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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

B

FINANCE DOCKET NO. 33388 (SUB-NO. 36)

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
TRANSTAR, INC. AND I & M RAIL LINK, LLC
—PURCHASE—
STOCK OF INDIANA HARBOR BELT RAILROAD COMPANY
CONTROLLED BY CONSOLIDATED RAIL CORPORATION

OPPOSITION OF INLAND STEEL COMPANY TO THE RESPONSIVE APPLICATION OF ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, TRANSTAR, INC. AND I & M RAIL LINK, LLC

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DATED: December 15, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
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OPPOSITION OF INLAND STEEL COMPANY
TO THE RESPONSIVE APPLICATION OF
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
TRANSTAR, INC. AND I & M RAIL LINK, LLC

Inland Steel Company ("Inland") hereby files its opposition to the joint Responsive Application of Elgin, Joliet and Eastern Railway Company ("EJE"), Transtar, Inc. and I & M Rail Link, LLC ("IMRL") (collectively "Responsive Applicants") which was filed with the Surface Transportation Board ("STB" or "Board") in the above proceedings on October 21, 1997.

By their Application, the Responsive Applicants have requested authorization to acquire Consolidated Rail Corporation's ("Conrail") 51% stock ownership in the Indiana Harbor Belt Railroad Company ("IHB"), an intermediate switching carrier that operates in and around the Chicago Switching District, including points within north-western Indiana. The Responsive Applicants have further requested that the Board impose the approval of this stock acquisition by EJE and IMRL as a condition to any approval of the Primary Application filed by CSX Corporation, CSX Transportation ("CSX"), Norfolk Southern Corporation, and Norfolk Southern Railway Company ("NS") for common control of Conrail and for the division of Conrail's assets. Approval of the Responsive Application would prevent CSX and NS from acquiring Conrail's 51% ownership in IHB, as proposed under the Primary Application. The Responsive Applicants claim that their acquisition of Conrail's 51% stock ownership in IHB is needed in order to prevent, among other wrongs, anticompetitive harm that would result to intermediate switching carriers, such as EJE and IMRL, that currently compete with IHB to serve shipper facilities, and to shippers that are presently served by both EJE and IHB, where CSX and NS serve in whole or in part as the line-haul carrier.

Inland strongly opposes the Responsive Application. If granted, the Responsive Application would cause Inland direct and substantial competitive harm by effectively eliminating rail competition that currently exists at Inland's Indiana Harbor Works facility, located in East Chicago, Indiana. In essence, a grant of the Responsive Application would result in Inland becoming a "2 to 1" shipper, as more fully explained in the accompanying Verified Statements of Bruce Klimek, Supply Manager of Iron Ore and Raw Material Services for Inland and Randy Garber, a Vice President of A.T. Kearney, Inc. However, should the Board decide to approve the Responsive Application (which Inland strongly contends it should not), then the Board should condition its approval by granting NS trackage rights over lines of the IHB, in order to preserve head-to-head rail competition at Indiana Harbor Works.

I. RAIL SERVICE AT INDIANA HARBOR WORKS

Inland is the sixth largest steel producer in the United States. Klimek V.S. at 1. Inland manufactures cold rolled, coated, motor lamination, special bar quality and alloy bar, and hot rolled steels. *Id.* at 2. Inland relies substantially on rail carriers to serve Indiana Harbor Works, its sole steel-making facility at East Chicago, Indiana, and I/N Tek and I/N Kote, two steel processing and finishing facilities located near New Carlisle, Indiana. I/N Tek and I/N Kote are owned and operated jointly by Inland and Nippon Steel Corporation. *Id.* Inland uses rail transportation to receive inbound raw materials, to distribute finished steel products, and to transfer steel inventories between Indiana Harbor Works and I/N Tek and Kote.

Indiana Harbor Works is presently served directly by two rail terminal switching carriers, the EJE and IHB. Klimek V.S. at 2. Thus, Indiana Harbor Works presently maintains head-to-head rail competition for the movement of products to and from Indiana Harbor Works. Both the IHB and EJE connect to all major trunklines in the Chicago area and originate and terminate significant volumes of traffic from and to Indiana Harbor Works. *Id.* Moreover, the Indiana Harbor Works facility is the largest customer of IHB and, therefore, IHB plays a critically important role in Inland's steel production and distribution operations. *Id.* In fact, IHB is the originating or delivering carrier at Indiana Harbor Works on all work-in-progress inventories moved by Conrail between Indiana Harbor Works and the joint ventures. *Id.* Conrail serves the joint venture facilities directly. *Id.*

The percentage of carload traffic carried annually by IHB and EJE to and from Indiana Harbor Works illustrates the vigorous competition that currently exists between these two carriers. Of the more than 50,000 carloads moving in and out of Indiana Harbor Works (excluding the movement of inventories between Indiana Harbor Works and the joint venture facilities which are solely IHB moves), EJE moves of the cars outbound and of the cars inbound. *Id.* IHB moves of the cars outbound and   of the cars inbound. *Id.* The rates and service for rail transportation received at Indiana Harbor Works also reflect the competitive relationship between EJE and IHB.

The proposal of EJE and IMRL to acquire Conrail's 51% stock ownership in IHB will eliminate the competition presently enjoyed by Inland at its Indiana Harbor Works facility by placing control of the facility solely in the hands of the EJE. Indiana Harbor Works will for all practical purposes become a 2 to 1 shipper.

