

STB FD 33388 (Sub 54) 10-1-97 K BUSINESS

HOPKINS & SUTTER

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

ENVIRONMENTAL DOCUMENT

888 SIXTEENTH STREET, N.W., WASHINGTON, D.C. 20006-4103 (202) 835-8000

FACSIMILE (202) 835-8134

INTERNET <http://www.hopsut.com>

CHICAGO OFFICE THREE FIRST NATIONAL PLAZA 60602-4205
DETROIT OFFICE 2800 LIVERNOIS SUITE 220 TROY, MI 48063-1220

JAMIE PALTER RENNERT
(202) 835-8116

October 1, 1997

Office of the Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



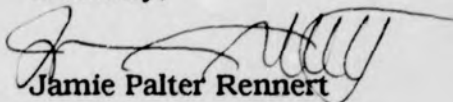
Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

Re: *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-54

Dear Ms. Kaiser:

Enclosed are an original and ten (10) copies of the New York City Economic Development Corporation's Verified Statement of Shirley Jaffe Concerning Environmental and Historical Reporting Requirements (NYC-7) for filing in the above-referenced proceeding. An additional copy is enclosed for file stamp and return with our messenger. Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

Sincerely,



Jamie Palter Rennert

Enclosure

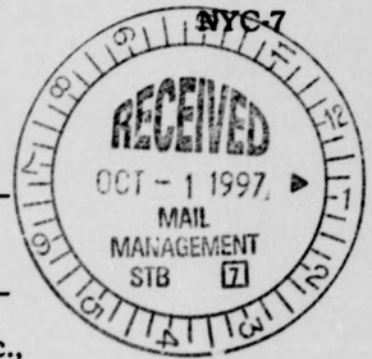
cc: The Honorable Jacob Leventhal
All Parties of Record

Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388 (Sub-No. 54)

CSX Corporation and CSX Transportation Inc.,
Norfolk Southern Corporation and
Norfolk Southern Railway Company
-- Control and Operating Leases/Agreements --
Conrail Inc. and Consolidated Rail Corporation

**Verified Statement of
Shirley Jaffe
Concerning Environmental and
Historical Reporting Requirements**



Charles A. Spitulnik
Alicia M. Serfaty
Jamie Palter Rennert
Hopkins & Sutter
888 Sixteenth Street, N.W.
Washington, D.C. 20006

Counsel for New York City Economic
Development Corporation, acting on
behalf of the City of New York

Dated: October 1, 1997

Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388 (Sub-No. 54)

CSX Corporation and CSX Transportation Inc.,
Norfolk Southern Corporation and
Norfolk Southern Railway Company
-- Control and Operating Leases/Agreements --
Conrail Inc. and Consolidated Rail Corporation



**Verified Statement of
Shirley Jaffe**

My name is Shirley Jaffe. I am a Senior Vice President of the New York City Economic Development Corporation ("NYCEDC"). I am submitting this Verified Statement pursuant to Decision No. 12 in this proceeding, which directs each party intending to submit a responsive application to either submit environmental documentation required under the Board's rules in regard to the transactions proposed in the responsive application, or to certify that under the Board's rules such transactions are exempt from any requirement of environmental documentation. Based on the information currently available to me, it is my judgment that NYCEDC's responsive application falls into the latter category pursuant to the exemption set forth at 49 C.F.R. § 1105.6(c)(2), and that the Board's rules do not require any environmental documentation regarding the transactions proposed in that application. Likewise, I conclude that the transactions proposed in NYCEDC's responsive application are exempt from historic impact reporting requirements under 49 C.F.R. § 1105.8(b)(1) and (3).

1. The NYCEDC Responsive Application

The responsive application to be filed by NYCEDC will seek the following relief to ensure competitive access to the City and Long Island:

(1) a responsive application seeking the divestiture of Conrail's current ownership and/or operating rights to a neutral third party administrator who will then allow for competitive access over the line extending from Fresh Pond, in the borough of Queens, N.Y. up the east side of the Hudson River through Selkirk, NY to points north therefrom where the Delaware & Hudson ("D&H") currently interchanges with Conrail; or

(2) a responsive application for trackage rights along the line on the east side of the Hudson on behalf of a neutral third party operator with a vested interest in the economic well-being of the downstate area. Specifically, NYCEDC would seek, subject to modification to accommodate operational considerations: (i) trackage rights at reasonable rates over the line from Fresh Pond, in the borough of Queens, N.Y. to Oak Point, NY over which the newly created New York Central Lines LLC ("NYC") will have trackage rights; (ii) concurrent trackage rights (with Conrail-CSX) over the line owned by the New York Metropolitan Transit Authority from Oak Point, NY to Poughkeepsie, NY; and (iii) trackage rights from Poughkeepsie, NY up through Selkirk, NY to points north therefrom where the Delaware & Hudson currently interchanges with Conrail.

NYCEDC's efforts to seek divestiture, trackage rights, or the imposition of some other appropriate condition will allow shippers from Long Island and New York City to have maximum competitive access to all carriers serving the Albany area.

