

with Mr. Brodowski who also was a former Conrail 1 employee. Can you tell me what his involvement 2 3 was? A. Yes. And the spelling for the record 4 is B-r-o-d-o-w-s-k-i. And he was also involved 5 with service planning and as an operating officer 6 7 at Conrail. Q. Now, was he part of the operating plan 8 9 team or not? 10 Yes, he was. Α. Q. But is he an NS employee to your 11 12 knowledge? A. He is under contract to NS directly. 13 Other than these three individuals, did 14 Q. you have other input from Conrail personnel, 15 present or former? 16 A. None that I directly recall at the 17 18 moment. Q. You testified that you had an early 19 meeting in the operating plan development with 20 21 Mr. Orrison of CSX? 22 A. Yes, that's correct. 23 And I believe you also previously Q. stated that CSX personnel were involved in 24 discussions with some portion your operating plan 25

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1 after the acquisition? A. And where you see normal year, then 2 3 normal year as well. Q. But normal year I think you just said 4 5 s beyond year three? A. It's a normal or average year and it 6 would be after all phases of implementation. So 7 that would mean after the third year. 8 9 Q. So then what is in the operating plan is not what we're going to see in year one? 10 Well, to the extent that you see 11 Α. specific allusion to year one anywhere, that's 12 our best guess about what will happen in year 13 14 one. Q. But otherwise, if we don't see that 15 specific allusion, then we're talking about 16 normal year which may be beyond year three? 17 18 A. That's our intent. Q. Will normal year operations depend upon 19 expenditures to change or upgrade facilities? 20 Yes, in part they will 21 Α. Q. Can you tell me, with regard to what I 22 will call the Southern Tier route, by which I 23 mean Cleveland through to Suffern I believe is 24 25 the end point?

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Conrail for Conrail to get with Finger Lakes 1 specifically to get coal shipments to the Dresden 2 3 facility? A. I don't know specifically. I'd like to 4 amend that answer. If the coal comes in via the 5 Southern Tier to the Dresden facility, then no, 6 it would not have to be interchanged. 7 Q. So your understanding is that the 8 Finger Lakes controls the portion on which side 9 10 of Dresden? A. On the north side of Dresden. 11 12 Are you aware of whether the operating Q. plan contemplates a particular path for movement 13 of unit coal trains from MGA origins to NYSEG 14 facilities on or off the Southern Tier; that is, 15 other than West Somerset? 16 A. I don't specifically recall a routing, 17 18 no. Q. If in the work papers there is 19 something which indicates a routing, is that 20 contemplated in the overall product of the 21 22 operating plan? I'm not sure I understand the 23 Α. 24 question. Q. Well, I have two pages labeled 25

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schedules and classifications II. And I guess 1 these are HC marked documents, but I guess 2 everybody signed the highly confidential 3 4 undertaking. So let me ask for these to be marked as 5 6 Mohan Exhibits 13 and 14. (Mohan Exhibit Nos. 13 and 14 7 8 were marked for 9 identification.) THE WITNESS: I have them both. 10 11 BY MR. REEVES: All right. Looking at those, do these 12 Q. indicate a route at least to the Johnson City and 13 14 Ludlowville plants? A. Yes. The implication would be on 15 Exhibit 13, and the route is from West 16 Brownsville to Pittsburgh up the Youngstown line 17 to Ashtabula and thence via the NS main line to 18 Buffalo and the to be controlled Southern to 19 Corning and thence up the Corning sub to 20 Ludlowville. 21 Q. And with respect to movements to 22 Johnson City similar to Buffalo Junction and 23 Corning except different final destination 24 points; is that correct? 25

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1 A. That's correct. I would say, on Exhibit 14, that I'm not certain why Corning 2 would appear as a station. 3 Q. Is Corning beyond Johnson City? 4 That's my recollection. 5 Α. By beyond I mean to the east? 6 Q. 7 Α. No. Excuse me. 8 MR. PLUMP: Can I consult with the 9 witness for a minute. 10 (Witness confers with counsel.) 11 BY MR. REEVES: 12 Binghamton is just to the east. Q. 13 Exhibit 14 appears to be all right. Α. Counsel has refreshed your recollection 14 0. on where Corning is? 15 16 MR. PLUMP: More spacifically where 17 Johnson City is. 18 BY MR. REEVES: 19 Q. All right. Now, do you recognize these 20 documents? A. I recognize the form of the document, 21 22 yes. Q. And are you familiar with the Bates 23 stamp numberings in the lower right-hand corner? 24 A. I can't say that I am, no. 25

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Q. Do you recommize these as work papers
 for the operating plan?

A. They would be that. These are
schedules generated by the operational model
which is run by Multimodal Applied Systems.

Q. And is it then contemplated by the
operating plan, with these being work papers for
the operating plan, that these trains would move
via these routes to these destinations?

10 A. As contemplated in the plan. To 11 understand the process, we're dealing with 12 traffic identified by the traffic witness, then 13 assembled by the operating team into what appears 14 to be a sensible operation. So within that 15 context, yes, they're part of what the operating 16 plan would be.

Q. And by sensible operation, am I correct in understanding that you mean that these routes are believed to be the efficient or most direct routes from West Brownsville to these two locations?

A. Efficient given the traffic as provided
 to us by the traffic witness.

Q. Given these specific moves or given the
overall volumes and flows?

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1 correct?

2 Α. It's a true statement. I'm having difficulty locating it on page 9. 3 4 Q. Well, okay. It's sufficient for my 5 purposes if it's a true statement as far as 6 you're concerned. Does NS have any plans of which you're aware to make investments in assets 7 needed to support performance on the Monongahela? 8 A. If the Shire Oaks facility as expanded 9 by Conrail is not completely finished by the time 10 11 NS assumes control, then certainly NS would intend to complete that, which is, of course, on 12 13 the Mon line but not the Monongahela Railway 14 itself. 15 Q. Is that the point which is contemplated to be the staging point for NS trains going onto 16 the MGA? 17 18 A. That's right. Are you familiar at all with CSX's 19 0. 20 Newell Yard? 21 Α. Somewhat. Do you have an opinion of the relative 22 0. capacity of the Shire Oaks versus Newell Yard? 23 My understanding is CSX has plans to 24 Α. expand Newell which is directly across the 25

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1 does not.

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2 Q. Is it correct that much of the MGA is 3 single track?

A. That's correct.

Q. NS has provided through discovery a
list of track segments ten miles or more in
length owned by NS and over which NS and CSX both
operate. I'm going to read this list, and if you
could tell me if you have any familiarity at all
with any of these lines, West Knoxville to
Chattanooga?

MR. PLUMP: When you say familiarity, do you mean that he has personally seen them or if he knows that they're part of the system? BY MR. REEVES:

Q. Is he at all familiar with the
interface between NS and CSX operations on these
lines. I realize they're current NS lines and,
therefore, not current Conrail properties.
A. I know generally of the line segment

A. I know generally of the line segment
that you're referring to. I know very little
about the interface between CSX and NS on it.
Q. Would the same be true of Greenville,
North Carolina, to Lee Creek, North Carolina?
A. Same answer.

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Α.

No.

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Q. Will it be moderately, mildly, or not
at all difficult to coordinate operations of two
carriers going into the MGA with its single-line
track for the most part than it would be to have
a single carrier?
A. Some coordination would be necessary.

Q. And, on a scale of not at all difficult
9 to effect that coordination, mildly difficult, or
10 very difficult, where would you put it?

