

STB

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(Sub 61)

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SERVICE DATE - JULY 23, 1998

This decision will be included in the bound volumes
of the STB printed reports at a later date.

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

Sub 61

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

Decision No. 89¹

Decided: July 20, 1998

The Board approves, with certain conditions: (1) the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail) by (a) CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and (b) Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS); and (2) the division of the assets of Conrail by and between CSX and NS.

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¹ This decision covers the STB Finance Docket No. 33388 lead proceeding and the embraced proceedings listed in Appendix A.

**FOR COMPLETE TEXT OF THIS DECISION SEE
LEAD DOCKET DECISION NO. 89**

STB

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33388

(Sub 61)

11-20-97

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SERVICE DATE - NOVEMBER 20, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB 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

STB Finance Docket No. 33388 (Sub-No. 35)

RESPONSIVE APPLICATION--NEW YORK STATE ELECTRIC AND GAS CORPORATION

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

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

STB Finance Docket No. 33388 (Sub-No. 39)

RESPONSIVE APPLICATION--LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION

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

RESPONSIVE APPLICATION--WISCONSIN CENTRAL LTD.

STB Finance Docket No. 33388 (Sub-No. 61)

RESPONSIVE APPLICATION--BESSEMER AND LAKE ERIE RAILROAD COMPANY

STB Finance Docket No. 33388 (Sub-No. 62)

RESPONSIVE APPLICATION--ILLINOIS CENTRAL RAILROAD COMPANY

STB Finance Docket No. 33388 (Sub-No. 63)

RESPONSIVE APPLICATION--R.J. CORMAN RAILROAD COMPANY/WESTERN OHIO LINE

STB Finance Docket No. 33388

STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION--STATE OF NEW YORK, BY AND THROUGH ITS
DEPARTMENT OF TRANSPORTATION, AND THE NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION

STB Finance Docket No. 33388 (Sub-No. 72)

RESPONSIVE APPLICATION--THE BELVIDERE & DELAWARE RIVER RAILWAY AND
THE BLACK RIVER & WESTERN RAILROAD

STB Finance Docket No. 33388 (Sub-No. 75)

RESPONSIVE APPLICATION--NEW ENGLAND CENTRAL RAILROAD, INC.

STB Finance Docket No. 33388 (Sub-No. 76)

RESPONSIVE APPLICATION--INDIANA SOUTHERN RAILROAD, INC.

STB Finance Docket No. 33388 (Sub-No. 77)

RESPONSIVE APPLICATION--INDIANA & OHIO RAILWAY COMPANY

STB Finance Docket No. 33388 (Sub-No. 78)

RESPONSIVE APPLICATION--ANN ARBOR ACQUISITION CORPORATION, D/B/A ANN
ARBOR RAILROAD

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

RESPONSIVE APPLICATION--WHEELING & LAKE ERIE RAILWAY COMPANY

STB Finance Docket No. 33388 (Sub-No. 81)

RESPONSIVE APPLICATION--CANADIAN NATIONAL RAILWAY COMPANY AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED

STB Finance Docket No. 33388 (Sub-No. 83)

GRAND TRUNK WESTERN RAILROAD INCORPORATED--CONSTRUCTION AND
OPERATION EXEMPTION--CONNECTING TRACKS AT TRENTON, MI

DECISION NO. 54

AGENCY: Surface Transportation Board.

ACTION: Decision No. 54; Notice of Acceptance of Responsive Applications and Related Filing.

SUMMARY: The Board is accepting for consideration the responsive applications filed: by New York State Electric and Gas Corporation (NYSEG) in STB Finance Docket No. 33388 (Sub-No. 35); jointly by Elgin, Joliet & Eastern Railway Company, Transtar, Inc., and I & M Rail Link, LLC, in STB Finance Docket No. 33388 (Sub-No. 36);¹ by Livonia, Avon & Lakeville Railroad Corporation (LAL) in STB Finance Docket No. 33388 (Sub-No. 39); by Wisconsin Central Ltd. (WCL) in STB Finance Docket No. 33388 (Sub-No. 59); by Bessemer and Lake Erie Railroad Company (BLE) in STB Finance Docket No. 33388 (Sub-No. 61); by Illinois Central Railroad Company (IC) in STB Finance Docket No. 33388 (Sub-No. 62); by R.J. Corman Railroad Company/Western Ohio Line (RJCW) in STB Finance Docket No. 33388 (Sub-No. 63); jointly by (i) the State of New York, acting by and through its Department of Transportation (NYDOT), and (ii) the New York City Economic Development Corporation (NYCEDC) in STB Finance Docket No. 33388 (Sub-No. 69);² jointly by the Belvidere & Delaware River Railway (BDRV) and the Black River & Western Railroad (BRW) in STB Finance Docket No. 33388 (Sub-No. 72); by New England Central Railroad, Inc. (NECR), in STB Finance Docket No. 33388 (Sub-No. 75); by Indiana Southern Railroad, Inc. (ISRR), in STB Finance Docket No. 33388 (Sub-No. 76); by Indiana & Ohio Railway Company (IORY) in STB Finance Docket No. 33388 (Sub-No. 77); by Ann Arbor Acquisition Corporation, d/b/a Ann Arbor Railroad (AA), in STB Finance Docket No. 33388 (Sub-No. 78); by Wheeling & Lake Erie Railway Company (W&LE) in STB Finance Docket No. 33388 (Sub-No. 80); and jointly by Canadian National Railway Company (CN) and Grand Trunk Western Railroad Incorporated (GTW) in STB Finance Docket No. 33388 (Sub-No. 81). The Board is also accepting for consideration the notice of exemption filed by GTW in STB Finance Docket No. 33388 (Sub-No. 83). The responsive applications filed in STB Finance Docket No. 33388 (Sub-Nos. 35, 36,

¹ Elgin, Joliet & Eastern Railway Company and Transtar, Inc. are referred to collectively as EJE. I & M Rail Link, LLC is referred to as IMRL.

² The responsive application filed jointly by NYDOT and NYCEDC purports to be filed both in STB Finance Docket No. 33388 (Sub-No. 69) (this being the sub-number docket reserved by NYDOT) and in STB Finance Docket No. 33388 (Sub-No. 54) (this being the sub-number docket reserved by NYCEDC). Although there are two responsive applicants there is only one responsive application, and we will treat this single application as if it had been filed in STB Finance Docket No. 33388 (Sub-No. 69) only.

39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81) are responsive to the primary application filed June 23, 1997, in STB Finance Docket No. 33388 by CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC).³ The notice of exemption filed in STB Finance Docket No. 33388 (Sub-No. 83) is related to the responsive application filed in STB Finance Docket No. 33388 (Sub-No. 81).⁴

DATES: The effective date of this decision is November 20, 1997. Comments regarding the responsive filings must be filed with the Board by December 15, 1997. Rebuttal in support of these responsive filings must be filed with the Board by January 14, 1998. Briefs (not to exceed 50 pages) must be filed with the Board by February 23, 1998.

ADDRESSES: An original and 25 copies of all comments referring to STB Finance Docket No. 33388 (Sub-No. 35), STB Finance Docket No. 33388 (Sub-No. 36), STB Finance Docket No. 33388 (Sub-No. 39), STB Finance Docket No. 33388 (Sub-No. 59), STB Finance Docket No. 33388 (Sub-No. 61), STB Finance Docket No. 33388 (Sub-No. 62), STB Finance Docket No. 33388 (Sub-No. 63), STB Finance Docket No. 33388 (Sub-No. 69), STB Finance Docket No. 33388 (Sub-No. 72), STB Finance Docket No. 33388 (Sub-No. 75), STB Finance Docket No. 33388 (Sub-No. 76), STB Finance Docket No. 33388 (Sub-No. 77), STB Finance Docket No. 33388 (Sub-No. 78), STB Finance Docket No. 33388 (Sub-No. 80), STB Finance Docket No. 33388 (Sub-No. 81), and/or STB Finance Docket No. 33388 (Sub-No. 83) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN.: STB Finance Docket No. 33388, 1925 K Street, N.W., Washington, DC 20423-0001.⁵

³ CSXC and CSXT, and their wholly owned subsidiaries, are referred to collectively as CSX. NSC and NSR, and their wholly owned subsidiaries, are referred to collectively as NS. CRR and CRC, and their wholly owned subsidiaries, are referred to collectively as Conrail or CR. CSX, NS, and Conrail are referred to collectively as the primary applicants.

⁴ The responsive applications filed in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81) and the notice of exemption filed in STB Finance Docket No. 33388 (Sub-No. 83) are hereinafter referred to collectively as the "responsive filings."

⁵ In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served on all other parties of record. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing in what has already become a voluminous record.

In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit one electronic copy of each such document. Further details respecting such electronic submissions are provided below.

In addition, one copy of each document filed in these proceedings must be served on: the U.S. Secretary of Transportation; the U.S. Attorney General; Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426; Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004-1202 (representing primary applicants CSXC and CSXT); Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, LLP, Suite 600, 888 Seventeenth Street, N.W., Washington, DC 20006-3939 (representing primary applicants NSC and NSR); and Paul A. Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, DC 20036 (representing primary applicants CRR and CRC).

In addition, one copy of all comments filed in these proceedings must be served on the appropriate responsive applicant's representative: William A. Mullins, Esq., Troutman Sanders LLP, 1300 I Street, N.W., Suite 500 East, Washington, D.C. 20005-3314 (representing NYSEG); Thomas J. Litwiler, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601-6710 (representing EJE, IMRL, BLE, IC, and WCL); Kevin M. Sheys, Esq., Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, DC 20036-6200 (representing LAL and RJCW); William L. Slover, Esq., Slover & Loftus, 1224 Seventeenth Street, NW, Washington, DC 20036-3003 (representing NYDOT); Charles A. Spitulnik, Esq., Hopkins & Sutter, 888 Sixteenth Street, NW, Washington, DC 20006 (representing NYCEDC); Peter A. Greene, Esq., Thompson Hine & Flory LLP, 1920 N Street, N.W., Suite 800, Washington, DC 20036 (representing BDRV and BRW); Karl Morell, Esq., Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005 (representing NECR, ISRR, IORY, and AA); Charles H. White, Jr., Esq., Galland, Kharasch & Garfinkle, P.C., 1054 Thirty-First Street, N.W., Washington, DC 20007-4492 (representing W&LE); and L. John Osborn, Sonnenschein Nath & Rosenthal, 1301 K Street, N.W., Suite 600 East, Washington, DC 20005 (representing CN and GTW).

