

STB FD 33388 (Sub 61) 2-25-98 E 185997

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February 24, 1998



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**VIA FEDERAL EXPRESS**

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

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

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

Dear Secretary Williams:

Please find enclosed an original and twenty-five copies of the **Errata to Brief of Bessemer and Lake Erie Railroad Company (BLE-11)**. The Errata contains a single line of text which was omitted from page 13 of BLE's Brief (BLE-10) due to an inadvertent word-processing error. In addition, we have also enclosed for the Board's convenience 26 copies of page 13 of BLE-10 as corrected. A copy of this letter and BLE-11 have been served on all parties of record.

We apologize for any inconvenience with this error may have caused the Board or other parties. Please do not hesitate to call me if you have any questions.

Respectfully submitted,

Christopher E. Quinn  
Attorney for Bessemer and Lake Erie  
Railroad Company

CEVQ:tjl

Enclosures

cc: Parties of Record

185997

BLE-11

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK MAIL  
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)

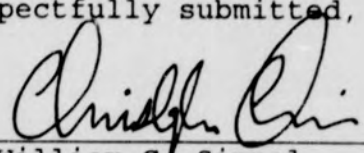
BESSEMER AND LAKE ERIE RAILROAD COMPANY  
-- TRACKAGE RIGHTS --  
LINES OF CSX TRANSPORTATION, INC.  
AND PENNSYLVANIA LINES LLC

**ERRATA TO BRIEF OF BESSEMER AND  
LAKE ERIE RAILROAD COMPANY**

The following line should be added as the last line to  
page 13 of the Brief of Bessemer and Lake Erie Railroad Company,  
BLE-10 as follows:

ability to successfully market our coal to these customers."

Respectfully submitted,

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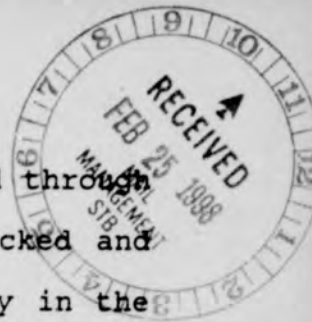
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**ATTORNEYS FOR BESSEMER AND  
LAKE ERIE RAILROAD COMPANY**

Dated: February 24, 1998

moved via Conrail over the Youngstown-Ashtabula line and through the Ashtabula Dock. That current traffic was bottlenecked and subject to congestion on a recurring basis, particularly in the period between August and the end of the Lake shipping season. Id. The "result of congestion at the Dock is that CONSOL gets 'rationed,' i.e., only allowed to load the number of cars prescribed by Conrail, regardless of how much coal needed to move and regardless of customers' needs and shipping schedules." Id. at 4-5. Future volume increases will only make the situation worse. As a result, CONSOL "strongly supports" the conditions proposed by B&LE in this proceeding.

Cyprus Amax Coal Sales Corporation, the marketing and sales arm of Cyprus Amax Coal Company ("Cyprus Amax" or "the Company"), similarly supports imposition of B&LE's conditions. See Verified Statement of Brad F. Huston, BLE-8 ("Houston V.S."). Cyprus Amax is the second largest coal mining company in the United States. Cyprus Amax currently operates 21 coal mines in 9 states, including mines located in the Powder River Basin, Colorado, Utah, the Illinois Basin, Kentucky, Pennsylvania, West Virginia and Tennessee. In 1996, Cyprus Amax mined 82 million tons of coal from total company reserves of 2.5 billion tons. Although Cyprus Amax participates in the metallurgical and industrial coal market, the vast majority of the Company's coal is sold to domestic electric utilities. Cyprus Amax points out that "[t]he adequacy of the rail transportation facilities and service available to our Company is a critical factor in our ability to successfully market our coal to these customers."



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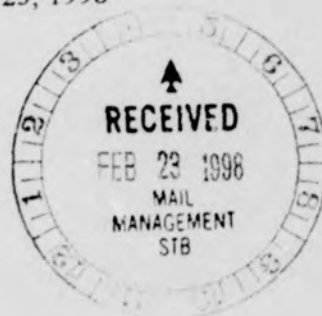
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**VIA HAND DELIVERY**

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

February 23, 1998



Re: **Finance Docket No. 33388**  
**CSX Corp. and CSX Transportation, Inc., Norfolk Southern Corp.**  
**and Norfolk Southern Railway Company -- Control and Operating**  
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**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 **Brief of Bessemer and Lake Erie Railroad Company** (BLE-10), dated February 23, 1998. A computer diskette containing the text of BLE-10 in WordPerfect 5.1 format also is enclosed.

I have also enclosed herewith an extra copy of BLE-10 and this transmittal letter, and would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope. Thank you for your assistance on this matter.

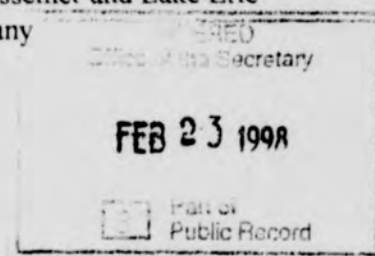
Respectfully submitted,

Christopher E.V. Quinn  
Attorney for Bessemer and Lake Erie  
Railroad Company

CEVQ:tjl

Enclosures

cc: Parties of Record



185920

BLE-10

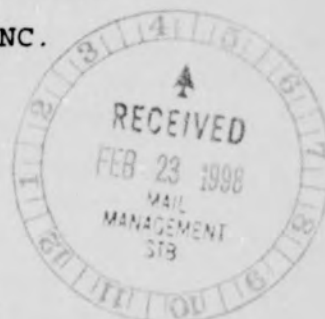
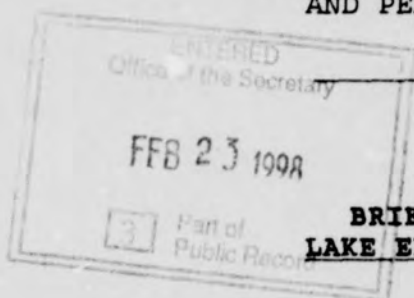
BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK  
SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY  
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FINANCE DOCKET NO. 33388 (SUB-NO. 61)

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



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

Dated: February 23, 1998



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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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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

---

**BRIEF OF BESSEMER AND  
LAKE ERIE RAILROAD COMPANY**

Pursuant to the Orders of the Board served May 30, 1997 and July 23, 1997, the Bessemer and Lake Erie Railroad Company ("B&LE") respectfully submits this Brief in support of its request for the imposition of conditions upon any approval of the proposed acquisition of control of Conrail, Inc. and the division of the rail assets, lines and operations of Consolidated Rail Corporation (collectively "Conrail") by CSX Corporation and CSXT Transportation, Inc. (collectively "CSXT") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS").<sup>1</sup>

**INTRODUCTION AND SUMMARY**

The transactions contemplated by the proposed Conrail takeover constitute the largest rail merger in United States

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<sup>1</sup> CSXT, NS and Conrail are referred to collectively herein as the "Primary Applicants."

history. Parties on both sides agree that it is a transaction which, if approved, would change permanently the freight railroad industry in the United States. Not surprisingly, the Primary Applicants have touted the proposed transaction as one that will create new single-line routes for freight rail transportation and open up major portions of the Northeast to rail competition for the first time in over 25 years. However, if left unremedied, the proposed Conrail transaction will cause serious transportation service and competitive routing problems in the transportation of northern Appalachia coal to the Great Lakes. B&LE has identified specific harms arising from the Conrail takeover that could be substantially ameliorated if the Surface Transportation Board grants the relief requested in the Responsive Application of Bessemer and Lake Erie Railroad Company for Trackage Rights, BLE-7 ("B&LE Resp. App.") and its Comments and Requests for Conditions, BLE-8 ("Comments and Requests"). The relief sought by B&LE is operationally feasible and would enhance rather than reduce the public benefits of the proposed Conrail takeover.

#### STATEMENT OF FACTS

##### I. B&LE AND THE LAKE COAL MARKET

B&LE is a Class II railroad which owns and operates 335.9 miles of trackage, including approximately 150 route miles in the states of Pennsylvania and Ohio. B&LE's principal line extends between North Bessemer, Pennsylvania (near Pittsburgh) and Conneaut, Ohio, on Lake Erie.

The principal commodities handled by B&LE are: (a) coal from mines served by the B&LE, from river sources using the inland waterways and transferred at the Duquesne Wharf of B&LE affiliate the Union Railroad ("URR") on the Monongahela River, and from off-line mines located in Pennsylvania, West Virginia and Ohio interchanged to B&LE by the Buffalo & Pittsburgh Railroad ("BPR"), CSXT, Conrail or NS for movement to Conneaut, Ohio; (b) iron ore and other steel raw materials from B&LE's port at Conneaut, Ohio, moving to integrated steel plants; (c) fluxing and industrial stones, aggregate, salt and gypsum delivered via vessel to Conneaut for outbound rail and truck delivery; and (d) steel, scrap and miscellaneous freight to and from points on the B&LE. Verified Statement of Timothy R. Howerter, BLE-8 ("Howerter V.S.") at 2.

B&LE has long been an active competitor for the transportation of coal in the so-called "lake coal market." The "lake coal market" is defined as the market for bituminous (soft) coal, primarily from northern Appalachia coal fields moving either to B&LE's Pittsburgh & Conneaut Dock (referred to as "P&C Dock") at Conneaut, Ohio, or Conrail's Ashtabula Dock at Ashtabula, Ohio. The northern Appalachia coal fields consist generally of mines located in Maryland, Ohio, Pennsylvania and Northern West Virginia. Primarily high- and mid-sulfur coal from these northern Appalachia mines are transported by rail to these dock facilities for transshipment via lake vessel to customers



served by the maritime industry on the Great Lakes.<sup>2</sup> End users include electric utilities and industrial customers on the Great Lakes and export traders which serve markets overseas via the St. Lawrence Seaway. Howerter V.S. at 3.

Since the mid-1980s, the scope of the lake coal market has been expanded to include the movement of low-sulfur coal to the historical users of the P&C and Ashtabula Docks (the same electric utilities, industrial customers and export traders described above). More stringent federal and state environmental regulations have forced many of the long-term users of the P&C and Ashtabula Docks to purchase low-sulfur coals and decrease, or in some cases, abandon traditional higher sulfur coal sources. Howerter V.S. at 3.

The lake coal market to the P&C and Ashtabula Docks does not include shipments of low-sulfur coal from the central (as opposed to northern) Appalachia coal fields. Coal from the central Appalachia coal fields moves via NS' lake terminal at Sandusky, Ohio, or CSXT's lake terminal at Toledo (which is also served by Conrail). The central Appalachia coal fields consist generally of mines located in eastern Kentucky, Virginia and southern West Virginia. See Map attached as Exhibit A to the Verified Statement of Grant R. Seiveright, BLE-8 at 43. The central Appalachia coal mines involved are almost exclusively served by NS and CSXT, both of which provide efficient, single-line service from these mines to Sandusky/Toledo. NS and

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<sup>2</sup> Some of the West Virginia coal is low sulfur, originating on CSXT and routed to P&C Dock at Conneaut.



CSXT do not serve the same customer base and end-user markets as B&LE and Conrail serve via Conneaut/Ashtabula. Furthermore, as the coal mining industry in northern Appalachia has evolved into a concentration of production controlled by several very large coal companies that utilize longwall mining technology, transportation economics have not supported the movement of the high- and mid-sulfur production from those mines to Sandusky/Toledo, which are at least 120 rail miles farther west. Howerter V.S. at 3-4.

Northern Appalachia coal which has moved through P&C Dock has traditionally come from either coal mines directly served by the B&LE or from sources with access to the river (which permits the coal to be barged to Duquesne Wharf and transferred to B&LE rail cars for movement to the Lake), or from off-line mines which reach the B&LE via rail connections. P&C Dock and its coal sources directly compete with Conrail's Ashtabula Dock and Conrail's own portfolio of coal sources, including directly-served origins in Pennsylvania, West Virginia and Ohio and off-line sources interchanged to Conrail via its own connections, including the former Monongahela Railway ("MGA"). Howerter V.S. at 6.

Thus, the competition for movements of northern Appalachia primarily high- and mid-sulfur coals to the lake coal market is between Conrail's Ashtabula Dock and B&LE's P&C Dock at Conneaut. P&C Dock and Ashtabula have not directly competed with Sandusky (NS) and Toledo (CSXT) for the most part because of a

different end-user customer base and because the coal chemistry of their respective origins is different. Howerter V.S. at 3-5.

## **II. B&LE'S DOCK AT CONNEAUT**

The B&LE has been a participant in the lake coal market since before the turn of the century, with B&LE's first coal dock commencing operation at Conneaut in 1897. The coal terminal facilities at P&C Dock have since been modernized, refined and expanded over the years. P&C Dock has two separate coal unloading and storage facilities which can operate either independently on a stand-alone basis, or in a coordinated mode to provide unparalleled flexibility. Each unloading facility is capable of unloading an average of two hundred, 100-ton rail cars per eight-hour shift. Each facility is equipped with inbound, automatic sampling. The lower coal facility can store up to 1.7 million tons of coal at any time, and the upper coal facility can store up to 4.0 million additional tons of coal, depending upon the number and size of the stockpiles. Howerter V.S. at 5.

Both the lower and upper coal facilities access two 6,000-ton storage silos. These silos serve two primary functions. First, the silos reduce vessel loading time when operated in concert with each coal facilities' direct rail car to vessel loading capability and each facilities' coal reclaiming capacity. Second, the silos provide the ability to blend coal as demanded by the market through seven adjustable, metered discharge gates which are located at the base of each silo. Both coal facilities also share access to two ship-loaders which can load coal into either lake vessels or barges. The rated capacity

of the two ship-loaders is 11,000 tons per hour. Howerter V.S. at 5.

### **III. THE APPLICANTS' PROPOSED TRANSACTION**

Under the proposed division of Conrail's assets, NS (through Pennsylvania Lines LLP "PRR") will acquire Conrail's former MGA coal lines (serving primarily northern Appalachian mines), Conrail's rail line between Youngstown and Ashtabula, Ohio and Conrail's Ashtabula Dock on Lake Erie. NS thus will obtain a single-line route from the MGA coal mines to Lake Erie. NS will grant trackage rights to CSXT over the former MGA lines to access MGA mines, will continue to grant CSXT trackage rights over the NS/PRR/Conrail line from Youngstown to Ashtabula, and will allocate 42% of the capacity of Ashtabula Dock to CSXT. In each instance the rail lines and the Ashtabula Dock will be owned, controlled and dispatched by NS.

### **IV. B&LE AND SHIPPERS' RESPONSE TO THE PROPOSED TRANSACTION**

After consulting with the principal shippers and receivers of coal in the affected lake coal market, B&LE proposed certain conditions set forth in its Comments and Requests and Responsive Application designed to ameliorate the harmful effects to the public interest that would otherwise result from the proposed transaction.<sup>3</sup> Not surprisingly, given the critical importance of adequate and competitive rail transportation and dock facilities to the movement of coal from northern Appalachia

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<sup>3</sup> The "ARGUMENT" section infra discusses the transaction-related harms and proposed conditions in detail.

to the Great Lakes, B&LE's proposed conditions have received strong support from major utilities and coal producers in the lake coal market. See Shipper Verified Statements submitted with B&LE's Comments and Requests. All of these shippers submit strong and compelling evidence that absent the relief proposed by B&LE the transportation of coal in this critical region will be seriously threatened under the Primary Applicants proposed transaction in regard to both capacity and competition. The extensive support from some of the largest producers and consumers of coal in the lake coal market is telling of the merger related threat to both capacity and competition for these important coal shipments.

For example, in his verified statement, Mr. James H. Bonnie of Niagara Mohawk Power Corporation ("Niagara Mohawk") addresses the critical need to ensure that participants in the lake coal market have reliable, long-term access to adequate transportation and dock facilities for lake coal shipments. See Verified Statement of James H. Bonnie, BLE-8 ("Bonnie V.S.") at 9. Niagara Mohawk is a major utility company based in Syracuse providing electric service to over 1.5 million customers in eastern and upstate New York. The Company's total electric generating capacity is 8,194,000 kilowatts, of which approximately 1.3 million kilowatts is generated by the Company's two coal-fired power plants. To fuel these plants, Niagara Mohawk purchases approximately 3 million tons of coal per year.

Mr. Bonnie points out that with the imminent deregulation of the electric power industry and, at the same



time, the implementation of more stringent air emission standards, the survival of the industry will depend heavily on the ability to generate electricity at low cost. Bonnie V.S. at 2-3. He confirms that economical access to the available capacity of B&LE and P&C Dock is a "key component" to meeting these challenges. Bonnie V.S. at 3.

In order to maintain some level of competition for the transportation of coal to Niagara Mohawk's plants, which are currently served by Conrail and will be served only by CSXT under the proposed merger, Niagara Mohawk has purchased coal from the Cumberland Mine of Cyprus Amax Coal Company, a Pittsburgh Seam mine with access to barge service on the Monongahela River. Cumberland Mine is one of the few longwall producers that is not captive to Conrail. Coal from Cumberland is routed via barge to B&LE's Duquesne Wharf for movement to P&C Dock for transfer to lake vessel for delivery to Niagara Mohawk's plants. Current contracts in place support up to 500,000 tons of Cumberland Mine coal via B&LE through P&C Dock annually.

In his verified statement, Mr. Bonnie notes a number of merger-related harms that Niagara Mohawk will suffer. The first is that:

as a result of the proposed Conrail transaction, the existing limited competitive alternative we have developed via B&LE and P&C Dock, even with Cumberland Mine coal, could be in jeopardy. Specifically, we are very concerned that unless B&LE is assured a fair opportunity to compete for coal moving from mines on the former Monongahela Railway to the lake, B&LE management may elect to downgrade or even abandon the B&LE and downsize P&C Dock to meet current levels of usage. Thus, not only do we face a

competitive block on our ability to expand our use of blended coal through P&C Dock, we face the possibility that our existing limited competitive alternative may be lost.

Bonnie V.S. at 9 (emphasis added).

He also notes that Niagara Mohawk's future needs for blended coal are seriously threatened by the proposed transaction as Niagara Mohawk's increased need cannot be adequately served by NS and CSXT alone. Bonnie V.S. at 7-8. Without P&C Dock's blending capabilities, Niagara Mohawk's ability to economically acquire blended coal is effectively cut off. Id. Blending at Ashtabula will be unavailable to handle increased needs as Ashtabula's capacity and ability to process the needed coal will effectively be prevented due to the Dock's capacity and service problems. Bonnie V.S. at 9.

Accordingly, Niagara Mohawk strongly supports the conditions sought by B&LE in this proceeding. As Mr. Bonnie states:

B&LE is a known transportation supplier to Niagara Mohawk and has a proven track record when given the chance to compete. Unless the proposed Conrail transaction is conditioned so as to assure competitive joint line rates with B&LE to P&C Dock, our ability to continue to develop this competitive alternative will be frustrated and even worse, may be lost.

Bonnie V.S. at 9 (emphasis added).

The CONSOL Coal Group ("CONSOL") also submitted a detailed verified statement describing its concerns with the proposed transaction and supporting B&LE's proposed conditions. See Verified Statement of William G. Rieland, BLE-8 ("Rieland V.S."). CONSOL is a major bituminous coal producer operating in



various coal basins throughout the United States. In 1996, CONSOL mines produced approximately 72 million tons of coal and had sales of nearly \$2.4 billion. CONSOL sells its products to electric utilities and industrial customers throughout the eastern and Midwestern areas of the United States, electric utility and steel industry customers in Canada, and to electric utilities and steel companies in 24 foreign countries. Rieland V.S. at 1-2.

CONSOL operates the Bailey, Enlow Fork, Blacksville and Loveridge Mines located in southwestern Pennsylvania and northern West Virginia. These mines are currently served exclusively by Conrail which acquired the Monongahela Railway in 1990. All of the coal produced from these mines, currently 24 million tons per year, is shipped by rail. These mines are all directly affected by the proposed breakup of the Conrail system. Rieland V.S. at 2.

Given that the market for coal has expanded steadily in recent years and is expected to grow steadily into the 21st century, CONSOL points out that "[i]t is absolutely critical to CONSOL's long-term competitive position that the rail transportation infrastructure available have sufficient capacity, be efficient, flexible and provide adequate levels of service to handle not only current volumes but increased volumes of traffic." Rieland V.S. at 3.

The lake coal market represents one of the most important markets for the coal from CONSOL's Pennsylvania and northern West Virginia mines. To meet the demands of this

market, CONSOL must efficiently move the coal north to vessel-loading facilities on Lake Erie, where it can be unloaded from railcar, stored, and loaded into vessel for movement by water to the ultimate customer. Because CONSOL has very limited space to store coal at its mines, it is absolutely essential to its ability to competitively market coal from its mines to the lake coal market that access be available to adequate facilities for the shipment, storage, and reshipment of this coal to its ultimate destination. Rieland V.S. at 3-4.

CONSOL points out that at first blush, the proposed Conrail transaction, which provides for both NS and CSXT to jointly serve mines on the former Monongahela Railway, including CONSOL mines, would seem to provide more capacity and more options, not less. Rieland V.S. at 4.

However, CONSOL points out that:

with respect to our ability to be efficient and participate in the lake coal market, we believe that without regulatory intervention, the Conrail transaction as presently structured, will actually result in inadequate service and less capacity being available to us than we have now. As we propose to increase our MGA production, CONSOL is concerned that insufficient lakefront capacity would limit our success in the lake coal market.

Id. (emphasis in original).

Specifically, CONSOL notes that the Ashtabula Dock simply does not have the facilities or the capacity to handle the volume of coal that is expected to move to the Lake in the near future, let alone expanded production over the long term. Id. In 1997, approximately 12% of the coal from CONSOL's MGA mines

moved via Conrail over the Youngstown-Ashtabula line and through the Ashtabula Dock. That current traffic was bottlenecked and subject to congestion on a recurring basis, particularly in the period between August and the end of the Lake shipping season. Id. The "result of congestion at the Dock is that CONSOL gets 'rationed,' i.e., only allowed to load the number of cars prescribed by Conrail, regardless of how much coal needed to move and regardless of customers' needs and shipping schedules." Id. at 4-5. Future volume increases will only make the situation worse. As a result, CONSOL "strongly supports" the conditions proposed by B&LE in this proceeding.

Cyprus Amax Coal Sales Corporation, the marketing and sales arm of Cyprus Amax Coal Company ("Cyprus Amax" or "the Company"), similarly supports imposition of B&LE's conditions. See Verified Statement of Brad F. Huston, BLE-8 ("Houston V.S."). Cyprus Amax is the second largest coal mining company in the United States. Cyprus Amax currently operates 21 coal mines in 9 states, including mines located in the Powder River Basin, Colorado, Utah, the Illinois Basin, Kentucky, Pennsylvania, West Virginia and Tennessee. In 1996, Cyprus Amax mined 82 million tons of coal from total company reserves of 2.5 billion tons. Although Cyprus Amax participates in the metallurgical and industrial coal market, the vast majority of the Company's coal is sold to domestic electric utilities. Cyprus Amax points out that "[t]he adequacy of the rail transportation facilities and service available to our Company is a critical factor in our

Huston V.S. at 2.

The market for coal from Cyprus Amax's Pennsylvania mines has expanded steadily in recent years and is expected to grow in the future. Id. at 2-3. To meet the demands of the market for our coal, Cyprus Amax is investing millions of dollars in new equipment to expand production and further reduce operating costs and is investigating the feasibility of opening an entirely new state-of-the-art mine not far from the Cumberland Mine, to tap the Company's Freeport low-sulfur coal reserves in this area. Id. at 3.

Cyprus Amax notes that the transaction as presently structured will make available to it single-line routes from both NS and CSXT between its Emerald Mine and the Ashtabula Dock. However, NS and CSXT plan to move the entire combined volume of both railroads of MGA-originated coal moving to the Lake over the exact same line (between Youngstown and Ashtabula) and through the same dock at Ashtabula. Cyprus Amax points out in no uncertain terms that such a plan will not succeed:

What [NS and CSXT] propose has failed in the past at existing tonnage levels and will not work in the future at increased tonnage levels. The Ashtabula Dock simply does not have the facilities or the capacity to handle the volume of coal that is expected to move to the Lake in the near future, let alone over the long term. . . . This already intolerable situation will be made even worse once CSXT begins to market its single line routes from coal mines on its West Virginia lines through Ashtabula Dock, which the



proposed Conrail transaction gives CSXT a strong incentive to pursue.

Huston V.S. at 5-6 (emphasis added). Moreover, its concerns over the adequacy of service that will be provided extend beyond capacity issues associated with Ashtabula Dock:

Moreover, we are concerned that the former Conrail line to the Ashtabula Dock between Youngstown and Ashtabula to be owned and operated by NS and over which CSXT will operate via trackage rights, will be unable to efficiently handle the combined volumes of the two railroads and will become a serious operating bottleneck. Indeed, at times, it is already a bottleneck. If a single railroad cannot operate the line without congestion problems today, how can anyone expect that two railroads operating over the same line trying to stay out of each other's way, handling greater volumes than Conrail handles today, will be able to avoid even worse congestion? The effect on our ability to market our Emerald Mine coal in the lake coal market would be greatly hampered.

Huston V.S. at 6-7 (emphasis added). Cyprus Amax "strongly supports" the conditions proposed by B&LE in this proceeding.

Ontario Hydro also strongly supports B&LE's proposed conditions. See Verified Statement of Grant R. Seiveright, BLE-8 ("Seiveright V.S."). Measured by installed generating capacity, Ontario Hydro is one of the largest utilities in North America. Ontario Hydro directly serves almost one million customers and indirectly serves almost three million customers. A portion of its electrical production is sold to utilities in New York and Michigan. The Ontario Hydro system includes 69 hydroelectric stations, 5 nuclear stations, and 6 operating fossil-fueled stations (5 of which burn coal).