A. It's somewhere less than in the middle. Some of the guiding parameters here can't be known in an operating plan filing. Some of the parameters include which carrier will the customer ultimately select and what will the customer's needs be. When that's known, your question could have a better answer.

18 Q. All right. Do you have any reason to think from your preparation of the operating plan 19 20 or from your other railroad experience that there would be any concern by NS in being treated 21 unfairly were it to be operating over CSX track? 22 A. That's a fairly common perception of 23 tenants in the railroad industry. Whether it's 24 borne out by fact or not, that's a common 25

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1	BEFORE THE
2	SURFACE TRANSPORTATION BOARD
3	Finance Docket No. 33388
4	CSX CORPORATION AND CSX TRANSPORTATION, INC.
5	NORFOLK SOUTHERN CORPORATION AND
6	NORFOLK SOUTHERN RAILWAY COMPANY
7	CONTROL AND OPERATING LEASES/AGREEMENTS
8	CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9	RAILROAD CONTROL APPLICATION
10	HIGHLY CONFIDENTIAL
11	Washington, D.C.
12	Tuesday, September 9, 1997
13	Deposition of STEPHEN C. TOBIAS, a
14	witness herein, called for examination by counsel
15	for the Parties in the above-entitled matter,
16	pursuant to agreement, the witness being duly
17	sworn by JAN A. WILLIAMS, a Notary Public in and
18	for the District of Columbia, taken at the
19	offices of Zuckert, Scoutt & Rasenberger, L.L.P.,
20	Suite 700, 888 Seventeenth Street, N.W.,
21	Washington, D.C., 20006-3939, at 10:05 a.m.,
22	Tuesday, September 9, 1997, and the proceedings
23	being taken down by Stenotype by JAN A. WILLIAMS,
24	RPR, and transcribed under her direction.
25	

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that was? Well, let me say, you've talked about the shared asset areas and what input you did and did not have into the development of those.

A. I think it would be accurate to state 4 that, from a philosophical operational 5 perspective, it was my belief that the 6 individuals that were placed from the operating 7 division on the strategic planning team had a 8 clear understanding of the Norfolk Southern 9 operational approach based on their experience 10 and long years of service and their association 11 with the way we do business. 12

From my standpoint my characterization to them was that's how we want to do business on the new Norfolk Southern unless you find practices as you put yourself in a position relative to the Conrail property that appear to be a better practice or a best practices initiative.

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. So there is in my opinion a good measure of Norfolk Southern traditional operating

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practice and philosophy driving the plan. 1 Q. Okay. Were there current Conrail 2 people that had anything to do that you know of 3 with the development of this operating plan? 4 I don't understand your guistion. In 5 Α. the context of current employees of Conrail? 6 7 Q. Right. To my knowledge there were no current 8 Α. 9 employees of Conrail. Q. Okay. Mr. Mohan told us on Friday that 10 two former Conrail employees were hired by 11 Kingsley or were consultants to Kingsley or some 12 relationship and participated in the development 13 of the operating plan. Do you know of any other 14 former Conrail employees who were involved? 15 A. Not that I recall at the moment. 16 There 17 may have been some. Q. Do you have any knowledge of what 18 Messrs. Wulfhorst and Hatton's Conrail background 19 20 was? A. Wulfhorst has an operational background 21 and I believe Hatton does as well, but I can't go 22 beyond that with you, I don't know. 23 Q. So your input into the operating plan 24 was primarily designation of operating people to 25

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meetings. 1

2	Q. Do you recall anything about those
3	meetings, was he asking you for specific input or
4	were you trying to direct him to do something
5	that hadn't been done?
6	A. No, I don't recall directing him to do
7	something that hadn't been done. I really don't
8	recall what the nature of the discussions were.
9	Q. The answer to this may be obvious, but
10	I'll ask you anyway, were any CSX people involved
11	in the development of the operating plan?
12	MR. PLUMP: The Norfolk Southern
13	operating plan?
13 14	BY MR. REEVES:
	BY MR. REEVES:
14	BY MR. REEVES: Q. The Norfolk Southern operating plan.
14 15	BY MR. REEVES: Q. The Norfolk Southern operating plan. A. To the extent that well, first of
14 15 16	BY MR. REEVES: Q. The Norfolk Southern operating plan. A. To the extent that well, first of all the NS operating plan is the NS operating
14 15 16 17	BY MR. REEVES: Q. The Norfolk Southern operating plan. A. To the extent that well, first of all the NS operating plan is the NS operating plan. And there is a CSX operating plan. To the
14 15 16 17 18	BY MR. REEVES: Q. The Norfolk Southern operating plan. A. To the extent that well, first of all the NS operating plan is the NS operating plan. And there is a CSX operating plan. To the extent that there were negotiations attendant to
14 15 16 17 18 19	<ul> <li>BY MR. REEVES:</li> <li>Q. The Norfolk Southern operating plan.</li> <li>A. To the extent that well, first of</li> <li>all the NS operating plan is the NS operating</li> <li>plan. And there is a CSX operating plan. To the</li> <li>extent that there were negotiations attendant to</li> <li>making conclusions relative to the development of</li> </ul>
14 15 16 17 18 19 20	BY MR. REEVES: Q. The Norfolk Southern operating plan. A. To the extent that well, first of all the NS operating plan is the NS operating plan. And there is a CSX operating plan. To the extent that there were negotiations attendant to making conclusions relative to the development of the NS operating plan, yes, there were CSX people
14 15 16 17 18 19 20 21 22	BY MR. REEVES: Q. The Norfolk Southern operating plan. A. To the extent that well, first of all the NS operating plan is the NS operating plan. And there is a CSX operating plan. To the extent that there were negotiations attendant to making conclusions relative to the development of the NS operating plan, yes, there were CSX people involved in that aspect of it. But I'm not aware
14 15 16 17 18 19 20 21 22 23	BY MR. REEVES: Q. The Norfolk Southern operating plan. A. To the extent that well, first of all the NS operating plan is the NS operating plan. And there is a CSX operating plan. To the extent that there were negotiations attendant to making conclusions relative to the development of the NS operating plan, yes, there were CSX people involved in that aspect of it. But I'm not aware of any CSX involvement in determining the
14 15 16 17 18 19 20 21 21	BY MR. REEVES: Q. The Norfolk Southern operating plan. A. To the extent that well, first of all the NS operating plan is the NS operating plan. And there is a CSX operating plan. To the extent that there were negotiations attendant to making conclusions relative to the development of the NS operating plan, yes, there were CSX people involved in that aspect of it. But I'm not aware

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Q. When you say negotiations, do you mean 1 that, in the negotiations such as led up to the 2 final agreement between NS and CSX, that CSX 3 participated in those? 4 A. Well, obviously, to have a negotiation, 5 you have to have two parties. 6 Q. Right. But are you talking about some 7 other negotiation than that? 8 9 Α. No, I'm not. Q. All right. You made a remark to 10 Mr. O'Neill in response to one of his questions 11 about the efficiency of single-line service 12 versus joint-line service. And I wasn't sure 13 that I got exactly what that was because you 14 qualified it a little bit. 15 16 So let me ask it this way, is interline , service necessarily less efficient between the 17 same two points over comparable lengths of haul 18 than single-line service? 19 A. Under certain circumstances, it doesn't 20 21 have to be. Q. Okay. Can you tell me what some of 22 23 those circumstances are? A. I take it your reference is a 24 comparison to strictly single line versus 25