In addition, one copy of all documents filed in these proceedings must be served on all other persons designated parties of record on the Board's service list in STB Finance Docket No. 33388. See the service list attached to Decision No. 21 (served August 19, 1997), as modified in Decision No. 27 (served September 8, 1997), and as further modified in Decision No. 43 (served October 7, 1997).⁶

⁶ Members of the United States Congress and Governors are not parties of record and therefore need not be served with copies of filings, unless any such Member or Governor is designated as a party of record. See Decision No. 12 (served July 23, 1997, and published that (continued...)

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: In the primary application filed with the Board on June 23, 1997, primary applicants CSX⁶, CSXT, NSC, NSR, CRR, and CRC seek approval and authorization under 49 U.S.C. 11321-25 for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS. In various related filings also filed June 23, 1997, the primary applicants seek related relief contingent upon approval of the primary application. In Decision No. 12, the Board accepted for consideration the primary application and the various related filings, and directed that responsive applications be filed by October 21, 1997.

RESPONSIVE FILINGS: CONDITIONS REQUESTED. In STB Finance Docket No. 33388 (Sub-No. 35), NYSEG seeks: (1) on behalf of NSR,⁷ or a third-party carrier suitable to NYSEG, trackage rights over the CRC lines between Buffalo, NY, and NYSEG's Kintigh Station; specifically, from the Niagara Branch MP 19.0 (CP-21)⁸ to the Tuscarora Wye, for approximately 4,200 feet, to Lockport Branch MP 69.6 (CP-69) to the connection with Somerset Railroad Corporation at Lockport Branch MP 58.8 (CP-59) (a total distance of approximately 11.2 miles);⁹ or (2) on behalf of CSXT, or a third-party carrier suitable to NYSEG, trackage rights over the CRC lines between Buffalo, NY, and NYSEG's Milliken, Goudey, and Greenidge plants; specifically, from Chicago Line MP 1.7 (CP-DRAW) over the Bison Running Track to

⁶(...continued)

day in the Federal Register at 62 FR 39577), slip op. at 19, 62 FR at 39588.

⁷ If exercised by NSR, modification of NSR's trackage rights over CSXT and New York Central Lines LLC (NYC), as shown on pp. 220-52 and 329-35 of Volume 8B of the primary application, would also be required to eliminate any restrictions contained therein that would prevent transportation to NYSEG's Kintigh Station, including, but not confined to, limitations against interchanging with, or operating over, property of Somerset Railroad Corporation.

⁸ Milepost is abbreviated MP. Control point is abbreviated CP.

⁹ If exercised by a third-party carrier, these rights would include full access over: The Chicago Line between CP-2 and FW Tower (CP-437) and the Belt Line Branch owned by NYC and operated by CSX between the connection at FW Tower (CP-437), Buffalo, NY, at or near MP 0.0, and the connection with the Niagara Branch (CP-1) at or near MP 7.2, and the Niagara Branch operated by CSX between the connection with the Belt Line Branch, at or near MP 7.5, "and to" Tuscarora Wye to CP-69 at MP 69.6 of the Lockport Branch to MP 58.8 (CP-59) and connection track to MP 0.0 of the Somerset Railroad Corporation. This would cover a total distance of approximately 33.2 miles.

Southern Tier Line MP 419.8 to Binghamton MP 215.3 including Binghamton Running Track and #4 Yard Track with connections to: Vestal Industrial Track; on Vestal Industrial Track from MP 192.3 to MP 195.4; and connections to Lehigh Secondary at Southern Tier MP 255.2. Lehigh Secondary Track MP 269.5 to 271.6 and connection to Ithaca Secondary; Ithaca Secondary from MP 271.6 to the end of line at Milliken Station MP 321.0; connections to Corning Secondary at Southern Tier Line MP 290.1 and 290.8, Corning Secondary from MP 70.6 (CP-Glass) and MP 70.9 (GP - Gibson/CP-Corning) to MP 0 (CP-335), including sidings, runarounds, and passing tracks (a total distance of approximately 333.4 miles).

In STB Finance Docket No. 33388 (Sub-No. 36), EJE and IMRL seek to acquire, and thereafter to divide into two equal parts, CRC's 51% stock ownership of the Indiana Harbor Belt Railroad Company (IHB).

In STB Finance Docket No. 33388 (Sub-No. 39), LAL seeks to acquire ownership of or trackage rights on approximately 1.0 route mile of trackage constituting CRC's Genesee Junction yard in Chili, NY.

In STB Finance Docket No. 33388 (Sub-No. 59), WCL seeks to acquire from The Baltimore & Ohio Chicago Terminal Railroad Company (B&OCT, a wholly owned CSX subsidiary) a portion of B&OCT's Altenheim Subdivision, including rail line, side track, yard trackage, and associated right-of-way and appurtenances, beginning at a connection between WCL and B&OCT trackage at B&OCT MP 37.4 at Madison Street, Forest Park, IL, and extending to a point of connection with Union Pacific Railroad Company (UPRR) and Conrail's Panhandle Line in the vicinity of Rockwell Street, Chicago, IL.

In STB Finance Docket No. 33388 (Sub-No. 61), BLE seeks overhead trackage rights over: (1) CRC's Mon Line between the connection with BLE (Union Railroad Company, a BLE affiliate) at Pittsburgh (Duquesne), PA, and CRC's Shire Oaks Yard in Shire Oaks, PA (a distance of approximately 14 miles); and/or (2) CSXT's line (formerly the Pittsburgh & Lake Erie Railroad Company) between the connection with BLE (Union Railroad Company) at Bessemer (Pittsburgh), PA, and CSXT's Newell Interchange Yard near Brownsville, PA (a distance of approximately 40 miles). The overhead trackage rights sought by BLE would be restricted to the transportation of coal originating at current or future mines on the former Monongahela Railway Company lines and destined to the P&C Dock at Conneaut, OH, for movement beyond.

In STB Finance Docket No. 33388 (Sub-No. 62), IC seeks to acquire CSXT's Leewood-Aulon Line in Memphis, TN, which extends between CSXT MP F-371.4 (IC MP 387.9) at Leewood and CSXT MP F-373.4 (IC MP 390.0) at Aulon, a distance of approximately 2 miles.

In STB Finance Docket No. 33388 (Sub-No. 63), RJCW seeks to acquire ownership of or trackage rights on Conrail's line of railroad between approximately MP 54.4 and approximately MP 52.1 in Lima, OH.

In STB Finance Docket No. 33388 (Sub-No. 69), NYDOT and NYCEDC seek: (1) full service trackage rights in favor of a rail carrier other than Conrail or CSX, to be designated jointly by NYDOT and NYCEDC, over the lines of Conrail between points of connection with the Delaware & Hudson Railway (D&H) at CP-160 near Schenectady, NY, and Selkirk Yard near Selkirk, NY, on the one hand, and, on the other, CP-75 near Poughkeepsie, NY, together with sufficient rights on tracks within Selkirk Yard to permit the efficient interchange of freight with D&H; (2) full service trackage rights in favor of a rail carrier other than Conrail or CSX, to be designated jointly by NYDOT and NYCEDC, over the lines of Conrail between the point of Conrail ownership at Mott Haven Junction ("MO"), NY, and the point of connection with the lines of the Long Island Railroad near Fresh Pond ("MONT"), NY, via the Harlem River Yard; and (3) to the extent necessary to permit uninterrupted rail freight transportation between CP-160 and/or Selkirk Yard, on the one hand, and, on the other, Fresh Pond, a declaration that, pursuant to 49 U.S.C. 11321(a), Metro-North Commuter Railroad Company, a subsidiary of the Metropolitan Transportation Authority of the State of New York, may grant unrestricted trackage rights over the lines between CP-75 and Mott Haven Junction to a rail carrier other than Conrail or CSX, notwithstanding any provisions of any agreements which purport to limit or prohibit such a grant.

In STB Finance Docket No. 33388 (Sub-No. 72), BDRV and BRW seek: (1) removal of the restriction on certain D&H trackage rights that prevents interchange between D&H and BDRV at Phillipsburg, NJ, and between D&H and BRW at Three Bridges, NJ; (2) a grant of overhead trackage rights to BDRV over lines to be acquired by NS from Phillipsburg, NJ, to Manville, NJ (a distance of 40 miles), or to some other operationally feasible point at which BDRV and CSXT can interchange traffic; (3) a grant of overhead trackage rights to BRW over lines to be acquired by NS from Three Bridges, NJ, to Manville, NJ (a distance of 13 miles), or to some other operationally feasible point at which BRW and CSXT can interchange traffic; and (4) a grant of overhead trackage rights to BDRV and BRW over lines to be acquired by NS between the BDRV-NS connection at Phillipsburg, NJ, and the BRW-NS connection at Three Bridges, NJ (a distance of 29 miles).

