will be injured financially and operationally.

C. Applicants' Projected Transit Times To Kintigh and Milliken Are Unrealistic

I have reviewed the train schedules filed by the Applicants to see what type of service to NYSEG those schedules reflect. While the NS transit times shown on those schedules would be acceptable to NYSEG, if attainable, my experience in working with Conrail tells me that the schedules are wholly unrealistic and were constructed without an adequate understanding of how service to NYSEG is actually provided. In addition, those schedules do not show terminal delays, which often are a large portion of overall transit time.

CSX's schedules do not show any trains to Kintigh. One schedule does show a hypothetical movement from an unspecified MGA mine[31] to Niagara Falls, NY, a point more than 20 miles from Kintigh Station. This move, from an unknown mine to an incorrect destination, has inaccuracy built in from the very start.

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[30] Primary Application, Vol. 3B at 461, as explained by NS witness Mohan at deposition (Mohan, Depo. Tr. 390-394).

[31] Most Kintigh coal presently originates at Consolidation Coal Company's Blacksville mine, near the southern end of the western, Waynesburg Branch of the MGA. Because of tight operational constraints on the MGA as previously discussed, CSX's pro forma operating schedule based on a movement from an unknown mine is highly likely to be inaccurate.

While the overall transit time shown on the CSX pro forma schedule approximately equals Conrail's current transit time to Kintigh, the methodology used to arrive at that transit time appears questionable. For example, CSX applies a two hour layover at several yards along the way - Newell Yard, New Castle, PA, Ashtabula, OH and Buffalo, NY - without any apparent justification. These could be crew change points,[32] although NS schedules to Milliken (NS-19, Book 4 of 4 at 558) **REDACTED** it crew change points. In addition, CSX's procedures for establishing train schedules, CSX-21-P-008205-008206, states that in the absence of direct information, crew change time would be assumed to be 15 minutes. It appears to me, therefore, that CSX simply attempted to set a pro forma schedule to match current Conrail performance, without having any actual knowledge of operating conditions in this service lane.

NS's transit times are at least equally suspect. The transit time NS shows for movements from Blacksville mine to Milliken, NS-19, Book 4 of 4 at 508 and 558, the time CSX shows for its movement to Niagara Falls, despite the fact that Milliken is about 170 miles further from the mines than is Kintigh. NS's hypothetical transit times greatly surpass Conrail's current performance, and again indicate to me a high probability that NS has little understanding of the actual operating conditions in this service lane, as evidenced by the complicated maneuvering described above that NS would have to do to move a train northbound on the Youngstown-Ashtabula line to head eastbound toward Buffalo.[33]

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[32] CSX's response to NYSEG's interrogatories in CSX/NS-67 at 15-16, states that CSX would use three crews to move coal from Newell Yard to Kintigh.

[33] NS's Executive Vice President - Operations, Stephen C. Tobias, stated. "As the plan was developed that was submitted to the Surface Transportation Board, I question whether that development team had a great deal of direct exposure to the Conrail property. . . . To my knowledge, there were no current employees of Conrail [that had anything to do with the development of NS's operating plan.]" Tobias, Depo. Tr. 199-200.

Also, NS shows me **REDACTED** each for four crew changes and a **REDACTED** route for working the train. These times are unrealistic. I am highly skeptical that the NS system averages for these activities approximate these figures. The time involved in a crew change depends largely on the availability of a properly rested crew to take the train. Such crews are not always immediately available. With the Applicants' plans to cut overall numbers of employees as a result of the acquisition, it seems unlikely that the availability of crews will improve under the Applicants' operations.

The Applicants' pro forma schedules do not cover the entire cycle for SRC-owned equipment. CSX schedules do not show the positioning of an empty train for loading at the mine. Like CSX, NS gives no indication how long a train will have to wait to be positioned for loading at an MGA mine, or for that matter, how long after the train is loaded it will have to wait to be dispatched back to the staging yard. That information may be unknown to CSX or NS at present, but its absence shows that NS and CSX's pro forma schedules are not an accurate indication of Applicants' ability to maintain or improve upon current cycle performance for NYSEG.

Two other factors also undercut the reliability of Applicants' pro forma schedules. First, the Applicants are not even coordinating their operating plans. Both Applicants testified that their operating plan teams interfaced essentially only with respect to the Shared Assets Areas. Orrison, Depo. Tr. 34-35; Tobias, Depo. Tr. 202-203. The same may be true of the ongoing efforts of the so-called transition teams. Tobias, Depo. Tr. 212.

Neither NS nor CSX has known what the other was planning, even in areas such as the MGA or the Youngstown-Ashtabula line, where a single operating asset will have to be shared. That is a formula for a disaster such as the current UP merger debacle. Applicants' train

schedules also show a lack of coordinated planning. CSX's witness John Orrison, who led development of the CSX operating plan, stated at deposition, "In terms of their schedules, I can't speak for their schedules because I haven't seen them. They have knowledge that we want to operate trains over those trackage rights from Youngstown to Ashtabula." Orrison, Depo. Tr. 216.

As proof of Mr. Orrison's statement, when errata to the Primary Application were filed, NS's traffic projections for the Youngstown-Ashtabula line jumped 46 percent, from 16.3 trains per day to 23.8 trains per day, almost double the current use of the line. If NS knew that CSX wanted to use the Youngstown-Ashtabula line, they certainly did not know to what extent. *See* Mohan, Depo. Tr. 390-394.

Lack of coordination between the Applicants of this sort could be disastrous for all affected by the proposed transaction. The foregoing example demonstrates that NS, the carrier that is to own and dispatch the Youngstown-Ashtabula line, made a very different assumption about operation of that line than the CSX and NS operating plans, considered together, showed. This is but a single example of the potential for massive lack of coordination between NS and CSX that could create operational nightmares for rail service users like NYSEG, nightmares similar to those that customers of UP are presently suffering.

The train schedules' reliability is further diminished because they supposedly show operations during a "normal year," which means some uncertain date, years in the future. Applicants were unable to state when a "normal year" operation for NYSEG would occur. *See* Tobias, Depo. Tr. 225-226; Mohan, Depo. Tr. 403. Yet the CSX operating plan, Primary Application Vol. 3A at 104-5, states:

> This transaction presents unique operating challenges. In the typical merger scenario, the assets of the acquired company are merged with those of its acquirer and the

two become one company. Since all of the assets of each merging company are under one company's managerial control, there is generally a transition period over which the full integration takes place. On "Day 1," the first day of implementation, each company continues to operate much as it did the day before.

In this transaction, the use and operation of the Conrail assets will be allocated between two acquiring railroads, ... The usual transition period will be accelerated because, upon approval of the Acquisition, Conrail assets will be separated *and Day 1 will be vastly different from the previous day.*" (My emphasis.)

This is exactly what NYSEG fears - that the efficient service that it has worked on with Conrail for years to develop will suddenly become "vastly different" post-acquisition because two railroads, unfamiliar with the practical aspects of operating a huge new property, will find that their theories run afoul of practicalities. While NS and CSX may someday be able to implement their theories, that day probably will, at a minimum, be years away. The years in between could be very costly to NYSEG.

IV. APPLICANTS' INABILITY TO EFFICIENTLY SERVE NYSEG WILL RAISE NYSEG'S COSTS IN OTHER AREAS

NYSEG's generating costs directly determine how much electricity NYSEG can sell. Total fuel costs are a large portion of NYSEG's overall costs, and coal transportation costs are 36 to 40 percent of total fuel costs. Therefore, coal transportation costs must be tightly controlled to maintain NYSEG's ability to market its product. Rail transportation of NYSEG's coal is the only cost-effective, environmentally sound method of transporting the Pittsburgh Seam coals, which NYSEG uses to NYSEG's Kintigh and Milliken plants.