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which you believe would have been relevant to 1 2 developing the operating plan? 3 From an operating standpoint? Α. 4 0. Yes. 5 Α. Yes. The operating plan is based on 1995 6 0. traffic data. Is the change between 1995 and 7 when, if this application is approved, in 1998 NS 8 takes over its portion of the Conrail operation, 9 would you anticipate a significant change in 10 traffic flows in that time frame? 11 A. I can't answer that. From an operating 12 standpoint, that's not a question I can address. 13 Q. By from an operating standpoint, you 14 mean traffic flows are a marketing issue and 15 that's not your area of responsibility? 16 17 A . Exactly. 18 And, to cover what may be obvious, are 0. there any CSX or Conrail people on any of these 19 transition teams to your knowledge? 20 A. To my knowledge there's no CSX 21 involvement. The transition teams may be 22 interacting with members of the current Conrail 23 24 management. Q. From an operating perspective, you may 25

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aware that he is functioning in the transition 1 2 team arena. 3 Q. So then would he be the person who would know whether run-through train agreements 4 post-transaction have been reached? 5 A. He would know what's in the plan. 6 Q. And anything that may have been reached 7 after the plan was printed and any errata were 8 taken care of he wouldn't know about? 9 A. He wouldn't have participated in the 10 process. I really can't testify to what he knows 11 12 or doesn't know. Q. Understood. As an operating person, do 13 you prefer to have your railroad's trains run on 14 15 your railroad's tracks? 16 Α. Yes, sir. 17 Q. Why is that? . . 18 I like to be in control of my own Α. 19 destiny. Q. How does that manifest itself, what 20 21 controls are there? 22 In managing your own property? Α. 23 In using a railroad property. Q. 24 It would manifest itself in Α. maintenance, operating decisions, movement 25

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configuration, service commitments, equipment 1 2 utilization. 3 Q. What do you mean by operating 4 decisions? 5 Practices. Α. Operating rules or dispatch or what? 6 0. 7 Dispatch, rule configuration, safety Α. 8 application. The operating plan projects spending on 9 0. the Southern Tier line; is that correct? 10 11 A. Yes, sir. 12 And do you know where that investment Q. 13 is to be made? 14 On the Southern Tier line. Α. 15 Q. A particular portion? 16 Not specifically. It will be allocated Α. to ties, rail, structure upgrades 17 18 But you don't know --Q. 19 Capacity expansion. Α. 20 I'm sorry, I ran over what you were 0. 21 Capacity expansion you said? saying. 22 Capacity expansion, signal work. Α. 23 But you don't know geographically where Q. 24 that's going to occur? 25 A. I don't think that's been determined

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completed, I'm not sure anybody would be in a 1 position to give you an evaluation of what the 2 project matrix -- production matrix would be. 3 4 It's preliminary. 5 Okay. But the design work has to 0. 6 proceed 7 Α. Exactly. 8 But there may be a gap between the two; Q. 9 is that correct? 10 There may, there may not. Α. 11 Thank you. The operating plan states Q. on page 88, quote, the discussion of operations 12 offered in this volume pertains to normal year 13 operations at the operating entity level unless 14 otherwise noted. Can you explain to me what that 15 16 means? No, I would think that's a question you 17 Α. ę . 18 should refer to Mr. Mohan. Q. Does the phrase at the operating entity 19 level mean anything to you particularly? 20 That would refer me to the terminal or 21 A . 22 division level. 23 Q. You cannot at this point tell me when normal year operations will occur on any 24 particular segment to be acquired? 25

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1 Α. No, sir, I can't. 2 Does the operating plan take into 0. account all trains that are anticipated to 3 operate including, for example, unit coal trains? 4 5 Yes, as far as I know. Α. 6 Does volume purchasing of materials 0. 7 benefit the railroad? 8 It depends on the price. Α. There's not necessarily a benefit to 9 0. purchasing larger volumes? Was that a no? 10 A. I didn't answer. It depends on the 11 12 price, it depends on the material. Q. Do you know of any capital project or 13 plan for the former Monongahela Railway 14 15 property? 16 Say that again, please. Α. Q. Are there capital expenditures on the 17 . . Monongahela Railway property projected in the 18 19 operating plan? 20 Yes, I believe there are. Α. Do you have a sense of what they are? 21 Q. 22 Not specifically. There are some Α. cap-ex considerations for trackage expansion. 23 Q. Can you tell me whether the Monongahela 24 Railway property is generally double track or 25

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## **PAGE 186**

### REDACTED

Re: Procedure for creating schedules for trains

- As much as possible, train schedules from current CSXT and Conrail train profile systems were retained. CSXT train schedules were based on HPO II train schedules pulled April 18, 1997. Conrail train schedules were based on Conrail data system pulled October, 1996. These train schedules will be referred to as the "old train times."
- Actual train running time information was pulled from CSXT systems for all road merchandise trains running in October, 1996. This information will be referred to as the "actual raw running times."
- 3. The HPO II process created tables of recommended intermediate dwell time for specific terminals and subdivisions on the CSXT system for various train activities. This information will be referred to as the "dwell time standards."
- 4. The new post-acquisition CSXT geographic network was obtained from ALK associates. The network contains information including node name and position, link description, length, and impedance.
- 5. Each train from the "actual raw running times" was "flowed" along the geographic network to get a detailed route. Each indicated link on the route accumulated the miles-per-hour was averaged weighted by the number of trains that touched each link in the detailed route.
- Any link that was not touched by trains in the "actual raw running times" file was assigned a default average speed of 18 miles-per-hour.
- 7. ALK associates provided a data file of all trains in the post-acquisition operating plan. Where possible, "old train times" were included in the file. This train will be referred to as the "new train file."
  - 8. Each train in the "new train file" was examined. If the train did not have an origin departure time from the first station, a time was assigned using a non-bunching technique station at the same time.
  - 9. For each from-to pair in the "new train file" the average historical running time was calculated by "flowing" the train on the geographic network. If no running time was available from the "old train times," the average historical running time was used for this train segment.
  - 10. For each station, the train activity was captured. Train

PUDLIC CSX 21 P 008205 activity could be one of: TO activity, crew change only, block pickup only, block setout only, and block pickup and setout. Block activity would always over-rule change activity. The dwell time at each intermediate station was changed to the appropriate dwell time standard. When no standard existed, the following times were used: 15 minutes for crew change, 30 minutes for setout, 45 minutes for pickup, 60 minutes for both.

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CSX 21 P 008206

"loader crew" that loads all trains due to production requirements. Consol has indicated an interest in using mine employees to perform Bailey loading and this possibility should be pursued.

Currently Shire Oaks Yard is being enlarged to provide surge capacity, car/locomotive inspection/repair, and train sizing capabilities for this route. Current loaded train volumes for this territory average 70 to 75 trains per week. Peak volumes at times consistently reach in excess of 80 trains per week with higher forecasts on the horizon.

Largely due to former MGA influence, mine loadings are scheduled and staged at customer request. As these mines have little or no ground storage, trains must arrive at the loadout as determined by mine production. Failure to do so may result in a shut down of underground operations.

The nature of the railroad lines described above, are as follows:

	Double Track TCS
W. Brownsville Yard to Waynesburg (CP 58 to CP 85)	Single Track TCS
Newell(CSX) to W. Brownsville (CP58)	Single Track TCS
Browneyille to I eventer (145 c c	Single Track TCS
Manas Sour Allourante and an an	Single Track DCS
Waynesburg Southern (Waynesburg to Federal Mine)	Single Track DCS
(regeral Mine)	Single Frack DCS

Note - DCS or Manual Block Territory is controlled by Digicon System.