In STB Finance Docket No. 33388 (Sub-No. 75), NECR seeks "limited trackage rights": (1) between Palmer, MA, and West Springfield, MA, a distance of 18 miles, over the CRC line to be acquired by CSXT; (2) between West Springfield, MA, on the one hand, and, on the other, Albany, Selkirk, and Mechanicville, NY, a distance of 98 miles, over the CRC line to be acquired by CSXT; and (3) between Albany, NY, and the New Jersey/New York Shared Assets

Area,¹⁰ a distance of 140 miles, over the CRC line located on the west side of the Hudson River that is to be acquired by CSXT.¹¹

In STB Finance Docket No. 33388 (Sub-No. 76), ISRR seeks: (1) overhead trackage rights in Indianapolis, IN, between MP 6.0 on ISRR's Petersburg Subdivision and Indianapolis Power & Light's Perry K facility, over the CRC line to be acquired by CSXT; (2) overhead trackage rights in Indianapolis, IN, between MP 6.0 on ISRR's Petersburg Subdivision and Indianapolis Power & Light's Stout facility located on the line of the Indiana Rail Road Company (INRD), over a segment of the CRC line to be acquired by CSXT and a segment of the INRD line; (3) local trackage rights over CRC's lines in Indianapolis, IN, including the Indianapolis Belt Line, to be acquired by CSXT (ISRR seeks trackage rights over all CRC lines in Indianapolis needed to access the 2-to-1 shippers located in Indianapolis); (4) local trackage rights between Indianapolis and Shelbyville, IN, a distance of 27 miles, over the CRC line to be acquired by CSXT; (5) local trackage rights between Indianapolis and Crawfordsville, IN, a distance of 44 miles, over the CRC line to be acquired by CSXT; and (6) local trackage rights between Indianapolis and Muncie, IN, a distance of 55 miles, over the CRC line to be acquired by CSXT.¹²

In STB Finance Docket No. 33388 (Sub-No. 77), IORY seeks: (1) overhead trackage rights over CSXT between East Norwood, OH, and Washington Court House, OH, a distance of 65 miles, with the right to connect at Midland City with IORY's Greenfield branch; (2) local trackage rights between Monroe, OH, and Middletown, OH, a distance of 5 miles, over the CRC line to be acquired by NSR (with the right to connect at Middletown with CSXT and IORY's existing trackage rights through Middletown over the CRC line between Springfield and Cincinnati); (3) local trackage rights between Sidney, OH, and Quincy, OH, a distance of 10 miles, over the CRC line to be acquired by CSXT; (4) local trackage rights between Sharronville, OH, and Columbus, OH, a distance of 125 miles, over the CRC line to be acquired by NSR; (5) local trackage rights between Quincy, OH, and Marion, OH, a distance of 52 miles, over the CRC line to be acquired by CSXT; (6) local trackage rights between Lima, OH, and Fort Wayne,

¹⁰ The "New Jersey/New York Shared Assets Area" is apparently the area that applicants refer to as the North Jersey Shared Assets Area.

¹¹ NECR's use of the term "limited trackage rights" is intended to include: (a) the right to operate trains over the lines described in the text; and (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described.

¹² ISRR's use of the term "local trackage rights" is intended to include: (a) the right to operate trains over the lines described in the text; (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described; and (c) the right to serve all shippers, sidings, and team tracks located on the lines thus described.

IN, a distance of 59 miles, over the CRC line to be acquired by CSXT; (7) local trackage rights over CRC's Erie track in Lima, OH; and (8) local trackage rights between Quincy, OH, and Marysville, OH, over the CRC line to be acquired by CSXT.¹³

In STB Finance Docket No. 33388 (Sub-No. 78), AA seeks: (1) "limited trackage rights" between Toledo, OH, and Chicago, IL, via Elkhart, IN, a distance of 230 miles, over the CRC line to be acquired by NS; and (2) a condition permitting AA to interchange traffic with CP Rail System at Ann Arbor, MI.¹⁴

In STB Finance Docket No. 33388 (Sub-No. 80), W&LE seeks: (1) haulage and trackage rights to Chicago, IL, including access to Belt Railway of Chicago and rights for interchange with all carriers, specifically including WCL;¹⁵ (2) haulage and trackage rights from Bellevue, OH, to Toledo, OH, a distance of 54 miles, for an interchange with the Ann Arbor Railroad, Canadian National, and the Indiana & Ohio Railroad (also including access to British Petroleum for movement of coke to Cressup, WV); (3) haulage and trackage rights to Erie, PA, with the right to interchange with other railroads; (4) the right "to lease to own" CRC's Randall Secondary from Cleveland, MP 2.5, to Mantua, MP 27.5; (5) the right "to lease to own" the Huron Branch (Shinrock to Huron) and Huron dock on Lake Erie; (6) haulage and trackage rights on CSX from Benwood to Brooklyn Junction and its yard facilities for commercial access to PPG and Bayer; (7) access on the Conrail Fort Wayne Line to the National Stone quarry near Bucyrus, via the Spore Industrial Track, a distance of 6.2 miles from CP Colsan, MP 200.5, on the Fort Wayne Line (access to the Fort Wayne line would be from the W&LE at CP Orr, MP 124, and from a point near Fairhope at MP 97.8); (8) trackage rights on the NS Sandusky District from Chatfield, OH, to Colsan, OH (for a junction with the Conrail Fort Wayne Line and access to the Spore Industrial Track); (9) access (apparently via trackage rights) to a stone quarry located on the Northern Ohio Railway at Maple Grove, via a junction on the NS Fostoria District at MP 269.4; (10) access (apparently via trackage rights over, among other lines, the former Conrail Akron Secondary) to the stone terminals in the Macedonia, Twinsburg, and Ravenna areas; (11) access, via haulage and trackage rights, to Wheeling Pittsburgh Steel at Allenport, PA; and (12) access,

¹³ IORY's use of the term "local trackage rights" is intended to include: (a) the right to operate trains over the lines described in the text; (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described; and (c) the right to serve all shippers, sidings, and team tracks located on the lines thus described.

¹⁴ AA's use of the term "limited trackage rights" is intended to include: (a) the right to operate trains over the line described in the text; and (b) the right to interchange with all carriers, including shortlines, at all junctions on the line thus described.

¹⁵ These rights would apparently run between Chicago, on the west, and Carey and/or Bellevue, OH, on the east.

via haulage and trackage rights on the CSX New Castle Subdivision, to the Ohio Edison Power plant at Niles, OH, and to Erie, PA, for interchange to the Buffalo & Pittsburgh. W&LE also requests that provision be made for an inclusion proceeding in the event that W&LE fails during a post-merger oversight period.¹⁶

In STB Finance Docket No. 33388 (Sub-No. 81), CN and GTW seek trackage rights over the Conrail northbound mainline between approximately MP 16.5 and MP 18.0 at Trenton, MI, a distance of approximately 1.5 miles, for the purpose of serving Detroit Edison's Trenton Channel power plant.

In STB Finance Docket No. 33388 (Sub-No. 83), GTW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Trenton, MI, a connection between the Conrail northbound mainline and the GTW Shoreline Subdivision.

RESPONSIVE FILINGS ACCEPTED. Because the responsive applications filed by NYSEG, EJE/IMRL, LAL, WCL, BLE, IC, RJCW, NYDOT/NYCEDC, BDRV/BRW, NECR, ISRR, IORY, AA, W&LE, and CN/GTW, and also the notice of exemption filed by GTW, are in substantial compliance with the applicable regulations, we are accepting for consideration such responsive applications and such notice of exemption.¹⁷

PUBLIC INSPECTION. The responsive filings are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC. The responsive filing made by any particular responsive applicant may also be obtained upon request from that applicant's representative named above.

PROCEEDINGS CONSOLIDATED. The responsive filings in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, 81, and 83) are consolidated for disposition with the primary application in STB Finance Docket No. 33388 (and all embraced proceedings).

COMMENTS MAY BE SUBMITTED. Interested persons may participate formally by submitting written comments regarding any or all of these responsive filings, subject to the filing and service requirements specified above. Such comments (referred to as "Response[s]" in the procedural schedule, see Decision No. 12, slip op. at 26, 62 FR at 39591) must be filed with the

¹⁶ Various additional W&LE condition requests are scattered throughout the verified statements submitted by W&LE witnesses in the WLE-4 pleading filed October 21, 1997.

¹⁷ We reserve the right to require the filing of supplemental information from any responsive applicant or any other party or individual, if necessary to complete the record in this matter. See Decision No. 12, slip op. at 18 n.29, 62 FR at 39587 n.29.

Board by December 15, 1997. Comments must include the following: the commenter's position in support of or in opposition to the transaction proposed in the responsive filing; any and all evidence, including verified statements, in support of or in opposition to such proposed transaction; and specific reasons why approval of such proposed transaction would or would not be in the public interest.

REQUESTS FOR AFFIRMATIVE RELIEF WILL NOT BE ACCEPTED. Because the responsive applications accepted for consideration in this decision contain proposed conditions to approval of the primary application in STB Finance Docket No. 33388, the Board will entertain no requests for affirmative relief with respect to these responsive applications. Parties may only participate in direct support of or in direct opposition to these responsive applications as filed.

PLEADINGS NOT TREATED AS RESPONSIVE APPLICATIONS. A pleading styled as a "responsive application" was filed on October 21, 1997, in a sub-number docket (Sub-No. 74) under the STB Finance Docket No. 33388 lead docket by Congressman Dennis J. Kucinich. While titled as a responsive application, this pleading does not address the criteria for such applications as required under 49 CFR part 1180. Rather, this pleading constitutes a comment on, and a request for conditions with respect to, the CSX/NS/CR primary application, and we will treat it as such and will docket this pleading in the STB Finance Docket No. 33388 lead docket..

Certain additional pleadings styled as "responsive applications" were filed in the STB Finance Docket No. 33388 lead docket on or about October 21, 1997, by: Jacobs Industries Ltd.; the State of Delaware Department of Transportation; ASHTA Chemicals Inc.; Southern Tier West Regional Planning and Development Board; and Resources Warehousing & Consolidation Services, Inc. Because these pleadings also do not satisfy the 49 CFR part 1180 requirements applicable to responsive applications, we will treat these pleadings as comments on, and/or requests for conditions with respect to, the CSX/NS/CR primary application.