Maintaining the requisite number of train cycles by SRC-owned equipment serving Kintigh and Milliken each year is crucial to controlling coal transportation cost. Because Applicants' proposal threatens to undermine essential cycle performance for NYSEG train sets, SRC is currently holding its 38 railcars that were rendered surplus by the Alliance, and which SRC had planned to sell or lease, to help protect NYSEG against deterioration of cycle

performance threatened by Applicants' operating plans. Should such deterioration occur, as NYSEG expects, NYSEG either would have to make a large capital investment in additional railcars to form another 130-car train set or would have to pay higher per ton transportation charges - **REDACTED** in - for moving coal in railroad-owned equipment.

A. The Transaction Will Require NYSEG To Increase Coal Inventories At Kintigh And Milliken, Adding To Inventory Carrying Costs

In part by working with Conrail on train cycle reliability, NYSEG has been able to reduce its coal inventory carrying costs, particularly at Kintigh. Kintigh currently has a coal stockpile of 60,000 to 80,000 tons, equivalent to 12 to 16 days' burn. Each unit train of coal delivered to Kintigh provides at most 15,300 tons of coal. Kintigh's current coal inventory is probably at or near the minimum advisable coal stockpile for a plant with Kintigh's burn. Inventory must be maintained to guard against interruptions in coal deliveries due to weather, possible miners' strikes, and dumper failures, as well as against rail service interruptions. Should Applicants be unable to maintain Conrail's cycle performance to Kintigh, Kintigh could have to increase its inventory. At an estimated inventory carrying cost of $.50 per ton per month, having to hold merely an additional unit train's worth of inventory at Kintigh to guard against Applicants' service irregularities would cost NYSEG approximately $92,000 per year.[34] Moreover, this is merely inventory carrying cost, not the inflated cost of transporting additional coal in railroad-

[34] Milliken's inventory level is approximately 100,000 tons, or 40 days' burn. Milliken personnel believe this higher inventory level is necessary to guard against potential service interruptions, due in part to the plant's location at the end of the Ithaca Secondary, a relatively long, stub ended branch line which is perceived to be somewhat more vulnerable to washouts or other weather-related closures than is the Lockport Branch, which serves Kintigh. Should Milliken's coal inventory decline because Applicants cannot maintain cycle performance,

owned equipment, given that SRC-owned equipment would be unavailable due to Applicants' inability to keep up with needed cycle performance.

B. The Proposed Transaction Will Require SRC To Maintain Surplus SRC-Owned Equipment In Order To Protect Against Cycle Performance Deterioration

Presently, 390 of SRC's 428 rotary coupler gondola cars are in constant circulation between mines and Kintigh or Milliken. The remaining thirty-eight cars are rarely used at this time, having been rendered essentially surplus by the Alliance agreement. Before the Conrail split-up was announced, it had been SRC's intention to sell or lease those 38 cars. Once the potential effect of the Conrail split-up on service to NYSEG began to clarify, a corporate decision was made that the 38 cars should be retained to protect NYSEG against anticipated service degradation. As previously noted, Applicants presently have no rotary coupler gondola cars of their own and will, post-transaction, each have only a portion of Conrail's current fleet of such cars. This fact only amplifies the necessity for NYSEG to protect itself by retaining this uncommon type of equipment, which the railroads cannot replace.

Each of the 38 surplus cars has a market value of about $10,000 to $12,000. Accordingly, the need to hold these cars in reserve is preventing NYSEG from realizing their value by sale or lease. Again, there is a carrying cost attached to maintaining this surplus inventory similar to the cost of maintaining a larger coal inventory. Viewed another way, this is a lost opportunity NYSEG is currently incurring because of the uncertainties raised by the Applicants' proposal.

Milliken likely would increase its coal inventory. The inventory carrying cost of stockpiling each additional trainload of coal at Milliken would be approximately $76,000 per year.

C. The Transaction May Also Require SRC To Acquire Additional Equipment

The 38 surplus cars SRC has available would not be sufficient by themselves to comprise another unit train large enough to haul the minimum train loading required under NYSEG's current contract with Conrail. If SRC had to add SRC-owned equipment to create additional unit train cycles to make up for Applicants' failure to maintain cycle performance, at least 92 additional cars likely would be needed to make a fourth unit train to haul the tonnage to which NYSEG's current transportation rate contract with Conrail applies. At an estimated present cost of $45,000 per car, this would require a capital expenditure of approximately $4,140,000 by NYSEG and SRC, due merely to Applicants' inefficiency and inability to maintain cycle performance.

SRC's equipment, as currently utilized by Conrail, is fully capable of serving the entire burn requirements of Kintigh and Milliken. Thus, if NS and CSX fail to maintain adequate train cycles and force NYSEG to pay for coal transportation in carrier-owned equipment or to purchase new equipment, that will cost NYSEG money unnecessarily and perhaps compromise NYSEG's ability to sell its product.

V. THERE IS A SOLUTION TO RESOLVE NYSEG'S CONCERNS THAT WOULD NOT INTERFERE WITH THE BENEFITS OF THE ENTIRE TRANSACTION

From an operational point of view, having single carrier access to Kintigh, Milliken, Greenidge and Goudey stations ("the four plants") is the best solution available to give Applicants the opportunity to replicate Conrail's coordinated, seamless cycle and operational performance. Giving NS direct access to Kintigh or giving CSX access to Milliken, Greenidge and Goudey ("the Southern Tier plants") via trackage rights would allow single carrier service at the four plants. Giving NS trackage rights to Kintigh would require only a very limited modification of the plan proposed in the Primary Application. At present it appears that NS also

may be in a better position than CSX would be to maintain cycle performance of SRC's equipment.

The major impediments to Applicants' ability to maintain requisite cycle performance are the creation of two-line hauls and the unrealistic approach Applicants have taken in formulating their operating proposals. Trackage rights cannot cure the latter problem. Only painful experience, mostly painful to NYSEG, could do that.

Allowing NYSEG single carrier service could eliminate some or all of the newly-created two-line hauls. Allowing either CSX or NS to serve the four plants would eliminate the interchanges of unit trains needed to divert a train from Milliken to Kintigh. It also would eliminate the approximately monthly interchange between NS and CSX of the Kintigh train for its run to Milliken.

Giving NS trackage rights to Kintigh seems the simpler and more effective solution. Such trackage rights would be much less extensive in scope than those CSX would need to serve the Southern Tier plants. In addition, NS has direct access to Mine 84 and Powhatan #6, giving single carrier access from those origins, replicating what Conrail now makes available. Granting CSX trackage rights to the Southern Tier plants would not eliminate joint-line routings from Mine 84 and Powhatan #6. Operationally, NS also seems better situated to serve NYSEG. The capacity of its MGA-staging yard and its control of the MGA and the Youngstown-Ashtabula line give it added ability to avoid train delays which could impair operational efficiency of CSX.

CSX service would not be devoid of operational benefit, however. If the transaction is approved, CSX would have the higher capacity line between Ashtabula and Buffalo. The NS line has capacity limitations southeast of Buffalo that could congest a portion of the line that NYSEG trains would utilize. NS's line also has fewer tracks than the line that CSX would

acquire. Also, NS has to make the time-consuming run-around operation at the connection of its Cleveland to Buffalo line at Ashtabula, an impediment which CSX will not suffer and which Conrail does not suffer now.