The gross tonnage estimated in the year 1996 on these routes is as follows:

Shire Oaks to Brownsville, Pa.	Conrail	61.66 MGT
Brownsville to Waynesburg, Pa.	Conrail	48.95 MGT
Waynesburg to Bailey Mine (Manor)		
Waynesburg to Lack (WS)	Conrail	27.75 MGT
Brownsville to Rivesville (East Division)	Conrail	19.20 MGT
	Conrail	5.89 MGT
(Trackage Rights)	CSX	Not available
Rivesville to Loveridge Mine	Conrail	4.98 MGT

# PUBLIC

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CSX 21 P 0082

## PAGES 190-218

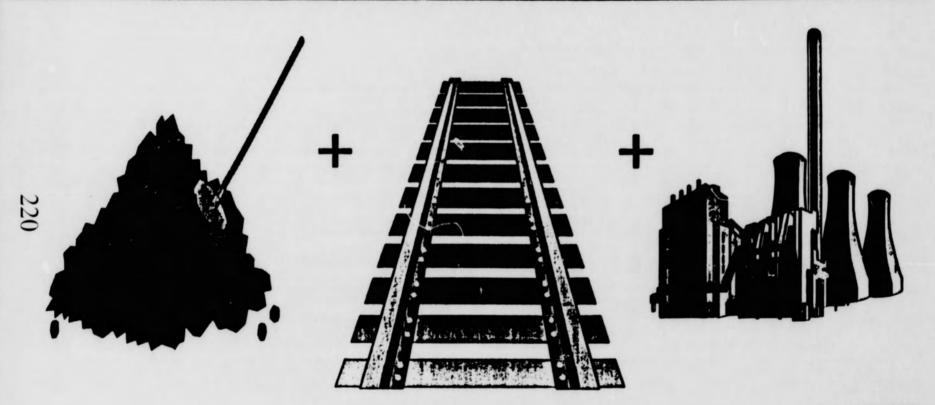
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## Impact Of Energy Policy Act Of 1992

- Shortly after passage, Conrail realized that future utility deregulation would force producers, transporters and generators to form strategic alliances in order to succeed.
- Conrail has embarked on a "partnership" approach with both coal suppliers and endusers.



## **Strategic Relationships Are The Answer To The Three Critical Issues**





CR 01 P 000140

#### 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**

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State	Rail Line Segment					Freight	t Trains p	er Day <sup>2</sup>		
	From	То	Current Operator	Length in Miles	Passenger Trains per Day	Pre- Acqui	Post-	Change	% Change in Gross Ton-Miles	Threshold Exceedances
IL	Colehour	Calumet Park	CR	5	0	1.1	2.5	1.4	125	Air Quality, Noise
	Taylorsville	Granite City <sup>3</sup>	NS	77	0	10.0	15.0	5.0	14	Air Quality
IN	Indiana Harbor	South Chicago <sup>4</sup>	CR	8	16.0	41.1	45.2	4.1	40	Air Quality
OH	Alliance	White	CR	46	2.0	26.4	30.1	3.7	5	Air Quality
	Bellevue	Sandusky Dock	NS	15	0	1.4	11.7	10.3	139	Air Quality, Noise
	Dayton	Ivorydale <sup>5</sup>	CR	48	0	6.9	14.9	8	76	Air Quality, Noise
	Miami	Airline	CR	2	4.0	55.4	64.0	8.6	10	Air Quality, Noise
	Oak Harbor	Miami <sup>6</sup>	CR	22	4.0	48.0	61.5	13.5	21	Air Quality, Noise
РА	Rochester	Youngstown, OH	CR	39	0	12.6	17.7	5.1	18	Air Quality

 Table 1-1

 Summary of Corrected NS Line Segments that Now Meet STB Thresholds for Environmental Analysis

State of rail line segment origin.

Freight trains per day including other railroads' trackage rights operations.

A portion of this segment (Taylorsville to ALS Mitchell) was included in the ER analysis. Due to corrections to the OP, the longer segment listed in Table 1-1 meets the STB air quality threshold for environmental analysis. This Corrected Line Segment is also listed in Table 1-3 of this SER.

<sup>4</sup> A portion of this segment (Indiana Harbor, IN to Colehour, IL) was included in the ER analysis (as rail line segment "Control Pt 501, IN to Colehour, IL). Due to corrections to the OP and to provide consistency with the OP segment, the ER segment was divided into "Control Pt 501, IN to Indiana Harbor, IN" (See Table 1-3) and "Indiana Harbor to South Chicago" (extending beyond Colehour, IL). The Indiana Harbor, IN to Colehour, IL segment was corrected in the OP errata to extend to South Chicago. In the ER the Control Pt 501 to Colehour segment met both the air quality and noise analysis thresholds; the corrected Indiana Harbor to South Chicago segment meets only the air quality analysis threshold.

<sup>3</sup> A portion of this segment (Dayton to Mill) was included in the ER analysis. Due to corrections to the OP, the longer segment listed in Table 1-1 meets both STB thresholds for environmental analysis. This Corrected Line Segment is also listed in Table 1-3 of this SER.

A portion of this segment (Martin to Miami) was included in the ER analysis. Due to corrections to the OP, the longer segment listed in Table 1-1 meets both STB thresholds for environmental analysis. This Corrected Line Segment is also listed in Table 1-3 of this SER.

Section 1 - Introduction

## Table 1-2 Summary of Corrected NS Line Segments that No Longer Meet STB Thresholds for Environmental Analysis

State'	Rail Line Segment			Length	Passenger	Frei	% Change		
	From	То	Current Operator	in Miles	Trains per Day	Pre-Acquisition	Post-Acquisition	Change	in Gross Ton-Miles
GA	Spring	East Point <sup>3</sup>	NS	6	0	6.9	6.2	-0.6	-49
IL	Forest Hill	Landers	NS	1	0	12.9	12.1	-0.7	87

State of rail line segment origin.

<sup>2</sup> Freight trains per day including other railroads' trackage rights operations.

<sup>3</sup> Note: This Corrected Line Segment would experience a decrease in traffic; therefore, it is also listed in Table 1-4. This segment was referred to as "Spring to Industry Yard" in the ER. The name as listed in this Table 1-2 is now consistent with the OP.

 Table 1-3

 Summary of Corrected NS Line Segments that Continue To Meet STB Thresholds for Environmental Analysis

State	Rail Line Segment					Frei	ght Trains p	per Day <sup>2</sup>		T
	From	То	Current Operator	Length in Miles	Passenger Trains per Day	Pre- Acq	Post- uisition	Change	% Change in Gross Ton-Miles	Threshold Exceedances
GA	Spring	Scherer Coal	NS	65	0	27.2	32.9	5.7	11	Air Quality
IL	Taylorsville	Granite City <sup>3</sup>	NS	77	0	10.0	15.0	5.0	14	Air Quality
IN	Butler	Ft Wayne	NS	28	0	13.6	27.3	13.7	99	Air Quality, Noise
	Control Pt 501	Indiana Harbor <sup>4</sup>	CR	1	14.0	43.4	60.3	16.9	39	Air Quality, Noise
NY	Campbell Hall	Port Jervis	CR	30	'3.4	7.9	12.0	4.1	56	Air Quality
	Ebenezer Jct	Buffalo	CR	6	0.	0	11.4	11.4	>1000*	Air Quality, Noise
	Suffern	Campbeli Hall	CR	35	13.4	4.7	-7.7	3	96	Air Quality

Supplemental Environmental Report

CSX/NS-67

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

#### APPLICANTS' RESPONSE TO THE SECOND DISCOVERY REQUEST FROM NEW YORK STATE ELECTRIC & GAS COMPANY

Applicants' hereby respond to the Second Discovery Request from New York State Electric & Gas Company ("NYSEG" or "requester") (NYSEG-4).

