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VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20423-0001

Re: **Finance Docket No. 33388**
CSX Corp. and CSX Transportation, Inc., Norfolk Southern Corp.
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 Corporation

Dear Secretary Williams:

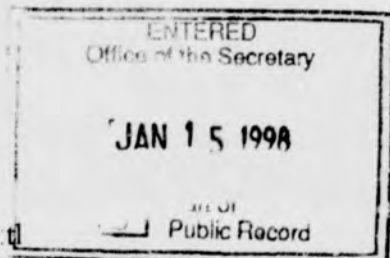
Elgin, Joliet and Eastern Railway Company, Transtar, Inc. and I & M Rail Link, LLC today filed their Rebuttal Comments and Evidence (EJE-17/IMRL-6) in the above-captioned proceedings. EJE-17/IMRL-6 was designated as highly confidential and thus was filed under seal.

I am now enclosing for placement in the public record twenty-six copies of a redacted version of EJE-17/IMRL-6. Copies of this pleading have been served on all designated parties of record in these proceedings.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Elgin, Joliet and Eastern Railway
Company, Transtar, Inc. and I & M Rail Link, LLC



TJL:tl

Enclosures

cc: Parties of Record

185241

[PUBLIC]

EJE-17/IMRL-6

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

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

REBUTTAL COMMENTS AND EVIDENCE OF
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
TRANSTAR, INC. AND I & M RAIL LINK, LLC

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Dated: January 14, 1998

[PUBLIC]

EJE-17/IMRL-6

BEFORE THE
SURFACE TRANSPORTATION BOARD

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CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK
SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY
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**REBUTTAL COMMENTS AND EVIDENCE OF
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
TRANSTAR, INC. AND I & M RAIL LINK, LLC**

Transtar, Inc., Elgin, Joliet And Eastern Railway Company (collectively "EJE") and I&M Rail Link, LLC ("IMRL") (collectively,, EJE and IMRL are referred to herein as the "Coalition") hereby submit these comments in response to the Primary Applicants' December 15, 1997 rebuttal filing and in further support of the Coalition's Responsive Application (EJE-10) to acquire the 51% stock ownership interest in Indiana Harbor Belt Railroad Company ("IHB") currently held by Consolidated Rail Corporation and Conrail, Inc. ("Conrail"). Submitted herewith are the rebuttal verified statements of Millard S. Turner ("Turner R.V.S.") and James H. Danzl ("Danzl R.V.S.") and the verified statement of Janet H. Gilbert ("Gilbert V.S.").

As is demonstrated in both the Applicants'¹ filings and the attached verified statements, divestiture of Conrail's stock interest in IHB is essential for the preservation of neutral, independent intermediate switching service in the Chicago Terminal District. The Applicants' own admissions reveal that they intend to exercise control over IHB post-acquisition. As Applicants already control the Baltimore and Ohio Chicago Terminal Railroad Company ("BOCT") and will control 50% of the stock of the Belt Railroad Company of Chicago ("BRC"), Applicants will essentially control all available intermediate switching railroads in Chicago.

Applicants have provided the Board with no evidence that they will not control IHB post-transaction. They have not effectively rebutted the Coalition's case, and it is appropriate for the Board to order divestiture of Conrail's stock in IHB to the Coalition based upon the evidentiary record.

I. THE APPLICANTS WILL EXERCISE CONTROL OVER IHB.

Nowhere is the Applicants' disingenuity more transparent than in their assertion of the alleged independence which IHB will exercise post-transaction. On the one hand, Applicants assert that IHB "will have its own operating, financial, mechanical, engineering and labor relations functions" ("Applicants' Rebuttal", hereinafter "R.", CSX/NS-176, Vol. 1, p. 309), and will, presumably, therefore be able to control its own

¹ "The Applicants" are Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS"), CSX Transportation, Inc. and CSX Corporation ("CSXT"), and Conrail.

destiny and operate as an independent railroad, making decisions as an independent economic actor. On the other hand, Applicants largely rest the vaunted "benefits" of their transaction in Chicago on the startling changes which IHB's operations will undergo under the continued "freedom" granted to it by CSXT and NS. Indeed, the very agreement alleged by Applicants to document IHB's independence (hereinafter "IHB Agreement", CSX/NS-25, Vol. 8C, p. 693) in fact documents nothing more than its subjugation.

As an initial matter, Applicants' laundry list of IHB's "independent functions" omits the most important function of a truly independent railroad: marketing. Nowhere in their Primary Application, and nowhere in their rebuttal filing, do Applicants establish that they will allow IHB to market its varied services independently. Given the extent to which Applicants otherwise discuss at length the indicia of "independence" of IHB they envision, it can only be concluded that IHB will not be allowed to operate its own marketing function.

An independent marketing department is the cornerstone to an independent railroad. Marketing personnel must be focused on developing the business of the railroad, without bowing to the wishes of one owner with separate interests. As further detailed by James H. Danzl, "control of IHB marketing will allow CSXT to remove the focus from on-line traffic and open market intermediate switching, and enhance the emphasis on CSXT's interchange to Western Class I carriers." Danzl R.V.S., p. 8.

Additionally, Applicants point out that IHB will retain a "General Manager," much as it does today, to oversee IHB

operations. Applicants gloss over the fact that the General Manager will be appointed by CSXT, owner of BOCT and largest shareholder of BRC. (CSX/NS-25, Vol. 8C, p. 698). Furthermore, the only "effective control" given to NS over CSXT's anointed General Manager allows NS, after a year's time, to demand that CSXT appoint a new General Manager. Apparently, NS cannot propose the identity of the new General Manager. (CSX/NS-25, Vol. 8C, p. 698).² In any event, the "independent" IHB will have a General Manager serving at the whim of its chief competitor's two largest and controlling shareholders.

Moreover, Applicants have already decreed that IHB will enter new contracts, including new trackage rights agreements, with NS and/or CSXT if old agreements expire. (CSX/NS-25, Vol. 8C, pp. 698-699, stating that "(Conrail) will take, and cause to be taken, appropriate steps to have new agreements executed or take, and cause to be taken, other actions necessary to preserve and maintain the interests of CSX and NSC as provided in this IHB Agreement."). By contrast, the Board found in Decision No. 53 of this proceeding that Conrail and IHB enter contracts at "arm's length" (Finance Docket No. 33388, Decision No. 53 ("Decision 53"), p. 4). Applicants' IHB Agreement cannot be taken any other way than terminating the freedom granted to IHB by Conrail in its contractual independence.

Further evidence of Applicants' planned control of IHB emerges in the area of dispatching. While it is true, as

² NS has limited approval rights, and may demand a change after one year.

Applicants suggest, that "IHB dispatching will be conducted by IHB employees who will be responsible to IHB management" (R., CSX/NS-176, Vol. 1, pp. 309-310), and that dispatching will "continue to be the responsibility of IHB in Chicago" (R., CSX/NS-176, Vol. 1, p. 300), it is also true that "(CSXT) will have the right to direct the exercise by (Conrail) of its Ownership Rights with respect to IHB dispatching." (CSX/NS-25, Vol. 8C, p. 699). Thus, IHB's dispatching will nominally remain with IHB's dispatchers, but those dispatchers will ultimately answer to CSXT, not IHB.

On a related topic, CSXT asserts that it will "propose" the relocation of IHB's dispatchers to the Chicago-area location currently used by the BOCT and BRC dispatchers (R., CSX/NS-176, Vol. 1, p. 310). While CSXT's suggestion appears to offer some promise for badly-needed coordination, one is left to speculate on why such a beneficial plan was not already agreed to by an independent IHB, if it in fact is in IHB's best interests. Further, it is unclear why this transfer would require CSXT's proposal to be effective, unless control of IHB is needed to coerce a currently-independent IHB into submission.

Further proof of the absence of IHB independence post-transaction can be found in the testimony of CSXT's operating plan sponsor, John W. Orrison. Against the backdrop of alleged IHB independence, Mr. Orrison has detailed at some length the modifications which IHB will make to the flow of traffic on the IHB system post-transaction. (See Orrison Verified Statement ("Orrison V.S."), CSX/NS-19, Vol. 2A, p. 458, for his discussion

of the "counterclockwise flow" of traffic through Chicago).³ While Applicants do not explain why an "independent" IHB would agree to make enormous changes to its operating system at the request of a minority shareholder, a clue can be found in the fact that [[[

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Additionally, Applicants' contention that IHB will function as an independent entity is effectively rebutted by the fact that Applicants have already carved up IHB's Blue Island Yard. As an element of their IHB Agreement, Applicants gave CSXT the right to exercise all Conrail's ownership interest over the use of the yard, with NS having the right to use the yard only for purposes of traffic moving to or from IHB on-line industries. CSX/NS-25, Vol. 8C, p. 700. There is no use in speculating on why an "independent" IHB would agree to constrict its dealings

³ It is interesting to note [[[

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with NS at its largest yard, because IHB was not even accorded a say in the restriction. The "IHB Agreement" contains signature blocks only for NS and CSXT. CSX/NS-25, Vol. 8C, p. 714. Apparently, Applicants did not feel it important for the "independent" IHB to agree to this restriction. It is also instructive to note that Canadian Pacific/Soo Line Railroad, which post-transaction will effectively be the largest single shareholder of IHB, also was not asked for its written approval of these changes.

Not just the identity of the users of IHB's Blue Island Yard, but also the functions of that yard, are to be modified by the Applicants post-transaction. []

]] Applicants' operating plan dictates a significant shift in how Blue Island Yard will be used to serve IHB's local customers, from a yard where currently "60% of the cars handled at Blue Island are industrial cars going to or from local industries served by IHB" (Orrison V.S., CSX/NS-20, Vol. 2A, p. 184) to a yard where the "primary mission will be to support gateway flow traffic. To the extent practicable, local switching service will be focused in BOCT's Barr Yard." Orrison V.S., CSX/NS-20, Vol. 2A, p. 191.