Ontario Hydro is one of the largest single receivers of coal in the lake coal market. The two principal Ohio lake terminals or docks used by Ontario Hydro for its coal are Ashtabula Dock and P&C Dock. Although Ontario Hydro supports "meaningful competition" between NS and CSXT over the former MGA, nevertheless it is:

very concerned that the proposed Conrail transaction will in fact have a substantial adverse effect on Ontario Hydro's long-term access to Pennsylvania and West Virginia coal through the lake terminals in at least two respects: (1) the potential for NS and CSXT to attempt to route all current and future volumes of MGA-origin coal through the already congested Ashtabula Dock; and (2) the potential for CSXT to attempt to route volumes of low sulphur coal, which originate on CSXT in West Virginia and which currently move via B&LE to their dock at Conneaut, to the Ashtabula dock.

Seiveright V.S. at 3-4 (emphasis in original). The need for two viable ports will become even more critical in the near future as Ontario Hydro recently announced that it will begin an extensive overhaul of its nuclear power plants that will result in a lay-up of about one-third of its nuclear generating capacity over the next several years. A significant portion of the replacement generation will come from Ontario Hydro's fossil-fueled plants, which will be operated at higher capacities. This will result in a sharp increase in Ontario Hydro's need for coal through the lake terminals for the next three years and possibly longer. Congestion at any one port, or a loss of Ontario Hydro's ability to use the extensive ground storage and loading capacity at P&C Dock, "would be harmful for the company, the customers (some of whom are, through our sales program, in the U.S.) and our coal



suppliers (in large measure U.S. coal suppliers)." Seiveright V.S. at 5.

The threat to Ontario Hydro from a lack of adequate transportation capacity is clear. "Without access to the facilities and storage areas of the P&C Dock, Ontario Hydro will not be able to move the volumes of coal that [it] must move over the next three years; and unless significant expansion occurs at Ashtabula or another dock facility in the area, [its] ability to move coal will be jeopardized in the longer term as well." Id. at 5. Consequently, Ontario Hydro "strongly supports" B&LE's proposed conditions. Id. at 6.

#### ARGUMENT

#### I. THE CONDITIONS REQUESTED BY B&LE FIT SQUARELY WITHIN THE BOARD'S CRITERIA FOR IMPOSITION OF CONDITIONS IN RAILROAD MERGERS

##### A. Applicable Standard For Imposition Of Conditions

In considering the Primary Application, the Board has a statutory obligation to, among other things, consider "the effect of the proposed transaction on the adequacy of transportation to the public," 49 U.S.C. § 11324(b)(1), as well as "whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region." 49 U.S.C. § 11324(b)(5). See, e.g., Decision No. 44, served October 15, 1997, at 4. The Board's authority to impose conditions on rail consolidation transactions is broad.<sup>4</sup> The Board prescribes conditions upon finding that:

<sup>4</sup> See 49 U.S.C. § 11324(c); Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad

- Absent a condition, the proposed railroad consolidation may produce effects harmful to the public interest (such as to transportation services and competition);
- An appropriate condition will ameliorate (or eliminate) the harmful effects;
- The condition is operationally feasible; and
- The conditions will yield public benefits outweighing any reduction in the benefits of the railroad consolidation.

Id. As is explained in the sections below, B&LE's requested conditions meet each of these criteria and therefore should be granted.<sup>5</sup>

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Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760 (STB served August 12, 1996) ("UP/SP") at 144; Burlington Northern, Inc. and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549 (ICC served August 23, 1995) ("BN/Santa Fe") at 55; Union Pacific -- Control -- Missouri Pacific; Western Pacific, 366 I.C.C. 459, 562 (1982), aff'd sub nom. Southern Pacific Transp. Co. v. ICC, 736 F.2d 708 (D.C. Cir. 1984), cert. denied, 469 U.S. 1208 (1985) ("UP/MP/WP").

<sup>5</sup> In the Application and the Rebuttal submission, the Primary Applicants attempt to rewrite the case law on the standard to be applied, adding provisions that are not part of the case law. For example, Applicants state that a condition "may not be imposed to change the competitive balance among shippers." Applicants' Rebuttal ("App. Reb.") at 42. However, the standard as determined by the Board is a different one. The Applicants themselves quote (App. Reb. at 37) the real standard from the BN/Santa Fe case that the Board is "disinclined" to grant a condition that "would broadly restructure the competitive balance among railroads." BN/Santa Fe at 55-56 (emphasis added). Applicants again fail to follow the very language they quote from BN/Santa Fe when they state that "conditions are not appropriate if alternative remedies exist." App. Reb. at 40. Nowhere in BN/Santa Fe, UP/SP or the other merger decisions is such a rule articulated. Instead, a condition must be "narrowly

## **B. Merger-Related Harms**

In its evidence in this proceeding, B&LE has identified several specific harms resulting from the Conrail takeover. B&LE has demonstrated that transactions contemplated by the Primary Application will diminish the adequacy of transportation services for and have serious anticompetitive effects on the transportation of coal in the eastern United States, particularly from origins on the former MGA in southwestern Pennsylvania and northern West Virginia. Absent appropriate conditions to ameliorate these harms, the proposed transaction cannot be found to be consistent with the public interest. See Comments and Requests at 6-12. In rebuttal, the Primary Applicants have attempted to sidestep B&LE's evidence of the harms by either ignoring, mischaracterizing, or conceding the evidence.

### **1. Harms To Competition**

B&LE seeks to preserve for lake coal customers the competitive alternative interline rates and routes that currently exist for B&O Origin District coal destined for P&C Dock. Today, P&C Dock competes with Conrail's dock facilities at Ashtabula, Ohio, for coal business originating on CSXT bound for vessel movement on the Great Lakes. As a competitive alternative to Conrail's sources routed to Ashtabula, CSXT currently routes its B&O Origin District coal to P&C Dock in interline movements over

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tailored." BN/Santa Fe at 55-56. Even under Applicants' view of the law, B&LE meets the criteria as B&LE's condition ensures adequate transportation services and is the most narrowly tailored condition available in order to ensure adequate transportation services and competition in the lake coal market.

the Buffalo & Pittsburgh Railroad ("BPRR") and B&LE. CSXT delivers the coal to New Castle, PA, for interchange with BPRR, which then moves the coal to Butler, PA. At Butler, B&LE takes over the movement for delivery to P&C Dock. Howerter V.S. at 7.