#### GENERAL RESPONSES

The following general responses are made with respect to all of the requests and interrogatories.

1. Applicants have conducted a reasonable search for responsive information to respond consistent with the stated objections. Except as objections are noted herein,<sup>2</sup> all responsive information has been or

<sup>1</sup> "Applicants" refers collectively to CSX Corporation and CSX Transportation (collectively, "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"), and Consolidated Rail Corporation and Conrail Inc. (collectively, "Conrail").

<sup>2</sup> Thus, any response that states that responsive documents are being produced is subject to the General Objections, so that, for example, any documents subject to attorney-client privilege or the work product doctrine

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Interrogatory No. 22: Describe in detail and produce all documents referring to the improvements at locomotive shops and car shops at Conway referred to on page 287 of the NS Operating Plan.

22. Subject to the general objections, NS responds as follows:

Details are not available at this time. As stated at page 325 of NS' Operating Plan, NS will first undertake a study to assess the strategic location of shops as related to train operations and to rationalize shop capacity between Bellevus, Conway and Encla.

Interrogatory No. 23: Describe in detail and produce all documents evidencing the anticipated effect upon NYSEG's coal deliveries of planned construction activities upon:

- (a) current delivery schedules;
- (b) operations on the MGA; and
- (c) interchanges with CSX.

23. Subject to their general objections, Applicants will produce responsive documents to the

extent any exist. Subject to the general objections, NS responds as follows:

Details are not available at this time.

Interrogatory No. 24: State the route CSX plans to use to move unit coal trains of 130 cars with 286,000 pound gross weight per car from origins on the MGA to Kintigh.

Subject to the general objections, CSX responds as follows: CSX plans to move coal trains from the mine through Newell Yard then over existing CSX lines

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to Youngstown via McKeesport; from Youngstown to Ashtabula using trackage rights over new NS lines; from Ashtabula to Buffalo and the Kintigh plant over new CSX lines.

Interrogatory No. 25: State the routes NS plans to use to move unit coal trains of 130 cars with 270,000 pound gross weight per car from origins on the MGA to Milliken, Goudey and Greenidge.

25. Subject to the general objections, NS responds as follows:

Details of future service to NYSEG destinations, including routes, schedules, types of equipment, movement of defective equipment, interchange with other carriers (if any), etc., will be determined following discussions with NYSEG.

Interrogatory No. 26: Identify all sidings and passing tracks on the routes identified in your response to the two immediately preceding interrogatories that are capable of accommodating a 130-car unit coal train with appropriate power units.

26. Subject to their general objections, Applicants respond as follows: See Conrail's System Timetable No. 4 and CSX's Baltimore Service Lane Timetable No. 1. Although Norfolk Southern did not identify specific routes in response to the two immediately preceding interrogatories, NS has placed track charts in the depository which provide the information requested.

Interrogatory No. 27: Describe all plans, proposals or schedules to maintain or improve current cycle times to

responsible for resolving any conflicts that may arise between NS and CSX, if the Application is approved, concerning operations on the MGA or on routes Applicants propose to use between that location and Kintigh, Milliken, Goudey and Greenidge.

31. See response to Interrogatory No. 30.

Interrogatory No. 32: Identify the person who will assume the position of Superintendent for the Southern Tier after the acquisition. If this position will be eliminated, describe the manner in which the current job responsibilities will be apportioned.

32. Subject to the general objections, NS responds as follows: NS is unable to identify such person at this time.

Interregatory No. 33: Fully describe each Applicant's plans for its crew headquarters for its operations on the MGA.

33. Subject to the general objections, CSX responds as follows: CSX plans to create a new terminal facility in the Newell area for crews operating trains to and from the mines on the MGA trackage. The facility will also serve as a home terminal for road crews to be used to move the loads and return empties from between the MGA trackage and various terminals. NS anticipates no changes from current Conrail crewing points.

Interrogatory No. 34: Fully describe Applicant CSX's plans for its crew headquarters for its crews handling unit train movements from the MGA to Kintigh.

34. Subject to the general objections, CSX responds as follows: CSX plans to use three crews for its trains operating from its new MGA terminal to the

Kintigh plant. CSX intends to have a crew operate the train from the new MGA terminal in the Newell area to Ashtabula. It is proposed that a Buffalo-based crew will take the train from Ashtabula to Buffalo. From Buffalo, another Buffalo-based crew will take the train to Somerset/Niagara.

Interrogatory No. 35: State as to each Applicant the following:

(a) the number of rotary couple gondola cars owned by or under long term lease (<u>i.e.</u>, a lease having at least five years until its current expiration date) by Applicant;

(b) the amount of such equipment operated by each Applicant which said Applicant is already committed contractually to provide to shipper other than NYSEC,

(c) the amount of rotary couple gondola equipment that each Applicant will dedicate to providing unit train service to NYSEG.

35. Subject to their general objections, Applicants respond as follows:

(a) For CSX, the number is zero. For Conrail,the number is 200. For NS, responsive information willbe provided in a supplemental filing.

(b) For CSX, the amount is zero. For Conrail, the amount is none. For NS, responsive information will be provided in a supplemental filing.

(c) CSX will provide equipment as needed to serve NYSEG. For NS, details of future service to NYSEG destinations, including routes, schedules, types

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of equipment, movement of defective equipment, interchange with other carriers (if any), etc., will be determined following discussions with NYSEG.

Interrogatory No. 36: Fully describe how and where Applicant CSX plans to stage unit trains of 130 cars for loading at points on the MGA.

36. Subject to the general objections, CSX responds as follows: CSX will stage 130-car unit trains at three locations: (1) Newell Yard in PA; (2) New Castle Yard in PA (which is approximately 7 hours from Newell Yard); and (3) Cumberland, MD (which is approximately 11 hours from Newell Yard).

Interrogatory No. 37: Identify and produce all documents and studies relating to why the MGA will not become a Shared Asset Area if the Application is granted.

37. Subject to their general objections, Applicants respond as follows: There are no responsive documents. Other than the April 8 Letter Agreement and the Transaction Agreement, which appear in Volume 8A and Volumes 8B and 8C of the Application, respectively, there are no responsive documents. For further reference, see the Verified Statement of James McClellan at page 514 of Volume 1 of the Application. <u>Interrogatory No. 38</u>: Explain how NS will move a 130car unit train traveling northbound on the Youngstown to Ashtabula line in order to then proceed for an eastbound movement toward Buffalo along track owned by NS.

CSX/NS-87

#### 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

APPLICANTS' RESPONSES TO BESSEMER AND LAKE ERIE RAILROAD COMPANY'S FIRST SET OF INTERROGATORIES AND REQUESTS TO PRODUCE DOCUMENTS (BLE-5)

Applicants<sup>1/</sup> hereby respond to the first set of discovery requests to Applicants

served by the Bessemer and Lake Erie Railroad Company ("BLE" or "Requester") (BLE-5).

### GENERAL RESPONSES

The following general responses are made with respect to all of the requests

and interrogatories.