VI. CONCLUSION

NYSEG's Milliken and Kintigh plants are both among the top six electric generating plants in New York in terms of operational efficiency and cost effectiveness. They also are equipped with pollution control equipment which makes them among the most environmentally-friendly coal-fired generating facilities in the state. Each plant is the primary source of electricity for an assigned region of New York, and produces additional electricity that is dispatched to other utilities to meet demand which they cannot meet or cannot meet as cost-effectively as NYSEG.

NYSEG has no feasible alternative to using rail service to bring coal to Kintigh and Milliken. Therefore, NYSEG has worked extensively with Conrail to develop an efficient rail delivery system that allows effective utilization of SRC-owned equipment hauling all of the coal that Kintigh and Milliken presently need. The Applicants' plans would jeopardize much of that efficiency by creating two-carrier movements out of current single-line service to NYSEG. The Applicants' operating plans also demonstrate an unrealistic approach to serving NYSEG.

While not a complete cure, giving either NS or CSX single carrier access to the four NYSEG plants - Kintigh, Milliken, Goudey and Greenidge - creates at least a greater opportunity for Applicants to replicate the efficiency of service which NYSEG must have. Loss of those efficiencies would be very costly to NYSEG.

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NIAGARA)

I, Gary P. Edwards, being first duly sworn, upon my oath state that I have read the foregoing verified statement and the contents thereof are true as stated.

Gary P. Edwards

Subscribed and sworn to before me this 16th day of October, 1997.

Notary Public

MARGOT E. RANDOLPH
Notary Public, State of New York
Qualified in Niagara County
Registration No. 01RA5074159
My Commission Expires on 3/10/99

My Commission Expires:

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 35)

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

APPENDIX 5

NYSEG-13

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 35)

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

VERIFIED STATEMENT OF NO SIGNIFICANT IMPACT

WILLIAM A. MULLINS
SANDRA L. BROWN
TROUTMAN SANDERS LLP
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202 274-2950 (PHONE)
202-274-2994 (FAX)

ATTORNEYS FOR NEW YORK STATE ELECTRIC AND GAS

September 29, 1997

NYSEG-13

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 35)

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

VERIFIED STATEMENT OF NO SIGNIFICANT IMPACT

My name is Alfred O. Beers and I am a Project Environmental Specialist at New York State Electric & Gas. (NYSEG). I have prepared this Verified Statement in connection with the request under Decision No. 6, served May 30, 1997 in this proceeding, for information concerning the effect of NYSEG's Responsive Application on the environment.

Based on the information available to me at this time, it is my judgment that the rail traffic reasonably likely to be associated with NYSEG's Responsive Application will not result in any significant changes in operations of the lines at issue, as described in the Description of Anticipated Responsive Application submitted as NYSEG-6 in this proceeding on August 22, 1997. The trackage rights transaction requested by NYSEG is only a replacement of current service and does not in any way increase or change the current service on the rail lines at issue. Furthermore, any environmental impact information dealing with the overall result of this control transaction and required by the Board may be obtained from Applicants' environmental documentation.

Pursuant to Decision No. 6, in this proceeding, served May 30, 1997, I certify that the transaction described in NYSEG-6 will not involve changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5). Specifically, I certify that the transaction

described in NYSEG-6 will not involve either the diversion from rail to motor carriage of more than (A) 1,000 rail carloads a year, or (B) an average of 50 rail carloads per mile per year for any part of the affected line (49 C.F.R. § 1105.7(e)(4)) on the one hand, or (A) an increase in rail traffic of at least 100 percent or an increase of at least eight trains per day on any segment of the affected line, (B) an increase in rail yard activity of at least 100 percent, or (C) an increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment (40 C.F.R. § 1105.7(e)(5)), on the other hand. See 49 C.F.R. § 1105.6(c)(2).

The trackage rights transaction proposed in NYSEG's Description of Responsive Application will not result in changes in carrier operations that exceed the above-listed thresholds. In addition, environmental documentation is not normally required for trackage rights transactions. See 49 C.F.R. § 1105.6(c)(4). Therefore, no additional environmental documentation is required for NYSEG's Responsive Application to be filed October 21, 1997. See Decision No. 6 in this proceeding, served May 30, 1997.

Transactions involving trackage rights actions which will not substantially change the level of maintenance of the railroad property are exempt from the historic reporting requirements of 49 C.F.R. § 1105.8(a). See 49 C.F.R. § 1105.8(b)(3). Since the rail traffic reasonably likely to be associated with NYSEG's Responsive Application will not result in any significant changes in operations of the lines at issue, NYSEG does not reasonably believe that the level of maintenance of the railroad property will substantially change. Therefore, a historic report is not required to be filed with NYSEG's Responsive Application to be filed October 21, 1997. See 49 C.F.R. § 1105.8.

VERIFICATION

STATE OF NEW YORK)
) SS.
COUNTY OF BROOME)

I, Alfred O. Beers, being duly sworn, state that I have read the foregoing statement, that I know its contents and that those contents are true as stated.

Alfred O. Beers

Alfred O. Beers

Subscribed and sworn to before me this 26th day of September, 1997.

Maria A. Evans

Notary Public

MARIA A. EVANS
Notary Public, State of New York
No. 4727382
Residing in Broome County
My commission expires Dec. 31, 1998

My commission Expires: 12-31-98

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Verified Statement of No Significant Impact" (NYSEG-13) was served this 30th day of September, 1997, by facsimile transmission to Applicants' representatives, and by first-class mail, postage prepaid, to Judge Leventhal and all parties of record in STB Finance Docket No. 33388.

WILLIAM A. MULLINS
SANDRA L. BROWN
TROUTMAN SANDERS LLP
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202 274-2950 (PHONE)
202-274-2994 (FAX)

ATTORNEYS FOR NEW YORK STATE ELECTRIC AND GAS

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 35)

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

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-- CONTROL AND OPERATING LEASES/AGREEMENTS --

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Thursday, August 21, 1997

Deposition of RAYMOND L. SHARP, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Arnold & Porter, 555 Twelfth Street, N.W., Washington, D.C., 20004-1202, at 10:00 a.m., Thursday, August 21, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

current single-line move. And I agreed with that generalization; that, not knowing all the facts of his movement, it would be likely that a joint-line movement of his coal to those plants in a future contract, without knowing the level of his current contract rate, would generally be higher as a joint-line move than a single-line move.

Q. Okay. Now, do you remember the two of us being in a meeting together in the L'Enfant Plaza Hotel on December 20, 1996, with a lot of other people?

A. Can you be more specific why we were there. Was that a conference?

Q. Conrail at the time and you were trying to merge. And Conrail asked me to set up a meeting with the utility industry so that you and Mr. Dwyer could make a presentation.

A. Now I remember being there.

Q. And do you remember some 20 or 25 utility representatives present at the meeting?

A. I remember a large group.

Q. And do you remember saying to the group that it was your job to charge them the highest rate that you could without losing their

business?

A. I don't specifically remember saying those words. But I would probably use those words, those sound like words I would use.

Q. And that is your understanding of your job?

A. Among many things, yes.

Q. Now, do you remember writing Mr. Murray subsequent to your Deposition Exhibit No. 3?

A. Yes.

MR. McBRIDE: I'll ask the reporter to mark as Deposition Exhibit 4 a letter from Mr. Sharp dated June 18, 1997, to Mr. Murray.

(Sharp Exhibit No. 4 was marked for identification.)

THE WITNESS: Okay. I remember this one.

BY MR. McBRIDE:

Q. Okay. If you remember it, we can move this along. This was about a month, would you agree, after your May 19 letter which is your Deposition Exhibit No. 3?

