

STB FD 33388 (Sub 61) 1-14-98 D 185222

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January 14, 1998



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VIA HAND DELIVERY

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

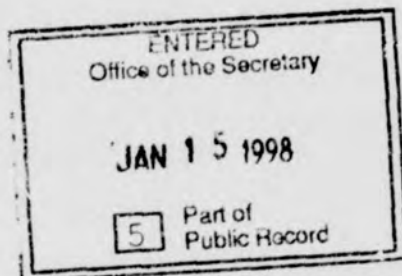
Re: **Finance Docket No. 33388**
CSX Corp. and CSX Transportation, Inc., Norfolk Southern Corp.
and Norfolk Southern Railway Company -- Control and Operating
Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation

Finance Docket No. 33388 (Sub-No. 61)
Bessemer and Lake Erie Railroad Company -- Trackage Rights --
Lines of CSX Transportation, Inc. and Pennsylvania Lines LLC

Dear Secretary Williams:

Enclosed for filing with the Board in the above-captioned proceedings are an original and twenty-five copies of the **Rebuttal Evidence of Bessemer and Lake Erie Railroad Company (BLE-9)**, dated January 14, 1998. A computer diskette containing the text of BLE-9 in WordPerfect 5.1 format also is enclosed.

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



Respectfully submitted,

OPPENHEIMER WOLFF & DONNELLY LLP

Thomas Lawrence III

Thomas Lawrence, III
Attorney for Bessemer and Lake Erie
Railroad Company

TLH:tjl
Enclosures
cc: Parties of Record

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK
SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

FINANCE DOCKET NO. 33388 (SUB-NO. 61)

BESSEMER AND LAKE ERIE RAILROAD COMPANY
-- TRACKAGE RIGHTS --
LINES OF CSX TRANSPORTATION, INC.
AND PENNSYLVANIA LINES LLC

**REBUTTAL EVIDENCE OF BESSEMER
AND LAKE ERIE RAILROAD COMPANY**

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**ATTORNEYS FOR BESSEMER AND
LAKE ERIE RAILROAD COMPANY**

Dated: January 14, 1998

**REBUTTAL VERIFIED STATEMENT
OF
TIMOTHY R. HOWERTER**

My name is Timothy R. Howerter. I am Director of Marketing - East for the Bessemer and Lake Erie Railroad ("B&LE") and three other railroads owned and operated by Transtar, Inc. As Director of Marketing - East, I am responsible for all commercial activities of the B&LE, Union Railroad, Lake Terminal Railroad, McKeesport Connecting Railroad, and The Pittsburgh & Conneaut Dock Company. In addition, I am responsible for the development of traffic and revenue forecasts used in our companies' Business Plan to develop and support capital investments to maintain and grow our long term business. My qualifications and experiences are further detailed in my earlier Verified Statement found in BLE-8 at 15.

The purpose of this verified statement is to respond to the Primary Applicants' December, 1997 Rebuttal to B&LE's Responsive Application filed in this proceeding. In that Application, B&LE seeks STB approval and authorization for its acquisition of limited overhead trackage rights over a line of Conrail to be acquired by Pennsylvania Lines LLC (an affiliate of Norfolk Southern Railway ("NSR")) and over a line of CSXT Transportation, Inc. ("CSXT") in southwestern Pennsylvania. Both of these lines connect with the former lines of the Monongahela Railway ("MGA") which serve the Monongahela coal field. B&LE requests that the trackage rights, along with the additional competitive condition described in B&LE's Comments and Requests for Conditions submitted therewith, be imposed as conditions upon

any approval of the Primary Application. B&LE believes that these conditions are necessary to assure that adequate rail transportation service, meaningful competition and adequate port capacity will be available post-transaction for the transportation of Northern Appalachia coal to the lake coal market.

It should be noted that the trackage rights sought in B&LE's Responsive Application would become effective only in the event that NSR initiates or provides haulage service for CSXT to and from the current and future mines served by the former MGA in southwestern Pennsylvania and northern West Virginia. Thus, the trackage rights are intended to work in conjunction with any such haulage arrangement to allow for the efficient movement of coal from the MGA mines to the B&LE and via the B&LE to P&C Dock on Lake Erie at Conneaut, Ohio. B&LE has not sought to compel any haulage arrangement with NSR but rather to provide for efficient operations and an additional shipper option should NS and CSXT implement such an arrangement.