1 A

<sup>&</sup>lt;sup>1/</sup> "Applicants" refers collectively to CSX Corporation and CSX Transportation (collectively "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS"), and Consolidated Rail Corporation and Conrail Inc. (collectively "Conrail").

### INTERROGATORY NO. 3:

For the tracks owned by Conrail between Youngstown and Ashtabula, Ohio, please state:

- a) The weight of rail for each track;
- b) the type of rail on each track (welded rail, jointed rail, etc.)
- c) The age of rail for each track (when the rail was rolled, and when the rail was laid),
- d) The estimated tonnage which has traversed each track, over the life of the rail;
- e) The system of signals used to govern train movements;
- f) The system used by Conrail to dispatch the track (i.e., track warrants, etc.);
- g) All instructions given to Conrail's dispatchers governing the priority of train movements over the track;
- h) the FRA classification of the track;
- i) the length and car capacity of the passing sidings;
- j) the average transit times between Youngstown and Ashtabula;
- the identity of all parties with trackage or other operating rights over any portion of the line, and the general nature of the rights held by those parties;
- the number of northbound and southbound trains on the line per day; and
- m) the use of Helper locomotives for any portion of the line.

#### **RESPONSE:**

Without waiving any objection, and subject to the General Objections stated above,

Applicants respond as follows:

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As to subparts (a), (b), and (c), Conrail will place responsive documents, if any, in the Applicants' depository.

(d) This subpart cannot be answered because tonnage data is stored by track and not by specific rail. Conrail's records show when rail is placed and its condition as between new or fit (used) but the Company does not keep a record of the tournage over fit rail. Rail life is measured by the "head" wear on the rail using a special train and replaced when necessary according to wear.

(e) The signal system used on this line is TCS ("Traffic Control System"), non-cab signal.

As to subparts (f), (g), (h), (i), and (j), Conrail will place responsive documents, if any, in the Applicants' depository.

(k) CSX Transportation, Inc. has overhead trackage rights on the line.

(1) Numbers of trains by line segment are already provided in the Operating Plan of

NS, in Volume 3B of the Application. Conrail will place additional responsive documents, if any, in the Applicants' depository.

(m) Helpers are used northbound between MP 53-56; southbound, MP 0-4.

### INTERROGATORY NO. 4:

Please identify, in as much detail as is available to Applicants, all changes which Applicants intend or anticipate subsequent to the approval of the Application with regard to the issues raised in the subparts to Interrogatory 3.

#### **RESPONSE:**

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CSX/NS-106

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

#### APPLICANTS' RESPONSES TO THE THIRD SET OF DISCOVERY REQUESTS FROM NEW YORK STATE ELECTRIC AND GAS

Applicants<sup>1</sup> hereby respond to the Third Set of Discovery Requests from New York State Electric and Gas ("NYSEG" or "requester") (NYSEG-12).

#### GENERAL RESPONSES

The following general responses are made with respect to all of the requests and interrogatories.

1. Applicants have conducted a reasonable search for responsive information to respond consistent with the stated objections. Except as objections are

<sup>&</sup>quot;Applicants" refers to CSX Corporation and CSX Transportation (collectively, "CSX"); Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"); and Consolidated Rail Corporation and Conrail Inc. (collectively, "Conrail").

Subject to the general objections, Applicants respond as follows: See response to Interrogatory No. 6. For 1997, Conrail has ordered 1200 rotary couple, Western-style gondola cars. Approximately one-half of the cars have been received and are in service to various coal mines, including ones in the Monongahela Valley. Delivery of the additional cars is expected in 1997. CSX and NS plan to maintain a fleet of cars sufficient to transport all forecasted traffic in the area.

8. To CSX: Please confirm that CSX plans and expects to have completed, prior to June 1, 1998, the upgrades of Newell Yard that are referenced in the response to Interrogatory No. 50 of NYSEG's Second Discovery Requests to Applicants.

Subject to the general objections, CSX responds as follows: CSX plans and expects to have completed, prior to June 1, 1998, the referenced upgrades of Newell Yard.

9. State how many 130-car unit coal trains CSXT will be able to hold simultaneously in Newell Yard after the upgrades to Newell Yard discussed in CSX's operating plan (and identified in response to Interrogatory No. 50 of NYSEG's Second Discovery Requests to Applicants) are completed. State how many other coal trains (specifying sizes thereof) could simultaneously occupy that yard when the maximum number of 130 car unit coal trains are in the yard.

Subject to the general objections, CSX responds as follows: CSXT will be able to hold three 130-car unit coal trains simultaneously in Newell Yard after the upgrades are completed. Two additional trains of up to

105 cars each could simultaneously occupy Newell Yard when the maximum number of 130-car trains are in the yard.

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10. State the amount of time CSX presently expects will elapse between (1) the arrival at New Castle, PA of a 130-car unit coal train intended to be loaded at the following mines located on the MGA and (2) the placement of that train into position for loading at said mines:

(a) Blacksville 2 Mine (at or near Wana, WV)

- (b) Loveridge Mine
- (c) Bailey Mine

(d) Federal 2 Mine (at or near Miracle Run, WV)

Subject to the general objections, CSX responds as follows:

Taking into account normal "meets and passes," yard time, and inspection time, and assuming no delays in "staging":

(a) 20 hours (including inspection time)

(b) 20 hours (including inspection time)

(c) 17 hours (including inspection time)

(d: 21 hours (including inspection time)

11. State whether CSX anticipates staging NYSEG's 130-car unit coal trains that are comprised of equipment owned by SRC at Cumberland, MD for loading on the MGA.

Subject to the general objections, CSX responds as follows: No.

12. State the average size of coal trains presently operated on the MGA.

(b) Because that number depends upon the level of business between the MGA and Ashtabula, OH, which at this time is not known, CSX does not know how many locomotives will be deployed to haul coal trains between the MGA and Ashtabula, OH.

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17.(a) If, as stated in its response to Interrogatory No. 54 of NYSEG's Second Discovery Requests to Applicants, CSX uses two AC locomotive units to move 130-car NYSEG unit trains from Newell Yard to Youngstown, and each car is loaded to 286,000 pounds gross weight on rail, does CSX plan to add locomotive power (through use of pusher or helper locomotives or through some other means) to move such trains over any portion of the Youngstown to Ashtabula segment referred to in its response to Interrogatory No. 24 of NYSEG's Second Discovery Requests to Applicants?

(b) If the answer to part (a) of this Interrogatory is "yes," state where, how and by what person such additional power will be provided, and whether arrangements for provision of such additional power have already been made.

(c) If the answer to part (a) of this interrogatory is not "yes," state whether (to CSX's knowledge) CRC presently adds power to its trains currently moving over the Youngstown to Ashtabula segment referred to in CSX's response to Interrogatory No. 24 of NYSEG's Second Discovery Requests to 'Applicants.

Subject to general objections, CSX responds as follows:

(a) Yes.

(b) Arrangements for the additional power have not yet been made.

(c) Not applicable.

18.(a) Does NSR plan to make pusher or helper loco.notives, or added motive power of any other sort, available to assist in NSR's movements of coal trains over the Youngstown to Ashtabula line segment?

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(b) If yes, state where such units will operate.

(c) State whether such units also will be made available by NSR to assist in movements of CSX unit coal trains (particularly unit coal trains destined to NYSEG'S Kintigh plant that consist of 130 cars each loaded to 286,000 gross weight on rail) over the Youngstown to Ashtabula line segment.