If the transaction contemplated by the Primary Applicants is approved, CSXT will gain shared access to the Conrail port facilities at Ashtabula, OH, thereby removing any incentive to interline this B&O Origin District coal over the B&LE to P&C Dock. Howerter V.S. at 7. Such action would strike a critical blow to lake coal customers who rely on P&C Dock. For example, as Mr. Seiveright testified, Ontario Hydro relies heavily on the substantial ground storage capacity of P&C Dock. Absent conditions requiring long-term, market-based rates to protect interline movements via B&LE to P&C Dock, CSXT will likely divert this B&O Origin District coal away from P&C Dock to the already congested Ashtabula Dock thus further constraining capacity. Seiveright V.S. at 4. The Board can ameliorate this demonstrated harm through the protection of the existing interline rate structure that will ensure competitive traffic routings for customers desiring to transload coal via P&C Dock.

Thus, the proposed diversion of this coal to Ashtabula will not only result in harm to competition, it will add volume to an overburdened Ashtabula Dock, thus adversely affecting the adequacy of transportation services provided to all shippers and receivers in the lake coal market.



2. Harms To Adequacy Of Transportation

a. Ashtabula Dock is Overburdened

The proposed routing of all MGA coal moving to the Great Lakes via the former Conrail Youngstown-Ashtabula line and the Ashtabula Dock will not result in adequate transportation service to the public or effective competition for the traffic. Currently, Ashtabula Dock runs at full capacity and lacks adequate capacity to efficiently handle all of the current traffic, with Conrail forced to divert traffic from Ashtabula more than 120 miles west to the ports of Sandusky and Toledo, Ohio.<sup>6</sup> These diversions add significant distance, expense and inconvenience to the movement of lake-bound coal.

b. Joint Use Will Overburden  
Ashtabula Dock Further

The Primary Applicants' proposal to provide joint access to and use of the Ashtabula Dock will cause further and additional problems at the dock. See verified statements attached to BLE-8. Properly coordinating and allocating resources at Ashtabula will not be easy, and the Primary

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<sup>6</sup> Applicants contest B&LE's statement that the Ashtabula Dock is already an overburdened facility. App. Reb. at 144. Interestingly, nowhere do Applicants dispute the accuracy of B&LE's statement. They only assert (inaccurately) that B&LE has provided no factual support for such conclusion. B&LE's extensive verified statements prove otherwise. See BLE-8, Bonnie V.S. at 9, Huston V.S. at 5-7 and Rieland V.S. at 4-6.

Moreover, Applicants' own evidence proves the point. See Rebuttal Verified Statement of John W. Orrison ("Orrison R.V.S.") at 492-493. Applicants admit that during 1997, several trains were diverted from the Ashtabula Dock to the Sandusky or Toledo Dock facilities. See also Rebuttal Verified Statement of Timothy R. Howerter, BLE-9 ("Howerter R.V.S.") at 4-5.

Applicants have not commented on how this may be accomplished. Extremely effective and coordinated management between two archrivals will be required if the joint users are to even approach the volumes of coal handled solely by Conrail today. That is not likely to occur at this already overburdened port facility. See Howerter V.S. at 7, 11-13. Furthermore, CSXT's need to rely on its major competitor for its access to and use of the port, all subject to NS direction and control, will impede effective use of the dock for this important coal traffic. Id.

In their Application, Applicants have stated that the coal dock at Ashtabula will be shared on the basis of Applicants' ownership division of Conrail (58% NS and 42% CSXT). NS will have the right to operate and control Ashtabula Dock with CSXT receiving access to and use of a 42% proportion of the total ground storage throughput and tonnage capacity. What this means in practical terms is decidedly unclear. Does CSXT get 42% of the support track capacity at the dock on a daily, weekly, monthly or some other time-frame basis? Does CSXT get 42% of the carloading dumping turns or do they get 42% of the unloading capacity on a daily, weekly, monthly or some other time-frame basis? Does CSXT get 42% of the storage piles at any time at the dock? Does CSXT have veto power on how its 42% of the ground storage area is used? If one user does not need all its ground storage capacity (whenever and however this may be defined by the Applicants in the future) at any given time, does this mean it is obligated to pass that unused capacity to the other user? Does CSXT get 42% of the use of ground crews? This is anything but an



exhaustive list of the questions that must be answered to determine what the effective capacity of Ashtabula will be after NS and CSXT split up the dock.

The next set of significant questions revolve around how the two companies (NS and CSXT) can share a facility and still get the same throughput as one company (Conrail) does now. As stated above, Conrail as the sole carrier serving the port today already cannot handle current volumes without diverting tonnage to out-of-route ports. NS and CSXT will have to effectively manage and jointly use several shared components needed to deliver coal to the shared coal dock at Ashtabula. First, the rail line between Youngstown and Ashtabula will be owned and dispatched by NS with CSXT retaining trackage rights over this line. It is questionable whether CSXT will get its needed line capacity to effectively utilize its shared use of Ashtabula Dock. Second, the Youngstown-to-Ashtabula line which both CSXT and NS will use to access Ashtabula Dock crosses Conrail's Cleveland-to-Buffalo main line at Ashtabula. CSXT will be assigned ownership of Conrail's Cleveland-to-Buffalo main line and will be responsible for dispatching the line to allow both CSXT and NS trains to cross it in order to get into the port of Ashtabula. Will crossing access be handled equitably?

With so many potential pitfalls and unanswered questions, the Board must assure that shippers in the lake coal market have access to adequate capacity for the handling of both existing coal traffic and the growing market for coal produced by the efficient production Pittsburgh Seam mines. The conditions

proposed herein by B&LE will assure the shipping public of needed port capacity and competition for the movement of MGA-origin coal via B&LE's route to Conneaut, Ohio, and the P&C Dock.

**c. Assured Shipper Access to P&C Dock is the Long-Term Solution**

P&C Dock at Conneaut is a state-of-the-art port with unused capacity that can immediately address the growing needs of lake coal customers. Howerter V.S. at 5-6. Its coal terminal has been modernized and expanded over the years to provide a facility second to none. P&C Dock offers two separate coal unloading and storage facilities which can operate either independently, on a stand-alone basis, or in a coordinated mode to provide unparalleled flexibility. It has extensive unused capacity available to provide a true competitive alternative to the Ashtabula Dock.<sup>7</sup> Competitive access to the P&C Dock is a necessity if the volumes of coal demanded through the lake coal market are to be efficiently handled for its end users. The lake coal market deserves no less than to have all port facilities available to it to meet its growing capacity and service demands.