Unfortunately, in their Rebuttal, Applicants seriously mischaracterize the relief sought by the B&LE. Such mischaracterization seems calculated to distract the Board from the legitimate service and competitive issues raised by B&LE and others concerning the movement of MGA-origin coal to the lake coal market in the post-Conrail environment. Applicants state that it is B&LE's position that "coal producers in the Monongahela area should be offered yet a third carrier." Rebuttal, Vol. 1 at 143. They also state that adding a third

carrier's operations to these lines would further complicate an already complex operational situation. See Orrison VS at 489-492. Applicants have completely missed (or ignored) the point.

B&LE does not seek to add a "third" carrier onto former MGA lines, CSXT lines or NSR lines. As expressly stated in B&LE's Responsive Application, the trackage rights sought by B&LE would only be triggered in the event NSR were to provide haulage service for CSXT to and from the mines, in which case only NSR would have direct operating access to the MGA mines. Furthermore, Applicants' operating plan contemplates that regardless of any haulage arrangement, NSR and CSXT plan to move all MGA-origin coal moving to the Great Lakes over the same rail line between Youngstown and Ashtabula and through the same dock at Ashtabula. NSR and CSXT will not be able to provide the capacity or needed service levels to move the combined tonnage of MGA-origin coal. In such an instance, B&LE seeks limited overhead trackage rights over approximately 54 miles of rail line (14 miles of Conrail/Pennsylvania Lines LLC track and/or 40 miles of CSXT track) in order to assure that adequate service will be provided, and that adequate line and dock capacity and a real competitive option will be available to shippers for the movement of MGA-origin coal to the Great Lakes.

Applicants question B&LE's rationale for seeking such rights, but the reason is simple. Applicants intend to haul all of the tonnage over the same route and via the same facilities. Such an operation will not result in adequate service and will not provide MGA coal shippers with a true competitive option.

NSR would control all movements into and out of the MGA mines over the same line between Youngstown and Ashtabula and through the same Ashtabula Dock. There would be no real service competition and no additional line or dock capacity made available to Great Lakes coal customers. Essentially, all MGA-origin coal would be forced to move the same way through Ashtabula Dock. In view of the storage and unloading capacity constraints at Ashtabula Dock, Great Lakes coal customers will not receive the level and quality of transportation service they demand and deserve. If activated, the trackage rights proposed by B&LE would ensure the adequacy of transportation service for lake coal customers by providing them with a true competitive alternative route to an efficient, state of the art port facility at Conneaut.

Applicants contest B&LE's statement that the Ashtabula Dock is already an overburdened facility. Interestingly, Applicants do not dispute the accuracy of B&LE's statement. They only assert (inaccurately) that B&LE has provided no factual support for such conclusion. But, in fact, we have. See BLE-8, Bonnie VS at 9, Huston VS at 5-7 and Rieland VS at 4-6.

Moreover, Applicants' own evidence proves the point. See Orrison RVS at 492-493. Applicants admit that during 1997, several trains were diverted from the Ashtabula Dock to the Sandusky or Toledo Dock facilities. They further indicate that Conrail attempted to move this coal over the B&LE to P&C Dock at Conneaut, but it was "more economical" to move the coal to Sandusky because of "dock charges" and the economics of the rail

movement. Orrison RVS at 492-493. First, for the record, there are no special or unusual "dock charges" at P&C Dock. Moreover, "dock charges" are not normally quoted separately to Conrail or anyone else. They are usually included in the through rate. Second, upon Conrail's request, B&LE aggressively priced its services for movement of this coal via Shenango to P&C Dock, which is only about 15 miles from Ashtabula Dock. Nevertheless, B&LE was advised that its pricing was not competitive with the NSR alternative route to Sandusky which is more than a hundred rail miles west of Ashtabula. It is difficult to fathom how, under these circumstances, the B&LE route through P&C Dock could possibly be "not competitive" with a route through Sandusky, except when one considers that Conrail's own profit margin would be considerably less on the shorter haul via the B&LE.