II. THE RESPONSIVE APPLICATION WILL CAUSE INLAND DIRECT AND SUBSTANTIAL COMPETITIVE HARM AND SHOULD BE DENIED BY THE BOARD

A. The Agency Has Repeatedly Recognized and Addressed Competitive Harm That Results to 2 to 1 Shippers

The STB and its predecessor, the Interstate Commerce Commission ("ICC"), have plainly recognized that serious competitive harm is likely to result in cases where a shipper facility will suffer a reduction in rail transportation providers and, specifically a reduction from two carriers to one carrier, as a result of a merger or control transaction between two or more rail carriers. *Burlington Northern Inc. and Burlington Northern R.R. Co. -- Control and Merger -- Santa Fe Pacific Corp. and the Atchison, Topeka and Santa Fe Ry. Co.*, Finance Docket No. 32549, slip op. at 55 (August 23, 1995) ("*BN/SF*") and *Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Transp. Co., et al.* Finance Docket No. 32760, slip op. at 100 (August 6, 1996) ("*UP/SP*"). In these cases, the agency found that "[t]he determination of competitive harm is more evident where possible routing options on a rail-bound commodity drop from two originating or terminating railroads to one." *Id.* Facilities that are jointly served by two railroads that post-transaction would receive only single carrier service are commonly referred to as "2 to 1 points." The Board and the ICC have been particularly sensitive in evaluating competitive harm at 2 to

1 points and have imposed conditions upon transactions in the past in order to alleviate competitive harm that would result at such facilities. *UP/SP* at 146; *BN/SF* at 63-64. A key determination that is made by the Board in evaluating competitive harm is "will the merger result in increased rates or deteriorated service or both?" *UP/SP* at 100. As demonstrated below and in the accompanying Verified Statement of Mr. Garber, the answer to this question when evaluating the impact of the joint Responsive Application of EJE and IMRL upon Inland is a resounding yes.

B. Inland Will Become a 2 to 1 Shipper If the Responsive Application is Granted

As discussed in Mr. Garber's Verified Statement, the vigorous head-to-head competition that currently exists between IHB and EJE would be eliminated if the Responsive Applicants' request to obtain Conrail's 51% ownership of IHB were granted. A grant of the Responsive Application would in effect cause Inland to become a 2 to 1 shipper, as rail service provided to the Indiana Harbor Works facility would for all practical purposes be controlled by a single rail carrier. As a result, the Indiana Harbor Works facility would suffer a significant reduction in competition which could be expected to have serious adverse consequences on the rail rates and service provided to Inland.

Under the proposal, EJE and IMRL would jointly acquire Conrail's 51 percent share of stock in IHB and the Soo Line Railroad would maintain the remaining 49 percent ownership of IHB. Responsive Application at 6. Based upon representations of the Responsive Applicants, an operating agreement has apparently not yet been created. Klimek V.S. at 3. However, as the Responsive Applicants virtually admit, maintaining an ownership interest in a carrier, even where the interest may not be a majority, will allow the owners to influence the management and operations of the carrier to serve their own vested interests.

Responsive Application at 41. It is ironic that the very concern expressed by EJE and IMRL in the Responsive Application, with respect to the lack of neutrality that would result from the acquisition of Conrail's stock interest in IHB by NS and CSX, would be the precise result to the detriment of Inland, if the Responsive Application were to be granted by the Board.

EJE may argue that, since EJE and IMRL is each obtaining only a 25.5% ownership interest in the IHB (with the Soo owning the other 49%), there is no effective "control" of the IHB by the EJE, and therefore there is still effective two-carrier competition from the EJE and the IHB. But such an argument would completely overlook the real economic interests at work. The EJE and the IMRL, by jointly acquiring the 51% ownership interest in the IHB, will have a very strong economic incentive to maximize the return from their investment. Thus, the interests of the EJE and IMRL will, in that respect, be coincident. If such generalized interest were all that was at issue here, then EJE and IMRL would be no different from investors in any project or firm, anywhere. But here there is more. For here, EJE and IMRL can both maximize their return <u>by having EJE eliminate the competition that EJE now provides to IHB rail service</u>. This can be done by coordinating the 51% interest that EJE and IMRL will have in IHB -- which 51% interest is clearly a controlling interest in the IHB -- with the heretofore separate and competitive pricing practices of the EJE. Thus, EJE and IMRL not only have the generalized <u>motive</u> to maximize their return, but have the <u>means</u> to do so <u>through the EJE's elimination of competitive pricing and service</u>.

The loss of rail competition at Indiana Harbor Works that would result from EJE's and IMRL's joint acquisition of Conrail's 51% ownership in IHB is plainly illustrated by three diagrams included in Mr. Garber's Verified Statement at pages 7-9. These diagrams depict and compare the level of competitive rail service that is presently provided to the Indiana Harbor Works facility with the level of competition that would result if the Responsive Application were either granted or denied, by showing the number of line-haul carriers that IHB and EJE may interchange with in providing service to Indiana Harbor Works under the various scenarios. As is plainly revealed by Diagram 2, if the Responsive Application were to be denied and CSX and NS were to share the ownership of IHB with the Soo Line Railroad, dual rail service at Indiana Harbor Works would be maintained and Indiana Harbor Works and EJE would suffer only a minimal reduction in competitive routing options, where CSX or NS served as the line-haul carrier for the Indiana Harbor Works traffic. Garber V.S. at 8. But despite this reduction, EJE would continue to connect with five other line-haul carriers that handle traffic at Indiana Harbor Works. Whereas, as shown by Diagram 3, if the Responsive Application were to be granted, Indiana Harbor Works would suffer a severe reduction in competition, with all rail service to and from Indiana Harbor Works being effectively controlled by a single rail carrier. *Id.* at 9. The control that EJE would acquire over Inland's Indiana Harbor Works facility if the Responsive Application were granted would enable EJE to direct Inland's selection of line-haul carriers and potentially its suppliers.