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<sup>7</sup> In his Rebuttal R.V.S., Mr. Orrison claims 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. Orrison R.V.S. at 489. Mr. Orrison does not know what he is talking about. 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. Howerter R.V.S. at 7. Secondly, as further detailed in the Rebuttal Verified Statement of James E. Streett, BLE-9 ("Streett R.V.S.") there are no multiple switching moves required to utilize the rotary dumper. Moreover, the bottom drop dumper that is in use at P&C Dock has the capacity to unload approximately 10 million tons of coal per year -- significantly more than the facility at Ashtabula.

The issue presented by the proposed Conrail transaction is not about protecting B&LE, its port at Conneaut, or its long-term coal sources from changes in competition in the lake coal market. It is about assuring adequate transportation service to the shipping public and retaining essential port capacity to support the lake coal customers in their fuel procurement and transportation purchases. The service and capacity provided by B&LE and P&C Dock is vital to the transportation needs of the lake coal customers. Access to both ports (Ashtabula and Conneaut) provides access to three unloading systems instead of one, three ground storage areas instead of one, three ship-loaders instead of one, and additional facilities and capabilities to satisfy current and future customer coal transfer, storage and ship-loading needs. Howerter V.S. at 6-7.

As demonstrated in the Verified Statements of Grant R. Seiveright, James H. Bonnie, Brad F. Huston and William G. Rieland, representing some of the largest coal producers and users in the lake coal market, two carriers (NS and CSXT) jointly serving an already congested port at Ashtabula on a shared basis (and acting to foreclose shipper access to P&C Dock on a competitive basis) will not come close to being able to provide adequate transportation service, or the total port capability, total port capacity and competitive options responsive to the needs of lake coal customers.<sup>8</sup>

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<sup>8</sup> 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." App. Reb. at 145. Again, they are wrong. What B&LE seeks is to ensure that adequate transportation service will

As their main defense to the shippers' testimony regarding the inadequacies of Ashtabula Dock, the Applicants 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 V.S. of Mr. Seiveright of Ontario Hydro at 4 and to the V.S. of Mr. Howerter at 7. Even a cursory look at both statements shows that they are not at all inconsistent or contradictory. Mr. Howerter 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. Mr. Seiveright stated that Ashtabula currently has adequate ground storage capacity available for Ontario Hydro (unlike other shippers, see, e.g., Rieland V.S. at 4-5). 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

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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 NS and CSXT attempt to move all of the MGA coal over the same line to Ashtabula and through the same congested 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 conditions sought by B&LE are intended to provide MGA coal customers with a true service and competitive option that the Applicants' proposal will not.



facilities, nor does it account for the increased traffic that the Applicants admit the Ashtabula Dock will experience.

The Applicants' failure to respond to B&LE's evidence of current and future service and capacity problems at Ashtabula Dock is telling of the merger-related harms that B&LE and its shippers will suffer.

**d.    The Coal Market in the Future  
Will Push Volumes to Ashtabula  
That it Cannot Handle**

A review of current and projected coal and coal transportation market conditions confirms why the conditions sought by the B&LE are needed to assure adequate service and competitive options for the lake coal market. Historically, the traffic base for the Ports of both Conneaut and Ashtabula has consisted of high- and mid-sulfur steam coals from northern Appalachia producers located in central and western Pennsylvania, northern West Virginia and eastern Ohio. Since the early 1970s, various economic and environmental factors have reduced the marketability of northern Appalachian coal in its broad market segments, including the lake coal market. Although total production in northern Appalachia has decreased by over 20% since 1980, one significant production area has expanded and prospered -- the Pittsburgh Seam mines which utilize highly efficient longwall mining technology. Howerter V.S. at 11.

The evidence submitted by B&LE demonstrates that production and shipment of coal to the lake coal market via the Ashtabula or P&C Dock will increase in the future. See, e.g., Seiveright V.S. at 5. The Primary Applicants do not dispute this



point. But when faced with the question of how they will be able to handle such further traffic increases, their response is legal one that there is no proof that Ashtabula is already congested.

**e. Without Conditions, P&C Dock 's  
Future is Threatened**

If NS and CSXT are allowed to foreclose shipper access to P&C Dock on competitive terms, P&C Dock will likely experience further declines in the amount of lake coal traffic transloaded at the port. See, e.g., Huston V.S. at 8. The likely diversion of the B&O Origin District Coal from P&C Dock to Ashtabula Dock will continue the recent downward trend of lake coal business moving through P&C Dock in Conneaut. This downward trend has not, however, been the result of inadequate service or facilities at the P&C Dock. Rather, it has resulted from Conrail's market power and revenue incentive to route nearly all northern Appalachia coal to its Ashtabula Dock to the exclusion of P&C Dock. This has not been in the best interests of the participants in the lake coal market which have been forced to accept delay, disruptions and diversion of their traffic. If this is allowed to worsen, as it will under the transaction proposed in the Primary Application, continued maintenance of current operations at P&C Dock may not be possible. Id.

**C. B&LE's Proposed Conditions Will Ameliorate  
The Demonstrated Harms**

In its Responsive Application, B&LE seeks limited overhead trackage rights over approximately 54 miles of rail line in a single, defined area of one state. B&LE Resp. App. at 8. As is explained more fully in the Responsive Application and the

Verified Statement of B&LE Director of Marketing Timothy R. Howerter which accompanies it, the requested trackage rights will become effective only in the event that NS initiates or provides haulage service for CSXT to and from the current and future mines served by the former MGA. If activated, the proposed trackage rights will ensure and enhance adequate transportation service and competitive routing options for MGA-origin coal. Such rights will clearly offer lake coal customers competitive service to the P&C Dock where, in the absence of such trackage rights, none would exist.

It should be noted that the trackage rights sought in B&LE's Responsive Application would become effective only in the event that NS 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 at Conneaut. B&LE has not sought to compel any haulage arrangement with NS, but rather to provide for efficient operations and an additional shipper option should NS and CSXT implement such an arrangement.

To make the requested trackage rights work effectively for the movement of coal originating on the former MGA lines, NS would haul the traffic directly to the B&LE at either Shire Oaks or Brownsville where B&LE would move it north via the trackage rights back to its own line and on to the P&C Dock. The haulage

rights provided by NS between the mines and Shire Oaks/Brownsville would be under the same terms and conditions as those between CSXT and NS. .

Even in the absence of a haulage agreement between CSXT and NS that would trigger the B&LE trackage rights, the lake coal customers must still be assured of adequate coal transportation services to and adequate coal handling capacity at the Lake Erie ports. As shown in the evidence submitted by B&LE and its supporting shippers, under the transaction contemplated by the Primary Applicants that will not occur. Therefore, B&LE has also requested that the Board condition any approval of the proposed Conrail transaction on assuring that coal shippers from MGA and B&O Origin Coal District mines have access on competitive terms to the facilities and capacity of B&LE's line to P&C Dock. B&LE's condition would assure that competitive long-term, market-based joint line rates and routings via B&LE would be available to meet the future market demands of the lake coal market. Comments and Requests at 12-13.