Subject to the general objections, NS responds as follows:

(a) NS is aware that at times Conrail does make pusher or helper locomotives, or added motive power of other sorts, available to assist in its movements of coal trains over the Youngstown to Ashtabula line segment. NS has no present plans regarding this matter, but NS will provide the necessary motive power required to conduct operations over the segment.

(b) See response to subpart (a).

(c) CSX has not made a request of NS regarding the matters set forth in this subpart. NS will consider such a request if made.

19. To Conrail: Describe Conrail's current operations, if any, by which Conrail adds power (by pusher or helper locomotives or otherwise) to trains moving northbound from Youngstown toward Ashtabula on Conrail's line between those points. Include an accurate description of what equipment is used; where it is based; the number of crew members assigned to operate it; over what portion of the Youngstown to Ashtabula line it provides assistance to trains; and the horsepower of the locomotive combinations customarily used by Conrail to move 130-car coal trains of minimum 270,000 pounds gross weight on rail per car. Subject to the general objections, Conrail responds as follows:

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See CSX/NS-87, Applicants' Responses to Bessemer and Lake Erie Railroad Company's First Set of Interrogatories and Requests to Produce Documents (BLE-5), Response to Interrogatory No. 12. As to equipment used for helper service, this varies from time to time depending on what is available. Currently (and typically) Conrail has two SD40-2 locomotives (3000 hp each) assigned to each location (Haselton and Ashtabula). Two-man crews, consisting of an engineman and a conductor, are assigned to each. One-man crews could be used, but two-man crews allow Conrail to switch if needed.

Conrail does move 130-car coal trains between Youngstown and Ashtabula. The locomotive combination (and thus, the total horsepower of those combinations) varies from train to train. For such a train, Conrail normally uses a locomotive combination totalling between 9,000 hp and 12,000 hp (g.g., three 3,000 hp units or three 4,000 hp units). A 130-car coal train behind 12,000 hp would not need help between Youngstown and Ashtabula.

20. To NS: State whether NS will now commit that if NSR is granted trackage rights over the present Conrail lines providing the most direct route from NS's Cleveland to Buffalo line to SRC's line connecting to NYSEG's Kintigh station to operate unit coal trains of

# PAGES 239-242

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#### 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 SUPPLEMENTAL RESPONSE TO NEW YORK STATE ELECTRIC AND GAS' SECOND DISCOVERY REQUEST TO APPLICANTS (NYSEG-4)

Norfolk Southern<sup>1/</sup> hereby serves its supplemental responses to the second set

of discovery requests to Applicants served by New York State Electric and Gas and states as

follows:

Interrogatory No. 35:

State as to each Applicant the following:

(a) the number of rotary couple gondola cars owned by or under long term lease (i.e., a lease having at least five years until its current expiration date) by Applicant;

(b) the amount of such equipment operated by each Applicant which said Applicant is already committed contractually to provide to shipper(s) other than NYSEG;

NS-23

<sup>&</sup>lt;sup>1</sup> "Norfolk Southern" refers collectively to Norfolk Southern Corporation and Norfolk Southern Railway Company

(c) the amount of rotary couple gondola equipment that each Applicant will dedicate to providing unit train service to NYSEG.

Without waiving any objection, and subject to the objections stated in NS' previous response to Interrogatory No. 35, NS supplements its response to subparts (a) and (b) as follows:

- (a) Zero.
- (b) None.

Respectfully submitted,

o G. Que.

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

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September 15, 1997

#### CERTIFICATE OF SERVICE

I, Patricia E. Bruce, certify that on September 15, 1997 I caused to be served by facsimile service a true and correct copy of the foregoing NS-23, Norfolk Southern's Supplemental Response to New York State Electric and Gas' Second Discovery Requests to Applicants (NYSEG-4) on all parties that have submitted to the Applicants a Request to be Placed on the Restricted Service List in STB Finance Dox'ret No. 33388.

Patricia E. Bruce

Dated: September 15, 1997

NYSEG-3

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

# NYSEG'S FIRST DISCOVERY REQUESTS TO APPLICANTS

WILLIAM A. MULLINS JOHN R. MOLM 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

Augus: 13, 1997

8. NYSEG subscribes to the terms of the Protective Order entered by the Board in this proceeding on April 16, 1997, as modified on May 2, 1997. Any information responsive to these discovery requests must be submitted under the Protective Order. If a response or document contains highly confidential commercial or proprietary information, it should be marked "Highly Confidential" consistent with the terms of the Protective Order and such a response or document should not contain any redactions, except for standard privileges, such as attorney/client privilege or attorney work product.

# INTERROGATORIES AND DOCUMENT REQUESTS

1. Identify and produce all contracts between or among any of the Applicants for delivery of coal to any shipper whereby the amount of coal delivered exceeded or is expected to exceed 100,000 tons per year.

2. As to each contract described in your response to Request No. 1, identify all communications, whether written or oral, that discuss or deal with the reason or reasons the railroads entered into such contract, including for each, the names of the participants to the communication, the date, the substance of the matters discussed, and, if there are documents evidencing such communications, produce all such documents.

3. Identify each shipper whose rates have been decreased by any of the Applicants during the time period applicable to these requests. Each Applicant may limit its response to this request to shippers transporting over \$1 million dollars per year or its 50 largest shippers.

4. Identify each Shipper whose contract allows for an increase in rate during the time period applicable to these requests, but whose rates have not in fact increased. Each Applicant may limit its response to this request to shippers transporting over \$1 million dollars per year or its 50 largest shippers.

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5. As to the decisions to decrease or maintain rates described in your responses to Request Nos. 3 and 4, identify all communications, whether written or oral, that discuss or deal with the reason or reasons the Applicant railroad made the decision to decrease or maintain rates, including for each, the names of the participants to the communication, the date, the substance of the matters discussed, and, if there are documents evidencing such communications, produce all such documents.

6. Identify each track line or segment where CSX and NS jointly serve:

(a) a specific origin;

(b) a specific destination: or

(c) a specific shipper.

7. Identify and produce all documents that refer to or relate to CSX and NS's joint service over the tracks identified in your response to Request No. 6.

8. Identify all communications between or among CSX, NS and any shipper regarding service by CSX and/or NS over the lines identified in your response to Request No. 6.

9. As to each communication identified in your response to Request No. 8, state the names of the participants to the communication, the date, the substance of the matters discussed, and, if there are documents evidencing such communications, produce all such documents.

10. Identify all track segments over 10 miles in length owned by CSX (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.

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.

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# **Balanced Rail Competition**

# Norfolk Southern's Commitment To The Customers Of NS/Conrail

Click here for a brief summary of this letter

October 29, 1996

To All Rail Shippers:

Norfolk Southern's Chairman, President and Chief Executive Officer David R. Goode announced NS's \$100 a share tender offer for Conrail on October 23. At the same time he emphasized that NS, in acquiring Conrail, would be receptive to competitive enhancements going far beyond anything envisaged by CSX's stonewall advocacy of the status quo. Specifically, he said that the nation's largest consumer market, the New York/New Jersey area, had been neglected.

Today we want to spell out, for the benefit of customers and communities, exactly how Norfolk Southern would be willing to shape its transaction to improve competition.

Let us say that we provide this outline not entirely out of altruism. In the first place, Norfolk Southern year in and year out is the nation's most efficient railroad and does not fear the impact of balanced competition. In fact, we think we will thrive in that environment. Secondly, we do not read the UPSP decision in the narrow, self-serving, hypertechnical way that CSX does. We read it to say that a region is best served by having two railroads of comparable size and scope competing for the business of customers. So we are willing to act consistently with that interpretation.