ADDITIONAL PLEADINGS TREATED AS FILED IN LEAD DOCKET. Certain additional pleadings filed on or about October 21, 1997, though not labeled "responsive applications," were filed in various sub-number dockets under the STB Finance Docket No. 33388 lead docket by: Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission (in Sub-No. 37); New Jersey Department of Transportation and New Jersey Transit Corporation (in Sub-No. 38); the Rhode Island Department of Transportation (in Sub-No. 42); Buffalo & Pittsburgh Railroad, Inc., Allegheny & Eastern Railroad, Inc., Rochester & Southern Railroad, Inc., and Pittsburgh & Shawmut Railroad, Inc. (in Sub-Nos. 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 56); the Eastern Shore Railroad, Inc. (in Sub-No. 57); Louisville & Indiana Railroad Company (in Sub-No. 64); Housatonic Railroad Company, Inc. (in Sub-No. 70); the Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence

& Hudson Railway Company Limited (in Sub-No. 85); and the Commonwealth of Massachusetts (in Sub-No. 86). Because these pleadings contain comments on, and/or requests for conditions with respect to, the CSX/NS/CR primary application, they will be docketed in, and they will be treated as having been filed in, the STB Finance Docket No. 33388 lead docket.

ELECTRONIC SUBMISSIONS. In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit, on diskettes (3.5-inch IBM-compatible floppies) or compact discs, one electronic copy of each such document. Textual materials must be in, or be convertible by and into, WordPerfect 7.0. Spreadsheets must be in, or be convertible by and into, Lotus 1-2-3 Version 7.¹⁸ Each diskette or compact disc should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such diskette or compact disc should be provided to any other party upon request. The data contained on the diskettes and compact discs submitted to the Board will be subject to the protective order applicable to this proceeding,¹⁹ and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.²⁰

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The responsive applications in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81), and the notice of exemption in STB Finance

¹⁸ Parties intending to submit spreadsheets in formats other than Lotus 1-2-3 Version 7 may wish to consult with our staff regarding such submissions. Some (though not all) spreadsheets prepared in other formats, though perhaps not convertible by and into Lotus 1-2-3 Version 7, may nevertheless be useable by our staff. For further information, contact Julia M. Farr, (202) 565-1613.

¹⁹ The protective order governing this proceeding was entered in Decision No. 1 (served April 16, 1997), and has been modified, in minor respects, in Decision Nos. 4, 15, 22, and 46 (served May 2, 1997, August 1, 1997, August 21, 1997, and October 17, 1997, respectively).

²⁰ The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. *See* 49 CFR 1104.3(a), as amended in Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

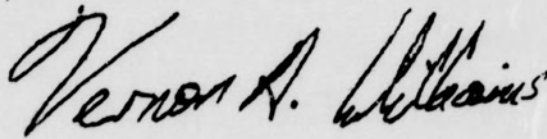
Docket No. 33388 (Sub-No. 83), are accepted for consideration, and are consolidated for disposition with the primary application in STB Finance Docket No. 33388 (and all embraced proceedings).

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on November 20, 1997.

Decided: November 12, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

A handwritten signature in cursive script, reading "Vernon A. Williams".

Vernon A. Williams
Secretary

STEPHEN M FONTAINE
MASSACHUSETTS CENTRAL RAILROAD CORPORATION
ONE WILBRAHAM STREET
PALMER MA 01069 US

ORVILLE HARROLD
PROVIDENCE & WORCESTER RR
P O BOX 1188
WORCESTER MA 01601 US

JOHN R NADOLNY, VICE PRESIDENT & GENERAL COUN
BOSTON & MAINE CORPORATION
IRON HORSE PARK
NO BILLERICA MA 01862 US

RICHARD B. KENNELLY, JR
CONSERVATION LAW FOUNDATION
62 SUMMER STREET
BOSTON MA 02110 US

JAMES HOWARD
90 CANAL STREET
BOSTON MA 02114 US

DENNIS COFFEY
TEN PARK PLACE
BOSTON MA 02116 US

JAMES F. MCGRILL
COMMONWEALTH OF MASS. EXEC. OFFICE OF TRANSP
10 PARK PLAZA ROOM 3170
BOSTON MA 02116-3969 US

WILLIAM D ANKNER PHD
R I DEPT OF TRANSPORTATION
TWO CAPITOL HILL
PROVIDENCE RI 02903 US

ELAINE L CLARK
MAINE DEPT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA ME 04333 US

ROBERT D. ELDER
STATE OF MAINE DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA ME 04333 US