C. <u>Inland Will Suffer Rate Increases and Service Deterioration if the Responsive Application is Granted</u>

As stated by Mr. Garber, a transportation consultant with more than 23 years experience in the industry, "ownership of a rail carrier provides the ability to control the operations and pricing strategies of that rail carrier." Garber V.S. at 4. Accordingly, if EJE were to obtain a significant ownership interest in IHB, the only other rail carrier serving the Indiana Harbor Works facility, it would be in a position to control and influence the pricing and service of *all* rail transportation provided to the facility. In that case, it could only be expected that the EJE would exercise its influence in a manner that would serve its own vested interests and not the interests of Inland. The competitive pricing of rail service to Indiana Harbor Works which currently exists would essentially be eliminated as IHB and EJE would be less willing to compete against each other once they share common ownership.

By obtaining an ownership interest in the IHB, the EJE would have every incentive to seek to maximize its profits at the expense of Inland. Garber V.S. at 4-5. This could be accomplished through increases in switching charges or increases in revenue requirements where the EJE obtains a division of a line-haul rate for service provided to Indiana Harbor Works. *Id.* at 5. With the elimination of true rail competition at Indiana Harbor Works, there would be little or no basis for the line-haul carriers to absorb these rate increases or modify their own rate levels. Thus, even where competition between line haul carriers moving Inland's products would continue to exist, Inland would not receive the benefits from such competition, as the EJE could be expected to strive to maximize its profits and retain the benefits of such competition for itself. Garber V.S. at 6. The actual experience of Inland with respect to railroad pricing where competition does and does not exist at the destination confirms the profit maximizing practices of railroads. This experience reveals a wide discrepancy in rail transportation rates, with rates at destinations served by two or more carriers being significantly lower. Garber V.S. at 6.

The natural motivation for EJE to maximize its profits at Inland's expense would be intensified by a desire to recoup the costs incurred to purchase Conrail's existing stock interest in IHB. Garber V.S. at 10. EJE and IMRL are proposing to purchase Conrail's stock interest at fair market value. It would be reasonable to expect that EJE would seek to recover the costs, including any premium, that it may pay to acquire Conrail's IHB stock, from shippers such as Inland that have no rail service alternatives.

In addition to being subjected to substantial rate increases, existing service at Indiana Harbor Works could be expected to deteriorate if the Responsive Application were to be granted. Presently, competition at Indiana Harbor Works provides Inland with efficient and effective service that meets both the needs of Inland and its customers. Existing service levels have been arrived at after careful study and analysis by Inland of its transportation options and in an effort to maximize the benefits of competition that exists at Indiana Harbor Works. The elimination of head-to-head rail competition at Indiana Harbor Works, however, will enable the EJE rather than Inland to dictate the rail service terms and conditions that are provided to Indiana Harbor Works. There would be no forces at work that would prevent the EJE from reducing the level of service presently provided to Indiana Harbor Works.

Accordingly, the competitive harm that would result to Inland's Indiana Harbor Works facility if the Responsive Application is granted would be direct and substantial. Indiana Harbor Works would effectively become a facility that receives direct rail service from only a single carrier. As a result, Indiana Harbor Works would lose all leverage in negotiating rates and service for the movement of its traffic to and from Indiana Harbor Works and would be severely disadvantaged with respect to its competitors in the steel industry. In order to prevent this harm from occurring, the Board must deny the Responsive Application. In the alternative, if the Board were to grant the Responsive Application, it should condition its approval upon the granting of trackage rights to NS over the rail lines of the IHB that access the Indiana Harbor Works facility.[1]

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1 The grant of trackage rights to the NS would preserve two carrier competition at Indiana Harbor Works, with the EJE/IHB as one carrier, and the NS as the other. Of course, service via trackage rights does not and cannot precisely replicate the service that would obtain from a carrier that owns and operates its own rail plant, and so the grant of trackage rights to NS would be a "second best" solution from Inland's point of view, though still far preferable to an unconditioned grant of the Responsive Application.

CONCLUSION

For the foregoing reasons, Inland respectfully requests that the Board deny the joint Responsive Application filed by EJE, Transtar, and IMRL in these proceedings on October 21, 1997 in order to prevent serious anticompetitive harm that would otherwise occur to Inland. In the alternative, Inland requests that the Board condition its approval of the Responsive Application by granting NS trackage rights over the lines of the IHB that access Indiana Harbor Works.

Respectfully submitted,

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December 15, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSITION OF INLAND STEEL COMPANY TO THE RESPONSIVE APPLICATION OF ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, TRANSTAR, INC. AND I & M RAIL LINK, LLC has been served by first class mail, postage prepaid, on all parties of record in this proceeding, this 15th day of December, 1997.