A. Yes.

Q. And is it a fair characterization of this letter that you were as of the date of the

SHARP

DEPOSITION TRANSCRIPT

PAGE 273

REDACTED

Eastlake and Ashtabula plants?

A. I'm not aware of any general reason why that would not be true on that movement.

Q. Okay. If we could please, could you turn to page 8 of your statement, and it's page 355 of the volume.

A. Okay.

Q. On that page you have a section that refers to more single-line service. Reading down approximately seven lines from the bottom, you have a statement that reads, eliminating interchange handling will significantly reduce transit times for coal shipments, end quote.

Can you try to quantify the significant reduction that you reference there, how much time will be associated with a given interchange; if you had a single interchange on a coal movement, what amount of time are you likely to add to that movement?

A. I cannot be specific because there is a wide range of variables. There are a wide variety of interchanges that we currently use. And the sophistication, the space, the timing, congestion, a lot of factors go into that.

We have in place in some instances a

step-off, step-on interchange, where slowing the train to a stop and getting it back up to speed is the only delay. That would include run through power.

We also have interchanges that take place that for again a variety of reasons I would assume that you would lose at least 24 hours and probably in extreme cases a little bit more than that.

Q. At the risk of asking a question that's difficult to answer, can you quantify or give me a guess as to which is more common and why would one be more common than the other as between the step-on and step-off interchange as opposed to the 24-hour interchange?

MR. ROSEN: There's a couple of questions in there, but why don't you answer as many as you think you can.

THE WITNESS: Well, I mentioned that there are a variety of factors. Among those factors can be the desire of the parties to work together, the lack of desire of the parties in some instances to work together.

I did say and I believe it to be the case that coordinating crews, if one crew goes

off-duty, another crew comes on-duty, there can be unintentional delays in simply getting people there.

Inspection of cars, inspection of the train, making sure you've got air on the train. One carrier is responsible to interchange cars to another carrier, that they're all in good repair and working condition, and occasionally there will be a disagreement over a particular car or an appurtenance to one of the cars.

And fueling, again space, congestion at an interchange point could certainly on one day be heavy, another day be light. You know, I can search and provide others, but those among others are reasons why interchanges can be quick or lengthy.

BY MR. KOLESAR:

Q. Okay. If we could again return to the statement, please. At page 13 and 14 of your statement which is page 360 and 361 of the volume, on page 13 you have a heading letter C, utilities in specific areas will benefit from the acquisition. And, after a brief introduction there, you talk about some of the Centerior plants, two in particular, the Eastlake plant and

BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Monday, August 25, 1997

Deposition of JOHN WILLIAM FOX, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Zuckert, Scoutt & Rasenberger, L.L.P., 888 Seventeenth Street, N.W., Washington, D.C., 20006-3959, at 10:05 a.m., Monday, August 25, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

factors and a lot of variables. So I wouldn't say that one would exclude the other absolutely.

Q. Given that there are no absolutes in this world, Mr. Fox, could you say on a general basis that you would price -- and further assuming as I did in the question that the coal quality is the same and the utility can deal with either producer, generally speaking isn't it a fact that your pricing would be such as to favor your single-line haul over a joint-line movement with CSX?

A. If you look at the entire movement, it's likely that either could compete effectively depending on, you know, how it's set up, proportional or a joint line, joint-line rates. I mean it's possible that it could be competitive.

Generally the single-line movement would be more efficient and, therefore, generally have a more favorable price. But that's not absolute. Other factors can determine the competitive nature of those type arrangements.

Q. But you stated previously that you prefer generally a longer haul?

A. We prefer the arrangement that produces

the best revenue for Norfolk Southern.

Q. And wouldn't that arrangement generally be a single-line haul?

A. I would say generally it would, all things be equal, destinations, equal mileage, it would be the most efficient one -- it would be the most efficient move and would be the one selected.

Q. And it would be priced in a more favorable manner than the joint-line move; isn't that true?

A. In a general sense. But there again I don't think that's an absolute.

Q. If I can refer you to page 272 of your statement, the paragraph at the top of the page, the carryover from the prior page, you state after the transaction is approved, these facilities will be served by two railroads with access to high quality coal. You do have reference to shippers of metallurgical coal and coke in the beginning of that paragraph. Shippers will benefit from the presence of balanced competition by two financially stable comparably sized rail systems able to offer cost-efficient single-line service to these

producer to look for ways to increase the amount of coal that that coal producer delivers to NS-served plants?

A. In certain ways, yes.

Q. Can you name those ways?

A. Helping producers improve facility efficiency from the rail loadout perspective.

Q. But you've never entered into a tri-party agreement?

A. Here again I'm not saying never, but I can't think of one.

Q. You can't recall one. Now, does Norfolk Southern own any interest, either directly or indirectly, in coal mines or coal producing companies?

A. Our Pocahontas Land Subsidiary owns certain coal producing properties and leases those reserves to mine operators on a royalty basis. So that's indirect I think as far as Norfolk Southern is concerned.

Q. And would you say in general that Norfolk Southern would price its services in such a way as to favor those producing companies where Pocahontas Land company has an interest over a non-Norfolk Southern owned?

A. I imagine. I'm just guessing. But I imagine that NS would originate the traffic and turn it over to CSX at Buffalo I think is probably what would happen. But I'm not sure. It could be another arrangement imposed, but that seems to be the most logical.

Q. But under that arrangement that would be a joint-line haul?

A. Yes.

Q. Norfolk Southern does not serve the Somerset plant post-transaction?

A. No.

Q. So wouldn't any coal from a Norfolk Southern-served origin that would be delivered into the Somerset plant be a joint-line movement?

A. Well, some Norfolk Southern origins would have also CSX -- access to CSX.

Q. If Norfolk Southern desired to deliver coal to plant Somerset from a Norfolk Southern-served origin, would it not necessitate a joint-line move into plant Somerset?

A. Yes.

Q. And in general you have testified that a single-line move is generally more efficient

and less costly than a joint-line move?

A. I think that's a general statement.

Q. Is there any reason to believe that general statement would not apply post-transaction for coal to be moved into plant Somerset?

A. That would be subject to negotiation by the utility. And certainly joint-line movements occur on a regular basis.

Q. That wasn't the question, Mr. Fox. The question was do you have any reason to believe that your general statement about single line being more efficient and less costly than joint line would not apply to the plant Somerset situation post-transaction?

A. I believe that the costs are more for a joint-line operation. But that doesn't necessarily mean that the pricing is different.

Q. And why do you say that?

A. A lot of competitive factors enter into that decision.

Q. Is a joint-line haul generally less efficient than a single-line haul?

A. Yes.

Q. And the costs are generally more than a

single-line haul?

A. Yes.

Q. So wouldn't the cost to plant Somerset be more post-transaction?

A. That would follow that logic. But a lot of other competitive factors enter the decision, depending on what the utility in question desires, the supply chain arrangement with a particular coal producer.

Q. Are you familiar with a mine called Powhatan No. 6?

A. I've never been there, but I know in general that it's located in Ohio.

Q. Who receives access to Powhatan No. 6?

A. Norfolk Southern.

Q. And, if plant Somerset post-transaction wanted to buy its coal from Powhatan No. 6, would that not require a joint-line move?

A. Yes.

Q. Would that not be less efficient than a single-line move?

A. Yes.

Q. More costly?

A. Yes.

Q. And is it generally true that Conrail

A. I'll accept that.

Q. If Norfolk Southern saw New York State Electric & Gas' coal deliveries post-transaction as a benefit to Norfolk Southern, would it have been listed in this memorandum?