JOHN K DUNLEAVY
ASSISTANT ATTORNEY GENERAL
133 STATE STREET STATE ADM BLDG
MONTPELIER VT 05633-5001 US

ARNOLD K SHIMELMAN
CONNECTICUT ASSISTANT ATTORNEY GENERAL
P O BOX 317546
NEWINGTON CT 06131 US

JAMES F SULLIVAN
CT DEPT OF TRANSPORTATION
P O BOX 317546
NEWINGTON CT 06131 US

EDWARD J RODRIQUEZ
PO BOX 298
67 MAIN ST
CENTERBROOK CT 06409 US

RICHARD C CARPENTER
1 SELLECK STREET SUITE 210
EAST NORWALK CT 06855 US

MICHAEL E STRICKLAND
NYK LINE (NORTH AMERICA) INC, SENIOR VICE PRE
300 LIGHTING W'Y
SECAUCUS NJ 07094-1588 US

HONORABLE ROBERT G. TORRICELLI
U. S. HOUSE OF REPRESENTATIVES
1 RIVER FRONT PLAZA, 3RD FLOOR
NEWARK NJ 07102 US

EDWARD LLOYD
RUTGERS ENVIRONMENTAL LAW CLINIC
15 WASHINGTON STREET
NEWARK NJ 07102 US

J WILLIAM VAN DYKE
NJ TRANSPORTATION PLANNING AUTHORITY
ONE NEWARK CENTER 17TH FLOOR
NEWARK NJ 07102 US

G W HERKNER JR
NJ TRANSIT RAIL OPERATIONS
ONE PENN PLAZA EAST
NEWARK NJ 07105 US

ROBERT A SHIRE
NEW JERSEY DEPARTMENT OF LAW & PUBLIC SAFETY
ONE PENN PLAZA EAST
NEWARK NJ 07105-2246 US

MARTIN T DURKIN ESQ
DURKIN & BOGGIA ESQS
PO BOX 378
71 MT VERNON STREET
RIDGEFIELD PARK NJ 07660 US

J DOYLE CORMAN
MAIN LINE MGMT SERVICES INC
520 FELLOWSHIP ROAD STE A-105
MOUNT LAUREL NJ 08054-3407 US

MARIAN J. WILLIAMS
3239 HOWARD AVENUE
PENNSAUKEN NJ 08109 US

TIMOTHY G CHELIUS
18 N EAST AVENUE
VINELAND NJ 08360 US

THEODORE H MATTHEWS
N J DEPARTMENT OF TRANSPORTATION
1035 PARKWAY AVENUE CN-600
TRENTON NJ 08625 US

ANTHONY BOTTALICO
UTU
420 LEXINGTON AVENUE ROOM 458-460
NEW YORK NY 10017 US

WALTER E ZULLIG JR
METRO-NORTH COMMUTER RAILROAD COMPANY
347 MADISON AVE
NEW YORK NY 10017-3706 US

ANTHONY P. SEMANCIK
347 MADISON AVENUE
NEW YORK NY 10017-3706 US

NICOLE E. CLARK
WACHTELL, LIPTON, ROSEN & KATZ
51 WEST 52ND STREET
NEW YORK NY 10019-6150 US

JAMES W HARRIS
THE METROPOLITAN PLANNING ORGANIZATION
1 WORLD TRADE CENTER STE 82 EAST
NEW YORK NY 10048-0043 US

HUGH H. WELSH
LAW DEPT., SUITE 67E
ONE WORLD TRADE CENTER
NEW YORK NY 10048-0202 US

R. LAWRENCE MCCAFFREY, JR.
NEW YORK & ATLANTIC RAILWAY
405 LEXINGTON AVENUE 50TH FLOOR
NEW YORK NY 10174 US

GEORGE MESIRES
STATE OF NY ASSISTANT ATTORNEY GERERAL
120 BROADWAY SUITE 2601
NEW YORK NY 10271 US

SAMUEL J NASCA
UTU STATE LEGISLATIVE DIRECTOR
35 FULLER ROAD SUITE 205
ALBANY NY 12205 US

WILLIAM C VAN SLYKE
152 WASHINGTON AVENUE
ALBANY NY 12210 US

DANIEL B. WALSH
BUSINESS COUNCIL OF NEW YORK STATE, INC.
152 WASHINGTON AVENUE
ALBANY NY 12210 US

DIANE SEITZ
CENTRAL HUDSON GAS & ELECTRIC CORP
284 SOUTH AVENUE
POUGHKEEPSIE NY 12601 US

IRWIN L. DAVIS
1900 STATE TOWER BLDG.
SYRACUSE NY 13202 US

ANGELO J CHICK JR, LOCAL CHAIRMAN
P O BOX 908
48398 OLD GOOSE BAY ROAD
REDWOOD NY 13679 US

GARY EDWARDS
SOMERSET RAILROAD
7725 LAKE ROAD
BARKER NY 14012 US

SHEILA MECK HYDE CITY ATTORNEY
CITY HALL
342 CENTRAL AVENUE
DUNKIRK NY 14048 US

JOHN F COLLINS
COLLINS, COLLINS, & KANTOR PC
267 NORTH STREET
BUFFALO NY 14201 US

HONORABLE ALFONSE D'AMATO
UNITED STATES SENATE
111 W. HURON STREET, ROOM 620
BUFFALO NY 14202 US

ERNEST J IERARDI
NIXON HARGRAVE DEVANS DOYLE LLP
PO BOX 1051
CLINTON SQUARE
ROCHESTER NY 14603-1051 US

H DOUGLAS MIDKIFF
65 WEST BROAD ST STE 101
ROCHESTER NY 14614-2210 US

JEANNE WALDOCK
107 GRANT COURT
ORLEAN NY 14760 US

DAVID W. DONLEY
3361 STAFFORD ST
PITTSBURGH PA 15204-1441 US

HENRY M. WICK, JR.
WICK, STREIFF, ET AL
1450 TWO CHATHAM CENTER
PITTSBURGH PA 15219 US

JOHN A. VUONO
VUONO & GRAY
2310 GRANT BUILDING
PITTSBURGH PA 15219 US

R J HENEFELD
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

M E PETRUCELLI
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

RICHARD R WILSON
1126 EIGHT AV STE 403
ALTOONA PA 16602 US

DONALD W DUNLEVY
230 STATE STREET
UTU STATE LEG DIR
PA AFL-CIO BLDG 2ND FL
HARRISBURG PA 17101-1138 US

HONORABLE THOMAS J RIDGE
GOVERNOR, COMMONWEALTH OF PENNSYLVANIA
225 MAIN CAPITOL BUILDING
HARRISBURG PA 17120 US

D J O'CONNELL
GENERAL CHAIRPERSON UTU
410 LANCASTER AVE STE 5
HAVERFORD PA 19041 US

JOHN J GROCKI
GRA INC
115 WEST AV ONE JENKINTOWN STA
JENKINTOWN PA 19046 US

HARRY C. BARBIN
BARBIN LAUFFER & O'CONNELL
608 HUNTINGDON PIKE
ROCKLEDGE PA 19046 US

G CRAIG SCHELTER
PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATI
2600 CENTRE SQUARE WEST 500 MARKET ST
PHILADELPHIA PA 19102 US

JOHN J EHLINGER JR
OBERMAYER REBMAN MAXWELL & HIPPEL
1617 JOHN F. KENNEDY BLVD ONE PENN CENTER-19T
PHILADELPHIA PA 19103-1895 US

DAVID BERGER
BERGER AND MONTAGUE, P. C.
1622 LOCUST ST
PHILADELPHIA PA 19103-6305 US

JOHN J COSCIA, EXECUTIVE DIRECTOR
DELAWARE VALLEY REGIONAL PLANNING COMMISSION
111 SOUTH INDEPENDENCE MALL EAST
PHILADELPHIA PA 19106 US

SHIRLEY E. SIMON
2328 W. VENANGO STREET
PHILADELPHIA PA 19140-3824 US

ERIC M. HOCKY
GOLLATZ, GRIFFIN, EWING
213 WEST MINER STREET
WEST CHESTER PA 19381-0796 US

ANDREW M. MULLER JR
P O BOX 218
PORT CLINTON PA 19549 US

HON JOSEPH R BIDEN, JR.
UNITED STATES SENATE
844 KING STREET
WILMINGTON DE 19801 US

J E THOMAS
HERCULES INCORPORATED
1313 NORTH MARKET STREET
WILMINGTON DE 19894 US

WILLIAM A. MCCURDY, JR.
LEGAL DEPARTMENT-D-7064
1007 MARKET STREET
WILMINGTON DE 19898 US

E C WRIGHT
RAIL TRANSPORTATION PROCUREMENT MANAGER
1007 MARKET STREET, DUPONT BLDG 3100
WILMINGTON DE 19898 US

FREDERICK H SCHRANCK
PO BOX 778
DOVER DE 19903 US

TERRENCE D JONES
KELLER & HECKMAN
1001 G ST NW STE 500 WEST
WASHINGTON DC 20001 US

PETER A GILBERTSON
REGIONAL RRS OF AMERICA
122 C ST NW STE 850
WASHINGTON DC 20001 US

JAMES HOWARD
COALITION OF NORTHEASTERN GOVERNORS
400 NORTH CAPITOL STREET, SUITE 382
WASHINGTON DC 20001 US

MARTIN W. BERCOVICI
KELLER & HECKMAN
1001 G ST NW SUITE 500 WEST
WASHINGTON DC 20001 US

BRUCE KNIGHT
NATIONAL CORN GROWERS ASSOCIATION
122 C ST NW SUITE 510
WASHINGTON DC 20001-2109 US

RICHARD G SLATTERY
AMTRAK
60 MASSACHUSETTS AVENUE N E
WASHINGTON DC 20002 US

DONALD F GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
10 G STREET NE STE 460
WASH DC 20002 US

ROSS B CAPON
NATIONAL ASSOCIATION OF RAILROAD PASSENGERS
900 2ND ST NE SUITE 308
WASHINGTON DC 20002 US

JOSEPH GUERRIERI, JR.
GUERRIERI, EDMOND, ET. AL
1331 F STREET N W, 4TH FLOOR
WASHINGTON DC 20004 US

DENNIS G LYONS
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004 US

DEBRA L. WILLEN
GUERRIERI, EDMOND & CLAYMAN PC
1331 F STREET N W, 4TH FLOOR
WASHINGTON DC 20004 US

DREW A HARKER
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004 US

GEORGE W MAYO JR
HOGAN & HARTSON L.L.P.
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109 US

MARY GABRIELLE SPRAGUE
ARNOLD & PORTER
555 TWELTH STREET NW
WASHINGTON DC 20004-1202 US

WILLIAM W MILLAR
AMERICAN PUBLIC TRANSIT ASSOCIATION
1201 NEW YORK AVE., NW
WASHINGTON DC 20005 US

MARK H SIDMAN
WEINER & BRODSKY, SIDMAN & KIDER
1350 NEW YORK AVE., NW., STE. 800
WASHINGTON DC 20005 US

ROSE-MICHELE WEINRYB
WEINER BRODSKY SIDMAN & KIDER
1350 NEW YORK AVENUE NW
WASHINGTON DC 20005 US

IRENE RINGWOOD
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

LOUIS E GITOMER
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

L JOHN OSBORN
SONNENSCHN NATH & ROSENTHAL
1301 K STREET NW STE 600 EAST
WASH DC 20005 US

KARL MORELL
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

ALICE C. SAYLOR
THE AMERICAN SHORT LINE RAILROAD ASSOCIATION
1120 G STREET, N. W., SUITE 520
WASHINGTON DC 20005 US

EDWARD WYTKIND, EXECUTIVE DIRECTOR
LARRY J WILLIS ESQ TRANSP TRADES DEPT AFLCI
1000 VERMONT AVENUE, NW STE 900
WASHINGTON DC 20005 US

CLARK DOWN
JONES DAY REAVIS & POGUE
1450 G STREET NW
WASHINGTON DC 20005-2088 US

KENNETH DRIVER
JONES DAY REAVIS & POGUE
1450 G STREET NW
WASH DC 20005-2088 US

WILLIAM A. MULLINS
TROUTMAN SANDERS LLP
1300 STREET NW SUITE 500 EAST
WASHINGTON DC 20005-3314 US

FRITZ R KAHN
1100 NEW YORK AVENUE NW SUITE 750 WEST
WASHINGTON DC 20005-3934 US

NICHOLAS J. DIMICHAEL
DONELAN, CLEARY, WOOD & MASER, PC
1100 NEW YORK AVENUE N W STE 750
WASHINGTON DC 20005-3934 US

JEFFREY O. MORENO
DONELAN CLEARY WOOD MASER
1100 NEW YORK AVENUE N W, SUITE 750
WASHINGTON DC 20005-3934 US

FREDERIC L WOOD
DONELAN, CLEARY, WOOD, & MASER, PC
1100 NEW YORK AVENUE, NW, SUITE 750
WASHINGTON DC 20005-3934 US

KARYN A BOOTH
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 NEW YORK AVE NW SUITE 750
WASHINGTON DC 20005-3934 US

JOHN K MASER III
DONELAN, CLEARY, WOOD, MASER
1100 NEW YORK AVE NW SUITE 750
WASHINGTON DC 20005-3934 US

ANDREW P. GOLDSTEIN
MCCARTHY, SWEENEY ET AL.
1750 PENNSYLVANIA AVE NW
WASHINGTON DC 20006 US

ANDREW R. PLUMP
ZUCKERT, SCOUTT & RASENBERGER. LLP
888 17TH ST., NW, STE. 600
WASHINGTON DC 20006 US

SCOTT M ZIMMERMAN
ZUCKERT SCOUTT & RASENBERGER L L P
888 SEVENTEENTH STREET NW
WASHINGTON DC 20006 US

JAMES R WEISS
PRESTON GATES ELLIS ET AL
1735 NEW YORK AVENUE NW SUITE 500
WASHINGTON DC 20006 US

JANICE G BARBER
MAYER BROWN & PLATT
2000 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20006 US