Further, subsequent to approval of the Responsive Application, the Applicants have determined that IHB will grant "the right to full, joint and equal use of services provided by

IHB", including access to on-line IHB industries, under the same terms and conditions as Conrail enjoys today, to CSXT and NS. (CSX/NS-25, Vol. 8C, p. 701). How this imposition squares with IHB's current right to participate in arm's-length contracting with Conrail (as found by the Board in Decision No. 53) is unclear, and is left unaddressed by Applicants in their discussion of how IHB will maintain its independence.

The Board should also take note of CSXT's plans to invest several million dollars in improvements in IHB's rail system. (Orrison V.S., CSX/NS-19, Vol. 2A, p. 458-459; R., CSX/NS-176, Vol. 1, p. 310). CSXT is apparently prepared to make this investment entirely with its own funds, without contribution from IHB's other owners, and without concern whether the improvements it proposes will benefit other IHB users. While the Coalition clearly supports any investment designed to facilitate the flow of traffic through Chicago, it is very doubtful that CSXT's largess would extend to an entity it did not feel confident of controlling post-transaction. As much is evident from the fact that CSXT will await acquiring control of IHB before making these investments.

Perhaps the most telling comments regarding IHB's independence post-transaction come from Applicants' own documents. Those documents reveal [[[

]]] CSX-92-HC-000102 and 000103. [[[

]]] CSX-92-HC-000102. [[[

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CSX-92-HC-000114 [[[

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Undoubtedly, CSXT and NS will attempt to rebut all of these varied indicia of control by pointing out that [[[

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II. **THE ALLEGED "ABSENCE OF SYNERGY" IN
THE COALITION'S RESPONSIVE APPLICATION IS INCORRECT.**

In a further attempt to defeat the Coalition's Responsive Application, Applicants assert that neither of the Coalition's two rail carriers, EJE and IMRL, bring any "synergy" along with their Application. Once again, however, Applicants' argument proves far too much for Applicants.

As an initial matter, Applicants nowhere explain the significance of the "synergy" requirement which they unilaterally impose on the Coalition. In fact, the Coalition bears no burden to establish the "synergy" of its Responsive Application. A strong showing of synergy might be useful to support requested conditions; the absence of synergy cannot defeat a condition which is narrowly crafted to meet a clearly identified harm.

Applicants have apparently not thought out how their "synergy" spotlight reflects on CSXT. According to CSXT filings, CSXT is an entity with no yard facility in the Chicago area, and no rail lines to speak of. Burlington Northern, Inc. v. The Baltimore & Ohio Chicago Terminal Railroad Co. et al., Docket No. 37515 (ICC served November 21, 1981) at 3. Indeed, CSXT and its corporate predecessors has invested significant sums of money over many decades to establish the complete absence of any connection between itself and Chicago. See Baltimore & Ohio Chicago Terminal Railroad v. Wisconsin Central Ltd., 1994 WL 71431 (N.D. Ill. 1994); Burlington Northern R.R. Co. v. U.S., 731 F.2d 33 (D. D.C. 1984). CSXT offers no synergy in its acquisition of part of Conrail's share of IHB, and to the extent that coordination of CSXT's wholly-owned subsidiary, BOCT, with

IHB can be construed as synergy, it is more reflective of Applicants' intention to control IHB's activities and eliminate IHB's independence than it is of efficient consolidation.

Regardless of its relevance, the claim that "EJE offers no operational synergy with IHB" is demonstrably false. As previously explained by the Coalition, EJE's system provides an uninterrupted, uncongested route for traffic around the Chicago District, avoiding to a large degree the gridlock engendered by the physical proximity of rail lines located in the Terminal District. Indeed, as cited by Mel Turner, EJE's General Manager, UP has begun to utilize trackage rights over EJE for just this purpose. (Turner Verified Statement, EJE-10, p. 47). A discussion of the ways in which EJE brings substantial synergy to the Responsive Application can be found in Turner R.V.S., attached.

In discussing EJE's "synergy," Applicants again misstate the evidence by alleging that EJE's "competition" with IHB is a negative synergy imposed by the Responsive Application. While the issue of the Responsive Application's effect on competition is addressed elsewhere, suffice to say that for purposes of this argument, Applicants depend upon a presentation of only a part of the record. EJE does not compete with IHB for intermediate switching services because EJE performs almost no intermediate switching services. There is simply no possibility for an anti-competitive concentration of control in this area because EJE's operations are far different than IHB's operations.

Amazingly, Applicants also complain about IMRL's alleged absence of synergy. At a minimum, IMRL brings no less synergy than does CSXT, both of which depend upon trackage rights to enter the Chicago Terminal District, and have no yard facilities in the District of their own. Moreover, Applicants' complaints regarding IMRL in this area ring hollow. Indeed, if EJE were the only railroad seeking divestiture of IHB, Applicants would proclaim the absence of any trunk line carriers as a reason to deny the Responsive Application. Now, when IMRL does step forward, it is dismissed for not having enough synergy for Applicants' liking.

Applicants do further damage to their reply when they proclaim an inability to "discern the purpose of (IMRL's) joinder with EJE" in filing the Responsive Application, other than to "improve appearances." (R., CSX/NS-176, Vol. 1, p. 313). The fact is that IMRL took an interest in this case because it will not be able to provide efficient connections at Chicago for its shippers once the focus of the intermediate switching carriers turns to run-through traffic. Whether that purpose, made clear in the Coalition's filings to date, is apparent to Applicants, is irrelevant.

**III. THE APPLICANTS ARE WRONG IN ARGUING THAT
THE COALITION HAS OFFERED NO OPERATING PLAN.**

Applicants have attempted to undercut the Coalition's Responsive Application by asserting that the Coalition has offered "no" operating plan. (R., CSX/NS-176, Vol. 1, p. 314). It is not surprising that Applicants have elected to ignore the

Coalition's Operating Plan, as [[[

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Moreover, the need to submit a highly detailed operating plan is lessened in this instance because the Coalition intends no major change in IHB operations. The Coalition's Operating Plan states that the Coalition intends "to continue existing operations on the IHB." Coalition's Responsive Application, EJE-10, p. 35. One of the primary purposes of the Coalition's Responsive Application is to assure IHB's on-line shippers that they will continue to be a focus for IHB, and to assure smaller railroads requiring intermediate switching services in Chicago that they will not become second class citizens. It is the Applicants, and not the Coalition, that seek to impose sweeping changes on IHB's operations. Because of the profound changes sought by Applicants, and because these changes are heavily dependent upon coordination of IHB's operations with those of BRC, it is Applicants, and not the Coalition, which were forced to focus on a detailed operating plan. The Coalition intends to operate IHB much as IHB is operated today.

Finally, this topic could not pass without a discussion of the Coalition's efforts to secure information regarding IHB's operations from Conrail. As the Board is aware, the Coalition served document production requests on Conrail seeking certain information relating to IHB operations. "Third Set Of Requests To Produce Documents Of Transtar, Inc. And Elgin, Joliet And

Eastern Railway Company", EJE-8. In response to these requests, Conrail professed to having insufficient control of IHB to force IHB to produce the information sought by the Coalition, and ultimately, Administrative Law Judge Leventhal's ruling in favor of Conrail's claim was upheld by the Board (Decision No. 53). The fact that Conrail does not "control" IHB for purposes of discovery, however, cannot relieve Conrail of the obligation to produce information within its own "possession, custody, or control." 49 C.F.R. 1114.30(a)(1). In other words, even if Conrail could not force IHB to produce the information sought, it still had an obligation to produce any of the requested information which it did possess. The fact that Conrail produced no information in response to these requests can only be interpreted to mean that Conrail did not possess any of the information sought. Further, when the Coalition asked for informal discovery of IHB, it was advised by IHB that not even a timetable would be provided unless the Coalition agreed to pursue no further discovery from IHB. In this light, Applicants' derision of the Coalition for having insufficient information regarding IHB operations to prepare an operating plan (R., CSX/NS-176, Vol. 1, p. 314) is disingenuous.

IV. APPLICANTS' COMPLAINTS REGARDING THE TIMING OF THE COALITION'S ASSOCIATION ARE A CLEAR RED HERRING.

In another effort to divert the Board's attention from the real issues presented by the Coalition, Applicants indulge in several pages of smear tactics, during which they criticize the Coalition as "hastily thrown together" and "contrived." Missing

from any of this unseemly attack is a discussion as to relevance. Shrill rhetoric aside, the Coalition's Responsive Application will stand or fail based upon the merits of its contents. The "behind the scenes" intrigue Applicants' so desperately want to draw the Board into have no place in a rebuttal filing, and should be of no interest to the Board.

Further, even assuming arguendo that there is some relevance to the timing of discussions between EJE and IMRL, the conclusions reached by Applicants clearly miss the mark. The fact that EJE and IMRL may not have reached agreement on the contents of the Responsive Application until relatively late in the day does not mean that the realization of harm to intermediate switching service in Chicago, or the remedy of divestiture of Conrail's IHB stock, was not realized early on.⁴ As the record in this case indicates, both Wisconsin Central Ltd. and Illinois Central Railroad Company filed a "Description of Anticipated Responsive Application" on August 22, 1997, declaring an intent to seek divestiture of the IHB stock as a remedy to the concentration of control of intermediate switching carriers in Chicago. "Description Of Anticipated Responsive Application Of Wisconsin Central Ltd.," WC-2, and "Description Of Anticipated Responsive Application Of Illinois Central Railroad Company," IC-2. The fact that those parties subsequently reached an accord with NS on separate issues and stopped short of their intention

⁴ Indeed, as Applicants themselves recognize, a number of other parties have come to the same realization. See Illinois Department of Transportation filing IDOT-2; Detroit Edison filing DE-2; Indiana Port Commission filing IPC-2.

to request divestiture does not mean that there were not serious discussions transpiring prior to that time. Applicants never bothered to find out in discovery what discussions took place among EJE, WCL and IC in the months prior to the filing of the Coalition's Responsive Application. Their discovery failure cannot be taken as a sign that a serious proposal was not contemplated and planned among those parties.

Moreover, the fact that the Coalition did not have many months to agree how to proceed can hardly be blamed on the Coalition. The schedule set for this case was premised upon Applicants' desire to rush their case through the Board's careful review process. Applicants prepared their case at their leisure prior to making a filing with the Board. Once that filing was made and a schedule set, however, all responsive parties, including the Coalition, were forced to then abide by the schedule set for this proceeding.