A. Well, you need to define -- somebody needs to define what benefit means. I mean it's incremental revenue associated with new developments. There is a section that deals with the amount of revenue associated with the Conrail transaction. That certainly is a benefit to Norfolk Southern and a benefit to CSX.

But incremental -- I think this document deals with incremental benefits associated with new market opportunities, not specifically associated with the Conrail core business. So I just think there's a difference.

Q. So, by the absence of New York State Electric & Gas, would you say then that Norfolk Southern does not see New York State Electric & Gas' coal business as a potential for incremental revenue?

A. It doesn't mean that at all. New York State Electric & Gas could have all their utilities base loaded and generating at the

maximum opportunity possible or we could be assuming, you know, normal growth patterns or we could have just simply overlooked it by omission and not considered it properly. This was a guess in a vacuum, if you will, at what we thought might occur at a time when we had absolutely no experience with the market dynamics.

Q. Do you recall at all ever mentioning New York State Electric & Gas in your work papers?

A. I don't recall. I can go through them, I think that's --

Q. No, we don't want to do that. I'm just asking whether or not you recall.

A. I don't. I'm drawing a blank on that.

Q. On page 272 of your testimony, section 5, can you explain to me what you see is a benefit to New York State Electric & Gas as a result of this transaction?

A. In the typical NS-served utility region, where NS and CSX compete vigorously for the utility business, either directly or on the grid so to speak, and with the advent of deregulation, New York State Electric & Gas will have an opportunity to pit Norfolk Southern

a fairly widely accepted expectation under utility deregulation. And some of our generators that we serve use this type of leverage very effectively.

Q. Mr. Fox, wouldn't you say, just because some utility generators that you serve in the Southeast use that leverage, that doesn't mean it's necessarily applicable to New York State Electric & Gas, does it?

A. I think it's applicable to the industry. And I personally believe, without having specific knowledge, that it is applicable to New York State Electric & Gas.

Q. Well, wouldn't the ability to play this leverage that you've described depend a lot upon the generating capacity, unused generating capacity in the plants?

A. That's one option. If that's available, that's an option. If not, the power generated from other neighborhood utilities, other utilities that are connected to the system, New York State Electric & Gas system, and other utilities using other forms of energy production certainly broaden the competitive landscape for power generated.

Q. But my question was that, if New York State Electric & Gas' plants were -- the ability to play the leverage that you've described depends a lot upon the unused generating capacity, would you not -- let me rephrase it.

You said there's two types of leverage, the first leverage is this ability to pit and the second leverage was the ability to buy power. We're focusing on the first leverage. Would that not depend upon the unused generating capacity?

A. Yes.

Q. Would that not depend upon the -- okay.

Now, for the second form of leverage, the ability to buy power, does this ability to buy power depend upon the ability to transmit the power?

A. Yes.

Q. So wouldn't the capacity of the transmission lines be a major factor in whether or not New York State Electric & Gas could utilize this leverage that you've discussed?

A. Yes.

Q. Now, you used **REDACTED** as a utility company that has used the first type of

AFTERNOON SESSION

(1:50 p.m.)

Whereupon,

JOHN WILLIAM FOX,

the witness on the stand at the time of recess, having been previously duly sworn, was further examined and testified as follows:

EXAMINATION BY COUNSEL FOR AMERICAN ELECTRIC POWER SERVICE CORPORATION, ATLANTIC CITY ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, INDIANAPOLIS POWER & LIGHT COMPANY, and THE OHIO VALLEY COAL COMPANY

BY MR. McBRIDE:

Q. Mr. Fox, my name is Michael McBride. I told you earlier, but I'll repeat it just so you're aware of who I'm representing today, American Electric Power, Atlantic City Electric Company, Delmarva Power & Light Company, Indianapolis Power & Light Company, and The Ohio Valley Coal Company.

Mr. Fox, I have spoken to Mr. Sharp already as you may be aware. And he had once publicly described his job as charging the highest rate that he could without losing the customer's business. Would you think that that

description applies to your job as well?

A. That's an oversimplification, but I think there is some element of truth in that, yes.

Q. Now, do you know a Mr. McClellan?

A. Jim McClellan, yes.

Q. He's got a chart, your counsel can show it to you if you like, at page 550 of volume 1 of the application that talks about single-line hauls going to joint-line hauls for coal, coke, and iron ore. Have you seen that table?

A. I read through Jim's statement, but I didn't study the table.

Q. Why don't you take a minute and look at it.

A. I've looked at the table, but I haven't studied it. I'm not sure I understand it.

Q. Well, let me represent to you that Mr. Williams who you see as the source of the table according to Mr. McClellan testified that units, when it comes to coal, are carloads. They may be containers as I understand it if we're talking about container traffic, but for coal it's carloads.

And I'm just interested, without asking

A. Yes.

Q. So you told me earlier, when I asked you about your job, that maybe it was an oversimplification, but there was certainly some truth, in fact, that your job was to charge the highest price you could without losing the business, correct?

A. That's right, I said that.

Q. And you don't know what Conrail is charging today to its customers, even the ones you're going to serve after you complete the acquisition, assuming it's approved, right?

A. Rumor is they do pretty well, that they charge what the market will bear.

Q. But, if that turns out not to be the case, would it be your job to raise those rates?

A. Oh, I would be surprised if it weren't the case. At the first round of negotiations that NS -- when NS negotiates the transportation contracts, we'll evaluate those conditions and try to maximize our revenues.

Q. So, if you find a rate on Conrail that you think can be increased, you will?

A. Yes.

Q. And, in effect, do you remember seeing

single-line service is equated with or expected to produce improved transit times?

A. I'm going to have to read it. I'm assuming that that's right, but I don't know. I better read the thing.

Q. Just read the response to interrogatory 3.

A. And the question is?

Q. And, when you read it, I'll be very candid when I tell you I'm not going to ask you about all these place names in there, all I want you to do is confirm for me that the response implies that single-line service as compared to a prior joint-line move will generally produce more efficient, more timely service?

A. Yes.

Q. Okay. Thank you. So would the converse be true, for Ohio Valley Coal's moves to Eastlake and Ashtabula, or did you mean to testify earlier that, because of either the internal gateways or some special arrangements or because of the switching at the end, that those movements would not be less efficient or take longer than the single-line service today?

MR. ALLEN: Well, there are several

BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Thursday, September 11, 1997

Deposition of JOHN W. ORRISON, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Arnold & Porter, 555 Twelfth Street, N.W., Washington, D.C., 20004-1202, at 10:05 a.m., Thursday, September 11, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

the teams. Approximately 100 people or more were involved.

Q. How much coordination did you have or discussions did you have personally with representatives of Norfolk Southern in the course of developing the CSY operating plan?

A. We had a meeting before we began the development of operating plans to discuss the methodologies in terms of approach and a table of contents because the two plans had to be coordinated for the application to the STB.

Q. When did that meeting take place approximately?

A. I would say sometime in March, early March.

Q. I didn't mean to interrupt your answer.

A. No, that's it. I don't know the exact date, but sometime in March.

Q. Did you meet again periodically throughout the process to compare notes on where you all were, how you were doing?

A. We had one or two other meetings to talk about the coordination of the shared area territories. We had meetings with Conrail

Norfolk Southern, and CSX representatives, consultants, to look at the operations jointly for the shared areas to understand those operations to develop good operating plans.

Q. When did those meetings cease, when was the last time you met with Norfolk Southern regarding the operating plan?

MS. CLAYTON: Regarding the shared assets areas? I believe he testified that those meetings only were with respect to shared asset areas.