FRANCIS G. MCKENNA
ANDERSON & PENDLETON
1700 K ST NW SUITE 1107
WASHINGTON DC 20006 US

LAURENCE R. LATOURETTE
PRESTON GATES ELLIS ETAL
1735 NY AVE NW SUITE 500
WASHINGTON DC 20006 US

ADRIAN L. STEEL, JR.
MAYER, BROWN & PLATT
2000 PENNSYLVANIA AVE N W SUITE 6500
WASHINGTON DC 20006 US

DANIEL J. SWEENEY
MCCARTHY SWEENEY & HARKAWAY, P. C.
1750 PENNSYLVANIA AVE NW, STE 1105
WASHINGTON DC 20006 US

G. PAUL MOATES
SIDLEY & AUSTIN
1722 EYE STREET NW
WASHINGTON DC 20006 US

ROBERT P. VOM EIGEN
HOPKINS AND SUTTER
888 16TH STREET N W STE 700
WASHINGTON DC 20006 US

ERIKA Z JONES
MAYER BROWN & PLATT
2000 PA AV NW
WASH DC 20006-1882 US

RICHARD A. ALLEN
ZUCKERT, SCOUT, RASENBERGER
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3939 US

ALICIA M SERFATY
HOPKINS & SUTTER
888 - 16TH STREET NW
WASHINGTON DC 20006-4103 US

RACHEL DANISH CAMPBELL
HOPKINS & SUTTER
888 SIXTEENTH STREET NW
WASHINGTON DC 20006-4103 US

STEVEN J. KALISH
MCARTHY, SWEENEY & HARKAWAY
1750 PENNSYLVANIA AVE NW
WASHINGTON DC 20006-4502 US

SHERRI LEHMAN DIRECTOR OF CONGRESSIONAL AFFAI
CORN REFINERS ASSOC
1701 PA AV NW
WASH DC 20006-5805 US

ROBERT G. SZABO
V. NESS FELDMAN
1050 THO JEFFERSON STREET, NW
WASHINGTON DC 20007 US

CHRISTOPHER C O'HARA
BRICKFIELD BURCHETTE & RITTS PC
1025 THOMAS JEFFERSON ST NW EIGHTH FLOOR
WASHINGTON DC 20007 US

EDWARD D. GREENBERG
GALLAND KHARASCH & GARFINKLE P C
1054 THIRTY-FIRST STREET NW
WASHINGTON DC 20007-4492 US

CHARLES H. WHITE, JR.
GALLAND, KHARASCH & GARFINKLE, P. C.
1054 THIRTY-FIRST STREET NW
WASHINGTON DC 20007-4492 US

MICHAEL F MCBRIDE
LEBOEUF LAMB GREENE & MACRAE
1875 CONNECTICUT AVENUE NW
WASHINGTON DC 20009 US

PAUL M. DONOVAN
LAROE, WINN, ETAL
3506 IDAHO AVE NW
WASHINGTON DC 20016 US

JOHN D. HEFFNER, ESQ.
REA, CROSS & AUCHINCLOSS
1920 N STREET NW SUITE 420
WASHINGTON DC 20036 US

JOHN M. CUTLER, JR.
MCCARTHY SWEENEY HARKAWAY
1750 PENNSYLVANIA AVE N W SUITE 1105
WASHINGTON DC 20036 US

PETER A. GREENE
THOMPSON HINE FLORY
1920 N STREET N W, SUITE 800
WASHINGTON DC 20036 US

RICHARD S. EDELMAN
HIGHSAW MAHONEY CLARKE
1050 SEVENTEENTH STREET N W, SUITE 210
WASHINGTON DC 20036 US

GERALD P NORTON
HARKINS CUNNINGHAM
1300 19TH ST NW SUITE 600
WASHINGTON DC 20036 US

CHRISTOPHER A. MILLS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

KEITH G O'BRIEN
REA, CROSS AND AUCHINCLOSS
1920 N STREET NW, STE 420
WASH DC 20036 US

C MICHAEL LOFTUS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET N W
WASHINGTON DC 20036 US

HELEN M. COUSINEAU
CARLOS RODRIGUEZ & ASSOCIATES
1710 RHODE ISLAND AVENUE, NW
WASHINGTON DC 20036 US

HAROLD P JR QUINN
NATIONAL MINING ASSOCIATION
1130 17TH STREET NW
WASHINGTON DC 20036 US

STEPHEN H BROWN
VORYS SATER SEYMOUR AND PEASE
1828 L STREET N W
WASHINGTON DC 20036 US

JEAN M CUNNINGHAM
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

ROBERT A. WIMBISH, ESQ.
REA, CROSS & AUCHINCLOSS
1920 N STREET NW SUITE 420
WASHINGTON DC 20036 US

FRANK J. PERGOLIZZI
SLOVER & LOFTUS
1224 SEVENTEENTH ST NW
WASHINGTON DC 20036 US

KELVIN J. DOWD
SLOVER & LOFTUS
1224 17TH STREET N W
WASHINGTON DC 20036 US

GORDON P. MACDOUGALL
1025 CONNECTICUT AVE NW SUITE 410
WASHINGTON DC 20036 US

PAUL CUNNINGHAM
HARKINS CUNNINGHAM
1300 NINETEENTH STREET, NW STE. 600
WASHINGTON DC 20036 US

DONALD G AVERY
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

PAUL D. COLEMAN
HOPPEL MAYER & COLEMAN
1000 CONNECTICUT AVE NW SUITE 400
WASHINGTON DC 20036-5302 US

L PAT WYNNS
SUITE 210
1050 - 17TH STREET N W
WASHINGTON DC 20036-5503 US

PAUL LAURENZA
OPPENHEIMER WOLFF & DONNELLY
1010 NINETEENTH STREET NW SUITE 400
WASHINGTON DC 20036-6105 US

JOHN L. OBERDORFER
PATTON BOGGS LLP
2550 M ST NW
WASHINGTON DC 20037-1301 US

ARVID E. ROACH II
COVINGTON & BURLING
PO BOX 7566
1201 PENNSYLVANIA AVE N W
WASHINGTON DC 20044-7566 US

THOMAS A. O'BRIEN
US DEPARTMENT OF AGRICULTURE
P O BOX 965456
WASHINGTON DC 20090-6456 US

WILLIAM DICKERSON
U S ENVIRONMENTAL PROTECTION AGENCY
401 M STREET SW (2252A)
WASHINGTON DC 20460 US

HON. BARBARA A. MIKULSKI
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE JACK REED
U. S. SENATE
WASHINGTON DC 20510 US

HON MIKE DEWINE
U S SENATE
WASHINGTON DC 20510 US

HONORABLE RICHARD LUGAR
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. JOSEPH BIDEN, JR.
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. JOHN W. WARNER
US SENATE
WASHINGTON DC 20510-0001 US

PAUL H. LAMBOLEY
1020 NINETEENTH STREET, N.W., STE 400
WASHINGTON DC 20036-6105 US

KEVIN M SHEYS
OPPENHEIMER WOLFF ET AL.
1020 NINETEENTH STREET N W SUITE 400
WASHINGTON DC 20036-6105 US

SCOTT N. STONE
PATTON BOGGS L.L.P.
2550 M STREET NW 7TH FLOOR
WASHINGTON DC 20037-1346 US

KEITH A KLINDWORTH
U S DEPT OF AGRICULTURE
P O BOX 96456
WASHINGTON DC 20090 US

JUDGE JACOB LEVENTHAL, OFFICE OF HEARINGS
FEDERAL ENERGY REGULATORY COMMISSION
888 - 1ST ST, N.E. STE 11F
WASHINGTON DC 20426 US

DINAH BEAR
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE NW
WASHINGTON DC 20503 US

HON. CHARLES ROBB
UNITED STATES SENATE
WASHINGTON DC 20510 US

WILLIMA V. ROTH, JR.
UNITED STATES SENATE
104 HART SENATE OFFICE BUILDING
WASHINGTON DC 20510 US

HONORABLE BOB GRAHAM
UNITED STATE SENATE
WASHINGTON DC 20510 US

HONORABLE ALFONSE D'AMATO
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON WILLIAM V. ROTH JR
U S SENATE
WASHINGTON DC 20510-0001 US

HONORABLE CONNIE MACK
UNITED STATES SENATE
WASHINGTON DC 20510-0904 US

HONORABLE JOHN BREAUX
UNITED STATES SENATE
WASHINGTON DC 20510-1803 US

HON ARLEN SPECTER
UNITED STATES SENATE
WASHINGTON DC 20510-3802 US

RICK SANTORUM
UNITED STATES SENATE
WASHINGTON DC 20510-3804 US

HONORABLE JOHN H. CHAFEE
UNITED STATES SENATE
WASHINGTON DC 20510-3902 US

HON. LEE N. HAMILTON
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE TED STRICKLAND
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON DENNIS J KUCINICH
UNITED STATES HOUSE REPRESENTATIVES
WASHINGTON DC 20515 US

HON. ED BRYANT
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. LOUIS E. STOKES
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. STEVE LATOURETTE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. RALPH REGULA
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE SAXBY CHAMBLISS,
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE TILLIE K FOWLER
US HOUSE REPRESENTATIVES
WASHINGTON DC 20515 US

HON JERROLD NADLER
U S HOUSE OF REPRESENTATIVES
2448 RAYBURN BUILDING
WASH DC 20515 US

HONORABLE ROBERT W. NEY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

BOB WEYGAND
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE BOB WEYGAND
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON MARCY KAPTUR
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON JAMES TRAFICANT JR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON ROBERT F SMITH
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON BOB WISE
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JOHN D. DINGELL
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. WILLIAM O. LIPINSKI
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. THOMAS C SAWYER
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. TOM BLILEY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE PETER J. VISCLOSKEY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON ROBERT G TORRICELLI
UNITED STATES SENATE
WASHINGTON DC 20515 US

HONORABLE JOHN J. LAFALCE
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. BUD SHUSTER
ATTN: MIKE RICK
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE ROD R BLAGOJEVICH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1305 US

HONORABLE JAMES A. BARCIA
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-2205 US

ROBERT MENENDEZ
US CONGRESS HOUSE OF REPRESENTATIVES
405 CANNON HOB
WASHINGTON DC 20515-3013 US

HONORABLE MICHAEL MCNULTY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3221 US

HONORABLE RICHARD BURR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3305 US

HONORABLE SHERROD BROWN
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3513 US

HONORABLE BOBBY L. RUSH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-9997 US

MICHAEL P. HARMONIS
DEPARTMENT OF JUSTICE
325 SEVENTH STREET, NW
WASHINGTON DC 20530 US

PAUL SAMUEL SMITH
US DEPARTMENT OF TRANSPORTATION
400 SEVENTH STREET SW
WASHINGTON DC 20590 US

JOSEPH R. POMPONIO
FEDERAL RAILROAD ADMIN.
400 7TH ST SW RCC-20
WASHINGTON DC 20590 US

DAVID G ABRAHAM
SUITE 400W
7315 WISCONSIN AVENUE
BETHESDA MD 20814 US

LARRY R. PRUDEN
TRANS. COMM. INTL UNION
3 RESEARCH PLACE
ROCKVILLE MD 20850 US

MITCHELL M. KRAUS
TRANSPORTATION - COMMUNICATIONS INTERNATIONAL
3 RESEARCH PLACE
ROCKVILLE MD 20850 US

MITCHELL M KRAUS, GENERAL COUNSEL
TRANSPORTATION COMMUNICATIONS INTERNATIONAL U
3 RESEARCH PLACE
ROCKVILLE MD 20850 US

JOHN M ROBINSON
9616 OLD SPRING ROAD
KENSINGTON MD 20895-3124 US

WILLIAM W WHITEHURST JR.
W. W. WHITEHURST & ASSOCIATES, INC.
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE MD 21030 US

JOHN HOY
P O BOX 117
GLEN BURNIE MD 21060 US

ROBERT J WILL
UNITED TRANSPORTATION UNION
4134 GRAVE RUN RD
MANCHESTER MD 21102 US

JOHN F WING CHAIRMAN
CITIZENS ADVISORY COMMITTEE
601 NORTH HOWARD STREET
BALTIMORE MD 21201 US

CHARLES M CHADWICK
MARYLAND MIDLAND RAILWAY INC
P O BOX 1000
UNION BRIDGE MD 21791 US

GARRET G SMITH
MOBIL OIL CORPORATION
3225 GALLOWES RD RM 8A903
FAIRFAX VA 22037-0001 US

HENRY E. SEATON
STE 201
7700 LEESBURG PIKE
FALLS CHURCH VA 22043 US

TENNYSON E.L. P.E.
2233 ABBOTSFORD DRIVE, RFD 55
VIENNA VA 22181-3220 US

PETER Q. NYCE, JR.
U. S. DEPARTMENT OF THE ARMY
901 NORTH STUART STREET
ARLINGTON VA 22203 US

THOMAS E. SCHICK
CHEMICAL MANUF. ASSOC.
1300 WILSON BOULEVARD
ARLINGTON VA 22209 US

JENNIFER BRAUN
JACKSON & JESSUP
P O BOX 1240
3426 NORTH WASHINGTON BOULEVARD
ARLINGTON VA 22210 US

GERALD W. FAUTH, III
G. W. FAUTH & ASSOCIATES INC.
116 SOUTH ROYAL STREET
ALEXANDRIA VA 22314 US

STEPHEN L. BASSFORD
L E PEABODY & ASSOCIATES INC
1501 DUKE STREET SUITE 200
ALEXANDRIA VA 22314-2401 US

KENNETH E. SIEGEL
AMERICAN TRUCKING ASSOC.
2200 MILL ROAD
ALEXANDRIA VA 22314-4677 US

CARL W SMITH
AMVEST CORPORATION
ONE BOAR'S PLACE
CHARLOTTESVILLE VA 22905 US

RICHARD WALTON
COMMONWEALTH OF VIRGINIA OFFICE OF THE ATTORN
900 EAST MAIN STREET
RICHMOND VA 23219 US

HONORABLE GEORGE ALLEN
GOVERNOR, COMMONWEALTH OF VIRGINIA
STATE CAPITOL
RICHMOND VA 23219 US

JOHN W. SNOW
ONE JAMES CENTER
901 EAST CARY STREET
RICHMOND VA 23219-4031 US

L P KING JR
GENERAL CHAIRPERSON UTU
145 CAMPBELL AVE SW STE 207
ROANOKE VA 24011 US

HONORABLE JOHN WARNER
UNITED STATES SENATE
P.O.BOX 8817
235 FEDERAL BUILDING
ABINGDON VA 24210-0887 US

VAUGHN R GROVES
PITTSTON COAL COMPANY
PO BOX 5100
LEBANON VA 24266 US

TERRELL ELLIS
CAEZV
P O BOX 176
CLAY WV 25043 US

R K SARGENT
GENERAL CHAIRPERSON UTU
1319 CHESTNUT STREET
KENOVA WV 25530 US

WILLIAM T BRIGHT
P O BOX 149
200 GREENBRIER ROAD
SUMMERSVILLE WV 26651 US

FRANK N JORGENSEN
THE ELK RIVER RAILROAD INC
P O BOX 460
SUMMERSVILLE WV 26651 US

SCOTT M SAYLOR
NORTH CAROLINA RAILROAD COMPANY
3200 ATLANTIC AV STE 110
RALIEGH NC 27604-1640 US

JOHN L SARRATT
KILPATRICK STOCKTON LLP
4101 LAKE BOONE TRAIL
RALEIGH NC 27607 US

GARLAND B GARRETT JR
NC DEPT OF TRANSPORTATION
P O BOX 25201
RALEIGH NC 27611 US

PATRICK B SIMMONS
NC DEPT OF TRANSP
1 S WILMINGTON STREET ROOM 557
RALEIGH NC 27611 US

DAVID D KING
BEAUFORT AND MOREHEAD RR CO
PO BOX 25201
RALEIGH NC 27611-5201 US

HONORABLE DAVID M BEASLEY
GOVERNOR
P. O. BOX 11369
COLUMBIA SC 29211 US

BILL CAMPBELL
MAYOR CITY OF ATLANTA
55 TRINITY AVENUE, S.W.
ATLANTA GA 30335-0300 US

CHARLES M. ROSENBERGER
CSX TRANSPORTATION
500 WATER STREET
JACKSONVILLE FL 32202 US

M W CURRIE
GENERAL CHAIRPERSON UTU
3030 POWERS AVENUE STE 2
JACKSONVILLE FL 32250 US

J L RODGERS
GENERAL CHAIRMAN UTU
480 OSCEOLA AVENUE
JACKSONVILLE FL 32250 US

J T REED
GENERAL CHAIRPERSON UTU
7785 BAYMEADOWS WAY STE 109
JACKSONVILLE FL 32256 US

HONORABLE LAWTON CHILES
OFFICE OF THE GOVERNOR
THE CAPITOL
TALLAHASSEE FL 32399-0001 US

HONORABLE FOB JAMES
GOVERNOR
STATE OF ALABAMA
MONTGOMERY AL 36130 US

ROBERT C. FREAS
SR. VICE PRESIDENT, MARKETING FRANKLIN INDUST
612 TENTH AVENUE, NORTH
NASHVILLE TN 37203 US

JAMES L BELCHER
EASTMAN CHEMICAL COMPANY
PO BOX 431
KINGSPORT TN 37662 US

WILLIAM L OSTEEN
ASSOCIATE GENERAL COUNSEL TVA
400 WEST SUMMIT HILL DRIVE
KNOXVILLE TN 37902 US

J R BARBEE
GENERAL CHAIRPERSON UTU
P.O. BOX 9599
KNOXVILLE TN 37940 US

HONORABLE KIRK FORDICE, GOVERNOR
STATE OF MISSISSIPPI
P O BOX 139
JACKSON MS 39205 US

HONORABLE PAUL E. PATTON
GOVERNOR
700 CAPITOL AVENUE, STE. 100
FRANKFORT KY 40601 US

WILLIAM P HERNAN JR GENERAL CHAIRMAN
P O BOX 180
HILLIARD OH 43026 US

F R PICKELL
GENERAL CHAIRPERSON UTU
6797 NORTH HIGH ST STE 108
WORTHINGTON OH 43085 US

THOMAS M O'LEARY
OHIO RAIL DEVELOPMENT COMMISSION
50 W BROAD STREET 15TH FLOOR
COLUMBUS OH 43215 US

DOREEN C JOHNSON, CHIEF ANTITRUST SECTION
OHIO ATTY GENERAL OFFICE
30 E BROAD STREET 16TH FLOOR
COLUMBUS OH 43215 US

HONORABLE DEBORAH PRYCE
U. S. HOUSE OF REPRESENTATIVES
500 SOUTH FRONT STREET, ROOM 1130
COLUMBUS OH 43215 US

HONORABLE JOHN GLENN
U. S. SENATE ATTN: ANISA BELL
200 N HIGH STREET S-600
COLUMBUS OH 43215-2408 US

TIMOTHY A WOLFE
WYANDOT DOLIOITE, INC
P O BOX 99 1794 CO RD #99
CAREY OH 43316 US

JAMES R JACOBS
JACOBS INDUSTRIES
2 QUARRY LANE
STONY RIDGE OH 43463 US

ROBERT J COOPER
GENERAL CHAIRPERSON UTU
1238 CASS ROAD
MAUMEE OH 43537 US

ROBERT E GREENLESE
TOLEDO-LUCAS COUNTY PORT AUTHORITY
1 MARITIME PLAZA SUITE 700
TOLEDO OH 43604 US

DAVID DYSARD
TMACOG
PO BOX 9508
300 CENTRAL UNION PLAZA
TOLEDO OH 43697-9508 US

RON MARQUARDT
LOCAL UNION 1810 UMWA
R D #2
RAYLAND OH 43943 US

MAYOR VINCENT M URBIN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

CHARLES S HESSE, PRESIDENT
CHARLES HESSE ASSOCIATES
8270 STONEY BROOK DRIVE
CHAGRIN FALLS OH 44023 US

COLETTA MCNAMEE SR
CUDELL IMPROVEMENT INC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

ANITA R BRINDZA
THE ONE FIFTEEN HUNDRED BUILDING
11500 FRANKLIN BLVD SUITE 104
CLEVELAND OH 44102 US

DANIEL R ELLIOTT III
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107 US

CLINTON J MILLER, III, GENERAL COUNSEL
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CHRISTOPHER C MCCracken
ULMER & BERNE LLP
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114 US