The Board might also take note of the staggering volume Applicants employ to discuss the timing of the formation of the Coalition. Using language which, to the Coalition's thinking, is unprecedented in Board proceedings, Applicants' bombast is intended only to divert attention from the real issues presented to the Board by the Coalition.

Finally, Applicants reserve their most caustic verbiage for the Coalition's outside counsel. Claiming without evidence that the Coalition was formed "in a lawyer's office in Chicago" (R., CSX/NS-176, Vol. 1, p. 317) by counsel engaged in some "brokerage or other deal-making relationship", (R., CSX/NS-176,

Vol. 1, p. 325), Applicants baselessly place responsibility for the formation of the Coalition on a law firm. The fact that the law firm may represent a variety of railroads, all of whom recognized the inherent harms to their shippers associated with the Primary Application, is not treated as a possibility by Applicants. In any event, the implication that the formation of the Coalition resulted from lawyer coercion is baseless, inaccurate and unfair. (See Gilbert V.S., attached.)

**V. APPLICANTS HAVE NOT REBUTTED
THE HARM IDENTIFIED BY THE COALITION.**

After berating the mechanics of the formation of the Coalition for several pages, Applicants devote the same amount of space attempting to reply to the harms which obviously arise from their intended Chicago oligopoly. Applicants' contentions, however, are wide of the mark.

Initially, Applicants rely on CP/Soo (which will remain as 49% minority shareholder of IHB) and NS (which will effectively own almost 30% of IHB) to "rein in" CSXT's domination of IHB's operations. This argument conveniently ignores the obvious: Conrail's 51% stock ownership interest will continue to be voted as a block, preventing CP/Soo (which, in a limited sense, will become the largest single shareholder) from gaining any additional voice in IHB operations and preventing CP/Soo and NS from effectively combining their ownership interests to defeat CSXT's desires. Moreover, as previously discussed, under the IHB Agreement, NS has apparently ceded control over general management of IHB's operations to CSXT. Thus, although CSXT will

retain minimal shareholder obligations to CP/Soo, and NS has been accorded limited rights of protest CSXT's actions, it is the influence of CSXT which will functionally control IHB, despite the fact that it has the smallest equitable interest in the enterprise.

Applicants also downplay the comments of Mel Turner, EJE's General Manager, regarding his observations of how CSXT manages BOCT today. Turner V.S., EJE-10, p. 35. While CSXT's 100% stock ownership interest in BOCT renders the two situations less than entirely comparable, the example of BOCT (a mere extension of CSXT) provides the best evidence available of how CSXT exercises operational control over an intermediate switching carrier in the Chicago terminal.

In the end, the best evidence of how the Primary Application will terminate IHB's neutrality comes not from the Coalition's witnesses, but from Applicants themselves. As discussed previously, it is the Applicants who have already documented how they intend to force IHB to make massive changes to train routing, who will force IHB to enter a variety of operating agreements, who will revise the functions of major yards, who will [[[

]]] None of these sweeping changes appears directed toward improved service for IHB's on-line shippers, or toward maintaining intermediate switching capability. Rather, Applicants own record dictates but one conclusion: IHB will become the pawn of Applicants, to serve as a conduit for run-through interchange with Applicants' Class I brethren. The

Coalition could not submit any evidence on these points that would speak more clearly than the words of Applicants themselves.

Applicants also criticize IMRL's President, William Brodsky, because his experience working in the Chicago Terminal District dates to more than 20 years ago. Apparently, CSXT can make do with a sponsor for their plans on operating IHB who resides in Jacksonville, Florida, but they feel free to dismiss the opinions of a gentleman whose everyday job involved determining routes to effectively move traffic through the Chicago Terminal, and who is currently President of a company whose eastern connections depend upon efficient intermediate switching in Chicago.

Finally, Applicants dismiss the presence of IMRL in this case by claiming an inability to determine "how (IMRL) would be prejudiced by the Primary Application." (R., CSX/NS-176, Vol. 1, p. 323). Applicants' inability may stem from the fact that it is the harm to the shipping public, and not the harm to IMRL, that has forced IMRL to come forward and join the Coalition.

VI. APPLICANTS' ARGUMENTS WITH RESPECT TO HARM TO JOINTLY SERVED CUSTOMERS IN NORTHWEST INDIANA ARE INACCURATE.

In addition to the harm to intermediate switching services in Chicago, the Coalition has also identified harm which will result to approximately two dozen industries in Indiana. At each of these facilities, the shipper is able to accept rail service from either EJE or IHB. However, for traffic moving to or from points on Conrail, these shippers are simply not given the option of working with EJE. In support of its Responsive

Application, EJE established that Conrail refuses to work with EJE into these facilities, instead including only IHB in bids for traffic, and thereby enhancing the economic position of its partially-owned subsidiary. Danzl Verified Statement, EJE-10, p. 39.

Applicants point out that the situation described by EJE is a currently existing harm, and they claim that no condition should be granted to remedy an existing harm. In pressing this argument, Applicants miss the point. If their proposed transaction is unconditioned, the situation currently existing with Conrail will expand to IHB's two new owners, NS and CSXT. Indeed, since those owners are splitting up Conrail between them, most traffic moving to or from Eastern points will now be subject to this same exclusion and loss of competition. Precedent recognizes that exacerbation of a pre-existing harm is an appropriate circumstance for the imposition of conditions.

In attempting to rebut the Coalition's case, Applicants respond that IHB will be allowed to set prices independently. (R., CSX/NS-176, Vol. 1, p. P-318). As an initial matter, this claim is without support in the record. Indeed, in detailing all of the ways in which IHB will allegedly be allowed to operate independently, nowhere do Applicants state that IHB will handle its own marketing functions.⁵ This omission is telling, because if Applicants intends to handle IHB's marketing functions (a

⁵ IHB "will have its own operating, financial, mechanical, engineering and labor relations functions." (R., CSX/NS-176, Vol. 1, p. 309).

conclusion fairly enough drawn from Applicants' comments), there can be no argument that will "set prices independently."

The notion that IHB will set prices independently is also belied by the host of changes Applicants have already mandated for IHB. Those changes are detailed elsewhere, and will not be discussed here. Suffice to say that if IHB does set prices independently, it will be one of the few areas of independence IHB experiences.

Additionally, the argument that IHB will set prices independently misses the point. Price is not the issue raised by EJE; the issue is the willingness of the trunk line carrier to work with a non-owned terminating or originating carrier. It is the trunk line carrier that submits bids for this traffic. Foreclosure takes place in the bidding process, not in the price-setting process.

As noted above, Applicants manifest a misunderstanding of the problem when they claim that the Coalition is seeking assistance to remedy an existing harm. The Coalition detailed its current experience with trying to work with Conrail at these locations not to be given relief from Conrail's actions, but instead to demonstrate that both the power and the motive are currently present to exclude EJE (and, hence, to stifle competition) from these facilities. The fact of the matter is that Conrail refuses to submit bids involving EJE unless IHB cannot provide acceptable service. The absence of any evidence from Applicants as to any alleged inability of EJE to provide

superior service at these locations is a strong indication that EJE's beliefs as to the reason for its exclusion are warranted.

Applicants also contend that it is actually the Coalition, and not Applicants, which propose a transaction resulting in a loss of competition. The Coalition, according to Applicants, will "control" its competitor, IHB, and thereby eliminate competition at jointly served locations. In pressing this argument, Applicants speak with both sides of their mouth. On the one hand, they claim that CSXT and NS, despite having entered an agreement carving up IHB and dictating how IHB will be compelled to operate post-transaction, are allowing IHB to be "independent." On the other hand, the Coalition, which has professed from the beginning to a desire to see IHB operate independently, as it does today under Conrail's majority ownership, will "control" IHB. In any analysis of the proposals of the two parties, it is clearly Applicants, and not the Coalition, which intend "control" of IHB.

Applicants also rely upon "economic theory" to reply to the Coalition's claims. "Economic theory", they suggest, dictates that no rational trunk line would use the services of a partially-owned subsidiary when a more viable option exists. (R., CSX/NS-176, vol. 1, pp. 319-320). Whatever the merits of this theory, real world experience flatly contradicts it. Conrail, a majority owner of IHB, continues to use IHB exclusively today, despite any evidence that EJE is not fully competitive with IHB at these facilities. A careful reader is forced to conclude that either Conrail is not a "rational"

railroad (an argument pressed by no one), or the "economic theory" presented by Applicants is flat wrong. In his Rebuttal Verified Statement, Coalition witness James Danzl reaches the latter conclusion, based on his experience in marketing to these facilities. Danzl R.V.S., attached.

IV. INLAND STEEL COMPANY'S CONCERNS REGARDING COMPETITION AT ITS INDIANA HARBOR WORKS FACILITY ARE UNFOUNDED.

In addition to the Applicants' opposition to the Coalition's Responsive Application, concern was also expressed by Inland Steel Company ("Inland") regarding rail service to its Indiana Harbor Works facility. Opposition of Inland Steel Company To The Responsive Application of Elgin, Joliet and Eastern Railway Company, Transtar, Inc., and I&M Rail Link, LLC (ISI-9) ("Inland"). As detailed by Inland, that facility currently enjoys rail access from both IHB and EJE. Inland fears that the result of the Coalition's Responsive Application will be to eliminate rail competition at the Inland plant, reducing Inland to a "2 to 1" shipper and eliminating competition between its two switching carriers.

Inland's concerns are unfounded, and apparently premised on a misunderstanding of the Coalition's Responsive Application. Inland will not be a "2 to 1" shipper, as it will continue to enjoy rail access from two competing, independent railroads. With an accurate understanding of the Responsive Application, it can be shown that Inland will experience virtually no change to its transportation picture.

The harms projected by Inland subsequent to approval of the Coalition's Responsive Application are premised entirely upon Inland's belief that its rail access will be reduced from two to one rail carriers if the Responsive Application is approved. That belief is simply not accurate. At the most cursory level, the Coalition has not proposed a merger or other consolidation with IHB. Two separate railroads serve Inland today, and those two separate railroads will continue to serve Inland after approval of the Responsive Application. Inland's citations to merger and control proceedings (Burlington Northern Inc. and Burlington Northern R.R. Co. -- Control and Merger -- Santa Fe Pacific Corp. and Atchison, Topeka and Santa Fe Ry. Co., Finance Docket No. 32549, slip op. at 55 (August 23, 1995) 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) are therefore inapposite; no merger or control by an individual carrier is proposed by the Coalition.

More substantively, however, while it might be possible for a railroad with a minority ownership interest in another railroad to impermissibly influence that other railroad's marketing, there is absolutely no basis to think that the Coalition intends to act that way towards IHB. Indeed, the thrust of the Coalition's filing is directed toward establishing the opposite premise - that neutral, independent switching service is necessary in the Chicago Terminal District, and that such service (currently provided by IHB today) can be continued only under the Coalition's purchase of Conrail's IHB stock.

As the Board found in Decision No. 53, it is possible for Conrail to own the majority of the stock of IHB and still allow IHB to be operated independently. The Coalition has declared its intent to exercise its ownership interest in IHB much as Conrail does today. By contrast, Applicants have already executed the IHB Agreement, under which they have already determined how IHB's yards will be used, what contracts IHB will enter, and how IHB dispatching will be controlled. Applicants intend to control IHB; the Coalition intends merely to own a portion of its stock.

Inland also presents the argument that if the Responsive Application is approved, EJE will have both the motive and the means to reduce competition at Inland's facility. Neither of these arguments make sense. As to motive, perhaps realizing that IHB's other stock owners (CP/Soo and IMRL) would not allow traffic to be forced off IHB in favor of an EJE routing, Inland argues the opposite - that EJE will simply stop competing for Inland's traffic, allowing IHB to raise rates and reduce service. This argument is non-sensical, as it is premised on a belief that EJE would gain more from traffic moved by its 25.5% ownership of IHB's stock than it would from handling this traffic directly. EJE's motivation would be to vigorously pursue as much of this traffic as it could effectively handle, and IHB's other stock owners (not restricted from opposition, as CP/Soo and NS are under the IHB Agreement) would not allow IHB to reduce its own competitive stance.

Nor, it is clear, will EJE have the means to reduce competition to Inland. IHB's marketing department will be wholly separate from EJE's marketing staff. Danzl R.V.S., p. 9. That separation is critical to the functioning of an independent IHB. Because the Coalition is not proposing a merger of IHB, but instead has manifested an intent to keep the marketing function separate, there is no danger of Inland becoming a "2 to 1" shipper.

It is interesting to note that Inland's witness, Randall G. Garber, claims that "ownership equals control." Inland, Garber Verified Statement, p. 4. That is not entirely correct. "Ownership equals the ability to control" is more accurate, as the Board's Decision No. 53 regarding Conrail's current control of IHB attests. While EJE will gain an ownership interest in IHB, it will not dictate IHB's use of Blue Island Yard; it will not exercise control over IHB's dispatching; it will not force IHB to enter into any contracts, all of which Applicants have already documented their intention to accomplish in their IHB Agreement.

CONCLUSION

For all of the foregoing reasons, it is appropriate for the Board to order divestiture of Conrail's 51% stock interest in IHB to the Coalition based upon this evidentiary record.

Respectfully submitted,

By: Tom Healey
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Colette Ferris-Shotton
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**ATTORNEYS FOR TRANSTAR, INC.,
ELGIN, JOLIET AND EASTERN RAILWAY
COMPANY AND I & M RAIL LINK, LLC**

Dated: January 14, 1998

**REBUTTAL VERIFIED STATEMENT
OF
MILLARD S. TURNER**

My name is Millard S. ("Mel") Turner. I am the General Manager of the Elgin, Joliet and Eastern Railway Company ("EJE"). I refer the reader to the Verified Statement I submitted in conjunction with the Responsive Application filed by EJE, Franstar, Inc. and I&M Rail Link, LLC ("IMRL") (EJE-10) in this proceeding for further background on myself and EJE.

My purpose in submitting this Rebuttal Verified Statement is to address an inaccurate argument presented by the Applicants in their responsive filing ("Applicants' Rebuttal", CSX/NS-176, Vol. 1, p. 313). Specifically, Applicants claim that EJE does not bring any "synergies" in its acquisition with IMRL of Conrail's 51% stock interest in the Indiana Harbor Belt Railroad Company ("IHB"). This statement is patently false, and, I believe, is grounded in an ignorance of EJE's operations and the methods by which it could work closer with IHB to move traffic more efficiently through Chicago.

As I explained in my Verified Statement, EJE's system structure is in the form of a circle ringing the City of Chicago, Illinois. The EJE crosses all of the trunk lines entering the Chicago Switching District, and at a number of these crossings, EJE controls the interlocking. Because of this control, EJE does not have to worry about being unfairly held at these rail crossings for the traffic of another railroad. Instead, EJE's neutral control of these interlockings assures that they function on an equitable basis, giving special account for passenger and

commuter train operations on crossing lines. Additionally, while a number of smaller interchange yards exist near these rail crossings, there are no major yard facilities where "bump outs" and other switching and classification chores might interfere with our operation on our track.

By contrast, the IHB system is located much closer to the City of Chicago. This fact means that while IHB crosses many of the same lines EJE does, those crossings are located much closer together. Additionally, it is my understanding that IHB's track is located closer to the mouths of major yard facilities. The result is that there is less room for unobstructed operations on the IHB than there is on EJE; closer coordination with the operations of other railroads is required.

Thus, although it is true that the mileage involved in making connections between carriers is somewhat longer on EJE than it is on IHB, that additional distance does not necessarily translate into longer transit times. Indeed, while elementary geometry concludes that the shortest distance between two points is a straight line, this principle does not correlate into efficient Chicago railroad operations. Rail traffic moving through the Chicago gateway coming from the North going South or from the East going West, and visa versa, achieves greater efficiency when it traverses the least congested route. The EJE is today that route, a route that can minimize conflict with major yard operations and terminals, avoid disruption of the public at grade crossings with stopped trains, and improve freight car and locomotive utilization.

Because of the different route structures of EJE and IHB, there exist a number of opportunities to re-route traffic over the EJE and enhance efficient operations. Admittedly, EJE's yard system is not designed for the large-scale classification of cars performed by IHB at its Blue Island Yard. However, I am convinced that much of the run-through traffic that currently uses IHB today, and which will increase through Chicago, according to Applicants, would be more efficiently moved if it were transferred to EJE.

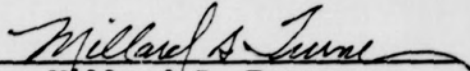
A train that can bypass the central part of Chicago by 35 miles, that is neither originating or terminating in the Chicago gateway, is what I would call a significant synergy. Ore, coal, potash, sulfur, and potentially manifest trains are examples of traffic that could benefit from this "around not through Chicago" concept.

In conclusion, I believe that the rationalization of the routes utilized by this traffic is a "synergy" brought by EJE into its minority ownership of IHB's stock. These synergies were ignored by Applicants in their responsive filing, but should not be ignored by the Board in its consideration of the merits of the Responsive Application.

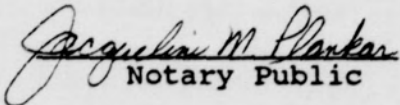
VERIFICATION

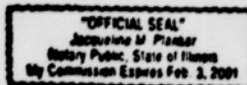
State of Illinois)
) SS:
County of Cook)

Millard S. Turner, being duly sworn, deposes and says that he is General Manager of Elgin, Joliet and Eastern Railway Company, that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.


Millard S. Turner

SUBSCRIBED AND SWORN to
before me this 9 day
of January, 1998.


Notary Public



My Commission Expires: February 2, 2001

**REBUTTAL VERIFIED STATEMENT
OF
JAMES H. DANZL**

My name is James H. Danzl. I am Director of Marketing - West for Transtar, Inc. ("Transtar"). Transtar owns a variety of Class II and Class III railroads, including the Elgin, Joliet and Eastern Railway Company ("EJE"). For further particulars on my background and qualifications, and for information regarding Transtar, I refer the reader to my Verified Statement previously submitted in this proceeding as a part of the "Responsive Application of Elgin, Joliet and Eastern Railway Company, Transtar, Inc., and I&M Rail Link, LLC" (EJE-10).

I have reviewed those portions of the "Applicants' Rebuttal" (CSX/NS-176, Vol. 1 and CSX/NS-177, Vol. 2A) directed at EJE and I&M Rail Link, LLC ("IMRL"), and the Opposition filed by Inland Steel Company ("Inland"), ISI-9. While I take issue with much of what Applicants have to say, the purpose of this Rebuttal Verified Statement is to respond to an argument presented by Applicants as to the marketing decisions of a "rational economic railroad," and to discuss a glaring omission contained in Applicants' recitation of the factors they claim indicate that the Indiana Harbor Belt Railroad Company ("IHB") will operate independently post-transaction. I also wish to address several issues overlooked by Inland in its filing.

I. In The Real World, Railroad Marketing Functions Far Differently Than Alleged By Applicants.

The Applicants state on pages 319 and 320 of their responsive filing:

In any case, EJE's competitive effects arguments are flat wrong. Economics dictate that a trunk line will not accept a lower level of service from a partially-owned subsidiary if an independent switch carrier can perform better. The competitive marketplace and the ever-increasing service demands of customers mandate this. Conrail's current willingness to favor EJE on movements where EJE can provide better service (see EJE-10 at; [sic] Danzl VS at 9) offers real world proof of that economically logical principal. And, this is in a world where Conrail controls IHB through 51 percent ownership. After the transaction, neither CSX nor NS will have that large an economic interest in IHB. See n.15, above. Any alleged "incentive" to favor IHB will be cut drastically.

CSX/NS-176, Vol. 1, pp. 319-20.