MR. DOWD: That's right. He did. Thank you, I appreciate that.

BY MR. DOWD:

Q. With respect to the shared asset areas, when was the last time you met with Norfolk Southern?

A. Approximately Memorial Day, somewhere around the Memorial Day weekend.

Q. I would like you to refer to page 37 of volume 3A. The page references that I make will be to the bottom number, all right, just so we're consistent. Do you have the page?

A. I'm on page 37.

Q. Okay. At the top of the page, you make

of whether it's railroad-owned equipment or private cars?

A. Yes, it would.

Q. Would either of those factors; that is, single-line service or shorter, more direct routes, by themselves individually improve equipment availability?

A. I don't understand what you're asking.

Q. If you had more single-line service on the same length of route, would your cars be more available?

A. I would expect that, if you have the elimination of interchanges and better coordination between carriers, which in this instance a single-line service route providing one carrier would eliminate, you know, switching, handling, delay of the cars.

Q. So that would improve your car availability?

A. Yes.

Q. Are you aware of any documents related to operation on the former Monongahela Railway, can you tell me what documents you're aware of other than the April 8 letter which you referred to previously?

the train over their lines does.

Q. My understanding from various things that you have said earlier today was that your operating plan in terms of how your trains, CSX trains will move has not been integrated or coordinated with NS's plans for its trains at this time; is that correct?

A. In terms of their schedules, I can't speak for their schedules because I haven't seen them. They have knowledge that we want to operate trains over those trackage rights from Youngstown to Ashtabula.

The transition teams are going to work out the details of what are the exact times, windows, slots, these mechanisms that would allow the trains to traverse the tracks efficiently. We are going to work relentlessly with Norfolk Southern to make sure that we meet our performance requirements for the movements of these trains.

Q. When are those things going to be worked out?

A. They're ahead of us in terms of being ready for day one operations. The transition teams will be working it out over this next

BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.

NORFOLK SOUTHERN CORPORATION AND

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-- CONTROL AND OPERATING LEASES/AGREEMENTS --

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Friday, September 12, 1997

Continued deposition of JOHN W. ORRISON, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being previously duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Arnold & Porter, 555 Twelfth Street, N.W., Washington, D.C., 20004-1202, at 9:10 a.m., Friday, September 12, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

Indianapolis Power & Light Company, although I will probably ask a few questions for the other three as well.

First of all we can just begin with first principles, if we may. On 14 of your verified statement, you discuss how the CSX/NS application and transaction will provide for improved single-line service. If you could for me, could you just define or give me a description of what single-line service is.

A. Single-line service is for the purposes of this record and, you know, my definition, it's described as an origin and destination that can be moved by one carrier.

Q. And so joint-line service in your opinion would be service that would be --

A. It would be not called single line, it would be called joint-line or two-carrier line service, it would not have the word single.

Q. So joint-line service in your opinion would be service from the origin to the destination carried by more than one carrier, correct?

A. That's what I've said, yes.

Q. At the top of page 14, the second

paragraph under heading B, you give some reasons why single-line service or you describe why single-line service is better than joint-line service; is that correct?

A. These are some of the examples, yes.

Q. Cup tell me some of those examples, please.

A. Well, they're listed right here in front of you on page 14.

Q. Can you just read them out loud, please.

A. It says it eliminates delay and costs associated with interchanges between carriers, when two railroads interchange cars, crews, and locomotives are usually changed, cars sit on interchange track often waiting for available crews or locomotives, electronic exchange has all but eliminated interchange paperwork, but communications mistakes, particularly data errors, can delay important shipments sometimes for days.

Q. Okay. And you would agree with the first sentence of that paragraph, that single-line service is generally faster, more reliable, and more efficient than joint-line

service?

A. Yes, speaking generally, yes.

Q. On the same page here, next you talk about how single-line service eliminates delays associated with interchanges between carriers. Next to delays you have in parentheses and costs. What is the relationship in your opinion between delays and costs?

A. Well, the example here that the paren is drawing your attention to is that there are costs that can occur also in interchange such as when cars are having to be switched to and from trains into yards, then being switched to another carrier, that loading which is the lading inside the car could be damaged, it creates costs in terms of the movement of the cars. That's an example of costs.

Q. So are we talking internal costs to the railroad?

A. Well, it's costs in terms of, if we damage the shipments that are the customer's shipments, it could be costs that, you know, have to be settled between the railroad and the shipper. And it could be delay of the materials in transit to their destinations in terms of

being in the marketplace for sale.

You know, it could create other downstream costs if those materials were needed for a just-in-time production. So those are some of the examples of costs.

Q. In your opinion who would end up paying those costs?

A. Generally they're going to have to be settled back by the people who cause it. So it would be between the carriers.

Q. So, when you say that generally single-line service eliminates delays, are you suggesting that single-line service is typically, between point A and point B, it would typically be faster than joint-line service between point A and point B?

A. That's what we've been speaking about over the last few minutes, yes.

Q. If I may, on page 50 -- make that 54, I'm sorry, I'm getting my numbers confused, in the second paragraph, under the heading C, where it says coal network, you suggest that after the acquisition CSX will be able to provide single-line service for a greater number of coal consuming markets in the Northeast, Southeast,

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CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Tuesday, August 26, 1997

Deposition of DONALD W. SEALE, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Zuckert, Scoutt & Rasenberger, L.L.P., Suite 700, 888 Seventeenth Street, N.W., Washington, D.C., 20006-3939, at 10:00 a.m., Tuesday, August 26, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

A. Correct.

Q. A large part of your statement is devoted to describing the difficulties of NS and Conrail joint-line service and how NS single-line service would be better. Can you tell me what factors primarily contributed to that?

A. Interchange delays, the interest in supplying equipment at the origin for load on the north-south basis, overall cycle time, inflated cycle times, that increases costs, making rail service less competitive. Probably the factor with the single most impact is inconsistencies with respect to transit time.

Q. And why were there inconsistencies in transit times?

A. A range of factors, from delays at interchange, weather-related problems, crews, power availability, a range of variables that go into providing rail service.

Q. Are these difficulties unique to Conrail?

A. No.

Q. So having joint-line service with CSX would run into some of the same problems?

A. That's a possibility.

Q. A probability?

A. Not knowing the specific lane or gateway we're talking about or particulars, I would say that it's a possibility.

Q. Overall, as a general matter, do you anticipate encountering these various factors at some point, difficulties we'll call them, in dealing with CSX?

A. I don't expect those. They may happen, but I don't expect them.

Q. You spoke of inflated cycle times. What goes into causing that?

A. Added car days or transit time on the load and an even slower handling of the empty returning to the load point or to the gateway back to the load point.

Q. Why do those things occur?

A. Those variabilities, those variables that I mentioned earlier with respect to the interchange delays and other factors.

Q. Your statement refers to eliminating wasted costs of the interchange. What do you mean by wasted costs of the interchange?

A. Car days, for example, where shipments may be delayed at an interchange point for 24

hours. A good example is Hagerstown, Maryland, today, with the interchange between Norfolk Southern and Conrail. With the new Norfolk Southern operating plan, there won't be a physical interchange at Hagerstown, traffic flows through Hagerstown, goes to Harrisburg, and beyond.

Q. So the delay then is the wasted cost of interchange; is that what you mean?

A. If you have a choice of interchanging traffic or flowing the traffic through and keeping it moving without a physical interchange, you eliminate a step in the process. And there's a cost attached to that step.