These are the principles of balanced competition, the fundamentals of competition in reality and not just in name.

First, balanced competition requires that the competing systems operate with comparable scale and scope, though absolute equality is unnecessary. While one hesitates to apply a mathematical formula, the 70-30 split which would result from a CSX acquisition of Conrail precludes effective competition. NS and CSX now have, respectively, about 45% and 55% shares of their total business. The spread of 10 percentage points is already an advantage for CSX if you credit Conrail -- it said at the time of the announcement that one reason for preferring CSX was its wider market reach. In the West, the respective shares of UP and of BNSF, before the concessions

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to BN, were 53/47. A NS/Conrail combination produces approximately a 60/40 split in the East, clearly preferable to approximately 70/30 with CSX/Conrail. And, applying the principles spelled out here, we are willing to work towards something even closer to an even split than 60/40.

Significant market dominance would exist across all industry sectors with a CSX/Conrail combination. One glaring example is that CSX/Conrail would serve approximately 110 power generating plants and NS would serve only 39.

These are not just numbers. Railroading is a network business with increasing economies of scale. This reality means that if you are much smaller than your competitor, you are competing with a handicap. We can cite case after case in which our system's ability to compete hinged not on its presence in some particular market but on the scope of our network and efficiency of our overall operations.

Perhaps the best example is the most recent. As you may know, with the present rough parity between NS and CSX, we recently won a 12-year contract for Ford's new mixing centers. We were able to give Ford a proposal for NS operation of centers as far west as Kansas City. And, of course, we serve many Ford destinations. Our ability to link all these points on our own rail network clearly appealed to Ford, and Norfolk Southern will ultimately increase its Ford business by approximately 60% as a result.

In short, in addition to the volume efficiencies which permit competitive pricing, our customers are demanding service which only a network of broad scope can provide. Real competition, long-term effective competition, depends on having railroads of comparable scale and scope. NS's acquisition of Conrail will make this goal much easier to achieve than CSX's, because the CSX/Conrail combination produces disparities so much greater than the NS/Conrail combination. Even so, we are willing to work to reduce our 60/40 disparity.

Second. balanced competition requires that the largest markets have service by two railroads. This follows from the previous discussion of balanced, effective competition -- a network cannot compete effectively, cannot meet the demands of customers operating on a global scale, if it does not reach all or most of the most important markets. Our customers do not just ask, can you get me from A to B. They ask, what can you do for my traffic moving between and among A to Z.

This is why Norfolk Southern recognized at the outset that it would have to address the New York/New Jersey port area situation. When the East is served by two railroads, competitive balance without access to the Port is a contradiction in terms. If only one large railroad provides good service to New York (or, in the case of the proposed CSX/Conrail combination, only one big railroad serves Philadelphia, Baltimore. Newark, Wilmington, Charleston, Pittsburgh, Indianapolis, Grand Rapids, and Lordstown), big customers do not really have two viable alternatives. They will

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need to use the railroad which has these big markets to itself.

Speaking more broadly, the port, the big city and the region which lacks a competitive rail infrastructure -- not competition to every station, but competition at and between the largest markets -- suffers a real handicap in the contest for industrial development and economic growth. While one can argue about the chicken and the egg, we offer for your consideration the lack of growth of the Port of New York during the Conrail monopoly epoch compared to the phenomenal growth of the Port of Hampton Roads, served by NS and CSX. Competitive rail service is relevant to growth and development. We have an economy and a rail system grounded on the reality that competition works better than monopoly.

As with the question of size, one hesitates to be too precise in prescribing solutions which may be affected by a host of real world complexities. But we are willing to look at New York and we are willing to look at the major markets defined by the Department of Transportation in 1974 in the process which led to the creation of Conrail. The government did not intend to fortify a rail monopoly in the Northeast. It did intend, as the report just cited and the Final System Plan show, to establish competing systems.

Third, balanced competition requires that each railroad own its own routes to major markets where feasible. At Norfolk Southern, we pride ourselves on the quality of our fixed plant and the efficiency of our operations. Our year-in-and-year-out investment in the maintenance and renewal of our lines, at the highest level in the industry, is the bedrock of our safety record (best in the industry), our efficiency (best of any major railroad), and our highly regarded service. 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. So we have cooperated to build a third main through Cincinnati, which Norfolk Southern owns.

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 unenthusiastic, competing owner did not suffice to give customers the service they wanted.

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Norfolk Southern is not against trackage rights. We utilize them and other facilities coordinations widely. They can work well for "short cuts" and for access over branches of, say, up to 100 miles, solidly anchored on the user's own trunk line. Consider, in connection with BN's existing network, the combination of owned or jointly owned lines, trackage rights, and joint facilities prerogatives gained by BN in UPSP. You can see that contrary to popular understanding, traditional trackage rights were not accepted as a solution there. Furthermore, we are fully aware that circumstances such as tax issues, labor problems, or efficiency (density) considerations may dictate creative alternatives in which a user controls a non-owned line.

Where trackage rights are the best alternative for market access, they should be on the CMA, UPSP model, permitting access to new plants, build-outs, and terminals and other necessary infrastructure.

All that said, a railroad needs, where feasible, to own its own trunk lines to and between major markets. In the context of New York, this means we will be willing to sell a line, and will not play the game of pretending to wish our competitor success over extended trackage rights on lines owned and controlled by Norfolk Southern.

Fourth, balanced competition requires that each railroad have effective terminal access. It does not do you any good to ride the train if you can t get off. A railroad may need yards, intermodal and multi-modal terminals. It should have reasonable access from day one so competition will be a reality, and it should also have the right, where feasible, to build its own terminals.

Now it is much easier to lay out our understanding of what is necessary for effective competition than to bring it about. A host of details and problems can interfere.

We see a clear way through some of them. We will not give any competitor a free ride, but will expect them to pay, on a formula based on revenues and reflecting the costs of the acquisition to NS, for the assets they acquire. If they do not pay a proportionate price, we will not be competing on equal terms.

The last thing we want to comment on is the UPSP decision, on which CSX/Conrail had relied. That decision, as we understand it, is one of the best thought out in the long history of railroad regulation. It shows a grasp of the realities of railway economics and operations -- of the importance of scope and scale for the efficiencies which permit improving service at decreasing rates -- which our regulators have not always had in the past. It says to us that

(a) a third-place railroad like SP, despite the intrinsic value of its routes, could not provide effective competition,

(b) and in fact not even UP could provide competition comparable to the substantially larger BNSF;

(c) customers are best served when two strong railroads of comparable size operate to and between all the major markets in a region;

(d) enhanced trackage rights to particular points, when grounded on a solid infrastructure of lines owned by a railroad already having a presence in the area, can work to provide competition.

The STB decision in UPSP does *not* hold that a 70-30 split, perhaps not even a 60-40 split, is good for rail transportation and the customers who use rail transportation. It was said of the old Romans, they make a desert and call it peace. We would say of CSX/Conrail, they extend a monopoly and call it competition. They would have found cold comfort in UPSP for that kind of grab. Norfolk Southern will acquire Conrail and will apply, as it must, the real message of UPSP. NS/Conrail customers will have competitive alternatives in major markets.

NORFOLK SOUTHERN CORPORATION

The Conrail Transaction

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### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Responsive Application of New York State Electric and Gas" (NYSEG-14) was served this 21<sup>st</sup> 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.

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Attorney for New York State Electric And Gas