For a host of reasons, this argument is flat wrong. First, the real world of railroad marketing functions far differently than the theories put forth by Applicants as an "economically logical principal." Second, the example I used in my Verified Statement does not support Applicants' argument; it proves the point I originally set out in that Statement. Finally, the fact that NS and CSXT will share Conrail's interest in IHB will not reduce their incentive to continue to exclude EJE as a competitive routing option; it will merely reduce their reward for acting in an anti-competitive fashion. I will address each of these points below.

A. The Real World Of Railroad Marketing Favors
Wholly- or Partially-Owned Subsidiaries Over
Unrelated Connections For Interlined Traffic

As I understand the above-referenced argument, Applicants believe that a line-haul railroad, faced with the choice of using as a connection either a railroad with which it has no economic interest or a railroad with which it has an ownership interest to move traffic into or out of a facility, will choose to work with whichever railroad combines with it to provide the best overall service package to the shipper. In other words, the line-haul carrier will be indifferent to the ownership interest of the two competing railroads in selecting a connection; its economic incentive is to work with whichever railroad helps it to most completely satisfy the shipper's needs.

While I agree in principle with the theory presented by the Applicants, I can assure the reader that it has no place in the reality of railroad marketing. This theory has not been practiced in the past, and nothing in the Applicants' filings indicates it will be followed in the future. In reality, railroads favor that routing which provides the greatest financial benefit to itself. That includes working towards a "long haul" on traffic that could be more efficiently moved over another routing, and it includes working with connecting carriers who share an economic bond. Whether "rational" or not, trunk line railroads market their services to maximize revenue, and that includes working with terminal carriers in which they have a vested interest.

B. Conrail's Current Treatment Of EJE
Demonstrates Reality, Not Hypothesis

In my Verified Statement, I pointed out that the only situation where Conrail will work with EJE to originate or terminate traffic is a situation where IHB (which also serves that customer) is simply unable to provide the level of service required by the customer. Somewhat amazingly, Applicants have cited to that example as an alleged "proof" that Conrail will work with EJE when it "provide(s) better service." (CSX/NS-176, Vol. 1, p. 320.)

In pressing this argument, Applicants have either misunderstood or ignored the contents of my Verified Statement. EJE is a fully capable competitor with IHB for traffic into and out of the facilities in Northwest Indiana served by both carriers. This fact is more than adequately demonstrated by the large volume of traffic we move into or out of these facilities in connection with NS and/or CSXT today. Conrail, however, refuses to work with us into or out of any of these facilities, other than the one single movement I referenced in my Verified Statement that originated from one very large industrial facility having very large traffic flows. Because of IHB's inability to provide adequate service for this one isolated movement, Conrail is forced to work with us, rather than lose the traffic to trucks.

As a further example of the realities of Conrail's marketing philosophies with respect to the IHB, EJE provides premium service for the movement of sheet steel for the Detroit and Northern Ohio auto markets for NS, CSXT and Conrail. We

provide pre-blocking service and expedited designated-time delivery to each interchange to allow the trunk line to place these blocks of cars directly on designated through trains to ensure rapid transit to the final destination. Both NS and CSXT have partnered with EJE to put U.S. Steel (solely served by EJE) and Inland Steel (jointly served by EJE and IHB) traffic together to take advantage of the synergies we alone can provide. Conrail, however, will only utilize the service of EJE on U.S. Steel traffic. The Inland Steel traffic could move in conjunction with the U.S. Steel traffic in the same blocks, interchanged together and moved on the same Conrail trains which would eliminate double handling by Conrail. Despite the obvious efficiency gained by the consolidation of this traffic, Conrail refuses to even allow EJE to bid on the Inland Steel traffic.

In short, Conrail consistently precludes EJE from competitive bidding on traffic into or out of jointly served EJE/IHB facilities even when EJE "provide(s) better service;" Conrail works with EJE only when IHB cannot do the job.

- C. If Applicants' Proposed Transaction Is Approved Without Divestiture Of Conrail's IHB Stock To The Coalition, NS and CSXT Will Have The Same Economic Incentive To Exclude EJE; The Rewards Will Simply Be Less

Finally, Applicants put forth the argument that even if Conrail today refuses to include EJE in competitive routings where IHB can be used (a contention they nowhere rebut), Applicants will not act in that fashion when they assume ownership of 51% of IHB's stock because their incentive to do so will be cut "drastically." I do not see how this can be so.

As matters currently exist, neither CSXT nor NS has an economic interest in IHB. Thus, neither railroad has any reason to favor either IHB or EJE when putting together bids for traffic into jointly-served facilities, other than for competitive reasons: timelier service, better rates, less freight damage, etc. We have experience in working with both NS and CSXT in conjunction with these facilities to put together competitive service for the customer. While EJE is not always included in the successful bids for these shippers, we handle more than enough of this traffic to know that in many cases we are able to provide a better overall value to the shipper than IHB.

Because CSXT and NS have indicated a desire to control IHB, once NS and CSXT gain control of Conrail's IHB stock, the principles I have discussed above will undoubtedly come into play, and the Northwest Indiana shippers, while technically remaining "jointly served" by IHB and EJE, will lose EJE as a competitive routing option for traffic moving to or from NS or CSXT points. The fact that NS and CSXT will not reap the 51% reward currently realized by Conrail for this activity, but will instead be limited to a smaller share, does not lessen their incentive to exclude an EJE routing from the shipper. The incentive to work exclusively with IHB will remain, and what is now a problem only on traffic moving to or from Conrail points will spread to virtually all traffic to or from points in the Eastern United States.

II. Applicants Have Made No Claim That IHB Will Continue An Independent Marketing Function

A key element of Applicants' argument against the Responsive Application is the claim that "IHB will continue to be operated independently post-transaction." In order to provide some sort of proof of their intentions, Applicants have created a list of functions which, they contend, IHB will continue to be allowed to perform for itself post-transaction. The list, found on p. 309 of CSX/NS-176, Vol. 1, includes "operating, financial, mechanical, engineering and labor relations functions." While clearly these functions are important to any railroad, the list omits the one function which I believe to be most important to any railroad's independence: an independent marketing function.

Marketing is the "supply" side of railroading. It provides the traffic base necessary for the success of any railroad. Indeed, to a large extent, the marketing department shapes the very nature of the railroad, in that the customers to be served by the railroad primarily interact with marketing department personnel.

Within the framework of a marketing department, each member works towards the ultimate goals of the railroad. An independent IHB will work towards developing traffic from any source from which it can derive a profit, including on-line industries, intermediate switching, and the granting of trackage rights to other carriers to allow them to perform interchanges. The goal of an independent IHB, as realized by its marketing function, is to retain all profitable traffic.

Once IHB's marketing function is directed by CSXT, however, the goals will change markedly. While I have no doubt CSXT hopes to realize a profit on its indirect ownership of IHB's stock, control of IHB marketing will allow CSXT to remove the focus from on-line traffic and open market intermediate switching, and enhance the emphasis on CSXT's interchange traffic with Western Class I carriers.

Because of the importance of marketing to any railroad, I do not believe that the omission of "marketing" from Applicants' list of "independent" IHB functions was an oversight. Rather, I believe it is a telling omission which bodes poorly for those shippers, non-affiliated Class I carriers, and regional railroads who today depend on an independent IHB.

III. Inland Steel Will Not Face Any Increased Rates Or Reduced Competition.

In its Opposition filing (ISI-9), Inland expresses its concerns that the Coalition will cocontrol IHB much as the Coalition has shown that Applicants will do with IHB, to the detriment of the competitive service that Inland enjoys today. In voicing these concerns, Inland overlooks two factors which I think are critical to understanding why their fears will not be realized.

As an initial matter, the transaction being proposed by the Coalition is in many ways different than that proposed by Applicants. While each entity seeks to purchase Conrail's 51% stock interest in IHB, Applicants have manifested a desire to use that stock ownership to control IHB. As much can be determined

from the many changes Applicants envision for IHB. And, perhaps most critically for this discussion, Applicants have never stated that IHB's marketing function will continue to be independent.

By contrast, the very purpose of the Coalition's Responsive Application is to keep IHB independent. In my opinion, chief among the ways that the Coalition will achieve that goal is through maintenance of IHB's independent marketing department. The Coalition has no intention to assume IHB's marketing operations, or to have any role whatsoever in the means by which IHB quotes rates or designs service plans for individual customers. We anticipate that the marketing departments of IHB and EJE would interact only as they do today, solely on business where we jointly participate. The EJE would make no changes to either IHB or EJE which would change this relationship.

It is my understanding that the Board has determined in this case that Conrail, despite its majority ownership of IHB's stock, allows IHB to operate as an independent railroad. We intend to maintain that same independence under the Coalition's ownership of IHB's stock.

A second point also missing from Inland's opposition is the factor primarily responsible for providing competition at Inland's Harbor Works - truck competition. I noted from the filing that although Mr. Garber apparently participated in a "Transportation Strategic Supply Project" for Inland, he nowhere discusses the role which his study determined is played by trucks in providing competitive transportation service for Inland. It is my estimation that approximately 75% of the traffic moved out

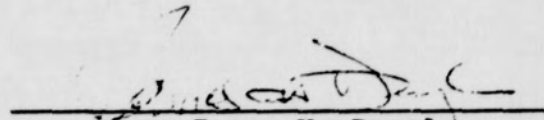
of Inland's facility is moved by truck. I also note that Inland has not argued that any portion of the roughly 25% of its traffic currently moving outbound by rail could not move by truck, if rail service or rates became unacceptable.

I believe that trucks provide solid competition for the vast majority of the rail movements currently moving out of Inland's plant. Healthy truck competition at Inland Steel prevents any railroad from either raising rates beyond competitive levels or reducing the timely, efficient service both of these plant enjoy today. I see no reason why truck competition at these facilities will not remain vigorous in the future.


VERIFICATION

State of Illinois)
) SS:
County of Cook)

James H. Danzl, being duly sworn, deposes and says that he is Director of Marketing - West for Transtar, Inc., that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.


James H. Danzl

SUBSCRIBED AND SWORN to
before me this 8th day
of January, 1998.