The Applicants also claim that there are inconsistencies and contradictions in the Verified Statements submitted by B&LE concerning the capacity of the Ashtabula Dock. Applicants cite to the VS of Mr. G. R. Seiveright of Ontario Hydro (B&LE-8 at 39, VS at 4) and my own previously submitted VS (B&LE-8 at 21, VS at 7). I simply and accurately stated that current capacity at Ashtabula was constrained and that traffic diversions anticipated in a post-transaction setting would further burden that facility. What Mr. Seiveright said is that Ashtabula currently has adequate ground storage capacity available for Ontario Hydro. The two statements are not at all inconsistent or contradictory. That Ontario Hydro's ground storage capacity needs are currently being met is hardly proof

that Ashtabula Dock overall has adequate capacity to accommodate all of the MGA coal moving to the lake coal market. Nor does it mean that the Dock has adequate loading or unloading facilities, nor does it account for the increased traffic that the Applicant's admit the Ashtabula Dock will experience.

Ironically, there are several erroneous statements made by Mr. Orrison in his Rebuttal VS found at CSX/NS 177, Vol. 2A at 467. Most of these errors relate to statements made about B&LE's proposed operations and are addressed in the Rebuttal VS of Mr. James E. Streett. However, Mr. Orrison also makes some inaccurate statements concerning (1) what he perceives to be the significance of the route currently used by CSXT and B&LE to move CSXT-origin coal to P&C Dock and (2) the efficiency of the Dock itself. These ought not be left uncorrected. Mr. Orrison states that the route through Demmler Yard is currently available to CSXT and B&LE (URR), however, the "two railroads have opted to use the route via New Castle, PA involving a third carrier (B&P)." Orrison RVS at 489. It is not B&LE's choice to have the B&P in the route to Conneaut. The fact is that B&LE has little, if any, control over the routing of this CSXT-origin coal. For a very brief period of time, this coal was routed directly from CSXT to B&LE at Bessemer. However, after operating only a couple of trains CSXT advised B&LE that the coal would again be routed through the B&P at New Castle. Clearly, this was not a joint decision between CSXT and B&LE as Mr. Orrison asserts.

Mr. Orrison also makes some inaccurate statements concerning the capacity of the P&C Dock at Conneaut. He asserts

that the P&C Dock is less efficient than the Ashtabula Dock because of multiple switching moves needed to access and utilize the rotary dumper. First of all, there are two dumping facilities at the P&C Dock, one utilizing a rotary dumper and one utilizing a bottom drop dumper. Currently, the rotary dumper is not being utilized because it is not needed based on the amount of coal currently moving through the P&C Dock. Secondly, as further detailed in the Street RVS, there are no multiple switching moves required to utilize the rotary dumper. Moreover, the bottom drop dumper that is in use at Conneaut has the capacity to unload approximately 10 million tons of coal per year -- significantly more than the facility at Ashtabula.

Also, through Orrison, Applicants state that there is no need in the context of this consolidation proceeding for the STB to condition the transaction on imposition of the trackage rights sought by B&LE. The Applicants allege that "[w]hat B&LE actually seeks is redress of wrongs it claims it suffered when Conrail was granted control of the Monongahela Railway by the ICC in 1991." Rebuttal, Vol. 1 at 145. Again, they are wrong. What B&LE seeks is to ensure that adequate transportation service will be provided for MGA-origin coal moving to the lake and that Great Lakes coal customers have a real competitive alternative to moving MGA-origin coal through the Ashtabula Dock facility. What happened in 1991 is history, but seeking to protect the market from being subjected to inadequate service, as both NSR and CSXT attempt to move all of the MGA coal over the same line to Ashtabula and through the same Ashtabula Dock, is not. The

Applicants argue that market forces will serve to direct the movement of MGA-origin coal. However, the market cannot function properly if the combined traffic cannot be handled over congested and inadequate facilities and the customers have no other options. The trackage rights sought by B&LE are intended to provide MGA coal customers with a true service and competitive option that the Applicant's proposal will not.