Q. Okay. So then wasted means work that is necessary if the car is interchanged?

A. That's a fair assessment.

Q. That would be breaking up trains and making up trains and all sorts of yard activities?

A. Yes.

Q. Are those avoidable if there is going to be an interchange?

A. It depends upon the volume available, the regularity of the business, and the lane

itself. For example, it's more highly probable that a unit train operation can avoid that type of delay as opposed to so-called manifest trains that have numerous customers on the train.

Q. But, if a unit train is going to be interchanged, it's still going to have wasted costs of interchange; is that correct?

A. What I was saying is that it has a higher probability of reduced cost at interchange, crew changes, perhaps power change, but no physical handling or classification changes, set-offs, pickups, things like that to so-called traditional yard activity.

Q. So less waste but still a cost which would be incurred in interchange which wouldn't be incurred in single-line service?

A. Unless the interchange point was the equivalent to a crew change point which would take place on single-line service routes.

Q. What steps has NS taken which have been effective in resolving these problems with joint-line service?

A. The industry through the AAR is addressing the concept with some tools and technology and process control called Interline

and allow for improved private equipment utilization?

A. Would you repeat that, please.

Q. Other than eliminating delays in interchange, are there any effects from substituting single-line service for joint-line service that you think would result from this transaction and lead to improved private equipment utilization?

A. With respect to the new routes that Norfolk Southern will have, the eight primary routings, the new routings in conjunction with the Conrail portion of the acquisition, we will have the capability of reducing cycle times beyond interchange; in other words, faster, more direct routes which will benefit private car owners.

MR. EDWARDS: Could we go off the record for a moment.

(Recess.)

MR. REEVES: Back on the record.

BY MR. REEVES:

Q. I hopefully have relatively few questions left.

You at one point in your statement say

that there are advantages to single-carrier responsibility for on-time performance. What are those advantages?

A. Having one party to hold accountable, one party to establish the transit standards, one party to measure against those transit standards, basically the one-party accountability as opposed to having two parties to deal with.

Q. Is it also the case that it's easier for one party to control its own actions than to have to coordinate with another party so that they both achieve a single result?

A. I would think generally that's a correct statement.

Q. Are there economies for a railroad such as NS in handling larger volumes of business for a single shipper?

A. That is a possibility. It's difficult to generalize that without any more parameters than what you have phrased. But rail service is a volume-driven business, a network business. And it would certainly be logical to say that the more volume that a given shipper has from an established set of origins going to an established set of destinations, with rapidity of

single line. The variability in terms of joint-line versus single-line service could be less than that or it could be more than that depending upon the lane, the traffic, how much traffic is involved, the type of traffic, the rapidity of it, and the volume.

Q. Would you say that on average two to four days additional time on a movement of 400 miles, say, would be expected or not unusual in joint-line service versus single-line service?

A. I defer to the answer that I just gave. It depends on the volumes, the rapidity of the business, the lane that it's in, those type of factors. It's difficult to generalize and say that two to four days is generally rule of thumb the differential. It may be less than that, it may be more than that.

Q. Would it be safe to say that you would normally expect a day's delay as a result of interchange?

A. I would be comfortable with that.

Q. All right. Now, referring to a work paper that was marked highly confidential, it talked about the effect on NS's fleet of coal cars having an average one-day increase in

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-- CONTROL AND OPERATING LEASES/AGREEMENTS --

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Friday, September 19, 1997

Deposition of L.I. (IKE) PRILLAMAN, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Zuckert, Scoutt & Rasenberger, L.L.P., Suite 700, 888 Seventeenth Street, N.W., Washington, D.C., 20006-3939, at 10:00 a.m., Friday, September 19, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

service afforded by single-line service. Please explain the relative advantages of single-line or interline or other rail service.

A. Somewhat repeating the quotes that you made, it does give improved -- for the most part and in most instances, it gives you improved service and efficiency.

Q. Can you elaborate on that, in what ways does service and efficiency improve due to interline versus single line?

A. Well, you avoid any prolonged bottlenecks in the interchange of the traffic. You also have direct control over the entire movement which means that you can increase the utilization and efficiency of your equipment.

Q. In your verified statement, in the middle of page 204 or page 10, you discuss the decline in the last number of years in Norfolk Southern's rates as well as it's revenue per ton.

MR. CALDERWOOD: I'm sorry, what page are you referring to?

BY MS. TANENHAUS:

Q. Page 204. You end that paragraph in the middle of page 204 by saying that, without a

is a benefit to NYSEG?

A. It would depend on the number of car sets and factors and origins and cycling. It's not a simple answer. Actually it could be physical indicated by modeling it, but I'm not aware or I can't answer that.

Q. Would you say that the fact that all four of NYSEG's plants currently enjoy single-line service from a single carrier is a benefit?

A. Yes.

Q. After NYSEG's plants are split between carriers, do you believe that this will cause inefficiencies in cycle times?

A. I think any inefficiencies that it's created certainly could be worked on and mitigated through run-through trains and other operating agreements between NS and CSX in order to honor the contracts that we have jointly agreed to do.

Q. Are NS and CSX currently working on issues to honor those contracts in the sense that what you just stated was it will take NS and CSX working together to honor those contracts?

A. In our definitive agreement, we have

from multiple locations to reduce their transportation costs by combining large segments of traffic from various sites and putting the combination out for competitive bid as a package.

Can you explain a lit~le bit further what you mean by that statement?

A. Using volume as leverage in negotiating.

Q. So would you agree that, if a utility has the ability to use a large volume of coal, that there would be an incentive to get a lower price for the delivery of that coal?

A. Generally that would be one of their leverage points, yes.

Q. So would you agree that, if NYSEG's plants are split post-transaction, that they would lose the ability to get sort of a volume discount?

A. Well, it depends how they're dispatching and if they're operating at 100 percent. It's my understanding that the CSX plant dispatches first and the other three dispatch depending on need which does not necessarily mean that you can leverage the

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-- CONTROL AND OPERATING LEASES/AGREEMENTS --

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Friday, September 5, 1997

Deposition of D. MICHAEL MOHAN, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Zuckert, Scoutt & Rasenberger, L.L.P., Suite 700, 888 Seventeenth Street, N.W., Washington, D.C., 20006-3939, at 10:05 a.m., Friday, September 5, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

transition teams.

Q. In other words, right now you don't know exactly how the coal is going to be shipped?

A. With respect to how it would be handled physically, from an operational standpoint, that's correct.

Q. In any event it's your understanding, isn't it, that today the coal is shipped on a single-line haul directly to those two plants?

A. I'm aware that that is a routing option. I don't know of my personal knowledge that that is the routing option that the customer is using today.

Q. It's certainly less efficient, isn't it, to have a two-line haul arrangement as opposed to a one-line transportation as is currently in place?

A. As a generalization, that would be true. It isn't always true.

Q. Are you aware of the manner in which other coal companies are able to or will be able to transport coal to Centerior Energy's plants at Eastlake and Ashtabula after the transaction?

A. Could you repeat the question, please.

Q. Let me try make it a little clearer.

A. That's right.

Q. Are you aware of whether there's been any agreements reached for how CP Draw is going to be handled with respect to NS and CSX?

A. I don't know if any conclusions have been reached.

Q. Does your plan reflect delays or other problems in negotiating CP Draw as a consequence of it being under CSX's control as opposed to NS's control?

A. Could you repeat your question.

Q. Yes. Do you make any assumptions in your operating plan regarding transit times and so forth, do you make any assumptions regarding any delays at CP Draw as a consequence of its position as a choke point and the fact that it will be controlled by your competitor?