Notary Public

My Commission Expires:

Notarial Seal
Patricia L. Kirk, Notary Public
Monroeville Boro, Allegheny County
My Commission Expires July 13, 2000

VERIFIED STATEMENT

OF

JANET H. GILBERT

My name is Janet H. Gilbert. I am General Counsel for Wisconsin Central Ltd. I have held this position since 1996, prior to which I served as Associate General Counsel since the Company began operations in 1987.

In the Applicants' Rebuttal Testimony in this matter, Applicants have alleged that the law firm representing Wisconsin Central Ltd. and others opposing certain aspects of Applicants' Control Application unduly influenced their clients in the formation of the Coalition represented by Elgin, Joliet and Eastern Railway Company and I&M Rail Link, LLC.

I was involved in counseling Wisconsin Central Ltd. from the inception of the concept of a Coalition, through the formation of the Coalition and up until the time Wisconsin Central Ltd. withdrew from the Coalition. Discussions involving the initial concept of a Coalition through its formation were exclusively the product of business representatives of the various railroads involved, each of whom was counseled exclusively by in-house counsel. Moreover, it was the specific understanding among the respective in-house counsel attorneys that no outside counsel assistance would be sought by the parties until such time as the group had reached full understanding regarding certain material aspects of the Coalition, including its intent, scope, terms, and participants.

VERIFICATION

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Janet H. Gilbert, being duly sworn, deposes and says that she has read the foregoing Statement, knows the contents thereof, and the same are true to the best of her knowledge, information and belief.



JANET H. GILBERT

The foregoing was acknowledged
before me this 13th day of January, 1998.



Notary

Pages 045 through 074 have been redacted from this volume
because they contain materials which have been designated
"Highly Confidential"

CERTIFICATE OF SERVICE

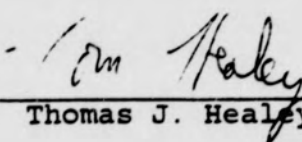
I hereby certify that on this 14th day of January, 1998, a copy of the foregoing Rebuttal Comments and Evidence of Elgin, Joliet and Eastern Railway Company, Transtar, Inc. and I & M Rail Link, LLC (EJE-17/IMRL-6) was served by overnight delivery upon the Primary Applicants herein, as follows:

Dennis G. Lyons, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004-1202

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, DC 20006-3939

Paul A. Cunningham, Esq.
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, DC 20036

and by first class mail, postage prepaid, upon all designated parties of record appearing on the Surface Transportation Board's official service list in this proceeding, served August 19, 1997 and revised on October 7, 1997 and December 5, 1997.



Thomas J. Healey

STB

FD

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(Sub

36)

12-15-98

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184806

SCHIFF HARDIN & WAITE

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Telephone (312) 876-1000 Facsimile (312) 258-5600

Sheldon A. Zabel
(312) 258-5540

Chicago
Washington
New York
Peoria
Merrillville

December 12, 1997

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

**Re: Finance Docket No. 33388
CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation and Norfolk
Southern Railway Company -- Control and
Operating Leases/Agreements -- Conrail Inc.
and Consolidated Rail Corporation**

**Finance Docket No. 33388 (Sub-No. 36)
Elgin, Joliet and Eastern Railway Company,
Transtar, Inc. and I & M Rail Link L.L.C.
-- Purchase -- Stock of Indiana Harbor
Belt Railroad Company**

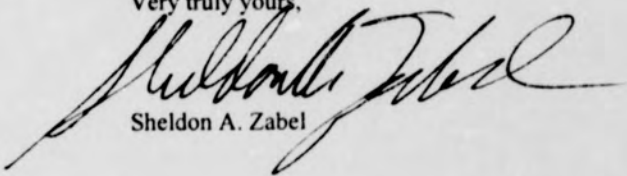
Dear Secretary Williams:

On behalf of Northern Indiana Public Service Company, enclosed for filing in the above-captioned proceeding are an original and twenty-five copies of the Comments of Northern Indiana Public Service Company on Responsive Applications (NIPS-2). A computer diskette containing the text of this filing in WordPerfect 6.1 format is also enclosed.

As required, copies of NIPS-2 have been served by first class mail, postage prepaid on all parties of record listed on the Board's service list.

If you have any questions on this matter, please contact the undersigned.

Very truly yours,


Sheldon A. Zabel

SAZ/mjt

Enclosures

cc: The Honorable Jacob Leventhal (w/encl.)
All Parties on Service List



D

**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**

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

**ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, TRANSTAR, INC. AND I & M RAIL
LINK, L.L.C.**

-- PURCHASE --

STOCK OF INDIANA HARBOR BELT RAILROAD COMPANY

**COMMENTS OF NORTHERN INDIANA PUBLIC SERVICE COMPANY
ON RESPONSIVE APPLICATIONS**

Sheldon A. Zabel
Schiff Hardin & Waite
7200 Sears Tower
Chicago, Illinois 60606
(312) 258-5540

Dated: December 12, 1997

**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**

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

**ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, TRANSTAR, INC. AND I & M RAIL
LINK, L.L.C.**

-- PURCHASE --

STOCK OF INDIANA HARBOR BELT RAILROAD COMPANY

**COMMENTS OF NORTHERN INDIANA PUBLIC SERVICE COMPANY ON RESPONSIVE
APPLICATIONS**

INTRODUCTION:

Northern Indiana Public Service Company ("NIPS") submits the following comments with respect to the Responsive Application of Elgin, Joliet and Eastern Railway Company, Transtar, Inc. and I & M Rail Link, L.L.C. (hereafter this Responsive Application will be referred to as "EJE-10"), filed in connection with the transaction proposed in the above-referenced proceeding by CSX Corporation ("CSXC"), CSX Transportation ("CSXT"), Norfolk Southern Corporation ("NSC"), Norfolk Southern

Railway ("NSR"), Conrail Inc. ("CRI") and Consolidated Rail Corporation ("CRC").¹ While NIPS is focusing these comments on EJE-10, the Board should understand that this is not the limit of NIPS concern with this proceeding. EJE-10 addresses the question of the handling of Conrail's ownership interest in the Indiana Harbor Belt Railroad Company ("IHB"), one of the primary concerns to NIPS in its original comments (see NIPS-1).

NIPS is also concerned with the potential for further deterioration in the quality of service that could result from the approval of the transaction proposed in this proceeding. The continuing, severe problems on the Union Pacific-Southern Pacific ("UP") -- it is becoming a virtual disaster for some of its shippers, including NIPS -- must demonstrate to this Board the need to carefully and thoroughly analyze the present transaction. Certainly the UP situation has to demonstrate to this Board that, in assuring the quality of rail service in this country, it cannot rely on the mere promises and projections of the proponents of a transaction since proponents have proven to be such poor prognosticators.

Another issue of concern to NIPS, which has been addressed in numerous of the comments and filings, is the apparent premium that is being paid for Conrail and the resulting adverse impact this could have on shipping rates. NIPS will not prolong these comments with a reiteration of the facts and potential problems this issue raises as they have been more than adequately addressed by others. Nonetheless, this is a legitimate concern and one which NIPS believes the Board must address.

On the issues of adequacy of service and cost of service, numerous comments and suggested conditions or limitations on the transaction, assuming the Board approves it, have been proposed. The Board certainly has the authority, as well as the duty, to condition the transaction so as to protect the adequacy of rail service and avoid the imposition of unreasonable costs on shippers resulting from the premium being

¹ CSCX and CSXT will be collectively referred to as CSX; NSC and NSR as NS; CRI and CRC as Conrail. All of them together will be referred to as Applicants.

paid for Conrail. NIPS believes the Board must carefully and thoroughly analyze all the proposals presented to it and adopt those that will assure this result.

INDIANA HARBOR BELT RAILROAD COMPANY:

As stated in NIPS' initial filing, of particular concern is the fate of the IHB. The IHB is one of the major, independent terminal/belt carriers in the Chicago switching district. Conrail owns 51% of the stock of IHB and after the transaction proposed here, if approved, the CSX and NS would control the IHB. As stated in NIPS' original comments, it ships a major portion of its coal purchases through the Chicago district and is vitally interested in both preserving the independence of the IHB in order to maintain and promote adequate competition within the Chicago district and avoiding the creation of a dominating position in the Chicago district that could be used anti-competitively to the detriment of shippers both in and outside the Chicago area. Unfortunately, except for describing how they will deal with each other with respect to the IHB if the acquisition is approved² the Applicants provide no information as to how they will operate IHB with respect to third parties or how -- or even if -- they will take any steps to preserve and continue the independence of the IHB. NIPS understands that the CSX and NS plans for operating IHB are not now available and will not be available until it is too late to comment in this proceeding. Further, NIPS is unaware of any commitment or even statement by NS and/or CSX that their plans would preserve and assure the independence of the IHB, which would protect the fair treatment of all shippers on the IHB.

Thus, NIPS has reached the conclusion that the Board must act in this proceeding to preserve the continuing independence of the IHB and thereby assure fair treatment of all users of the IHB. The Board, of course, has the authority to so act and can do so in at least two different ways. First, the Board, assuming

² See "Agreement Relating to the Contractual Rights and Ownership Interest of Consolidated Rail Corporation with respect to the Indiana Harbor Belt Railroad Company," Finance Docket No. 33388, Volume 8C, Exhibit 2, pp. 693-714 (hereafter "IHB Agreement")

it will approve the proposed transaction, could impose conditions on the acquisition of Conrail's stock in IHB designed to preserve IHB's independence. The second, alternative approach would be to adopt an institutional solution placing Conrail's controlling stock interest in IHB in hands other than CSX and NS and thereby avoid issues of unfair, discriminatory or anti-competitive treatment that can result from a loss of independence.

NIPS, having carefully considered the question, believes the second alternative is preferable. No matter how carefully crafted the conditions might be, they are always open to abuse and disagreements over interpretation. The conditions then become just an invitation to disputes that would probably end up before this Board. Because of these uncertain effects of conditions, NIPS and other shippers would have difficulty developing and relying on their transportation plans. Furthermore, NIPS and other shippers would be forced to constantly monitor compliance with the conditions.