Patrice A. Coachman

Patrice A. Coachman

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

FINANCE DOCKET NO. 33388 (SUB-NO. 36)

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
TRANSTAR, INC. AND I & M RAIL LINK, LLC
—PURCHASE—
STOCK OF INDIANA HARBOR BELT RAILROAD COMPANY
CONTROLLED BY CONSOLIDATED RAIL CORPORTATION

**VERIFIED STATEMENT OF
BRUCE A. KLIMEK**

My name is Bruce A. Klimek. I am the Supply Manager of Iron Ore and Raw Material Services for Inland Steel Company (ISC), which is located in East Chicago, Indiana. I have been employed by ISC since 1976, and have held various legal traffic and purchasing positions during this time. Prior to my current position, I had been Project Manager for ISC's Transportation Strategic Supply Project. My various responsibilities have included extensive involvement in ISC's transportation requirements and with its transportation suppliers, especially with rail carriers.

I am a 1972 graduate of Northern Illinois University. I received a J.D. degree in 1976 from the Valaparaiso University School of Law, and an MBA in 1984 from the University of Chicago.

The purpose of this statement is to describe ISC's facilities and operations and the adverse impact that the responsive application filed by Elgin, Joliet and Eastern Railway Company (EJE), Transtar, Inc. and I&M Rail Link (IMRL), will have upon ISC's Indiana Harbor Works facility.

ISC is the sixth largest steel producer in the United States. The company mines and transports iron ore, makes iron and produces carbon and high-strength, low alloy steels. Its sole steel-making facility is Indiana Harbor Works at East Chicago, Indiana with an annual raw steel-making capacity of six million tons. The company, in joint venture with Nippon Steel Corporation, operates I/N Tek, a cold rolling mill near New Carlisle, Indiana (NCW), with annual steel finishing capacity of one million tons. The company also operates I/N Kote in joint ventureship with Nippon Steel Corporation. I/N Kote, located adjacent to I/N Tek, galvanizes finished steel and has an annual capacity of 900,000 tons.

Indiana Harbor Works occupies approximately 2,400 acres of land on the southern shore of Lake Michigan and employs more than 10,000 individuals. Indiana Harbor Works manufactures cold rolled, coated, motor lamination, special bar quality and alloy bar, and hot rolled steels. The major market for ISC's products are automotive, appliance, and machinery manufacturers and steel service centers throughout the United States and internationally.

Indiana Harbor Works is heavily dependent on rail transportation for its inbound raw materials, its coal and coke requirements, for the distribution of its finished steel products, and for the transfer of steel inventories between Indiana Harbor Works and its joint venture facilities. Indiana Harbor Works is served by two carriers, EJE and the Indiana Harbor Belt Railroad (IHB) in which Conrail (CR) has a 51% equity interest.

Indiana Harbor Works is IHB's largest shipper and IHB is of critical importance to the operations at Indiana Harbor Works and at the joint ventures. IHB connects to all major trunk-lines in the Chicago area and either originates or delivers significant volumes of coal and finished steel from or to Indiana Harbor Works. It is the delivering or originating carrier for all work in progress inventories moved via CR between Indiana Harbor Works and the joint ventures. CR serves the joint ventures directly.

Indiana Harbor Works is also one of EJE's largest shippers. EJE connects to all major trunk-lines in the Chicago area and either originates or delivers significant volumes of furnace coke and finished steel from or to Indiana Harbor Works.

The vigorous competition that exists between IHB and EJE in serving Indiana Harbor Works is demonstrated by the following table, which shows the approximate annual railcar traffic to and from Indiana Harbor Works and EJE's and IHB's respective percentages:

It should be noted in the above table that the nature of the operation between Indiana Harbor Works and I/N Tek & Kote requires that the business be awarded on an all or nothing basis. It would be highly inefficient to utilize two switch carriers at Indiana Harbor Works for this traffic.

The competition provided by these two carriers at Indiana Harbor Works is essential to Indiana Harbor Works' continuing competitiveness in its markets. The EJE, Transtar, IMRL Responsive Application whereby EJE and IMRL would collectively acquire CR's 51% interest in IHB would have the practical effect of turning Indiana

Harbor Works into a "2 to 1" shipper. A serious deterioration in Indiana Harbor Works' ability to secure competitive rail rates and service would result from EJE's involvement in the ownership of IHB, because it would be irrational for IHB to vigorously compete against an owner. The adverse impact on competition at Indiana Harbor Works that would result from the proposed transfer of CR's 51% ownership in IHB to EJE and IMRL is more fully described in the accompanying verified statement of Randall G. Garber.

Recognizing the serious impact that the proposal of EJE and IMRL could have on the ability of ISC to maintain multiple independent and competing direct rail service to Indiana Harbor Works, I have requested information from EJE on the terms and conditions between EJE and IMRL regarding the operation and management control of IHB. However, my requests have not been fulfilled. Rather, EJE personnel have informed me that a formal agreement does not yet exist.

ISC believes it is highly likely that EJE would be positioned to exert controlling influence over the operations and management of IHB because of its more direct interests in the Chicago area. This scenario of EJE ownership of IHB would have direct negative impact on ISC's ability to capture the benefits of line-haul carrier competition that Indiana Harbor Works currently enjoys. In previous discussions with EJE, EJE has maintained that existing line-haul rates offered by the line-haul carrier for Indiana Harbor Works traffic reflect the competition between EJE and IHB. However, if the Responsive Application of EJE and IMRL were granted, EJE would be in a position to capture these economic "rents" as effectively as the single carrier serving Indiana Harbor Works. Further, ISC's ability to retain competitive rail switching service to Indiana Harbor Works would be decimated. Whereas, EJE has previously negotiated directly with ISC in an effort to retain and/or grow its ISC traffic, such negotiations would become irrational given EJE ownership of IHB.