2. Environmental and Historic Reporting Exemptions

Under 49 C.F.R. § 1105.6(c)(2), an environmental assessment need not be prepared in connection with a responsive application seeking divestiture or trackage rights, if the granting of the requested relief will not result in changes in carrier operations over the subject lines that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5). Likewise, 49 C.F.R. § 1105.8(b)(1) and (3) provide that historic impact reports will not be required for (i) the transfer of rail lines where further Board approval is required to abandon any service and there are no plans to dispose

of or alter properties subject to Board jurisdiction that are 50 years old or older, or (ii) trackage rights applications that will not substantially change the level of maintenance of railroad property.

As described below, I conclude that the divestiture, trackage rights or other relief to be requested by NYCEDC in its responsive application will not propose operational changes that would exceed any of the applicable thresholds. Specifically, the divestiture or trackage rights to be requested in the responsive application will not result in:

A. Any diversion of traffic from rail to motor carriage. As such, neither of the thresholds described at 49 C.F.R. § 1105.7(e)(4)(iv)(A) or (B) will be exceeded.

B. An increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase in 8 trains per day on any segment of rail line affected by the proposal, pursuant to 49 C.F.R. § 1105.7(e)(5)(i)(A), or an increase over the 50%/3 trains per day threshold for Clean Air Act non-attainment areas under 49 C.F.R. § 1105.7(e)(5)(ii)(A). According to the 1995 traffic data submitted by the Applicants, the Conrail and Metro-North line from New York City to Albany that will be the subject of NYCEDC's responsive application handled between 21 and 146 trains per day during the study year. See Application, Volume 3(A), page 447. NYCEDC anticipates no more than a one (1) or two (2) train per day increase on the line and this would not trigger the thresholds set forth above.

C. An increase in rail yard activity of at least 100% (measured by carload activity), or an increase over the 20% threshold for Clean Air Act non-attainment areas, pursuant to 49 C.F.R. §§ 1105.7(e)(5)(i)(B) and § 1105.7(e)(5)(ii)(B).

D. An increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, pursuant to 49 C.F.R. § 1105.7(e)(5)(i)(c).

E. The transportation of ozone depleting materials.

Given that the responsive application will seek divestiture, trackage rights or other relief that, once exercised, will result in only a minimal increase in rail freight operations, there will be no abandonment of service or plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older, and there should be little or no related impact on the level of necessary railroad property maintenance. As such, NYCEDC's responsive application meets the standard for an historic reporting exemption under 49 C.F.R. § 1105.8(b)(1) and (3).

On the basis of the foregoing, I conclude that under the applicable Board rules, no environmental or historic documentation is required in connection with NYCEDC's responsive application.

Verification

State of New York

)

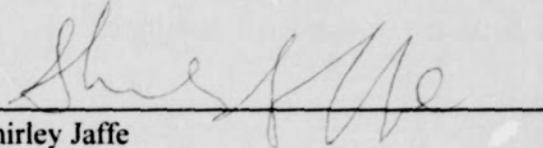
)

ss:

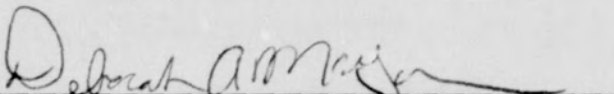
City of New York

)

Shirley Jaffe, being duly sworn, deposes and says that she is qualified and authorized to file this Verified Statement, and that she has read the foregoing statement, knows the contents thereof, and that the same are true as stated to the best of her knowledge, information and belief.


Shirley Jaffe
Senior Vice President

Subscribed and sworn to
before me this 30th
day of September, 1997.


Notary Public

DEBORAH A. MCGOVERN
Notary Public, State of New York
No. 01MC5076459
Qualified in Queens County 1999
Commission Expires April 21, 1999

My commission expires:

4/21/99

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 1997, a copy of the foregoing New York City Economic Development Corporation's Verified Statement of Shirley Jaffe Concerning Environmental and Historical Reporting Requirements (NYC-7) was served by hand delivery upon the following:

The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Regulatory Commission
888 First Street, N.E.
Suite 11F
Washington, D.C. 20426

John M. Nannes
Skadden, Arps, Slate, Meagher
& Flom L.L.P.
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

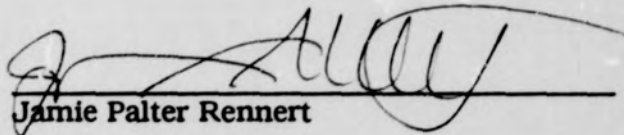
Samuel M. Sipe, Jr.
Steptoe & Johnson L.L.P.
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

Richard A. Allen
John V. Edwards
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3939

Dennis G. Lyons
Drew A. Harker
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1202

Paul A. Cunningham
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, D.C. 20036

and by first class mail, postage pre-paid upon all other Parties of Record in this proceeding.


Jamie Palter Rennert