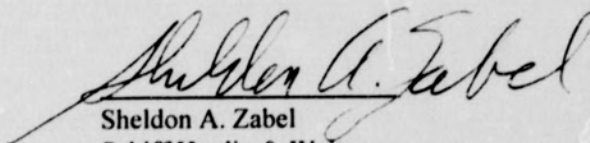
A better solution to the problem, one that avoids the loss of independence and almost certainly would encounter far fewer disputes, is to approve an alternative acquisition of Conrail's stock in IHB. The Elgin, Joliet and Eastern Railway Company ("EJE"), et al., have, in their Responsive Application (EJE-10, Sub No. 36) proposed as an alternative that EJE and I & M Rail Link, L.L.C. ("IMRL") each acquire, for cash at fair market value, 25.5% of the IHB shares. While, for several reasons, this may not be a perfect solution to the IHB problem, among the choices available to the Board - approve the CSX/NS acquisition as proposed; condition the acquisition to try to preserve the independence of the IHB; or approve the EJE proposal - NIPS believes approval of the EJE proposal is by far the superior solution.

CONCLUSIONS:

If the Board determines to approve the proposed transaction, NIPS urges the Board to thoroughly and carefully investigate the service and rate implications of the transaction and assure itself, the users of these rail services and the public generally, by the imposition of necessary and appropriate conditions and limitations, that such approval will not result in either a deterioration of the quality of service or the

imposition of unreasonable rates to recover the premium being paid for Conrail. Second, NIPS believes that the Board should reject the portion of the proposal that would give the CSX and NS control of 51% of the shares of the IHB and should approve the proposal in EJE-10, Sub-No. 36, for the EJE and IMRL to each acquired 25.5% of those shares.

Respectfully submitted,

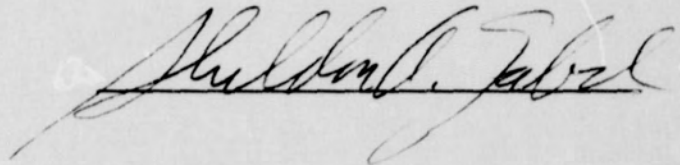
A handwritten signature in cursive script, reading "Sheldon A. Zabel", written over a horizontal line.

Sheldon A. Zabel
Schiff Hardin & Waite
7200 Sears Tower
Chicago, Illinois 60606
(312) 258-5540
Counsel for Northern Indiana
Public Service Company

CHI3:150085.1 12.12.97 08.40

CERTIFICATE OF SERVICE

I, Sheldon A. Zabel, certify that on December 12, 1997, I have caused to serve a true and correct copy of the foregoing NIPS-1, Comments of Northern Indiana Public Service Company, on all parties listed on the Surface Transportation Board's service list in Finance Docket No. 33388, by first-class mail, postage prepaid.

A handwritten signature in cursive script, reading "Sheldon A. Zabel", written over a horizontal line.

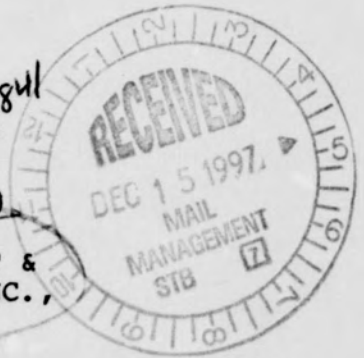
STB FD 33388 (Sub 36) 12-15-97 D 184841

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388 (Sub-No. 36)

RESPONSIVE APPLICATION--ELGIN, JOLIET &
EASTERN RAILWAY COMPANY, TRANSTAR, INC.,
AND I&M RAIL LINK, LLC



Finance Docket No. 33388 (Sub-No. 59)

RESPONSIVE APPLICATION-WISCONSIN CENTRAL LTD.

Finance Docket No. 33388 (Sub-No. 80)

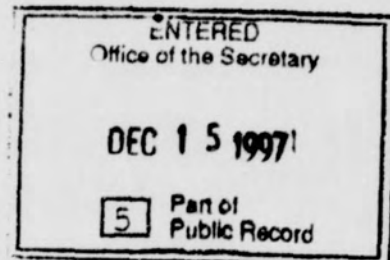
RESPONSIVE APPLICATION--WHEELING & LAKE ERIE RAILWAY COMPANY

COMMENTS

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

Attorney for Joseph C. Szabo

Due Date: December 15, 1997



.
Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388 (Sub-No. 36)

RESPONSIVE APPLICATION--ELGIN, JOLIET &
EASTERN RAILWAY COMPANY, TRANSTAR, INC.,
AND ' M RAIL LINK, LLC

Finance Docket No. 33388 (Sub-No. 59)

RESPONSIVE APPLICATION-WISCONSIN CENTRAL LTD.

Finance Docket No. 33388 (Sub-No. 80)

RESPONSIVE APPLICATION--WHEELING & LAKE ERIE RAILWAY COMPANY

COMMENTS

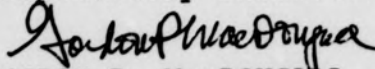
These comments are submitted by Joseph C. Szabo,^{1/} for and on behalf of United Transportation Union-Illinois Legislative Board.

The captioned proceedings involve responsive applications with respect to the primary application. These responsive applications do not provide justification, or support, for approval of the primary application. The responsive applications, as well as the primary application, would be adverse to rail employment in the State of Illinois, and would adversely affect rail employees.

Denial of the primary application would moot the responsive applications.

^{1/} Illinois Legislative Director for United Transportation Union, with offices at 8 So. Michigan Avenue, Chicago, IL 60603.

Respectfully submitted,



GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

December 15, 1997

Attorney for Joseph C. Szabo

Certificate of Service

I hereby certify I have served a copy of the foregoing upon the following, and upon all parties of record on the Board's service list attached to Decision No. 21, as modified in Decision Nos. 27, 43, and 57, by first class mail postage-prepaid:

Thomas J. Litwiler
Oppenheimer Wolff & Donnelly
1020-19th St., N.W.-#400
WASHINGTON DC 20036

Charles H. White, Jr.
Galland, Kharasch & Garfinkle
1054-31st Street, N.W.
WASHINGTON DC 20007

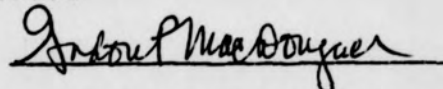
Jacob Leventhal, ALJ
Federal Energy Regulatory Comm.
WASHINGTON DC 20426

Dennis G. Lycns
Arnold & Porter
555-12th St., N.W.
WASHINGTON DC 20004

Richard A. Allen
Zuckert, Scoutt & Rasenberger
888-17th St., N.W.-#600
WASHINGTON DC 20006

Paul A. Cunningham
Harkins Cunningham
1300-19th St., N.W.-#600
WASHINGTON DC 20036

Washington DC



GORDON P. MacDOUGALL

STB

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(Sub 36)

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SCHIFF HARDIN & WAITE

A Partnership Including Professional Corporations

7200 Gears Tower, Chicago, Illinois 60606-6473
Telephone (312) 876-1000 Facsimile (312) 258-5600

Sheldon A. Zabel
(312) 258-5540

Chicago
Washington
New York
Peoria
Merrillville

December 12, 1997

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

**Re: Finance Docket No. 33388
CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation and Norfolk
Southern Railway Company -- Control and
Operating Leases/Agreements -- Conrail Inc.
and Consolidated Rail Corporation**

**Finance Docket No. 33388 (Sub-No. 36)
Elgin, Joliet and Eastern Railway Company,
Transtar, Inc. and I & M Rail Link L.L.C.
-- Purchase -- Stock of Indiana Harbor
Belt Railroad Company**



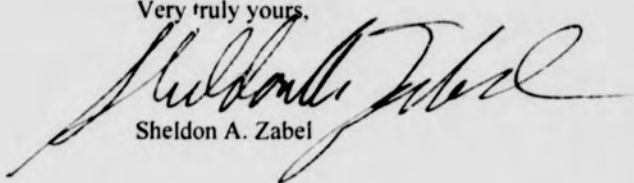
Dear Secretary Williams:

On behalf of Northern Indiana Public Service Company, enclosed for filing in the above-captioned proceeding are an original and twenty-five copies of the Comments of Northern Indiana Public Service Company on Responsive Applications (NIPS-2). A computer diskette containing the text of this filing in WordPerfect 6.1 format is also enclosed.

As required, copies of NIPS-2 have been served by first class mail, postage prepaid on all parties of record listed on the Board's service list.

If you have any questions on this matter, please contact the undersigned.

Very truly yours,

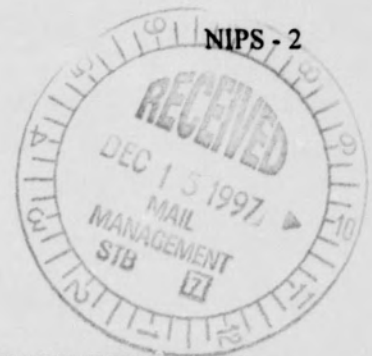

Sheldon A. Zabel

SAZ/mjt

Enclosure

cc: The Honorable Jacob Leventhal (w/encl.)
All Parties on Service List

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

**ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, TRANSTAR, INC. AND I & M RAIL
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-- PURCHASE --

STOCK OF INDIANA HARBOR BELT RAILROAD COMPANY

**COMMENTS OF NORTHERN INDIANA PUBLIC SERVICE COMPANY
ON RESPONSIVE APPLICATIONS**

Sheldon A. Zabel
Schiff Hardin & Waite
7200 Sears Tower
Chicago, Illinois 60606
(312) 258-5540

Dated: December 12, 1997

**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
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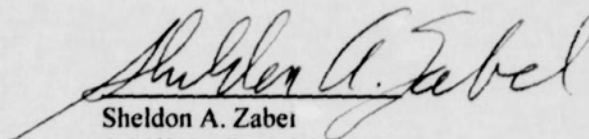
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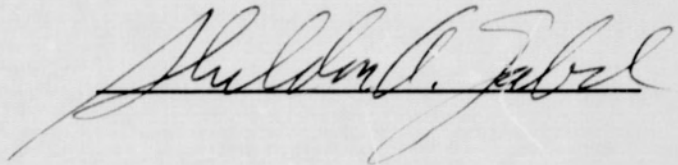


Sheldon A. Zabel
Schiff Hardin & Waite
7200 Sears Tower
Chicago, Illinois 60606
(312) 258-5540
Counsel for Northern Indiana
Public Service Company

CHI3:150085.1 12.12.97 08.40

CERTIFICATE OF SERVICE

I, Sheldon A. Zabel, certify that on December 12, 1997, I have caused to serve a true and correct copy of the foregoing NIPS-1, Comments of Northern Indiana Public Service Company, on all parties listed on the Surface Transportation Board's service list in Finance Docket No. 33388, by first-class mail, postage prepaid.