In addition to the effects on rates and service that would most assuredly result, EJE would be positioned to steer Indiana Harbor Works' selection of connecting trunk-line carriers which results in undue influence on Indiana Harbor Works' selection of alternative raw material, coal, coke, steel processing and warehousing suppliers. It would also maintain this influence over Indiana Harbor Works' selection of local suppliers who are served directly by either EJE or IHB, but not both.

<u>**Verification**</u>

BRUCE A. KLIMEK, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

Bruce A. Klimek

Bruce A. Klimek

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

Joanne M. Gruszkowski
Notary Public, State of Indiana
Lake County
My Commission Expires 08/12/99

Joanne M. Gruszkowski

Notary Public in and for the State of Indiana.

Joanne M. Gruszkowski

My Commission Expires August 12, 1999

VERIFIED STATEMENT
OF
RANDALL G. GARBER

Introduction

My name is Randall G. Garber. I am a Vice President of A.T. Kearney, Inc., a global management consulting firm with 63 offices in 33 countries. My office is located at 225 Reinekers Lane, Alexandria, Virginia, 22314. My qualifications are attached as Exhibit RGG-1.

I have been asked by Inland Steel Company ("ISC" or "Inland") to submit this verified statement, commenting on the impact on Inland that would result from Surface Transportation Board ("STB") approval of the joint responsive application of the Elgin Joliet & Eastern Railway Company ("EJE"), Transtar, Inc. and I & M Rail Link ("IMRL"), jointly referred to as "Applicants", in Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Lease/Agreements – Conrail Inc. and Consolidated Rail Corporation and in Finance Docket No. 33388 (Sub-No. 36), Elgin Joliet and Eastern Railway Company, Transtar, Inc., and I&M Rail Link, LLC – Purchase – Stock of Indiana Harbor Belt Railroad Company Controlled by Consolidated Rail Corporation.

In their responsive application, Applicants oppose the acquisition of Consolidated Rail Corporation's ("Conrail") 51 percent share of the Indian Harbor Belt Railroad Company ("IHB") by CSX Transportation, Inc. ("CSX") and Norfolk Southern Railway Company ("NS"). CXS/NS proposed this acquisition as a part of their acquisition of Conrail in Finance Docket No.

33388. Applicants, instead propose that they be permitted to acquire Conrail's 51 percent ownership of IHB.[1]

During 1995 and 1996, A.T. Kearney assisted Inland with a Transportation Strategic Supply Project which evaluated all rail service into and out of each of Inland's facilities. I was the A.T. Kearney officer in charge of that project and, as a result, I am very familiar with Inland's rail transportation requirements and the inbound and outbound rail service provided to Inland by the rail carriers at both of Inland Steel's production facilities. These facilities are the Indiana Harbor Works ("IHW"), located at East Chicago, Indiana, where hot rolled and cold rolled steel are manufactured, and I/NTek and I/NKote, located at New Carlisle, Indiana, where cold rolling and finishing operations are performed.

The Transportation Strategic Supply Project included identifying alternative transportation options to Inland's existing rail service and supporting rail rate and service negotiations with nearly every rail carrier providing services to Inland. Our negotiating strategy included a carefully planned and executed strategy to maximize the benefits of the competitive market forces available to Inland.

A significant component of the competitive environment for rail service to Inland is the fact that Inland's IHW facility is currently served directly by two rail terminal switching companies, EJE and IHB. These two carriers each connect with numerous line-haul carriers serving the Chicago area, and their head-to-head competition plays an important role in Inland's ability to achieve competitive rail prices. As described in the accompanying verified statement of Bruce A. Klimek, the EJE and IHB combined handle approximately 65,000-70,000 carloads

[1] IHB is jointly owned by Conrail and Canadian Pacific Railroad Company ("CP"), with Conrail owning 51 percent

annually from or to Inland's IHW facility, making Inland the IHB's largest customer and one of the EJE's largest customers.

In my opinion, approval of Applicants' responsive application will result in a significant reduction in the competitive forces available to Inland for all rail shipments into and out of IHW. This competitive erosion occurs because Inland's IHW facility would, for all practical purposes, become a single rail carrier-served facility; i.e., Inland would become a "2 to 1" shipper at IHW. As a result of this serious competitive erosion of its critical rail service at IHW, Inland strongly opposes Applicants' acquisition of the IHB.

To maintain Inland's current competitive situation for its IHW rail service, head-to-head competition among railroads **directly** serving the plant must be preserved. I believe this competitive situation is best preserved by denying Applicants' acquisition of the IHB. However, if the STB were to approve Applicants' acquisition of the IHB, I believe the STB must impose conditions on the acquisition. To maintain Inland's existing rail competitive environment, an appropriate condition would include providing NS **direct** access to IHW via trackage rights over the IHB lines acquired by Applicants.

The remainder of my statement describes the reasons for the reduction in the competition available to Inland that would result from Applicants' acquisition of IHB and the implication of reduced competition. Ironically, the underlying nature of the negative impact on Inland is very much the same as that claimed by Applicants' in their responsive application opposing the acquisition of Conrail's 51 percent share of the IHB by NS and CSX.