In their Rebuttal, Applicants seriously mischaracterize the trackage rights condition 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." App. Reb. 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 R.V.S. at 489-492. Applicants have completely missed (or ignored) the point.

B&LE does not seek to add a "third" carrier. As expressly stated in B&LE's Responsive Application, the trackage rights sought by B&LE would only be triggered in the event NS were to provide haulage service for CSXT to and from the mines, in which case only NS would have direct operating access to the MGA mines. B&LE's proposed condition seeks only to assure that adequate transportation service to the lake coal market will be provided by assuring access to the additional service, and line and dock capacity of B&LE's route via P&C Dock. Applicants' operating plan contemplates that regardless of any haulage arrangement, NS 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. As discussed infra, NS and CSXT will not be able to provide the capacity or needed service levels to move the combined tonnage of MGA-origin coal. Shippers in the lake coal market require the protection afforded by B&LE's proposed conditions to assure that adequate transportation service will be provided to this market.

**D. B&LE's Conditions are Narrowly Tailored To Remedy The Demonstrated Harms**

B&LE's conditions do not guarantee any business to the B&LE, only an equitable means for B&LE to offer shippers the service and capacity demanded by the market. The requested conditions will assure adequate competition for both NS and CSXT in providing service through their acquired port at Ashtabula as



well as assuring adequate transportation services to the lake coal market. Tellingly, the Applicants have not cited a less burdensome alternative.

**E. B&LE's Proposed Conditions Are Operationally Feasible**

The trackage rights condition that B&LE seeks as a condition to STB approval of the transaction is operationally feasible. See Verified Statement of James E. Streett, BLE-8 ("Streett V.S.") at 2-3. Each of the two lines over which B&LE would obtain trackage rights has adequate capacity to accommodate the trackage rights operation proposed by B&LE. Id. Marketing forecasts indicate the availability of one to three million tons of MGA-origin coal that could move on B&LE via the trackage rights proposed in this proceeding. Id. Assuming B&LE were to handle two million tons of such coal, it would require operation of approximately four trains per week over the trackage rights lines with each train handling about 10,000 tons of coal. This service would require the addition of eight engine and train crews per week on each of the URR and B&LE. Id.

In response, 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, and track and grade problems exist on the B&LE and less efficient dock facilities at P&C Dock make the B&LE/URR route less desirable for lake coal customers. None of these unsubstantiated claims is accurate. See Streett R.V.S. at 2-4. In fact, currently two and one-half million tons of coal move over B&LE's



route annually and P&C Dock is a modern and efficient facility with substantially greater throughput capacity than Ashtabula Dock. Id. See also Howerter V.S. at 15.

Specifically, Applicants claim that the proposed movement from B&LE to URR to CSXT at Bessemer is "not an efficient connection." Orrison R.V.S. at 489. They claim that switching operations and movement of road trains originating and working at Demmler Yard (just south of Bessemer) would become congested causing delay to CSXT, BLE and URR operations. Id. Applicants' argument indicates their lack of familiarity with BLE/URR facilities. B&LE/URR trains would not be required to stop and/or switch cars at Demmler Yard. Streett R.V.S. at 2. Trains moving through Demmler Yard would be unit trains operating on the mainline. Id. They could efficiently move past Demmler Yard in 15 to 20 minutes without significant disruption to other road and yard operations. Id. at 2-3.

Similarly, Applicants assert 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. Orrison R.V.S. at 489. They argue that the B&LE/URR trains coming into their system through Bessemer will create congestion, inefficiencies and delay, apparently because they believe that B&LE staging and car inspection work will be done at Newell Yard. Applicants here again misunderstand the proposed trackage rights operations. First, the staging of such trains in Newell Yard would 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. Streett R.V.S. at 3.

Nor is the fact that Applicants do not plan to perform car inspections at Newell material to B&LE's operations. 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. Streett R.V.S. at 3.

Finally, Applicants claim that the proposed B&LE route is less efficient 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 R.V.S. at 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. Streett R.V.S. at 4. Simply put, there are no operational impediments to the service proposed by B&LE/URR. The rebuttal points raised by the Applicants are simply untrue or immaterial and represent a poorly disguised effort to inject confusion into the record.

**F. B&LE's Proposed Condition Will Not Diminish  
The Benefits Of The Conrail Takeover**

Applicants cite as the primary public benefit of the proposed transaction the introduction of "rail competition into

areas previously rail-served only by Conrail." App. Reb. at 13. Given this backdrop of cited public benefits, the Applicants have not argued and, therefore, concede that B&LE's requested condition will not reduce the cited public benefits of the transaction and, in fact, is consistent with the public benefits.

B&LE's conditions ensure that adequate transportation services, capacity and competitive routing options will be available to meet the future transportation needs of shippers in the lake coal market. It is simply not credible for the Applicants to argue that the public benefits of the proposed Conrail transaction would in any way be reduced by B&LE's conditions.

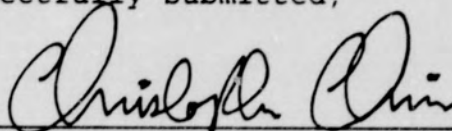
These proposed conditions are necessary to ameliorate the anticompetitive and harmful effects of the transaction proposed in the Primary Application upon the transportation of certain northern Appalachia coal to the Great Lakes. These conditions have been narrowly crafted to help satisfy the port capacity needs of the lake coal market and provide essential competition to the Ashtabula Dock. The conditions requested will not diminish the anticipated benefits of the transaction as proposed in the Primary Application.

**CONCLUSION**

For the foregoing reasons, B&LE respectfully requests that if the Board decides to approve the proposed Conrail transaction, it condition such approval upon grant of the trackage rights and efficient routing relief sought by B&LE in this proceeding.

Respectfully submitted,

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Dated: February 23, 1998

CERTIFICATE OF SERVICE

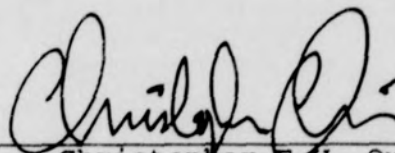
I hereby certify that on this 23rd day of February, 1998, a copy of the foregoing **Brief of Bessemer and Lake Erie Railroad Company** (BLE-10) was served by overnight delivery upon the Primary Applicants herein, as follows:

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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.



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