A. Only by implication in schedule running times.

Q. But it is accounted for?

A. It is implicit in the running times on schedules through Buffalo on the NS main, not studied but implicit.

Q. I'm not sure I understand the difference.

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-- CONTROL AND OPERATING LEASES/AGREEMENTS --

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Wednesday, September 17, 1997

Continued deposition of D. MICHAEL MOHAN, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being previously duly sworn, taken at the offices of Zuckert, Scoutt & Rasenberger, L.L.P., Suite 700, 888 Seventeenth Street, N.W., Washington, D.C., 20006-3939, at 9:05 a.m., Wednesday, September 17, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

presentations have been completed in this matter?

A. None that I know of.

Q. Would anybody else know if you don't?

A. I wouldn't know if they would.

Q. As a preliminary matter, let me ask you a follow up on something that we dealt with at the end of the day on the 5th, and that was that Mr. Wood was asking you about some apparent inconsistencies in traffic density figures on the Youngstown to Ashtabula line, where it appeared that traffic had been diverted to other routes and, nevertheless, the traffic levels increased on that line. Have you had an opportunity to look into the source of the apparent confusion on that?

A. Yes. I'm not so sure it was a confusion issue. What I am told is that the errata filing which shows the increase in one of the line segments I believe from Youngstown to Ashtabula comes about as the result of incorporating an estimate for CSX movements between Youngstown and Ashtabula.

And the background is that, when the original filing was made, we had no estimate of what the CSX movements might be. And then the

company asked that we prepare one errata filing within 30 days after we had submitted our final work product to correct any errors that we saw at that time. And at that time the CSX movements were estimated, and that accounts I believe for the difference you're alluding to.

Q. Was that sort of thing done with respect to CSX traffic on any other lines that you recall?

A. Wherever we had an estimate for CSX at the time of the filing, we used it. I don't recall any other instances where we may have subsequently included it.

Q. And the time of this preparation of this errata was approximately when?

A. Well, we were asked to prepare it or give our input to it roughly a week after it was filed. And we were told we had 30 days to come up with our recommendations.

Q. So it was filed about June 23 as I recall, is that the date of filing you're referring to?

A. I would have to rely on your recollection.

Q. Okay. But you're talking about filed

with the STB?

A. Yes.

Q. And so approximately five weeks after that, you said seven days after the filing and then you had another 30, so five or six weeks?

A. That's a rough recollection, yes.

Q. Do you know where the traffic data for CSX came from that was incorporated?

A. I don't. That was given to a member of our transportation team.

Q. Did you have any knowledge whether that data is consistent with what is in CSX's operating plan?

A. I don't know.

Q. Well, that jumps me ahead in my questioning a little bit, but let me go ahead and do that at this point. Have you reviewed the CSX operating plan in connection with your participation in this case?

A. I have read it.

Q. Is there anything about it which you think affects what is in the NS operating plan but which has not been accommodated through the errata?

A. Not to my knowledge.

Q. Mr. Mayo was I believe the first person who participated in questioning you on the 5th. And I believe, during the course of that questioning, you told him that the operations of Delaware & Hudson over current Conrail lines were considered in the operating plan based on information from former Conrail employees and information obtained from D&H; is that correct?

A. Yes. It's in specific reference to the Southern Tier, but that's basically correct.

Q. And were trackage rights or was traffic of other carriers similarly considered?

A. Wherever we could. The problem with the consideration of the CSX traffic between Youngstown and Ashtabula is that there was during the base period none to consider. And, until the information was available from CSX, it wouldn't be possible to make an estimate other than from their own process.

In the case of the Southern Tier, there is traffic operating on it. And you can make an estimate of what the foreign carrier movements would be.

Q. Is it your understanding then that the CSX traffic over the Youngstown to Ashtabula line

that was added by way of the errata was traffic that doesn't move now?

A. I don't think that's accurate. My understanding is that CSX has not in recent years used its trackage rights from Youngstown to Ashtabula which were associated with its former Pittsburgh and Lake Erie property. And, with respect to the increment of traffic, I would presume that to be somebody's best estimate from CSX projections of what CSX would do.

Q. Other than CSX and other than D&H, do you know whether traffic that would be operated by other carriers on trackage rights over the new NS was factored into the operating plan?

A. We always tried to wherever we could make a reasonable estimate.

Q. Then would it be your testimony that earlier you told -- I believe you told Mr. Mills that train density figures on page 459 in volume 3B, you were not certain if they included CSX traffic. Is that correct?

A. I don't recall the specific links we were looking at at that time.

Q. Well, unfortunately I guess I don't either. Would it have been Oak Island, between

Q. And that is because that's where CSX would begin its trackage rights over the line that NS proposes to acquire?

A. I believe that's correct.

Q. Have you visited that area?

A. I've been at Rochester, Youngstown, and Ashtabula.

Q. Let me ask you then, with respect to Ashtabula, have you been to the location where the Youngstown to Ashtabula line crosses the NS line which the operating plan says would be the route for traffic to the Buffalo area?

A. Yes, I have been.

Q. Is there at that point a track connection which would allow a northbound train to move directly from the Youngstown to Ashtabula line in an eastbound direction?

A. It would have to be done as it's been done in the past. The connection is in the Southwest quadrant of the Youngstown line. The move is to head through the connection directly into the NS Ashtabula siding, run around the train, and head east.

Q. How long is that likely to take to do that?

A. I would estimate 30 to 40 minutes.

Q. I've heard mention of having to move a marker from one end of the train to another; is that part of that process?

A. It would be, or it at least could be.

Q. Would that be a normal part of that process, do you know?

A. It could be done as well by having another EOT device at the site and having an employee place an additional device on the other end of the train, if you will.

Q. And what type of mechanism would be required to do that?

A. Well, the end of train device could be moved by the train and engine crew with a locomotive or by an employee with a pickup truck.

Q. And would you think that that what I'll term jockeying around the train; that is, moving the end of train device or moving another end of train device and moving the locomotive from one end of the train to the other, is that going to interfere with operations on this line that's supposed to have significantly increased traffic?

A. It may or may not. The move itself

said earlier today that Amtrak trains have priority on NS lines?

A. They do.

Q. And are there Amtrak trains that operate through this particular area we're talking about?

A. Not to my knowledge.

Q. Do scheduled freight trains, by which I mean a train that has a particular departure time from a particular point every day, have priority over unit train movements which may be irregular in their occurrence?

A. They may or may not, it depends upon the commercial and operating circumstances.

Q. And there's no general rule on that?

A. I wouldn't think.

Q. Let me go back to some things that I wanted to cover about input from Conrail into the NS operating plan. You previously stated that Messrs. Wulfhorst and Hatton were on your operating plan team; is that correct?

A. That's right.

Q. And they are both former Conrail employees?

A. That's right.

Q. And you said that Mr. Wulfhorst's prior experience with Conrail had to do with interfacing with passenger operations?

A. Those were some of his duties, yes. He also had line operating experience with the freight operation as well.

Q. And what about Mr. Hatton?

A. Primarily freight. At one point in time, he was general manager of one or more of Conrail's regions.

Q. Do you know if either of them had any particular experience with respect to the area of the MGA to Ashtabula?

A. Mr. Wulfhorst at one time was manager of customer service for Conrail and has an extensive knowledge of the entire freight operation.

Q. No area of specific responsibility in that area that you know of?

A. I believe at one time he was assigned in the Pittsburgh area, but I don't recall whether that included direct responsibilities on the MGA.

Q. You mentioned to Mr. Dowd in the September 5 session that you had had discussions