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of IHB and CP owning 49 percent of IHB.

Ownership equals control

Ownership of a rail carrier provides the ability to control the operations and pricing strategies of that rail carrier. This viewpoint is implicitly expressed by Applicants' in their responsive application, "Although it is often said in these proceedings that 'the shipper controls the routing' on rail traffic, that view only pertains to an open market not influenced by ownership factors. In fact, as the long-haul carriers for these movements, CSXT and NS have the ability to exclude the EJE from acting as an effective competitor for this traffic." Responsive Application, p. 41.

While Applicants' statement refers to the CSX/NS acquisition of Conrail's 51 percent share of IHB, it is equally applicable to Applicants' acquisition of a 51 percent share of IHB. Stated differently, approval of Applicants' acquisition of IHB would give EJE an ownership role in IHB, thereby effectively giving EJE the ability to influence the operations and pricing strategies of both carriers serving IHW.

In addition to non-competitive pricing actions, EJE would have the opportunity to transform the operations of IHB to fit its needs. Inland would have no recourse to EJE profit maximization at Inland's expense. Without the competitive threat provided by another railroad serving IHW, Inland would face the real prospect of rail service deterioration. In short, the transaction as proposed by Applicants' would effectively transfer control to EJE of Inland's traffic originating and terminating at IHW.

A further recognition of the effect of ownership on control of a railroad is stated in the October 21, 1997 comments of Wisconsin Central Ltd. ("WC") in Finance Docket No. 33388. WC states, "Upon CSXT/NS acquisition of control of CRC, Primary Applicants will obtain jointly control Conrail's 51 percent of IHB. This is power to control IHB." (emphasis added), WC comments, p. 9. The same would be true of Applicants' acquisition of Conrail's 51 percent of IHB, i.e., EJE/IMRL would have the power to control IHB. As controlling owners of IHB, EJE/IMRL would have a strong profit enhancement incentive to exercise control over Inland traffic.

Profit maximization

Assuming Applicants' were permitted to acquire IHB, and assuming EJE were to operate and price service to IHW so as to maximize EJE's profits, EJE could exploit its new IHB ownership position through several actions which capitalize on reduced competition. EJE could increase its revenue requirements where it receives a division of line-haul rates. In addition, EJE could increase its switching charges for movements where it does not receive through rate revenue divisions.

Where competition currently exists among line-haul carriers for Inland's traffic, these carriers will be unwilling or unable to absorb lower revenue divisions or higher switching costs imposed by EJE. Through the Transportation Supply Strategy Project mentioned above, Inland worked diligently to ensure that, wherever possible, competition among carriers was used to achieve the best possible rates and service. In all likelihood, revenue requirement or switching rate increases will be incurred by Inland – a situation kept in check today by dual carrier competition at IHW.

Finally, without the competitive threat of IHB, EJE could seek to increase profitability by reducing its level of service to IHW, thereby potentially either reducing its operating costs or freeing up crew or equipment resources involved in Inland service for other business subject to competitive threat.

Inland's experience with railroad pricing power in the absence of competition is not just theoretical. A previous analysis I conducted indicated that Inland's rates to single carrier-served destinations were to carriers than rates to destinations served by two or more carriers.

Effectively, EJE would strive to maximize profits and to retain the benefits from the competition between the line-haul carriers for itself. As a result, Applicants' proposed acquisition transfers any harm they believe would occur as a result of the CSX/NS acquisition of Conrail's share of IHB to a clear and definite harm to Inland.

Reduced Competition

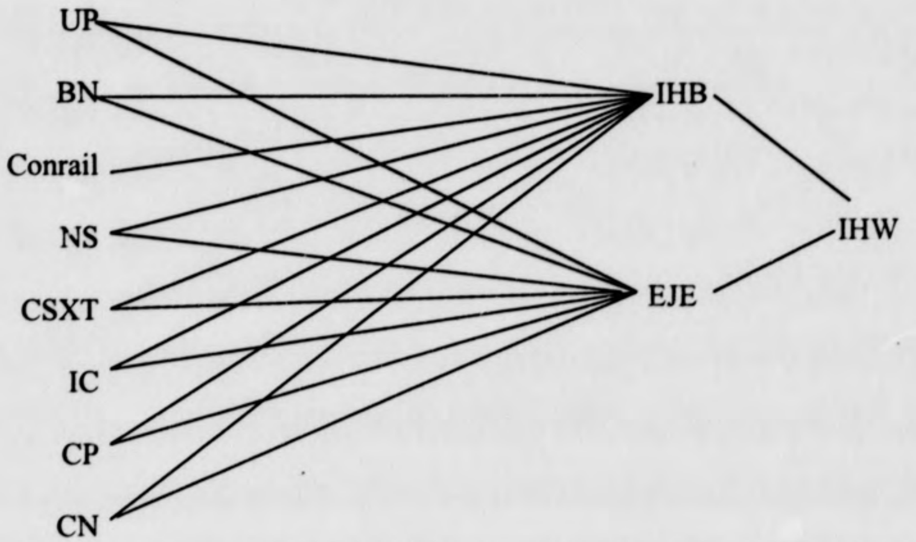
As stated above, EJE ownership of IHB will cause a reduction in competitive routings for Inland who today enjoys alternative routings between IHB and EJE at IHW. Ownership of Conrail's 51 percent share of IHB by NS and CSX may minimally lessen EJE's and Inland's competitive routing options. However, EJE's ownership of Conrail's 51 percent share of IHB will eliminate Inland's origin or destination carrier competitive routing options for traffic originating or terminating at IHW.