To assure the availability of a real competitive alternative for customers moving MGA-origin coal to the lake coal market, in the event CSXT agrees to allow NSR to haul CSXT cars from mines on the former MGA in lieu of CSXT conducting its own operations over former MGA lines, B&LE should be granted trackage rights over CSXT or NSR to access NSR's or CSXT's haulage service over MGA lines. This will serve to assure that adequate transportation service will be provided to MGA coal shippers post-Conrail transaction. Access to the P&C Dock at Conneaut on a competitive basis will assure that the lake coal market will receive the port capacity and high quality of transportation service it demands.

VERIFICATION

Commonwealth of Pennsylvania)
) SS:
County of Allegheny)

Timothy R. Howerter, being duly sworn, deposes and says that he is Director of Marketing - East for Bessemer and Lake Erie Railroad Company, The Lake Terminal Railroad Company, McKeesport Connecting Railroad Company, The Pittsburgh & Conneaut Dock Company, and Union Railroad Company, that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.

Wm. R. H. H. H.

Timothy R. Howerter

SUBSCRIBED AND SWORN to
before me this 12th day
of January, 1998.

Julius L. K.
Notary Public

My Commission Expires:

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

000009

**REBUTTAL VERIFIED STATEMENT
OF
JAMES E. STRETT**

My name is James E. Streett. I am Superintendent of Operations for the Bessemer and Lake Erie Railroad ("B&LE"), The Pittsburgh & Conneaut Dock Company ("P&C Dock"), Union Railroad Company ("URR") and the McKeesport Connecting Railroad Company. In this position, to which I was appointed on July 1, 1993, I have over-all management responsibility for transportation and dock operations for the above-stated companies. My qualifications and relevant experiences are further detailed in my earlier Verified Statement found in BLE-8 at 33.

The purpose of my Verified Statement is to comment on and correct information in the Primary Applicants' Rebuttal concerning the trackage rights sought by B&LE in its Responsive Application. The trackage rights that the B&LE seeks as a condition to STB approval of the transaction contemplated by the Primary Applicants cover segments of two existing Class I carriers, Conrail and CSXT. B&LE seeks trackage rights over either CSXT track between Bessemer (Pittsburgh), PA and Brownsville, PA or over Conrail track between Pittsburgh (Duquesne), PA and Shire Oaks, PA. The B&LE connects with Conrail at Pittsburgh (Duquesne), and from there the line runs a distance of approximately 14 miles to Shire Oaks, PA. This Conrail line has been assigned to Norfolk Southern Railway Company ("NSR") in the proposed division of Conrail assets, and upon consummation of the transaction contemplated in the Primary Application, if approved, will be owned by Pennsylvania Lines

LLC. The CSXT line over which B&LE seeks to operate is a line of railroad that runs between CSXT's connection with B&LE at Bessemer (Pittsburgh), PA and CSXT's Newell Yard near Brownsville, PA, a distance of approximately 40 miles. The trackage rights would be effective only in the event NSR provides haulage service for CSXT to and from the mines served by the former Monongahela Railway in southwestern Pennsylvania and northern West Virginia.

The Applicants allege that the operation proposed by B&LE to move MGA-origin coal to the P&C Dock would be inefficient. They assert that yard congestion, lack of appropriate staging facilities, inadequate locomotive power, track and grade problems and less efficient dock facilities make the B&LE/URR route less desirable for lake coal customers. None of these unsubstantiated claims is accurate. In fact, currently two and one-half million tons of coal move over this route annually.

Applicants argue that the "proposed movement from B&LE to URR to CSX at Bessemer is not an efficient connection." Rebuttal, Vol. 2A, Orrison VS at HC-489. They state that switching operations and movement of road trains originating and working at Demmler Yard (just south of Bessemer) would become congested causing delay to CSX, BLE and URR operations. The Applicants overstate the impact on such movements. B&LE/URR trains would not be required to stop and/or switch cars at Demmler Yard. Trains moving through Demmler Yard would be unit trains operating on the mainline. They could efficiently move

through Demmler Yard in 15 to 20 minutes without significant disruption to other road and yard operations.