JAY WESTBROOK
CITY HALL RM 216
601 LAKESIDE AV NE
CLEVELAND OH 44114 US

DAVID ROLOFF
GOLDSTEIN & ROLOFF
526 SUPERIOR AVENUE EAST SUITE 1440
CLEVELAND OH 44114 US

DAVID J MATTY
CITY OF ROCKY RIVER
21012 HILLIARD ROAD
ROCKY RIVER OH 44116-3398 US

MICHAEL J GARRIGAN
BP CHEMICALS INC
4440 WARRENSVILLE CTR RD
CLEVELAND OH 44128 US

C D WINEBRENNER
GENERAL CHAIRPERSON UTU
27801 EUCLID AV RM 200
EUCLID OH 44132 US

GARY A EBERT
CITY OF BAY VILLAGE
350 DOVER CENTER ROAD
BAY VILLAGE OH 44140 US

SYLVIA R. CHINN-LEVY
NEFCO
969 COPLEY ROAD
AKRON OH 44320 US

JACK A WALTER
WCI STEEL INC
1040 PINE AVENUE S E
WARREN OH 44483 US

CHARLES E ALLENBAUGH JR
EAST OHIO STONE COMPANY
2000 W BESSON ST
ALLIANCE OH 44601 US

D G STRUNK JR
GENERAL CHAIRPERSON UTU
817 KILBOURNE STREET
BELLEVUE OH 44811 US

RICHARD E. KERTH, TRANS. MGR.
CHAMPION INTERNAT'L CORP
101 KNIGHTSBRIDGE DRIVE
HAMILTON OH 45020-0001 US

BRAD F HUSTON
CYPRUS AMAX COAL SALES CORP
400 TECHNECENTER DRIVE STE 320
MILFORD OH 45150 US

SANDRA L NUNN
FROST & JACOBS LLP
201 EAST FIFTH STREET
CINCINNATI OH 45202 US

FAY D DUPUIS
CITY OF CINCINNATI
801 PLUM STREET
CINCINNATI OH 45202 US

ROBERT EDWARDS
EASTERN TRANSPORT AND LOGISTICS
1109 LANETTE DRIVE
CINCINNATI OH 45230 US

HONORABLE ROB PORTMAN
U. S. HOUSE OF REPRESENTATIVES
8044 MONTGOMERY ROAD, ROOM 540
CINCINNATI OH 45236 US

MICHAEL P. FERRO
MILLENNIUM PETROCHEMICALS, INC.
11500 NORTHLAKE DRIVE
CINCINNATI OH 45249 US

THOMAS R RYDMAN PRESIDENT
INDIAN CREEK RAILROAD COMPANY
3905 W 600 NORTH
ANDERSON IN 46011 US

F RONALDS WALKER
CITIZENS GAS & COKE UTILITY
2020 N MERIDIAN STREET
INDIANAPOLIS IN 46202-1393 US

LARRY D MACKLIN
INDIANA DIVISION OF HISTORIC PRESERVATION
402 W WASHINGTON STREET RM 274
INDIANAPOLIS IN 46204 US

MICHAEL P MAXWELL JR
MCHALE, COOK & WELCH
320 N MERIDIAN ST 1100 CHAMBER OF COMMERCE BL
INDIANAPOLIS IN 46204 US

J PATRICK LATZ
HEAVY LIFT CARGO SYSTEM
PO BOX 51451
INDIANAPOLIS IN 46251-0451 US

MICHAEL CONNELLY
CITY OF EAST CHICAGO
4525 INDIANAPOLIS BLVD
EAST CHICAGO IN 46312 US

DENISE L SEJNA CITY ATTORNEY
CITY OF HAMMOND
5925 CALUMET AV
HAMMOND IN 46320 US

HAMILTON L CARMOUCHE, CORPORATION COUNSEL
CITY OF GARY
401 BROADWAY 4TH FLOOR
GARY IN 46402 US

CARL FELLER
DEKALB AGRA INC
P. O. BOX 127
4743 COUNTY ROAD 28
WATERLOO IN 46793-0127 US

WILLIAM A BON, GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
26555 EVERGREEN ROAD SUITE 200
SOUTHFIELD MI 48076 US

NICOLE HARVEY
THE DOW CHEMICAL COMPANY
2020 DOW CENTER
MIDLAND MI 48674 US

JAMES E SHEPHERD
TUSCOLA & SAGINAW BAY
PO BOX 550
OWOSSO MI 48867-0550 US

LARRY B. KARNES
TRANSPORTATION BUILDING
PO BOX 30050
425 WEST OTTAWA
LANSING MI 48909 US

HON JOHN ENGLER
OFFICE OF THE GOVERNOR
P O BOX 30050
LANSING MI 48933 US

T SCOTT BANNISTER
T SCOTT BANNISTER AND ASSOCIATES
1300 DES MOINES BLDG 405 SIXTH AVENUE
DES MOINES IA 50309 US

PYRON D. OLSEN
FELHABER LARSON FENLON & VOGT PA
601 SECOND AVENUE SOUTH 4200 FIRST BANK PLACE
MINNEAPOLIS MN 55402-4302 US

LEO J WASESCHA
GOLD MEDAL DIVISON - GENERAL MILLS OPERATION
P.O.BOX 1113
NUMBER ONE GENERAL MILLS BULEVARD
MINNEAPOLIS MN 55440 US

JEFFREY R. MORELAND
THE BURLINGTON NORTHERN SANTA FE CORPORATION
1700 EAST GOLF ROAD
SCHAUMBURG IL 60173 US

GERALD J. VINCI
PRAIRIE GROUP
P. O.BOX 1123
7601 WEST 79TH STREET
BRIDGEVIEW IL 60455 US

RICHARD A GAVRIL
16700 GENTRY LANE NO 104
TINLEY PARK IL 60477 US

WILLIAM F. COTTRELL
ASST. ATTORNEY GENERAL
100 W RANDOLPH ST - 12TH FLOOR
CHICAGO IL 60601 US

ROBERT H. WHEELER
TWO PRUDENTIAL PLAZA
180 NORTH STETSON AVE - 45TH FLOOR
CHICAGO IL 60601 US

WILLIAM C SIPPEL
OPPENHEIMER WOLFF & DONNELLY
180 N STETSON AVE TWO PRUDENTIAL PLAZA 45TH F
CHICAGO IL 60601 US

THOMAS J HEALEY
OPPENHEIMER, WOLFF, ETAL
180 N STETSON AV 2 PRUDENTIAL PL
CHICAGO IL 60601 US

THOMAS J. LITWILER
OPPENHEIMER WOLFF & DONNELLY
180 N STETSON AVE 45TH FLOOR
CHICAGO IL 60601 US

KEVIN BRUBAKER
ENVIRONMENTAL LAW AND POLICY CENTER OF THE MI
203 NORTH LASALLE ST, SUITE 1390
CHICAGO IL 60601 US

CHRISTINE H. ROSSO
IL ASSISTANT ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FLOOR
CHICAGO IL 60601 US

EILEEN CAREY
CITY OF CHICAGO CITY HALL RM 700
121 NORTH LASALLE STREET
CHICAGO IL 60602 US

RICHARD FRIEDMAN
EARL L NEAL AND ASSOCIATES
111 W WASHINGTON STREET, STE 1700
CHICAGO IL 60602 US

EDWARD C MCCARTHY
INLAND STEEL INDUSTRIES INC
30 WEST MONROE STREET
CHICAGO IL 60603 US

ROGER A. SERPE
INDIANA HARBOR BELT RR
175 WEST JACKSON BOULEVARD SUITE 1460
CHICAGO IL 60604 US

MARK H. SIDMAN
LOUISVILLE & INDIANA RAILROAD COMPANY
53 W. JACKSON BOULEVARD, STE 350
CHICAGO IL 60604 US

SANDRA J. DEARDEN
MDCO CONSULTANTS, INC.
407 SOUTH DEARBORN, SUITE 1145
CHICAGO IL 60605 US

SHELDON A ZABEL
SCHIFF HARDIN & WAITE
7200 SEARS TOWER
CHICAGO IL 60606 US

SCOTT BERNSTEIN
CENTER FOR NEIGHBORHOOD TECHNOLOGY
2125 WST NORTH AVENUE
CHICAGO IL 60647 US

CHARLES D BOLAM
UNITED TRANSPORTATION UNION
1400-20TH STREET
GRANITE CITY IL 62040 US

LYNN HISER
A E STALEY MANUFACTURING COMPANY
2200 E ELDORADO STREET
DECATUR IL 62525 US

SCOTT A RONEY
ARCHER DANIELS MIDLAND COMPANY
P O BOX 1470
4666 FARIES PARKWAY
DECATUR IL 62525 US

K. N. THOMPSON
UTU, GENERAL CHAIRPERSON
11025-C GRAVOIS INDUSTRIAL PLAZA
ST LOUIS MO 63128 US

R A GRICE
GENERAL CHAIRPERSON UTU
11017-F GRAVOIS INDUSTRIAL PLAZA
ST LOUIS MO 63128 US

IAN MUIR
BUNGE CORPORATION
P O BOX 28500
ST LOUIS MO 63146 US

JOHN JAY ROSACKER
KS, DEPT OF TRANSP
217 SE 4TH ST 2ND FLOOR
TOPEKA KS 66603 US

MIKE SPAHIS
FINA OIL & CHEMICAL CO.
8350 NORTH CENTRAL EXPRESSWAY, STE. 1620
DALLAS TX 75206 US

ROBERT L. EVANS
OXYCHEM
P O BOX 809050
DALLAS TX 75380 US

W DAVID TIDHOLM
HUTCHESON & GRUNDY
1200 SMITH STREET #3300
HOUSTON TX 77002 US

DAVID L HALL
COMMONWEALTH CONSULTING ASSOCIATES
720 NORTH POST OAK ROAD SUITE 330
HOUSTON TX 77024 US

DENNIS A. GUTH
WEST LAKE GROUP
2801 POST OAK BLVD
HOUSTON TX 77056 US

STEVE M COULTER
EXXON COMPANY USA
PO BOX 3272
HOUSTON TX 77253-3272 US

MONTY L PARKER
CMC STEEL GROUP
P O BOX 911
SEGUIN TX 78156 US

STEPHEN M UTHOFF
CONIGLIO & UTHOFF
110 WEST OCEAN BLVD STE C
LONG BEACH CA 90802 US

J D FITZGERALD
UTU, GENERAL CHAIRPERSON
400 E EVERGREEN BLVD STE 217
VANCOUVER WA 98660-3264 US

Records: 343