The first diagram shows the current rail service options available to Inland at IHW. As shown, Inland originates and terminates rail traffic with both EJE and IHB, who in turn interchange with eight line-haul carriers. Diagram 1 indicates the one-way relationship between

Conrail and IHB described by Applicants in their responsive application and is a good "real life" example of the results of partial ownership influence on a switching carrier's behavior.

Diagram I

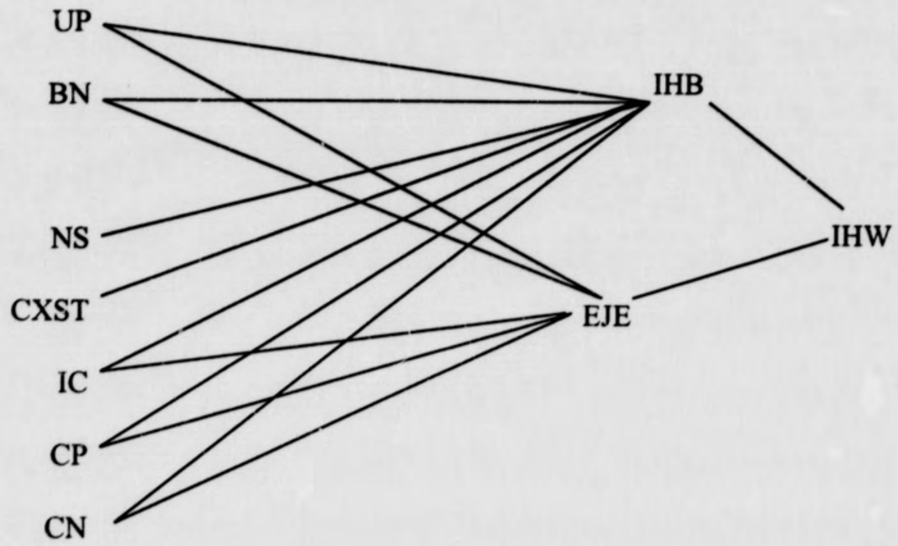
CURRENT RAIL SERVICE AT IHW



The following diagram 2 shows the effect of the CSX/NS acquisition of Conrail's share of IHB on both Inland and EJE's rail service at IHW. Applicants are correct in stating that the CSX/NS transaction may result in a reduction of their current business with Inland because of CSX and NS's control of IHB. However, as shown in Diagram 2, EJE will continue to interchange with five other line-haul carriers that handle traffic originating or terminating at IHW.

Diagram 2

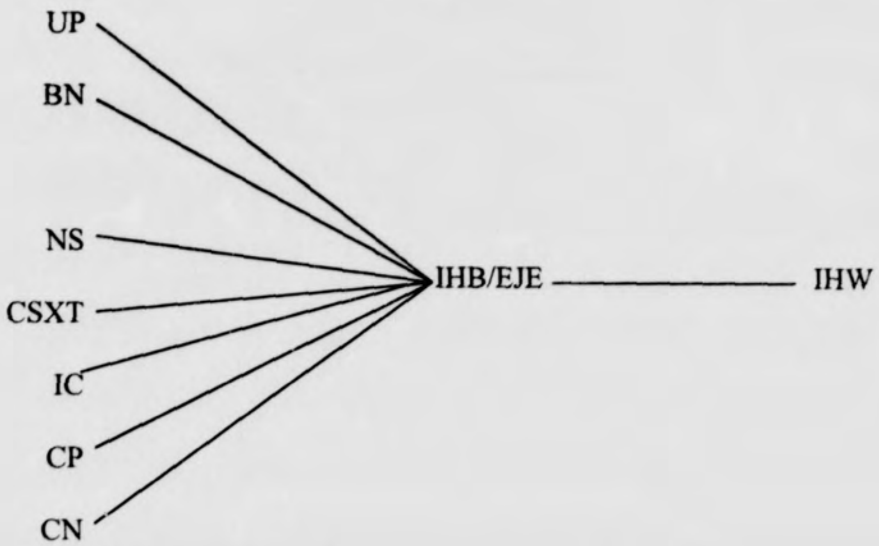
<u>CSX/NS Proposed Acquisition of IHB</u>



Finally, Diagram 3 shows the effect of the EJE/IMRL acquisition of Conrail's share of IHB. Unlike the potential loss of EJE's competitive position under the CSX/NS proposal, Inland will suffer a definite and significant reduction in its competitive position at IHW, as <u>all</u> of its traffic into and out of IHW will be under EJE's control. In this situation, Inland will lose all of its current market-generated protection from EJE's profit maximization capability.

Diagram 3

EJE/IMRL PROPOSED ACQUISITION OF IHB



ISC will clearly be harmed by Applicants' acquisition of IHB

In his accompanying verified statement, Bruce Klimek, describes previous negotiations with EJE regarding switching rates and service to IHW. As Mr. Klimek notes, during the negotiations, EJE stated that the through line-haul rates offered by the line-haul carriers shown in Diagram 1 reflect competition among the EJE and IHB. In spite of that statement, EJE was willing to enter into negotiations directly with Inland in an effort to retain and grow its participation in volumes shipped by Inland. I believe EJE's willingness to negotiate was based on the competition between EJE and IHB and EJE's desire to regain business it had lost to IHB. Assuming EJE/IMRL were permitted to acquire IHB, this competitive situation would be eliminated and EJE would no longer have an incentive to negotiate competitive rates with Inland.

Beyond typical profit maximization motives, applicants will be driven to recoup their investment in IHB. Compounding the harm to Inland from Applicants' acquisition of IHB is the fact that EJE/IMRL expect to purchase Conrail's 51 percent share of IHB at fair market value. To recover the costs for this transaction, EJE/IMRL would have a strong incentive to charge rates to single carrier-served shippers sufficient to recoup their investment in the IHB. This fair market value acquisition cost would reasonably include a premium over the rates currently charged by IHB which are based on the fair market value paid by IHB in acquiring the property it currently operates and which are set in a competitive situation.

As Inland would now be captive to EJE through either direct service or through IHB, it would be forced to pay for any EJE/IMRL premium investment in IHB. Such rate levels would change Inland's position in the marketplace and disadvantage Inland within the steel industry.

Neutral Management of IHB is necessary to preserve competition to shippers currently served by both EJE and IHB.

Neutral management of IHB will preserve effective competitive routing options for shippers currently served by both EJE and IHB. As shown previously, EJE ownership of IHB does not constitute neutral management. EJE admits in its own evidence that ownership constitutes control and that IHB should remain neutral. However, EJE fails to be forthcoming and state that its ownership of IHB will also result in control of IHB to the significant detriment of shipper served by both EJE and IHB.

The same mechanism which EJE states is needed to assure that it is provided the forces of the competitive market place is needed to provide shippers the same competitive forces.

Reducing the ownership of both switching carriers to a single company does not accomplish neutrality. Maintaining two neutral independent intermediate switching carriers, as currently exists, is the only way in which the status quo can be retained for rail service to Inland.

Paraphrasing Applicants' comments from their responsive application – placing dispatching in the hands of a neutral carrier would mitigate the anti-competitive effects of the concentration of power in EJE and would assure that the actual daily operations of IHB would continue to serve the interests of Inland Steel, not just the narrow interests of EJE.

An alternative to maintaining two neutral switching carriers to provide service to Inland is to provide NS access to IHW via trackage rights over those IHB lines acquired by EJE. This alternative would provide Inland access to nearly the same competitive market forces which exist at IHW today.

EXHIBIT RGG-1

QUALIFICATIONS OF RANDALL G. GARBER

My name is Randall G. Garber. I am a Vice President with A.T. Kearney, Inc., a global management consulting firm. My office is located at 225 Reinekers Lane, Alexandria, VA ?2314.

I have worked in the transportation industry, in government and in a consulting capacity on rail transportation matters for over 23 years. Much of this work has been in the area of railroad economics and pricing. I have previously submitted expert testimony on transportation matters before the Interstate Commerce Commission, various state rail regulatory agencies and Federal and State courts.

I have been employed as a consultant with A.T. Kearney for the past 10 years. During that period, most of my consulting work has been with rail shippers on a variety of transportation matters, including economic analysis of transportation competitive options and rate and service issues. Inland Steel Company is one of the clients with whom I have consulted extensively on rail transportation matters since early 1995. During the 1995-1996 period, I was the A.T. Kearney officer in charge of Inland's Transportation Strategic Supply Project. In this project, we evaluated all rail service and rates for Inland traffic moving into or out of each of Inland's facilities, including the Indiana Harbor Works (IHW). IHW is currently served by the Elgin, Joliet and Eastern Railway Company (EJE) and the Indiana Harbor Belt Railroad Company (IHB) and is the facility that is the principal focus of my verified statement. As a result of this project, I am very familiar with Inland's rail transportation requirements and its rail competitive transportation situation.

Prior to joining A.T. Kearney, I served as Deputy Director of the Railroad Accounting Principles Board (1985-1987). This Board was responsible for establishing principles for railroad cost determinations for regulatory purposes.

Prior to serving as Deputy Director of the Railroad Accounting Principles Board, I was Vice President of R.L. Hines Associates, Inc., a transportation consulting firm located in Washington, DC (1979-1985). In my capacity with R.L. Hines, I worked exclusively with rail shippers in support of rail rate and service negotiations and in developing economic analysis for use in various regulatory proceedings.

Prior to joining R.L. Hines Associates, I was employed as a Cost Analyst in the Economic Research Department of the Missouri Pacific Railroad in St. Louis, MO (1975-1979). In this position, I conducted economic analyses in support of pricing actions, traffic profitability evaluations, capital investment decisions and regulatory proceedings.

I received an MBA in 1979 from Washington University in St. Louis and a B.S. in Economics from Central Missouri State University in 1975.

I am a member of the Transportation Research Forum and was previously a Vice President of its Cost Analysis Chapter.

VERIFICATION

COMMONWEALTH OF VIRGINIA

CITY OF ALEXANDRIA

RANDALL G. GARBER, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof and that the same are true as stated.

Randall G. Garber

Randall G. Garber

Sworn to and subscribed
before me this 12 day
of December, 1997.

Witness my hand and official seal.

Elizabeth A McDonald

My Commission Expires December 31, 1997