Similarly, the Applicants point out that under their current operating plan car inspection and staging of trains moving into Newell Yard will be done at New Castle, PA and Cumberland, MD. They argue that the B&LE/URR trains coming into their system through Bessemer will create congestion, inefficiencies and delay, apparently because they believe the staging and car inspection work will be done at Newell Yard. First, the staging of such trains in Newell Yard will be minimal or non-existent. The operating plan submitted by B&LE provides that unit trains of empties will be delivered to Newell Yard for subsequent movement intact to the mines and a loaded unit train will be retrieved intact at Newell and operated north. Staging of B&LE trains in Newell Yard would therefore be unusual.

The fact that the Applicants do not plan to perform car inspections at Newell is not material to this matter. B&LE plans to perform required car inspections at Conneaut on outbound empties and at North Bessemer Yard for loaded trains moving north. This will fully comply with all applicable federal regulations. If operationally necessary, B&LE is prepared to send URR car inspectors to Newell Yard to perform the required inspections.

Applicants also state that the proposed B&LE route is less inefficient than the route to Ashtabula because the "grades and curvature on the [B&LE] route require more motive power than the Youngstown-Ashtabula line." Orrison Rebuttal at HC-492.

That is a wholly inaccurate statement. The grades and curvature on the B&LE route are typical of the entire geographical region and are no more difficult than those existing on the route to and from Ashtabula. Granted, more locomotive power is utilized by B&LE, but that is simply because the locomotives currently used by B&LE have less horsepower capacity than those used by Conrail. Conrail may have bigger locomotives and thereby require less locomotive units, but that does not make the proposed B&LE/URR routing less efficient. In fact, the B&LE/URR route is less congested and delivers the coal to a superior dock facility.

The Applicants acknowledge that Conneaut is a larger dock facility than Ashtabula, but they erroneously assert that Conneaut is "a less efficient operation for the movement of coal to the rotary dumper." Orrison Rebuttal VS at HC-492. As explained in the Howerter VS, BLE-8 at 19-20, the coal unloading facility at Conneaut is second to none. There are two separate unloading facilities that can each handle unloading an average of two hundred, 100-ton rail cars per eight hour shift. One unloading facility at the lower end of Conneaut is a bottom-drop dumper similar to that which exists at Ashtabula. The upper coal unloading facility has a rotary dumper, but due to lower levels of coal moving through Conneaut it is not currently in use. Should its services be utilized, the Conneaut facility would have twice the unloading capacity of Ashtabula.

The Applicants further state that using the rotary dumper requires multiple switching movements to transfer loaded coal trains to the dumper, thereby further hindering efficiency.

That simply is not the case. Trains moving into the rotary dumper for unloading are handled no differently than trains moving into the bottom-drop dumper. There are no multiple switching moves associated with moving coal to the rotary dumper. Regardless of which dumper facility is utilized, cars are delivered for unloading in exactly the same manner. The only difference being that the cars sent to the rotary dumper traverse a different route to get to the upper yard facility.

Clearly, there are no operational impediments to the service proposed by B&LE/URR. The rebuttal points raised by the Applicants are simply untrue or insignificant. Moreover, the port capacity provided by the P&C Dock at Conneaut is needed to satisfy the needs of the lake coal market and ensure that the market receives the highest quality of transportation services.

VERIFICATION

Commonwealth of Pennsylvania)
) SS:
County of Allegheny)

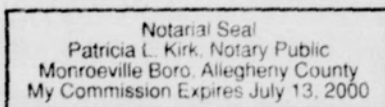
James E. Streett, being duly sworn, deposes and says that he is Superintendent Operations for Bessemer and Lake Erie Railroad Company, McKeesport Connecting Railroad Company, The Pittsburgh & Conneaut Dock Company, and Union Railroad Company, that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.

James E. Streett -
James E. Streett

SUBSCRIBED AND SWORN to
before me this 12th day
of January, 1998.