A handwritten signature in cursive script, reading "Sheldon A. Zabel", is written over a horizontal line.

STB FD 33388 (Sub 36) 12-15-97 D 184804

174804

LAW OFFICES
McFARLAND & HERMAN
20 NORTH WACKER DRIVE-SUITE 1330
CHICAGO, ILLINOIS 60606-2902
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mchermn@aol.com

THOMAS F. McFARLAND, JR.
tmcfarld@aol.com

STEPHEN C. HERMAN
schrnm@aol.com

December 12, 1997

By U.P.S. overnight (Monday delivery)

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001



Re: Finance Docket No. 33388 (Sub-No. 36), *Responsive Application -- Elgin, Joliet & Eastern Railway Company, Transtar, Inc., and I&M Rail Link, Inc.*

Dear Mr. Williams:

Enclosed please find an original and 25 copies of Statement of Ad Hoc Committee of On-Line IHB Shippers in Support of the Responsive Application, for filing with the Board in the above referenced matter.

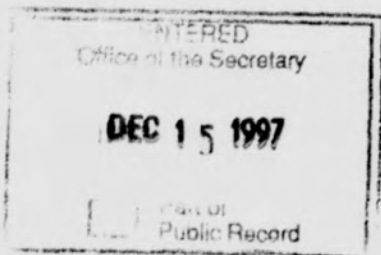
Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

Thomas F. McFarland Jr.

Thomas F. McFarland, Jr.

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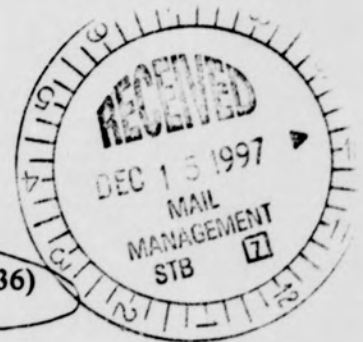
184804

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

RESPONSIVE APPLICATION -- ELGIN,
JOLIET & EASTERN RAILWAY
COMPANY, TRANSTAR, INC., AND
I&M RAIL LINK, INC.

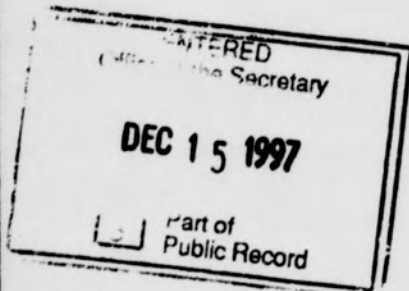
)
) **FINANCE DOCKET**
) **NO. 33388 (SUB-NO. 36)**
)



STATEMENT OF AD HOC COMMITTEE
OF ON-LINE IHB SHIPPERS IN
SUPPORT OF THE RESPONSIVE APPLICATION

AD HOC COMMITTEE OF
ON-LINE IHB SHIPPERS
(listed in attached Appendix A)

Commentor



THOMAS F. McFARLAND, JR.
McFARLAND & HERMAN
20 North Wacker Drive, Suite 1330
Chicago, IL 60606-2902
(312) 236-0204

Attorney for Commentor

DUE DATE: December 15, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

RESPONSIVE APPLICATION -- ELGIN,)	
JOLIET & EASTERN RAILWAY)	FINANCE DOCKET
COMPANY, TRANSTAR, INC., AND)	NO. 33388 (SUB-NO. 36)
I&M RAIL LINK, INC.)	

**STATEMENT OF AD HOC COMMITTEE
OF ON-LINE IHB SHIPPERS IN
SUPPORT OF THE RESPONSIVE APPLICATION**

The AD HOC COMMITTEE OF ON-LINE IHB SHIPPERS (IHB Shippers) hereby submits this statement in support of the Responsive Application filed by Elgin, Joliet & Eastern Railway Company (EJ&E), Transtar, Inc., and I&M Rail Link, Inc. (IMRL).^{1/} The names and addresses of the IHB Shippers are listed in Appendix A attached to this statement.

The IHB Shippers ship or receive various commodities by rail. Some of the IHB Shippers ship large volumes of traffic by rail. Others are small shippers. All are physically served by Indiana Harbor Belt Railroad Company (IHB). As such, the IHB Shippers would be directly affected by the proposed acquisition, whereby Conrail's 51-percent ownership of IHB would be acquired by CSX and NS, and by the Responsive Application, whereby EJ&E and IMRL would acquire that Conrail ownership of IHB.^{2/}

^{1/} Transtar is the parent company of EJ&E.

^{2/} The other 49 percent of IHB is owned by Soo Line Railroad Company.

The IHB Shippers firmly believe that if the acquisition were to be approved without the relief sought in the Responsive Application, service to on-line IHB shippers would deteriorate to their substantial detriment. It is understood that under the acquisition agreement, CSX would exercise day-to-day control of IHB, i.e., dispatching authority and the right to appoint the IHB General Manager. The IHB Shippers fear that CSX would manage and operate IHB in its own interest, not in the interest of IHB's on-line shippers.

Chicago interline rail traffic has increased significantly in recent years as a result of mergers of Western rail carriers. IHB is operating at virtual capacity to handle that increased through traffic as well as its own local business. The Conrail merger would increase Chicago interline traffic even more. CSX would use IHB facilities to further that interline traffic to the detriment of local IHB business in the Chicago area. CSX currently does not have its own major classification yard in the Chicago area. After the merger, CSX would use IHB's Blue Island Yard to further its interline Chicago business. Whereas Blue Island Yard currently is used by IHB primarily to serve on-line IHB shippers, under CSX management and operation the primary use of Blue Island Yard would be to get interline traffic through the Chicago gateway. Service to on-line IHB shippers would suffer as a result.

In order to avoid that harm to IHB shippers, it is essential that IHB be managed and operated as a neutral switching carrier devoted to serving its shippers and all carriers entering Chicago equally. IHB is so operated currently and would be so operated under the Responsive Application. The desirability of neutral switching operations in large competitive rail terminals has been traditionally recognized, particularly in the Chicago area. *See Illinois Central R. Co. Construction and Trackage*, 307 I.C.C. 493, 527 (1959).

The IHB shippers support the Responsive Application of EJ&E and IMRL because it would result in the preservation of essential switching and routing alternatives in the Chicago gateway for all on-line IHB shippers. In contrast, if the merger were to be approved without the Responsive Application, IHB would be managed and operated as an extension of CSX's rail lines. That anti-competitive effect would be significantly harmful to on-line IHB shippers.

If the merger were to be approved without the Responsive Application, there would be a substantial risk that congestion problems and service failures on CSX would paralyze IHB and the entire Chicago rail terminal. As serious and disastrous as was the UP service failure at Houston, TX and resulting overall rail paralysis, the adverse effect would be much more nightmarish if service in the Chicago gateway were to be impeded. The Responsive Application would alleviate that risk and ensure that by means of IHB, other rail carriers serving Chicago would be able to operate effectively through the gateway even if CSX were to be unable to function.

In managing and operating IHB, CSX's interest and emphasis would be on its own through traffic, not on IHB's local traffic. IHB local traffic would be "small potatoes" to CSX, much as it has been to Conrail in recent years, during which IHB service has declined. Class I carriers are more concerned with efficient handling of their through traffic than in developing local rail traffic.

In contrast, it is commonly accepted that short-line and regional rail carriers such as EJ&E and IMRL provide better service for local traffic. *See Class Exemption - Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 1 I.C.C.2d 810, 813 (1985) ("... (S)hortlines are dependent on local traffic for their survival, and thus have a greater incentive than Class I carriers to provide

local shippers with service tailored to their needs. . ."). Thus, the influence of EJ&E and IMRL in IHB management and operation is expected to result in improved rail service for IHB Shippers.

For the foregoing reasons, the IHB Shippers would be harmed by CSX management and operation of IHB, but would be benefitted by neutral management and operation of IHB under EJ&E, IMRL and Soo Line ownership. Consequently, the IHB Shippers strongly support the Responsive Application of EJ&E and IMRL.

Respectfully submitted,

AD HOC COMMITTEE OF
ON-LINE IHB SHIPPERS
(listed in attached Appendix A)

Commentor

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DUE DATE: December 15, 1997

APPENDIX A

LISTING OF AD HOC COMMITTEE OF ON-LINE IHB SHIPPERS

1. **CPC INTERNATIONAL**
6500 South Archer Road
Summit-Argo, IL 60501-0345
2. **FSC PAPER COMPANY, LP**
13101 South Pulaski Avenue
Alsip, IL 60658
3. **FAVORITE BRANDS INTERNATIONAL**
2005 West 43rd Street
Chicago, IL 60609
4. **FERRO CORPORATION, KEIL CHEMICAL DIVISION**
3000 Sheffield Avenue
Hammond, IN 46320
5. **ILLINOIS BRICK COMPANY**
7601 West 79th Street
Bridgeview, IL 60455
6. **MID-CONTINENT COAL AND COKE COMPANY**
915 West 175th Street
Homewood, IL 60430
7. **PRAIRIE GROUP**
P.O. Box 1123
Bridgeview, IL 60455
8. **RAMM BRICK COMPANY**
223 Tilden Avenue
LaGrange, IL 60525

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document, Statement of Ad Hoc Committee of On-Line IHB Shippers In Support of the Responsive Application, on all parties of record, by first-class, U.S. mail, postage prepaid, this 12th day of December, 1997.

Thomas F. McFarland Jr.

Thomas F. McFarland, Jr.