Salma A. Kist
Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

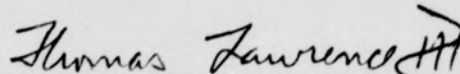
I hereby certify that on this 14th day of January, 1998, a copy of the foregoing **Rebuttal Evidence of Bessemer and Lake Erie Railroad Company (BLE-9)** was served by hand delivery upon the Primary Applicants herein, as follows:

Dennis G. Lyons, Esq.
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Richard A. Allen, Esq.
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Suite 600
Washington, DC 20006-3939

Paul A. Cunningham, Esq.
Harkins Cunningham
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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 Lawrence III

STB FD 33388 (Sub 61) 11-4-97 D 183702

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ENTERED
Office of the Secretary

NOV 05 1997

183702



October 31, 1997

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Washington, D.C.

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 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. 61)
Bessemer and Lake Erie Railroad Company --
Trackage Rights -- Lines of CSX Transportation,
Inc. and Pennsylvania Lines LLC

Dear Secretary Williams:

On October 21, 1997, the Bessemer and Lake Erie Railroad Company ("BLE") filed its Comments and Requests for Conditions (BLE-8) in the above-captioned proceedings. The verification pages for the Statements of Grant R. Seiveright and William G. Rieland included in BLE-8 were filed in facsimile form. BLE also understands that the verification page for the Statement of James E. Streett may have inadvertently been omitted from certain service copies of BLE-8.

I am now attaching for placement in the Board's records the original verification pages for the statements of Messrs. Seiveright, Rieland and Streett. Twenty-five copies of this letter, with attachments, are enclosed for filing, and copies of this letter, with attachments, have been served on all designated parties of record in this proceeding by first class mail, postage prepaid.

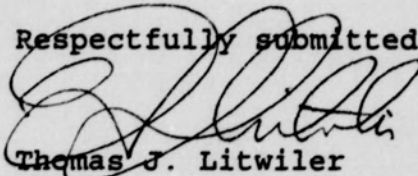
I also have enclosed herewith an extra copy of this letter, and would request that you date-stamp that copy to show receipt of this filing and return it to me in the provided envelope.

OPPENHEIMER WOLFF & DONNELLY

Mr. Vernon A. Williams
October 31, 1997
Page 2

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 Bessemer and Lake Erie
Railroad Company

TJL:tl

Attachments

cc: Parties of Record

VERIFICATION

Commonwealth of Pennsylvania)
) SS:
County of Allegheny)

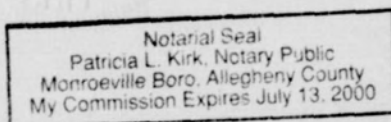
James E. Streett, being duly sworn, deposes and says that he is Superintendent Operations for Bessemer and Lake Erie Railroad Company, McKeesport Connecting Railroad Company, The Pittsburgh & Conneaut Dock Company, and Union Railroad Company, that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.

James E. Streett
James E. Streett

SUBSCRIBED AND SWORN to
before me this 16th day
of October, 1997.

Patricia L. Kirk
Notary Public

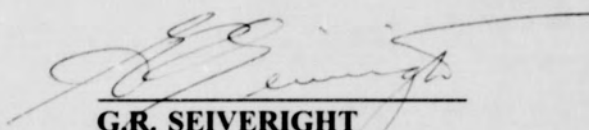
My Commission Expires:



VERIFICATION

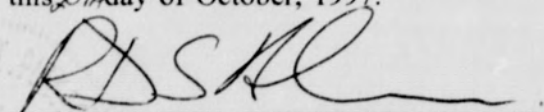
SS: City of Toronto
Province of Ontario

G.R. SEIVERIGHT, being duly sworn, depose and says that he is Manager-Fuels Division for Ontario Hydro, that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.



G.R. SEIVERIGHT
Manager-Fuels Division
Ontario Hydro

SUBSCRIBED AND SWORN before me
this 27th day of October, 1997.



ROBERT DICKSON STEPHEN HARKNESS
A Notary Public in and for the
Province of Ontario.
My commission never expires.

G:\law....\fossil\doc\verifica

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF ALLEGHENY :

William G. Rieland, being duly sworn, deposes and says that he is Vice President Transportation & Marketing Services for CONSOL Inc., that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.

William G. Rieland

William G. Rieland

SUBSCRIBED AND SWORN
to before me this 17th day of
October, 1997.

Barbara P. Tate

Notary Public

My Commission Expires:

