

STB FD 33388 (Sub 69) 11-30-98 D 192430 2/2

operating agreement with New York Central Lines LLC ("NYC") (and which in turn NYC will acquire from Consolidated Rail Corporation ("Conrail")).

I. The Proposed Trackage Rights

As set forth in CP's proposed trackage rights agreement accompanying this submission, CP is seeking full-service trackage rights over the following NYC tracks to be operated by CSX: 2/

(1) between connection of CP and NYC at CP 485 (approximately mileage 484.74) of CP's freight main line and CP 160 (approximately mileage 159.9) of NYC's Chicago Line, along the said Chicago Line and onto NYC's Hudson Line at CP 142 to the connection with the Metro-North Railroad's ("Metro-North") ownership of the Hudson Line at Poughkeepsie (approximately mileage 73.6);

(2) between connection of CP's Voorheesville Running Track (approximately mileage A10.94) and NYC's Selkirk Branch at CP VO (approximately mileage 22.2), through Selkirk Yard, to CP 125 (approximately mileage 1.3) (where the Selkirk Branch meets NYC's Hudson Line) and between CP 125 (approximately mileage 125.6) on said Hudson Line to the connection with Metro-North's ownership of the Hudson Line at Poughkeepsie (approximately mileage 73.6);

(3) between CP's Kenwood Yard (approximately mileage 7.1) on NYC's Albany Secondary Track to CP SK (approximately mileage 0.0) and through NYC's Selkirk Yard, including without limitation sufficient trackage within Selkirk Yard to permit efficient movement of freight as well as use of a "run-around track" at Selkirk Yard, and between CP SK (approximately mileage 11.5) on NYC's Selkirk Branch and CP 125 (approximately mileage 1.3) where the Selkirk Branch meets the Hudson Line and onto NYC's Hudson Line to the connection with Metro-North's ownership of the Hudson Line at Poughkeepsie (approximately mileage 73.6); and

2/ CP currently contemplates that D&H would be the entity actually conducting operations pursuant to the trackage rights.

(4) between connection of Metro-North's ownership of the Hudson Line near High Bridge and the Oak Point Link then on the Oak Point Link to Harlem River Yard, through Harlem River Yard, then from Harlem River Yard over the Harlem River Lead connecting to the Fremont Secondary/Industrial Track then on the Fremont Secondary/Industrial Track from Oak to Mont and for connection to the Long Island Rail Road at Fresh Pond Junction and from Oak over the Old Bay Ridge Industrial Track to the end of the track including the Hunts Point Market Lead, including without limitation the right to use all track providing access to all existing and future customers at or served by Harlem River Yard, Oak Point Yard, and Hunts Point Terminal as well as the tracks in such yards and terminal.

As also set forth in CP's proposed trackage rights agreement, the rights granted in the agreement would be full-service in nature, and hence would

include the right to service all existing and future customers in the New York Metropolitan area including without limitation customers near Oak Point Yard and Hunts Point Terminal as well as the right to service all existing and future customers located along NYC's Chicago Line and Hudson Line between the points referred to above. CP shall also have the right to use any branch line, spur track, industrial track and industrial siding connecting to these lines, including without limitation the Claverak/Hudson Upper Industrial Track. CP shall also have the right to interchange traffic with any rail carriers connecting to these lines now or in the future and the right to enter into any necessary interchange agreements with such carriers, including without limitation right to interchange traffic with the New York and Atlantic Railway or any other rail carrier at Fresh Pond Junction and shall have the right to enter into necessary interchange agreements with such carriers, and further including the right to grant incidental trackage rights between Fresh Pond Junction, on the one hand, and Oak Point Yard, Harlem River Yard, and Hunts Point Terminal, on the other, to facilitate such interchange.

II. Explanation of Proposed Trackage Rights

The trackage rights description provided above is broken down into four separate parts. Parts 1 through 3 are descriptive of the three sets of rights CP will require on the north end of the east-of-the-Hudson line in order to be fully competitive with CSX, and part 4 is descriptive of the rights CP will so require on the south end of the line. Exhibit 1 to this statement is a color map that depicts CP's existing lines and the NYC/CSX lines over which CP is seeking trackage rights in the east-of-the-Hudson area.

In regard to the rights CP is seeking on the north end of the east-of-the-Hudson line, part 1 corresponds to the line segments depicted as CP Route 1 on Exhibit 2 hereto. This route, through Rensselaer and Schenectady, is the most efficient routing for movement of traffic between Canadian markets and New York City/Long Island markets; it would not entail any use of CSX's Selkirk Yard and hence would not require any coordination in that regard. CP expects that this routing would handle movements of grain, food products, forest products, pulp and paper, among other things.

Part 2 corresponds to the line segments depicted as CP Route 2 on Exhibit 3 hereto. This route, through Selkirk Yard, is the most efficient routing for movement of traffic between southern U.S. markets and New York City/Long Island markets; it passes through CSX's Selkirk Yard but does not require use of yard facilities. CP expects to compete with CSX for the movement

of municipal solid waste, food and manufactured products, and other shipments over this routing. 3/

Part 3 corresponds to the line segments depicted as CP Route 3 on Exhibit 4 hereto. This routing is the routing CP would use where it is handling traffic to or from the local Albany/Rensselaer area and utilizes CP's Kenwood Yard at Albany. It involves a forward and reverse movement through CSX's Selkirk Yard. CP expects this routing to handle grain, chemicals, and paper products among other things. It is the most logical routing to use for pick-up from and delivery to local customers in the Albany/Rensselaer area.

CP will route its trains over each of these routes based on the traffic it develops. It will utilize the routing that is most efficient for the traffic involved.

As for the south end of the east-of-the-Hudson line, part 4 of the trackage rights description corresponds with the New York area route schematic depicted on Exhibit 5 hereto. 4/ It shows the routing CP will need to reach an interchange with the New York and Atlantic Railroad ("NY&A") at Fresh Pond

3/ Effective use of this route will require improvement of an existing connecting track at CP-VO on the NYC Chicago Line.

4/ CP is not seeking trackage rights in this proceeding over any part of the east-of-the-Hudson line owned by Metro-North or the State of New York (the Oak Point Link); CP will separately negotiate these trackage rights with Metro-North and the state. However, CP does request that the Board exercise its authority to override any right CSX may have to provide exclusive freight service on the Metro-North- and state-owned lines where such right might interfere with CP's trackage rights.

Junction, and also the segments CP will need to access in order to reach shippers served by, and to utilize, the Harlem River Yard, Oak Point Yard, and Hunts Point Terminal.

III. Summary of Proposed CP Operations

CP proposes to initiate its east-of-the-Hudson service operating one train a day each way. 5/ CP hopes to add a second train a day each way at some point 18 to 24 months after service initiation.

To illustrate the service it proposes to provide on the east-of-the-Hudson line, CP has generated schedules and related string diagrams that depict how CP's trains would operate over Route 1 (Exhibit 6), Route 2 (Exhibit 7) and Route 3 (Exhibit 8). These schedules are not final in nature; final schedules would have to be coordinated with CSX, Metro-North and the State of New York. But they do give an idea of how CP would expect to operate on the east-of-the-Hudson line, and in particular show how CP would respect the current commuter service of Metro-North.

In regard to local service, CP is prepared to provide its own local service on the north end of the east-of-the-Hudson line, and if necessary, to do the same on the south end. CP will

5/ CP would like to negotiate with CSX an interim haulage arrangement that would allow CP to build a traffic base utilizing haulage rights on CSX trains, and then to convert (at CP's sole option and without need for CSX consent) to operation of its own trains using the trackage rights after this base has been generated. This interim haulage arrangement would use Route 3 to make a connection with CSX at Selkirk Yard. If such an interim haulage arrangement cannot be established, however, CP will begin service on a trackage rights basis using its own trains.

negotiate with CSX to see if some mutually beneficial local service arrangements can be made. Additionally, CP will need CSX to provide it with switching services at the Oak Point Yard and the other rail facilities in the Bronx Borough of New York City to effect local pick-ups and deliveries.

To maximize the efficiency of customer service on the south end of the east-of-the-Hudson line, CP seeks the right to grant incidental trackage rights between Fresh Pond Junction, on the one hand, and Oak Point Yard, Harlem River Yard, and Hunts Point Terminal. This would facilitate CP's ability to effect interchange with NY&A, by (for example) allowing NY&A to reach Oak Point Yard or Harlem River Yard for purposes of interchange with CP there.

* * * *

CP is committed to competing aggressively with CSX for all traffic served by means of the east-of-the-Hudson line. CP believes that this competition will enhance the market for rail service along this line, and will broadly serve the public's interest through the benefits that flow from service and price competition.

EXHIBIT 1

ROUTE SCHEMATIC EAST OF HUDSON RIVER

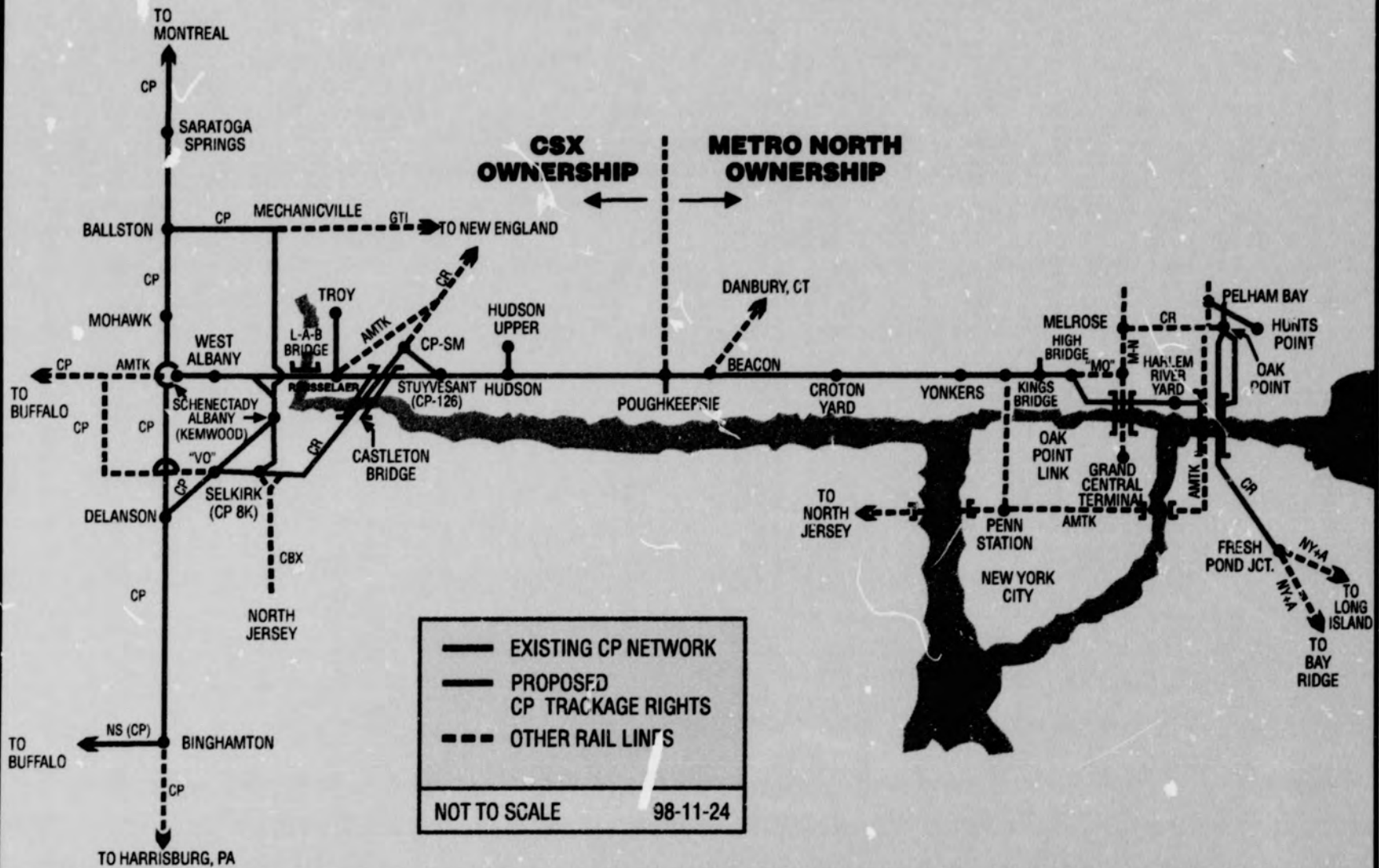


EXHIBIT 2

ROUTE SCHEMATIC EAST OF HUDSON RIVER ROUTE 1

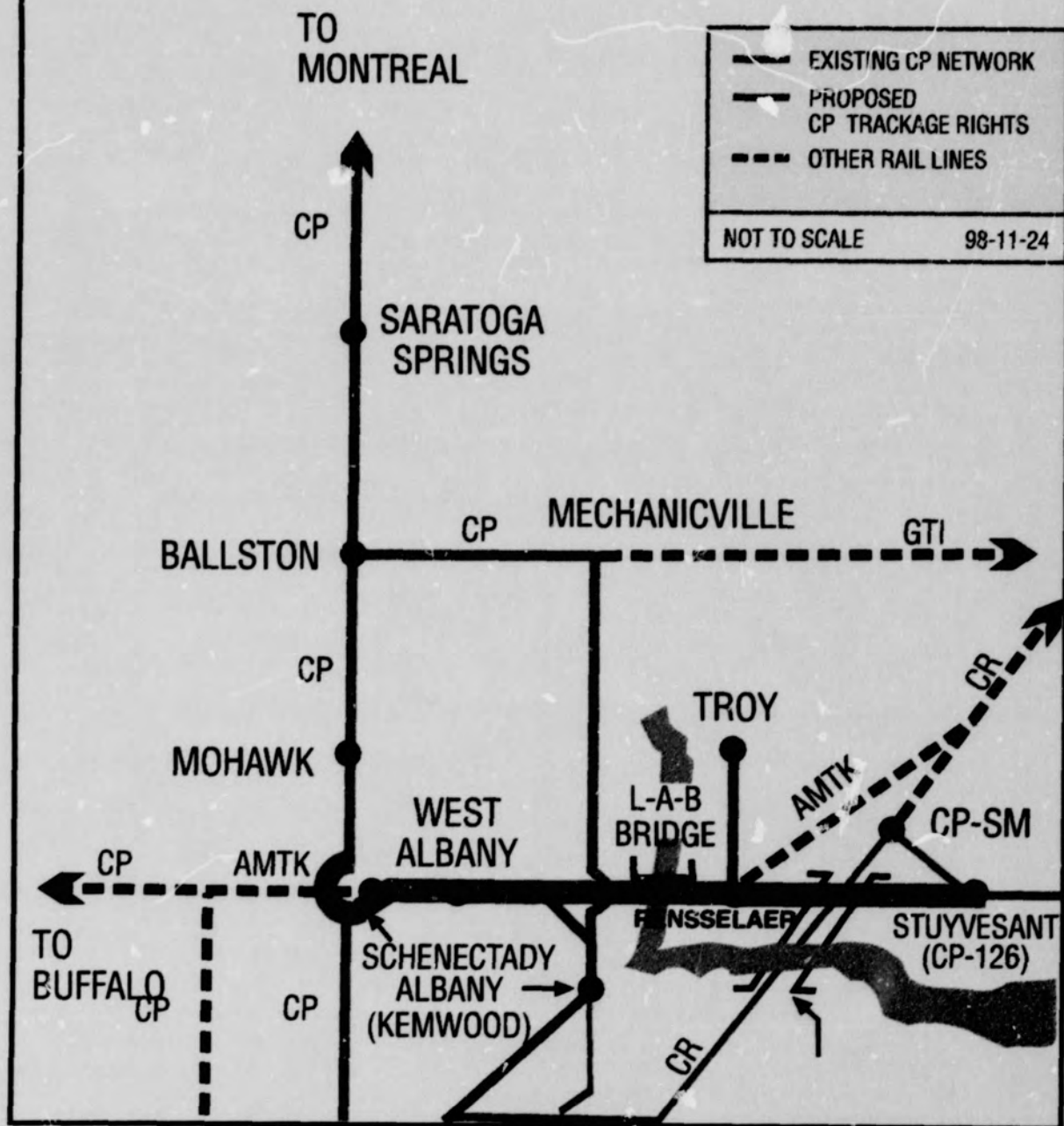


EXHIBIT 3

ROUTE SCHEMATIC EAST OF HUDSON RIVER

ROUTE 2

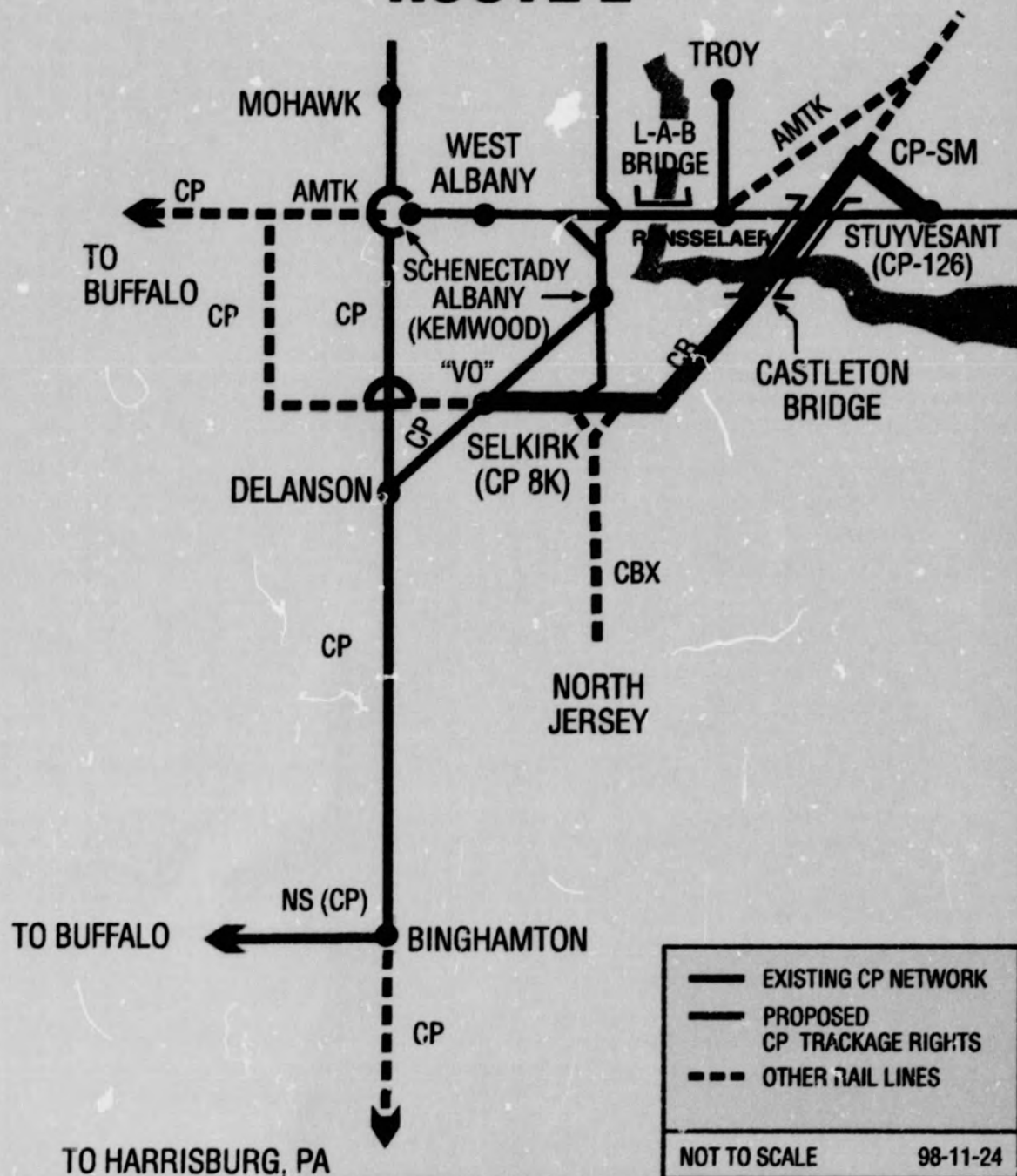


EXHIBIT 4

ROUTE SCHEMATIC – EAST OF HUDSON RIVER ROUTE 3

- EXISTING CP NETWORK
- PROPOSED CP TRACKAGE RIGHTS
- - - OTHER RAIL LINES

NOT TO SCALE

98-11-24

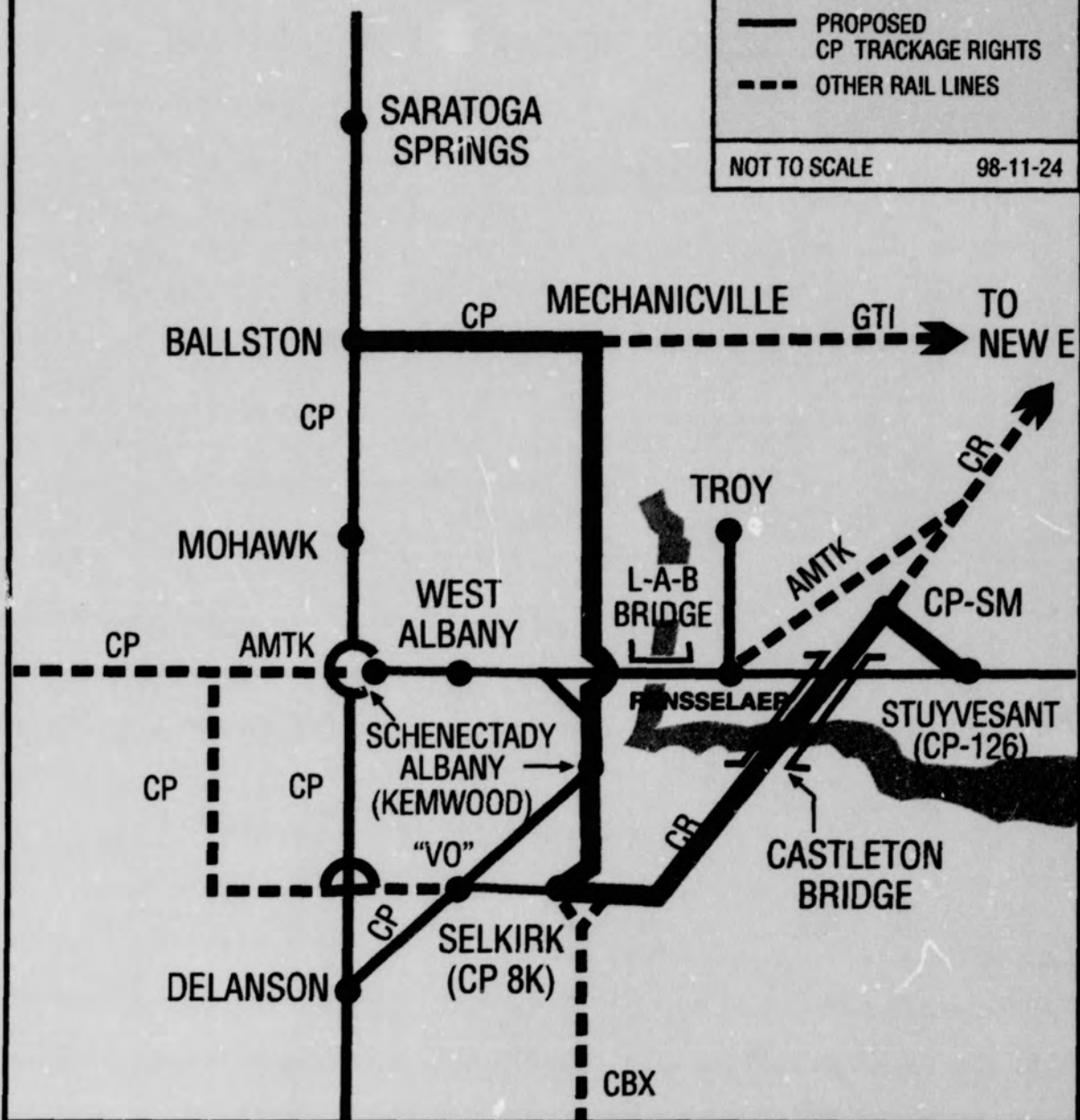
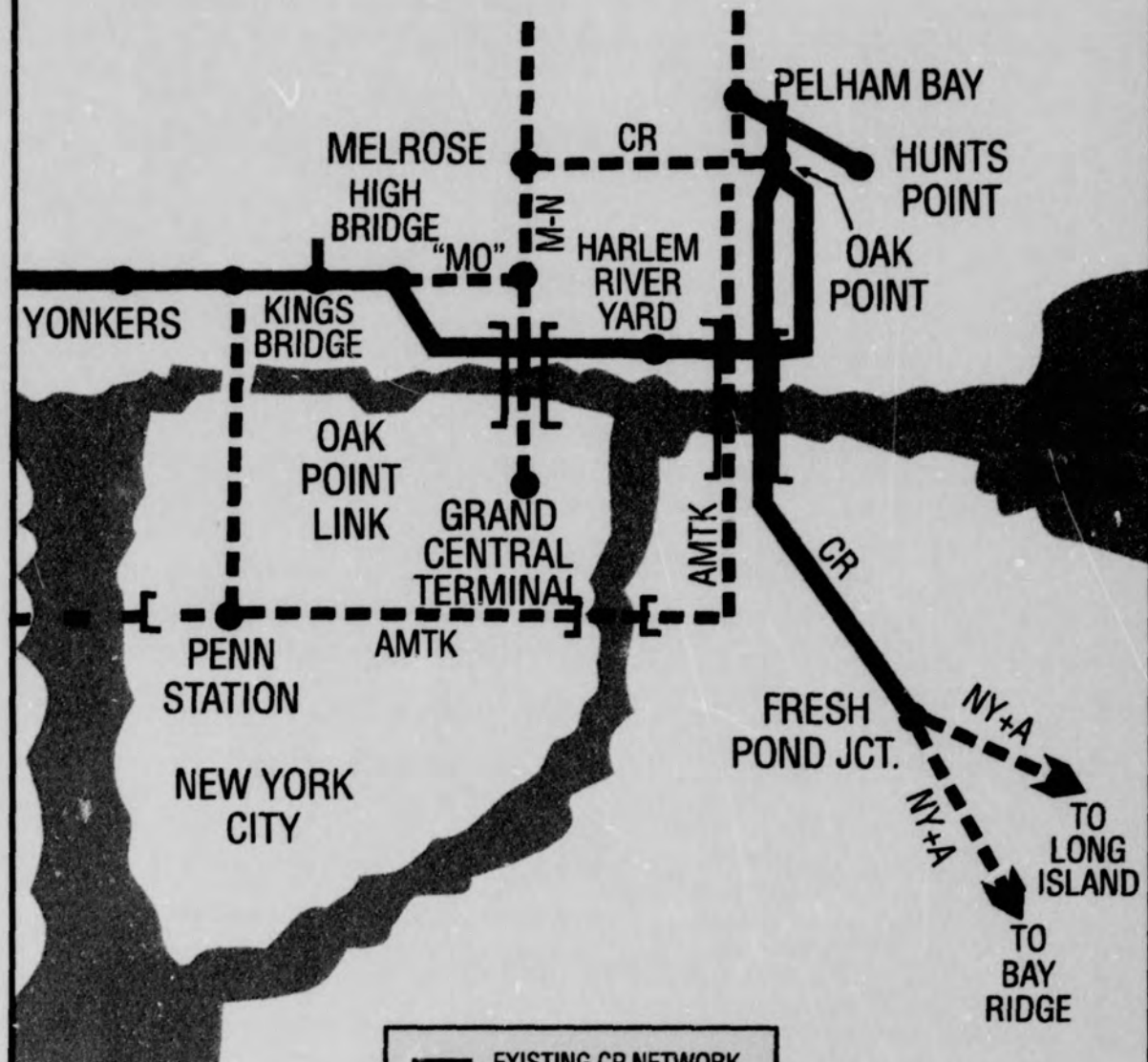


EXHIBIT 5

ROUTE SCHEMATIC EAST OF HUDSON RIVER New York Area



— EXISTING CP NETWORK
 — PROPOSED CP TRackage RIGHTS
 - - - OTHER RAIL LINES

NOT TO SCALE

98-11-24

EXHIBIT 6

Category:01JULY96; Network:NS; Blocks:STLHZER2; Trains:NS271

Operates Su Mo Tu We Th Fr S	Effective	5/ 1/97
HP/TT	Expiration	12/31/99
Max Train Length	0	International Lead 0.0

Manifest service from Saratoga to Oak Point.

Station/Location	- Ariv - Time Day	- Dept - Time Day	Sta Time	Speed	Cum Time	Dist	FWCILDRM*
=====	=====	=====	=====	=====	=====	=====	=====
Saratoga Springs	0000 E 0	2100 E 0	0030	20	0000	0	.YY.....
Schenect (CPF485)	2200 E 0	2200 E 0	0000	18	0130	20	.....
Rensselaer	2300 E 0	2300 E 0	0000	25	0230	38	.....
Hudson NY	0022 E 1	0022 E 1	0000	25	0352	72	.Y.....
Poughkeepsie	0200 E 1	0200 E 1	0000	20	0530	113	.....
Harlem River Yard	0500 E 1	0545 E 1	0045	17	0830	174	.Y.....
Oak Point	0615 E 1	0000 E 0	0000	0	0945	183	.....

* F=Fuel, W=Work, C=Crew, I=Inspection, L=Locomotive Service,
D=Customs, R=perishables, M=Mechanical Inspection

Saratoga Springs-Fresh Pond-FAK	LIFT	1810
HARRISBURG MS-Oak Point-INDL	LIFT B	815
Ohio-427-Oak Point-INDL	LIFT B	815
Lachine MS-Oak Point-INDL	LIFT B	815
St. Luc-Oak Point-FAK	LIFT B	815
Minneapolis-Madison NY-FAK	LIFT B	252

Obico-427-Oak Point-INDL	THRU		815
Saratoga Springs-Fresh Pond-FAK	THRU	1830	
HARRISBURG MS-Oak Point-INDL	THRU		815
Lachine MS-Oak Point-INDL	THRU		815

Freight Service Operating Plan

Category:01JULY96; Network:MS; Blocks:STLHZER2; Trains:NS271

Train: DE275 (1)

Oak Point to Saratoga

Operates Su Mo Tu We Th Fr S Effective 5/ 1/97
HP/TT 0.00 Expiration 12/31/99
Max Train Length 0 International Lead 0.0

Train Header Notes:

Manifest service from Oak Point to Saratoga.

Route Oak Point to Schenectady
Schenectady to Saratoga

Station/Location	- Ariv - Time Day	- Dept - Time Day	Sta Time	Speed	Cum Time	Dist	FWCILDRM*
Oak Point	0000 E 0	2245 E 0	0030	17	0000	0	.YY.....
Harlem River Yard	2315 E 0	2359 E 0	0044	20	0100	9	.Y.....
Poughkeepsie	0300 E 1	0300 E 1	0000	25	0445	70	.....
Rensselaer	0600 E 1	0600 E 1	0000	18	0745	145	.....
Schenect (CPF485)	0700 E 1	0700 E 1	0000	20	0845	163	.....
Saratoga Springs	0800 E 1	0000 E 0	0000	0	0945	183	.Y.....

Total Run Time (HHMM): 831
Total Station Time (HHMM): 44
Total Transit Time (HHMM): 915
Total Average Speed (MPH): 21

* F=Fuel, W=Work, C=Crew, I=Inspection, L=Locomotive Service,
D=Customs, R=perishables, M=Mechanical Inspection

Marshalling from Head End: Block Code Activity Blk Swap to Cutoff Avail

Exiting Oak Point ...

Oak Point-Toronto Yard-FAX	LIFT	2145
Oak Point-Obico-427-INDL	LIFT	2145
Oak Point-St. Luc-FAX	LIFT	2145
Oak Point-Saratoga Springs-FAX	LIFT	2145 1030
Oak Point-HARRISBURG NS-INDL	LIFT	2145

Exiting Harlem River Yard ...

Oak Point-Toronto Yard-FAX	THRU	2145
Oak Point-Obico-427-INDL	THRU	2145
Oak Point-St. Luc-FAX	THRU	2145
Oak Point-Saratoga Springs-FAX	THRU	2145 1030
Oak Point-HARRISBURG NS-INDL	THRU	2145
Fresh Pond-Toronto Yard-FAX	LIFT B	
Fresh Pond-St. Luc-FAX	LIFT B	

Trains on line from Saratoga Springs to Oak Point

Operating from 11/25/98 to 11/27/98

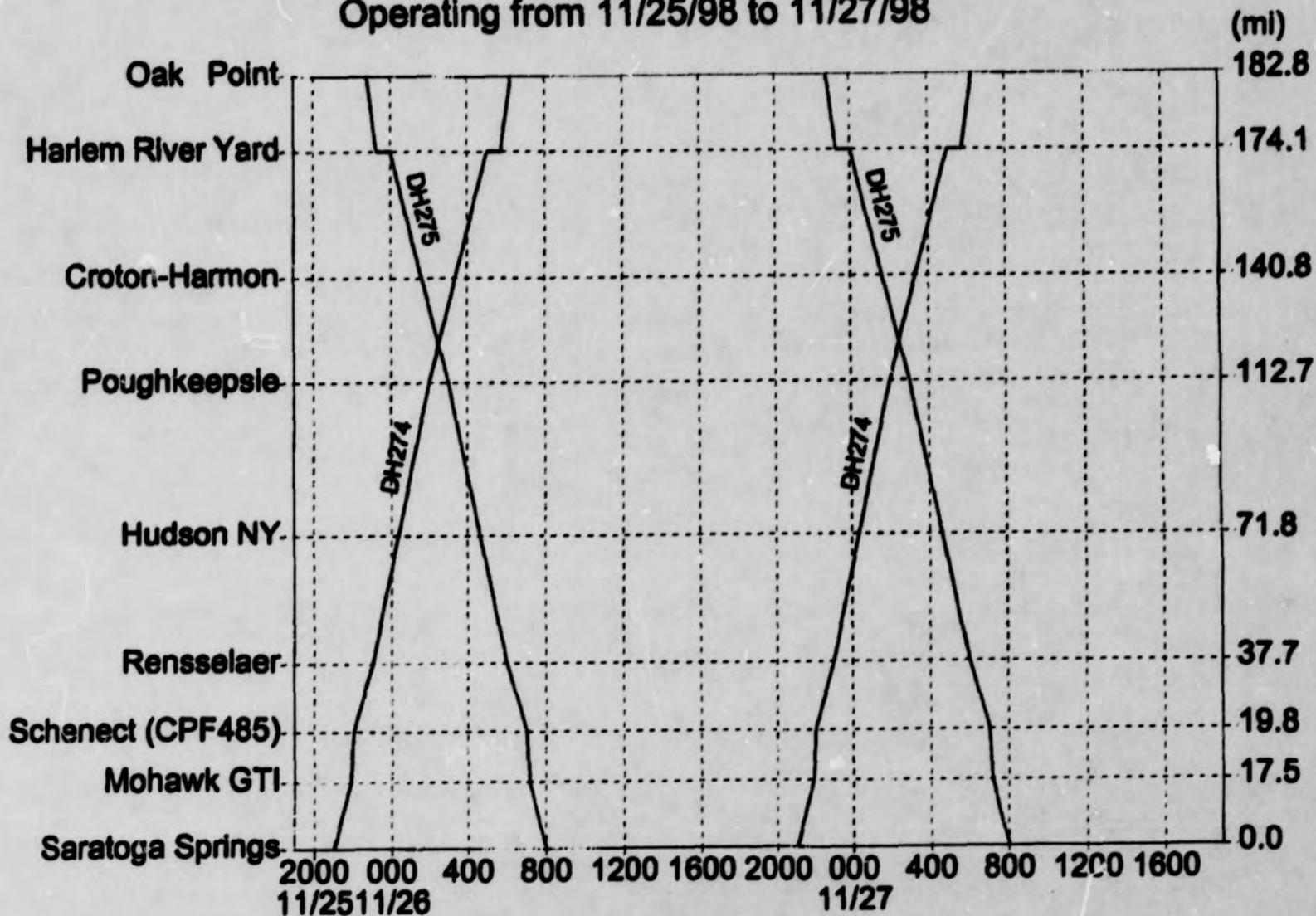


EXHIBIT 7

Category:01JULY96; Network:NS; Blocks:STLAZER2; Trains:NS271

Operates Su Mo Tu We Th Fr S	Effective	5/ 1/97
HP/TT	0.00	Expiration 12/31/99
Max Train Length	0	International Lead 0.0

Route Delanson CP Voorhesville
CP Voorhesville to Selkirk CR
Selkirk to MP125
MP125 to Oak Point

Station/Location	- Ariv - Time Day	- Dept - Time Day	Sta Time	Speed	Cum Time	Dist	FWCILDRM*
Delanson (CPF499)	0000 E 0	1830 E 1	0000	14	0000	0	.....
Voorheesville	1930 E 1	1930 E 1	0000	5	0100	14	.....
Selkirk	2100 E 1	2100 E 1	0000	23	0230	22	.....
Poughkeepsie	0030 E 2	0030 E 2	0000	20	0600	102	.....
Harlem River Yard	0330 E 2	0415 E 2	0045	17	0900	163	.....
Oak Point	0445 E 2	0000 E 0	0000	0	1015	172	.....

Total Run Time (HOURS):	930
Total Station Time (HOURS):	45
Total Transit Time (HOURS):	1015
Total Average Speed (MPH):	18

* F=Fuel, W=Work, C=Crew, I=Inspection, L=Locomotive Service,
D=Customs, R=Perishables, M=Mechanical Inspection

Freight Service Operating Plan

Category:01JULY96; Network:NS; Blocks:STLEZER2; Trains:NS271

Train: DH275 (2)

Oak Point to Delanson

Operates Su Mo Tu We Th Fr S Effective 5/ 1/97
HP/TT 0.00 Expiration 12/31/99
Max Train Length 0 International Lead 0.0

Train Header Notes:

Manifest service from Oak Point to Delanson.

Route Oak Point to MF125
MF125 to Selkirk Yard
Selkirk to CP Voorheesville
CP Voorheesville to Delanson

Station/Location - Ariv - - Dept - Sta Cum
 Time Day Time Day Time Speed Time Dist FWCILDRM*

Oak Point 0000 E 0 2300 E 0 0030 17 0000 0 .YY.....
Harlem River Yard 2330 E 0 0015 E 1 0045 20 0100 9 .Y.....
Poughkeepsie 0315 E 1 0315 E 1 0000 23 0445 70
Selkirk 0645 E 1 0645 E 1 0000 16 0815 150
Voorheesville 0715 E 1 0715 E 1 0000 14 0845 158
Delanson (CPF499) 0815 E 1 0000 E 0 0000 0 0945 172

Total Run Time (HHMM): 830
Total Station Time (HHMM): 45
Total Transit Time (HHMM): 915
Total Average Speed (MPH): 20

* F=Fuel, W=Work, C=Crew, I=Inspection, L=Locomotive Service,
D=Customs, R=perishables, N=Mechanical Inspection

Trains on line from Delanson (CPF499) to Oak Point

Operating from 11/25/98 to 11/27/98

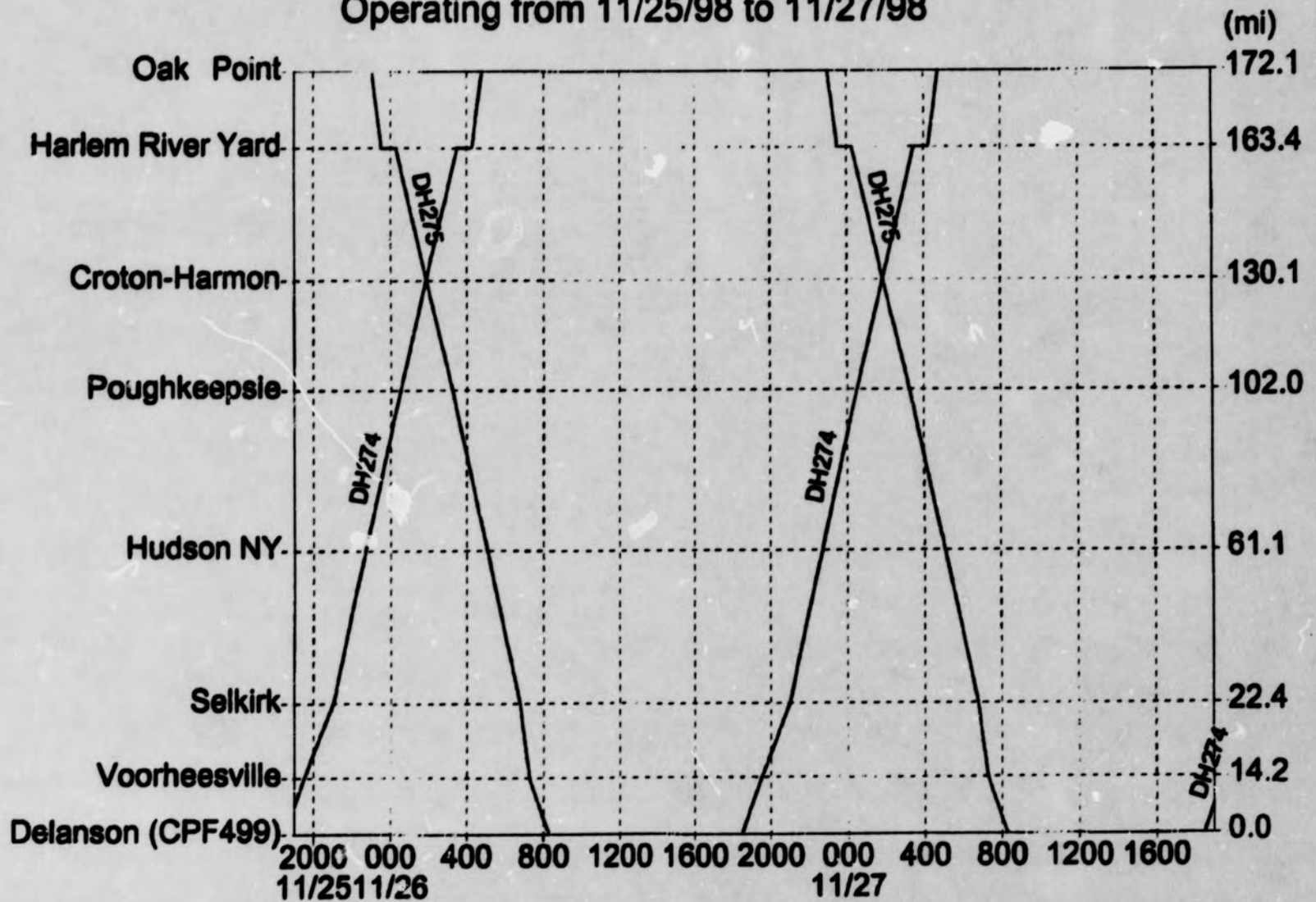


EXHIBIT 8

Freight Service Operating Plan

Category:01JULY96; Network:NS; Blocks:STLHZER2; Trains:NS271

Train: DH274 (3)

Kenwood to Oak Point

Operates Su Mo Tu We Th Fr S Effective 5/ 1/97
HP/TT 0.00 Expiration 12/31/99
Max Train Length 0 International Lead 0.0

Train Header Notes:

Manifest service from Kenwood Yard to Oak Point.
Connections at Kenwood from train 552.

Route Kenwood Yard to Selkirk

Selkirk to MP125

MP125 to Oak Point

Station/Location - Ariv - - Dept - Sta Cum
 Time Day Time Day Time Speed Time Dist FWCILDRM*

Kenwood 0000 E 0 2000 E 0 0030 19 0000 0 .YY.....
Selkirk 2100 E 0 2100 E 0 0000 23 0130 19
Poughkeepsie 0030 E 1 0030 E 1 0000 20 0500 99
Harlem River Yard 0330 E 1 0415 E 1 0045 17 0800 160 .Y.....
Oak Point 0445 E 1 0000 E 0 0000 0 0915 169

Total Run Time (HHMM): 800
Total Station Time (HHMM): 45
Total Transit Time (HHMM): 845
Total Average Speed (MPH): 21

* F=Fuel, W=Work, C=Crew, I=Inspection, L=Locomotive Service,
D=Customs, R=perishables, M=Mechanical Inspection

Freight Service Operating Plan

Category:01JULY96; Network:NS; Blocks:STLHZER2; Trains:NS271

Train: DH275 (3)

Oak Point to Kenwood

Operates Su Mo Tu We Th Fr S Effective 5/ 1/97
HP/TT 0.00 Expiration 12/31/99
Max Train Length 0 International Lead 0.0

Train Header Notes:

Manifest service from Oak Point to Kenwood Yard.
Connections at Kenwood Yard - Train 551.

Route Oak Point to MP125
MP125 to Selkirk Yard
Selkirk to Kenwood Yard

Station/Location - Ariv - - Dept - Sta Cum
 Time Day Time Day Time Speed Time Dist FWCILDRM*

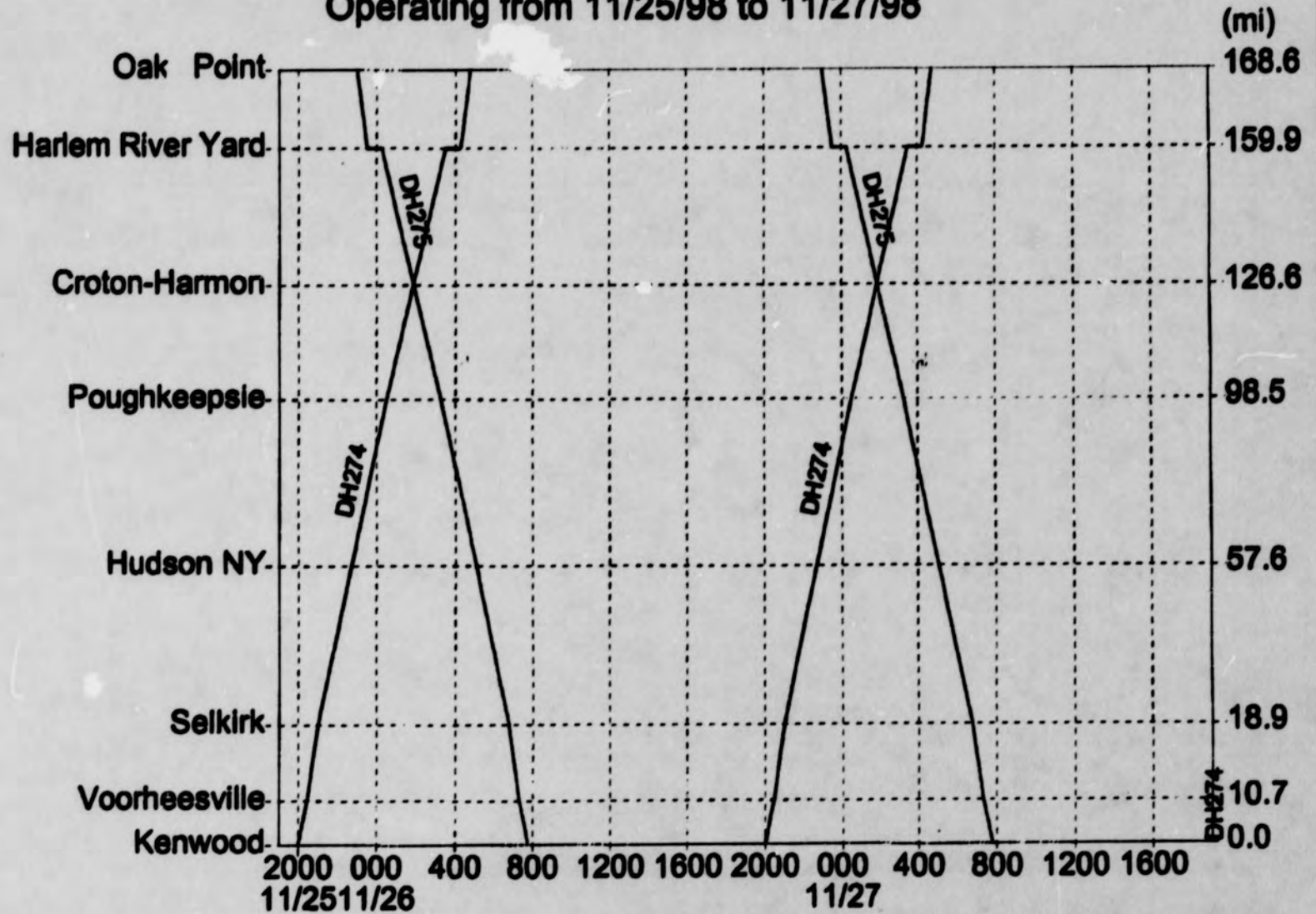
Oak Point 0000 E 0 2300 E 0 0030 17 0000 0 .YY.....
Harlem River Yard 2330 E 0 0015 E 1 0045 20 0100 9 .Y.....
Poughkeepsie 0315 E 1 0315 E 1 0000 23 0445 70
Selkirk 0645 E 1 0645 E 1 0000 19 0815 150
Kenwood 0745 E 1 0000 E 0 0000 0 0915 169

Total Run Time (HHMM): 800
Total Station Time (HHMM): 45
Total Transit Time (HHMM): 845
Total Average Speed (MPH): 21

* F=Fuel, W=Work, C=Crew, I=Inspection, L=Locomotive Service,
D=Customs, R=perishables, M=Mechanical Inspection

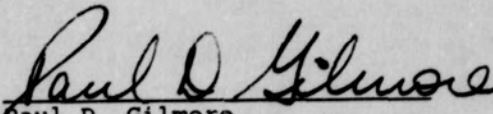
Trains on line from Kenwood to Oak Point

Operating from 11/25/98 to 11/27/98



VERIFICATION

I, Paul D. Gilmore, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this verified statement. Executed on November 27, 1998.


Paul D. Gilmore

**VERIFIED STATEMENT OF
PAUL D. GILMORE
CONCERNING ENVIRONMENTAL AND
HISTORIC REPORTING REQUIREMENTS**

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HISTORIC REPORTING REQUIREMENTS**

My name is Paul D. Gilmore. I am Vice President Eastern Operations of the Canadian Pacific Railway Company ("CPR"). 1/ My background and qualifications are described in my accompanying verified statement dealing with operating matters.

I am submitting this statement pursuant to Decision No. 102 in this proceeding, which directs CP to resubmit, with appropriate modifications, the environmental verified statement it filed on October 1, 1997 (which I sponsored). In my October 1 statement -- which embraced not only the east-of-the-Hudson trackage rights at issue here, but also other conditions and operations -- I concluded that, based on the information available to me, the various rights being sought by CP were exempt under the Board's rules from any requirement of environmental documentation. In this statement, which focuses exclusively on the east-of-the-Hudson trackage rights now before the Board, I reach the same conclusion: for the reasons explained below, the Board's rules do not require any environmental documentation in regard to those trackage rights.

1/ This statement is being submitted on behalf of CPR, Delaware and Hudson Railway Company, Inc. ("D&H"), Soo Line Railroad Company ("Soo"), and St. Lawrence & Hudson Railway Company Limited ("StL&H") (collectively, including CPR, referred to as "Canadian Pacific Parties" or "CP").

1. The Trackage Rights at Issue

CP seeks to obtain full-service trackage rights between Schenectady/Albany, NY, and Fresh Pond Junction, NY. In my accompanying verified statement discussing operating matters pertaining to these trackage rights, I describe these trackage rights in detail.

CP proposes initially to operate one train a day each way over the line that would be subject to these rights. In approximately 18 to 24 months, CP hopes to augment this service by adding an additional train that would operate once a day each way over the line.

2. Applicability of the Board's Environmental and Historic Report Rules

Environmental Information. The Board's rules require an environmental assessment if an operational change proposed in a responsive application would exceed any of the thresholds established in Sections 1105.7(e)(4) or (5). 2/ 49 C.F.R. § 1105.6(b)(4)(i). To the same effect, the rules provide that no environmental documentation would normally be required for any action proposed in a responsive application that does not result in significant changes in carrier operations, which are defined as changes that do not exceed the thresholds established in Sections 1105.7(e)(4) or (5). Id., § 1105.6(c)(2). The Board's rules also provide that no environmental documentation will

2/ All section references are to Title 49 of the Code of Federal Regulations.

normally be required for common use of rail terminals and trackage rights. Id., § 1105.6(c)(4).

As explained below, no environmental documentation is required for the trackage rights being sought by CP because there would be no operational changes effected under them that would exceed any of the relevant thresholds. In addition, no environmental documentation is required for the proposed trackage rights because trackage rights are specifically exempted from the environmental requirements.

In regard to the thresholds established under the Board's rules, the CP east-of-the-Hudson trackage rights would not effect any operational changes that would exceed those thresholds:

- They would not cause diversions from rail to motor carriage of more than 1,000 carloads per year. 49 C.F.R. § 1105.7(e)(iv)(A).

- They would not cause diversions from rail to motor carriage of more than an average of 50 rail carloads per mile per year for any part of the affected lines. Id., § 1105.7(e)(iv)(B).

- They would not result in an increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase in 8 trains a day on any segment of rail line affected by the proposal. Id., § 1105.7(e)(5)(i)(A).

- They would not result in an increase in rail yard activity of at least 100 percent (measured by carload activity). Id., § 1105.7(e)(5)(i)(B).

- They would not result in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment. Id., § 1105.7(e)(5)(i)(C).

Similarly, as to the lower thresholds established by the Board's rules for class I or nonattainment areas under the Clean Air Act, the CP east-of-the-Hudson trackage rights would not effect any operational changes that would exceed those thresholds:

- They would not cause an increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least 3 trains a day on any segment of rail line. 49 C.F.R. § 1105.7(e)(5)(ii)(A).

- They would not result in an increase in rail yard activity of at least 20 percent (measured by carload activity). 49 C.F.R. § 1105.7(e)(5)(ii)(B).

- They would not result in an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on a given road segment. Id., § 1105.7(e)(5)(ii)(C).

CP proposes initially to run only one train a day (each way) over the east-of-the-Hudson line; an additional daily train (operating each way) will hopefully be added in 18 to 24 months. Applicants' traffic data shows that the line handled between 21

and 146 trains per day, and between 6 and 34 million gross tons, in 1995. Application, Vol. 3A of 8, at 411, 469. Id. at 448, 470. With these existing train densities and traffic tonnages, CP's proposed trackage rights will not trigger any of the potentially applicable thresholds.

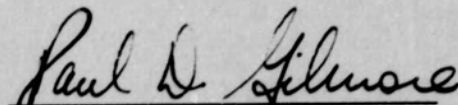
Historic Report. As for the Board's Historic Report requirements, the CP east-of-the-Hudson trackage rights do not require any historic documentation. First, because the trackage rights will not trigger any of the above-described environmental documentation thresholds, they do not entail an action identified in Sections 1105.6(a) or (b), and hence no Historic Report documentation is required. 49 C.F.R. § 1105.8(a). Second, the trackage rights do not propose an action described in Section 1105.6(c) that will result "in the lease, transfer, or sale of a railroad's line, sites or structures." Id., § 1105.8(a). Finally, the trackage rights propose "[t]rackage rights, common use of rail terminals, common control through stock ownership or similar action which will not substantially change the level of maintenance of railroad property," actions which are specifically excepted from historic reporting requirements. Id., § 1105.8(b)(3).

* * * *

For the reasons set forth above, based on the facts currently known to me, it is my judgment that under the applicable Board rules no environmental or historic documentation is required for the CP east-of-the-Hudson trackage rights.

VERIFICATION

I, Paul D. Gilmore, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this verified statement. Executed on November 27, 1998.


Paul D. Gilmore

SHIPPER STATEMENTS

VERIFIED STATEMENT
OF
DANIEL D. LUIZZI

1. My name is Daniel D. Luizzi. My business address is 1900 River Road, Castleton, NY 12033. I am employed as Director of Operations for Fort Orange Paper Company ("Forge"), for whom I have worked for over 17 years. In the capacity, I am responsible for, among other things, purchasing transportation services. I am intimately familiar with the company's transportation needs. In that regard, I have prepared and am authorized to make this verified statement in support of the initial filing by CP Rail ("CP") addressing the "east-of-the-Hudson" condition due November 30, 1998.

2. Forge is a small company which specializes in making cardboard and paper boxes at its sole facility located in Castleton, NY, about 10 miles southeast of Albany on the east bank of the Hudson River. Annually, Forge manufactures about 40,000 tons of recycled, clay coated box board generating about \$18 to \$20 million in sales. Because Forge is a small company and operates in a very competitive business environment, it must carefully monitor its overhead costs including those involving the transportation of inbound raw materials and outbound finished product. In that regard, Forge depends heavily upon rail for inbound transportation of raw materials used in its manufacturing and uses motor carrier service for outbound product. Forge's sole facility is connected by a spur to the "Hudson Division" of

Consolidated Rail Corporation ("Conrail").¹ The Hudson Division is one of Conrail's lines to be acquired and operated by CSX Transportation ("CSX") as part of this transaction. Because Conrail has, to date, been the only freight carrier providing freight service on this line, we are a "captive shipper."

3. I understand that when the Surface Transportation Board ("the Board") approved the joint application by CSX and Norfolk Southern Railway ("NS") to control Conrail and to acquire and operate Conrail's lines and services, it did so subject to certain conditions. As relevant to Forge's concerns, the Board specifically required that CSX negotiate an agreement with CP permitting it either haulage rights, not restricted as to commodity or geographic scope, or similarly unrestricted trackage rights over the Hudson Division. I further understand that the Board even went so far to suggest that this condition "may help FOPC [Forge]." See, Board decision approving control by CSX and NS of Conrail at page 116. Surely, the Board would not have made that statement if it only intended to grant CP overhead rights to New York City.

4. With that background, I recently learned with great disappointment that CP had been unsuccessful in negotiating with CSX for unrestricted haulage or trackage rights over the Hudson Division. Accordingly, I have been advised that CP has petitioned the Board to institute a new proceeding addressing

¹ Forge maintains and operates this trackage and owns a small locomotive used to switch cars.

that matter. Forge is pleased to submit this statement supporting CP's request.

5. Previously, I had testified before the Board that Forge as a small company had been a consistent, albeit modest, Conrail customer receiving inbound loads of kaolin clay from southern origins routed via NS and raw paper from eastern and midwestern points located on Conrail. I also testified that a combination of rate surcharges and increases, abandonment threats, and heavy handed contract negotiations by Conrail drastically reduced my company's use of rail. In several different regulatory proceedings, my company had advised the Board and its predecessor the ICC that Conrail had taken advantage of the "exempt" status of Forge's inbound traffic to exercise and abuse its monopoly power over Forge by charging excessive rates and that Forge was effectively powerless to combat these abuses.

6. I also previously testified in this proceeding that, with CP as a serving carrier, Forge will for the first time in years be able to obtain favorable rail rates and single line service on inbound Canadian paper products. I stated that heretofore Forge either could not afford to buy Canadian paper products or must truck it in at higher rates. Forge advised the Board that it has customers in both Toronto and Montreal and would like to use rail for outbound moves if economically attractive.

7. As I indicated back in our earlier comments and request for condition filed October 21, 1997, a trackage rights grant to

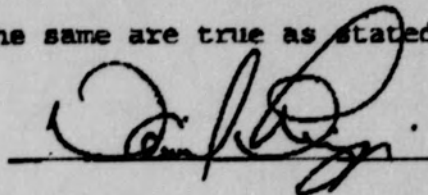
CP should be able to address many of its concerns. Much of Forge's traffic originates in the South on NS lines and is interchanged with Conrail over the Hagerstown Gateway. Some traffic originates on Conrail lines that will be operated by NS in the future. The commercial relationship that has developed between CP and NS in the Northeast will ensure that Forge continues to have attractive and affordable rates and service on this traffic. Introducing CP as a competitive carrier offering local rail service on the Hudson Division will ensure rail competition for "exempt" traffic. CP will also address Forge's concern over surcharges. While CP is not yet able to quote rates for Forge, it has advised us that company policy does not favor imposition of rate surcharges. Finally, CP local service for Forge will open up new sources of raw materials and new markets for Forge's finished products.

8. Accordingly, Forge supports CP's request to the Board initiating a proceeding and setting the terms for CP's use and/or operation over the Hudson Division.

VERIFICATION

STATE OF _____)
) ss:
COUNTY OF _____)

Daniel B. Luizzi, being duly sworn, deposes and
says that he has read the foregoing statement, knows the facts
asserted there are true and that the same are true as stated.



Subscribed and sworn to before me this _____ day of
_____, 1997.

Notary Public of _____

My Commission expires:



ADM MILLING CO

8000 W. 116TH STREET OVERLAND PARK, KS. 66210-2312 TELEPHONE (913) 491-8400

November 30, 1998

J. Robert Woolery
Vice President Transportation

Linda J. Morgan
Chairman
Surface Transportation Board
The Mercury Bldg.
1925 K Street, N.W.
Suite 500
Washington, D.C. 20423

RE: Finance Docket 33388 (Sub No. 69 Responsive Application of the State of New York and the New York City Economic Development Corporation).

Dear Chairman Morgan:

We have been advised that, at the direction of the Surface Transportation Board, Canadian Pacific Railway, the State of New York and the New York City Economic Development Corporation have initiated a proceeding requesting the Board to set terms and conditions governing Canadian Pacific's operations over the rail line from Selkirk, N.Y. to Harlem River Yard in New York City ("East Hudson Line").

ADM Milling Co. operates flour mills throughout the United States, including a mill on this line, and originates the preponderance of the required wheat via rail from the following areas:

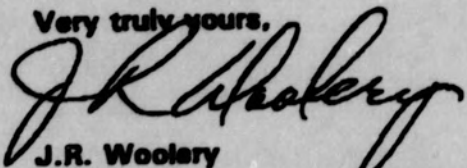
- I. Winter wheat - states of Texas, Oklahoma, Kansas, Colorado, Nebraska and Montana.
- II. Spring Wheat - states of South Dakota, North Dakota and from Canadian Province's.

We have no guarantee from one Wheat crop year to the next what Mother Nature will provide in the all important area of quality and protein. One crop year could dictate Winter wheat areas and another crop year could dictate Spring Wheat areas. Obviously we cannot relocate our flour mills.

Page 1 of 2

We feel rail competition is a necessary healthy ingredient in the movement of our Nation's commerce and specifically in the movement of the wheat requirements for our mills.

Very truly yours,

A handwritten signature in dark ink, appearing to read "J.R. Woolery". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

J.R. Woolery
Vice President - Transportation

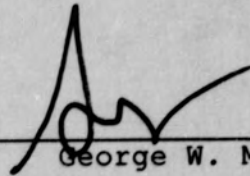
JRW/jc

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 1998, I served by the means indicated below a copy of the foregoing Canadian Pacific Parties' Opening Evidence and Argument on the following:

Counsel for CSX, NYCEDC and NYDOT
(by hand)

Counsel for all parties requesting a copy
(by first-class mail or by hand where requested)

A handwritten signature in black ink, appearing to be 'G. Mayo', is written over a horizontal line.

George W. Mayo, Jr.

STB

FD

33388

(Sub 69)

11-13-98

D

192235

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20006

NYS-30

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KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
JEAN M. CUNNINGHAM
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ENTERED
Office of the Secretary

NOV 16 1998

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Public Record

November 13, 1998

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WRITER'S E-MAIL:

kjd@sloverandloftus.com

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
ATTN: STB Finance Docket 33388
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: F.D. No. 33388, CSX Corporation, Et Al. -- Control and Operating Leases/Agreements -- Conrail Inc., Et Al., and F.D. No. 33388 (Sub-No. 69), The State of New York, By and Through Its Department of Transportation -- Trackage Rights Over Lines of Consolidated Rail Corporation

Dear Secretary Williams:

On behalf of the State of New York, acting by and through the New York State Department of Transportation ("New York"), we are writing in response to the letters filed on November 10, 1998 by counsel for the Canadian Pacific Railway Company, et al. ("CP"), and on November 12, 1998 by counsel for CSX Corporation and CSX Transportation, Inc. ("CSXT").

CP's letter requests establishment of a schedule for the submission of evidence respecting terms to govern implementation of the conditions imposed by the Board in Ordering Paragraphs 28 and 62 of Decision No. 89 in the referenced proceeding. According to CP, Board resolution is necessary because CP has been unable to reach agreement with CSXT on all of the terms pursuant to which CSXT will grant CP unrestricted trackage and/or haulage rights over Conrail's Hudson Line between Albany/Selkirk and Fresh Pond, NY, as required by Decision No. 89. CSXT's November 12 letter acknowledges the negotiation impasse and concurs in CP's procedural schedule, but also seeks substantive modifications to the Board's conditioning order.

The Honorable Vernon A. Williams
November 13, 1998
Page 2

New York supports CP's request, and urges adoption of the schedule proposed therein. Over three (3) months have elapsed since the Board imposed the Hudson Line conditions, and CP and CSXT still have not agreed on complete terms for its effective implementation. Consistent with Decision No. 89, therefore, Board intervention is both necessary and appropriate.

New York opposes the requests by CSXT that it be permitted to fulfill the Board's East-of-Hudson condition by negotiating with another rail carrier in lieu of CP, or that other parties be invited to submit new responsive applications addressing the East-of-Hudson issues. Upon consideration of the entire record in this proceeding, the Board determined that East-of-Hudson shippers should have full, competitive access to CP service as an alternative to that which otherwise would be provided solely by CSXT, either through a negotiated arrangement between CP and CSXT or Board-prescribed terms and conditions. See Decision No. 89 at 82-83, 177. No party -- CSXT included -- sought reconsideration of this ruling, or filed a timely petition for review challenging it. Despite over three (3) months' effort, CP and CSXT apparently have been unable to come to agreement on acceptable terms through negotiation. In accordance with its prior ruling, the Board should now move forward expeditiously and prescribe them.

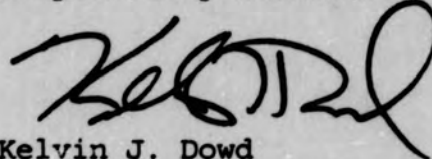
Throughout this proceeding, CSXT has vigorously opposed the pro-competitive relief sought by New York and the New York City Economic Development Corporation (NYCEDC), which relief ultimately was granted by the Board in Decision No. 89. Among other things, CSXT insisted that the requested relief was unnecessary and operationally infeasible, and that no qualified rail carrier would "step forward" to supply competitive rail freight service over the Hudson Line. See CSX/NS-176, Vol.1, Narrative at VIII, 13-19. Against this record of resistance, it is not unreasonable to conclude that the lack of an implementing agreement between CP and CSXT more likely is due to an unduly narrow reading of the Board's conditions by CSXT, than to an overly broad one on the part of CP. Indeed, on information and belief, CSXT has insisted that CP acquiesce to geographic and commodity restrictions on its East-of-Hudson access that were specifically proscribed by the Board's conditioning order. New York is concerned that CSXT now may be intent on seeking out a more malleable carrier willing to accept that which CP would not -- and less than the full measure of access ordered by the Board. On behalf of the shippers and communities that would be directly and adversely affected by such a maneuver, New York urges the Board to reject CSXT's request.

The Honorable Vernon A. Williams
November 13, 1998
Page 3

Likewise, there is no legitimate reason why the Board should re-open this case to entertain new responsive applications. CP's November 10 filing reflects that carrier's commitment to effective rail competition East of the Hudson, and CP already has in place the connecting lines and inter-carrier arrangements (such as its haulage agreement with Norfolk Southern Railway) necessary to offer New York shippers a competitive alternative to CSXT. New York and NYCEDC, the Responsive Applicants in whose favor the Board imposed the conditions at issue, support CP as the carrier best-positioned to succeed in this regard. Given the record, we submit that the proper course for the Board now is to enforce its ruling and move to set the terms of CP's access over the Hudson Line, not to reward CSXT's resistance by entertaining unnamed replacements for CP.

The Board should adopt the procedural schedule proposed by CP in its letter of November 10. CSXT's November 12 request for additional terms should be denied.

Respectfully submitted,



Kelvin J. Dowd
An Attorney for the
State of New York

KJD\cbh

cc: George W. Mayo, Jr., Esq. (via facsimile)
Charles A. Spitulnik, Esq. (via facsimile)
Dennis G. Lyons, Esq. (via facsimile)
All Parties of Record (via U.S. Mail)

STB FD 33388 (Sub 69) 11-10-98 D 192182

192182

HOPKINS & SUTTER

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

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

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CHARLES A. SPITULNIK
(202) 835-8196
Direct: (202) 835-8136
E-Mail: CSpitulnik@hopsut.com

November 10, 1998



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

Re: Finance Docket No. 33388 (Sub-No. 69), *Responsive Application -- State of New York by and through its Department of Transportation and New York City Economic Development Corporation*

Dear Sir:

The New York City Economic Development Corporation ("NYCEDC") is one of the joint applicants in the above-referenced proceeding. In response to the joint application of NYCEDC and New York State, this Board, in Decision No. 89 in Finance Docket No. 33388, required applicant CSX Transportation, Inc. to negotiate an agreement with Canadian Pacific Railway Company ("CP")

. . . [T]o permit either haulage rights, not restricted as to commodity or geographic scope, or similarly unrestricted trackage rights, over the east-of-the-Hudson line from Fresh Pond to Selkirk (near Albany), under terms agreeable to the parties, taking into account the investment that continues to be required for the line.

Decision No. 89 at 83.

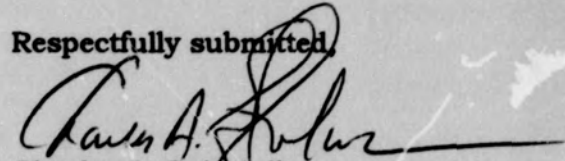
NYCEDC is aware that CP and CSX have not been able to reach an agreement on unrestricted haulage or trackage rights over this line. We are further aware that CP has notified this Board that no agreement has been reached, and has asked the Board to begin a proceeding to "determine just how the needs of the New York parties are to be addressed." *Id.* As the Board stated in Decision No. 89, the needs of the New

Hon. Vernon A. Williams, Secretary
November 10, 1998
Page 2

York parties can best be served by trackage or haulage rights, unrestricted as to commodity or geographic scope. NYCEDC supports both CP's request for a proceeding, and the schedule CP has proposed. NYCEDC will participate actively in such a proceeding and will ask the Board to mandate imposition of an agreement that meets the description included in *Decision No. 89*, if the parties remain unable to reach an agreement themselves.

Thank you for your attention to this matter.

Respectfully submitted,



Charles A. Spivulnik
Counsel for New York City Economic
Development Corporation

cc: All parties in Finance Docket No. 33388

STB FD 33388 (Sub 69) 10-22-98 D 191773

191773

HOGAN & HARTSON

L.L.P.

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GEORGE W. MAYO, JR.
PARTNER
DIRECT DIAL (202) 637-5679

October 21, 1998



COLUMBIA SQUARE
999 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



Re: Finance Docket No. 33388 (Sub-No. 69), 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

Dear Secretary Williams:

Pursuant to ordering paragraphs 28 and 62 of the Board's Decision No. 89 in the above-referenced proceeding, I am writing on behalf the Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited (collectively, "CP") to advise the Board that CP, on the one hand, and CSX Corporation and CSX Transportation, Inc. (collectively "CSX"), on the other, have been negotiating to reach agreement on terms pursuant to which "CSX will grant CP either haulage rights unrestricted as to commodity and geographic scope, or trackage rights unrestricted as to commodity and geographic scope, over the east-of-the-Hudson Conrail line that runs between Selkirk (near Albany) and Fresh Pond (in Queens)." Id. at 177.

As of today, it appears that CP and CSX have made progress but have not reached an agreement on such rights.

BRUSSELS LONDON MOSCOW PARIS* PRAGUE WARSAW

BALTIMORE, MD BETHESDA, MD COLORADO SPRINGS, CO DENVER, CO Mc

\\SDC - 66673/1 - 0377213.13

*Affiliated Office

HOGAN & HARTSON L.L.P.

The Hon. Vernon A. Williams
October 21, 1998
Page 2

Accordingly, CP requests that the Board defer for a period of one week initiating a proceeding addressing the matter as contemplated by paragraph 28 of the Board's Decision No. 89. CP will report to the Board within that time whether or not it has been able to reach an agreement with CSX.

Respectfully,

George W. Mayo, Jr. by E.V.S.

George W. Mayo, Jr.
Attorney for Canadian
Pacific Railway Company,
Delaware and Hudson
Railway Company, Inc., Soo
Line Railroad Company, and
St. Lawrence & Hudson
Railway Company Limited

GWM:jms

cc: All Parties of Record

STB FD 33388 (Sub 69) 1-20-98 D 185281

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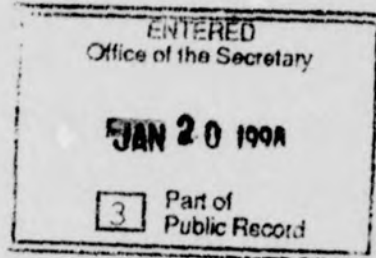
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CHARLES A. SPITULNIK
(202) 835-8196

January 20, 1998

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



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

Dear Secretary Williams:

I am enclosing the original verification page for the Rebuttal Verified Statement of Seth O. Kaye, which was filed as part of the Joint Rebuttal Statement of the State of New York and the New York City Economic Development Corporation (NYS-24/NYC-17) on January 14, 1998. Due to time constraints, a facsimile copy of the verification page was filed with the Joint Rebuttal Statement. By copy of this letter, I am notifying the other parties to the proceeding that the original verification page has been filed.

Sincerely,

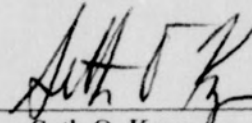
Charles A. Spitulnik
Charles A. Spitulnik

Enclosures

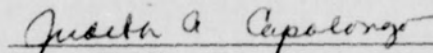
cc: All Parties

VERIFICATION

I, Seth O. Kaye, verify under penalty of perjury that I have reviewed the foregoing Rebuttal Verified Statement, and that all of the facts stated therein are true and correct. Further, I certify that I am qualified and authorized to verify and file this Rebuttal Verified Statement on this 14th day of January, 1998.


Seth O. Kaye

Subscribed and sworn to
before this 14th
day of January 1998.


~~Notary Public~~ Commissioner of Deeds

~~My commission expires:~~

JUDITH A. CAPOLONGO
Commissioner of Deeds, City of New York
No. 5-1425
Cert. Filed in New York County
Commission Expires October 23, 1999

STB FD 33388 (Sub 69) 1-14-98 D 185230 1/2

BEFORE THE
SURFACE TRANSPORTATION BOARD

THE STATE OF NEW YORK, BY AND
THROUGH ITS DEPARTMENT OF
TRANSPORTATION -- TRACKAGE RIGHTS
OVER LINES OF CONSOLIDATED
RAIL CORPORATION AND DECLARATION
CONCERNING TRACKAGE RIGHTS
RESTRICTIONS ON LINES OF METRO-
NORTH COMMUTER RAILROAD COMPANY

Finance Docket No. 33388
(Sub-No. 69)--185230

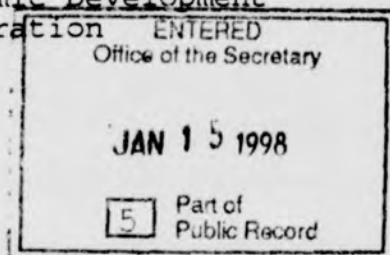
CSX CORPORATION AND CSX
TRANSPORTATION INC., NORFOLK
SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING
LEASES/AGREEMENT -- CONRAIL INC.
AND CONSOLIDATED RAIL CORPORATION

Finance Docket No. 33388
~~XXXXXXXXXXXXXXXXXXXX~~

JOINT REBUTTAL STATEMENT
OF THE
STATE OF NEW YORK
AND THE
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

Charles A. Spitulnik
Rachel Danish Campbell
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Washington, D.C. 20036
(202) 347-7170

Dated: January 14, 1998

Attorneys for the State of New York

[illegible]

The State of New York, acting by and through its Department of Transportation ("New York"), and the New York City Economic Development Corporation ("NYCEDC"), in accordance with the procedural orders entered herein by the Board, hereby submit their Joint Rebuttal Statement in support of their Joint Responsive Application filed in this proceeding on October 21, 1997 (NYS-11/NYC-10).

INTRODUCTION AND BACKGROUND

In their Joint Responsive Application and separately-filed Comments (NYS-10 and NYC-9), New York and NYCEDC demonstrated that unless properly conditioned, the acquisition and division of Conrail¹ proposed by CSX and NS would have significant, adverse competitive impacts on rail shippers and receivers in New York City, on Long Island, and in the New York counties east of the Hudson River and south of Albany. Inter alia, Applicants' proposal would establish CSX as the sole operator of Conrail lines and trackage rights east of the Hudson, while simultaneously providing direct rail competition for the benefit of west side shippers in New York and New Jersey through creation of the North Jersey Shared Assets Area.

Through expert testimony and legal argument, New York and NYCEDC explained how Applicants' exclusion of east side shippers from access to restored competitive rail service was at odds with the pro-competitive Congressional and regulatory mandates attending the creation of Conrail -- including the Final System Plan -- and the legal standards that properly should guide the Board's evaluation of the unique transaction proposed by Applicants.² The testimonies of representative shippers in the

¹ As used herein, "Conrail" refers to Consolidated Rail Corporation and Conrail, Inc.; "CSX" refers to CSX Corporation and CSX Transportation, Inc.; and "NS" refers to Norfolk Southern Corporation and Norfolk Southern Railway Company, Inc. Collectively, CSX, NS and/or Conrail are referred to as "Applicants."

² See NYS-10, V.S. Banks, Argument at 6-10; NYC-9 at 4-11.

affected region likewise confirmed the harm that they would suffer as the heretofore level surface transportation playing field on which they and their west side counterparts compete was tilted sharply in favor of the latter, by Applicants' deliberate partitioning of the Conrail System.³

To ameliorate these serious flaws in Applicants' plan, New York and NYCEDC proposed that Board approval be conditioned on a grant of trackage rights and related declaratory relief to enable a second rail carrier to compete directly with CSX in the provision of freight transportation to shippers and receivers east of the Hudson in New York. Specifically, as set forth in their Joint Responsive Application, New York and NYCEDC request imposition of the following conditions:

1. Full service trackage rights in favor of a rail carrier other than Conrail or CSX, to be designated jointly by New York and NYCEDC, over the lines of Conrail between points of connection with the Canadian Pacific Railway/Delaware & Hudson Railroad at CP-160 near Schenectady, NY and Selkirk Yard near Selkirk, NY, and CP-75 near Poughkeepsie, NY, together with sufficient rights on tracks within the Selkirk Yard to permit the efficient interchange of freight with CP/D&H; and

2. Full service trackage rights over the lines of Conrail between the point of Conrail ownership at Mott Haven Junction ("MO"), NY and the point of connection with the lines of

³ See NYS-10, V.S. D'Arrigo, V.S. Christie, V.S. Firestone; NYC-9, V.S. Riccio.

the Long Island Railroad near Fresh Pond ("MONT"), NY, via the Harlem River Yard. See NYS-11/NYC-10 at 5.

The portion of the Hudson Line between Poughkeepsie and Mott Haven Junction is controlled by Metro-North Commuter Railroad Company. Conrail presently conducts freight operations under trackage rights granted by Metro-North, which likewise would have to grant trackage rights to New York/NYCEDC's designated operator in order to permit competitive rail service to be provided over the entire Hudson Line. Metro-North President Donald N. Nelson, testifying in support of the Joint Responsive Application, confirmed Metro-North's ability and willingness to enter into such an arrangement. See NYS-11/NYC-10, V.S. Nelson at 8-9. As an addendum to the requested trackage rights, New York and NYCEDC sought a Board declaration that pursuant to 49 U.S.C. §11321(a), approval of the Joint Responsive Application would allow Metro-North to grant trackage rights over its portion of the Hudson Line notwithstanding any purported restrictions that Conrail or CSX might claim under Conrail's agreement with Metro-North. Id. at 6.

On December 15, 1997, formal comments in support of New York and NYCEDC's Joint Responsive Application were filed by New England Central Railroad Company, a Class III carrier also seeking to establish an interchange with CP/D&H at Selkirk, and the Fort Orange Paper Company, a shipper located south of Albany which would benefit directly from the rail competition that the requested trackage rights would provide. See NECR-7; FOPC-5.

Likewise, by letter dated December 12, 1997, Congressman Jerrold Nadler (D-NY) endorsed the New York/NYCEDC Joint Responsive Application. Of the over 215 active participants in these proceedings, only Applicants oppose the pro-competitive relief sought by New York and NYCEDC on behalf of east-of-Hudson shippers and receivers.

In Applicants' December 15, 1997 Rebuttal (CSX/NS-176) and accompanying Rebuttal Verified Statements of their witnesses Joseph Kalt, John Orrison and Christopher Jenkins, five (5) basic claims are raised against New York/NYCEDC's case for east-of-Hudson trackage rights. By way of summary, CSX, NS and Conrail argue that:

1. The governing approval statute is pro-merger, and does not require Applicants to permit new rail competition to develop beyond boundaries they select (CSX/NS-176, Vol. 1, Narrative at III-11-12, VIII-12-15);
2. East-of-Hudson shippers will have a competitive alternative to CSX, in the form of drayage to and from the North Jersey Shared Assets Area (id. at VIII-13-14; R.V.S. Kalt at 16-17);
3. East-of-Hudson shippers will have competitive alternatives to CSX as a result of recent settlements between Applicants and CP and the Canadian National Railway (CSX/NS-176, Vol. 1, Narrative at VIII-17-18);
4. The trackage rights requested by New York/NYCEDC are not economically viable due to low projected densities and the absence of an identified trackage rights operator (id. at VIII-16-17); and
5. The subject trackage rights are not operationally feasible, due to the presence of passenger trains on key segments of the Hudson Line (id. at 18).

As will be shown in this Rebuttal Statement, each of Applicants' arguments is substantially lacking in merit, and together they fail to undermine New York and NYCEDC's case for conditions relief. The trackage rights described in the Joint Responsive Application are consistent with the pro-competitive mandate of applicable law, and are necessary to remediate direct and specific anti-competitive consequences of Applicants' plan for the division of Conrail. Neither drayage nor the limited "commercial access" rights granted to CP and CN under their settlements are an effective substitute for bona fide, dual carrier service to east-of-Hudson shippers and receivers, which service is both economically viable and operationally feasible. The established criteria for the imposition of trackage rights conditions having been met, New York and NYCEDC's Joint Responsive Application should be granted.

JOINT REBUTTAL STATEMENT

A. The Governing Law Is Pro-Competition

The statutory provisions governing the Board's consideration of rail consolidations are set forth at 49 U.S.C. §§11321-27, and are reviewed in detail in New York's Comments. See NYS-10, Argument at 4-10. As stated therein, the central focus in reviewing control applications under the statute is whether the proposed transaction is in the public interest.⁴ In considering the public interest, prior to modern times, Congress maintained a resistance to the effectuation of intramodal railroad competition as a transportation policy goal. Instead, the encouragement of industry consolidation was determined to be in the best interest of maintaining an efficient transportation system.⁵ However, through the passage of the Railroad Revitalization and Regulatory Reform Act of 1976 ("4R Act"), Pub. L. 94-210, and subsequent pro-competitive enactments, Congress' prior policy disfavoring rail-to-rail competition and favoring railroad consolidation has been reversed dramatically.

Under the 4R Act, it was "declared to be the policy of the Congress" to "foster competition among all carriers by

⁴ "The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest." 49 U.S.C. §11324(c).

⁵ In attempting to cast the governing statutory scheme as pro-merger, Applicants point to this now-obsolete legislative policy. See CSX/NS-176, Vol. 1, Narrative at III-1-2.

railroad." Id. at §101(b).⁶ This policy of promoting intra-modal railroad competition was strengthened by Congress through the enactment of the Staggers Rail Act of 1980, Pub. L. 96-448 ("Staggers Act", and most recently by the ICC Termination Act of 1995, Pub. L. 104-88 ("ICCTA"). Today, competition is emphasized throughout the applicable statutory and regulatory standards that govern railroad control proceedings before the Board. For example, the Board's decisions under §11324 are influenced by four provisions addressing competition that are central to the National Rail Transportation Policy. These policy goals direct the Board:

(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail . . . ;

(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;

(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes . . . ;

(12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power and to prohibit unlawful discrimination.

49 U.S.C. §10101.

⁶ See also S. Rep. No. 94-499, at 11 (1975).

The Board's policy statement that governs its consideration of railroad consolidations likewise emphasizes the importance of intramodal railroad competition:

[T]he [Board] does not favor consolidations that substantially reduce the transport alternatives available to shippers unless there are substantial and demonstrable benefits to the transaction that cannot be achieved in a less anticompetitive fashion. Our analysis of the competitive impacts of a consolidation is especially critical in light of the Congressionally mandated commitment to give railroads greater freedom to price without regulatory interference.

49 C.F.R. Part 1180.1(a) (emphasis added).

In summary, the 4R Act, the Staggers Act, and the ICCTA are predicated on the promotion of competition rather than government regulation as the controlling force over the provision of railroad rates and services. Under modern law, the priority of the statute governing proposed rail mergers and acquisitions is competition, not consolidation.

1. The Final System Plan Embodies Congress' Intent Regarding the Future of Conrail and the Promotion of Competition in the Northeast

New York's October 21, 1997 Comments describe how this proceeding is unique from other recent western railroad mergers, in large part because of the special political, economic, and historical circumstances that led to the creation of Conrail in 1976. As summarized immediately below, virtually all involved authoritative entities, including the Congress, the United States Railway Association ("USRA"), and the ICC acknowledged that the preservation of effective rail competition throughout the North-

east was to be a key element of federal policy regarding the future of what became Conrail. See NYS-10, Argument at 6-10.

The USRA was created by Congress to produce a comprehensive plan that would maintain adequate rail service in the northeastern United States.⁷ In carrying out its mandate, USRA was directed to take care that "the retention and promotion of competition in the provision of rail and other transportation services" was a priority in developing its plan for the region. 3R Act, §206(a)(5). The unchallenged testimony of New York's witness Robert Banks thoroughly discussed how in its Preliminary and Final System Plans, the USRA considered many different approaches toward reviving northeastern railroad operations. Ultimately, however, the USRA recommended the approach that would ensure adequate competition in the region. See generally FSP, Chap. 1, at 13-36; NYS-10, V.S. Banks at 11-17. The FSP described a regional railroad system sustaining three major carriers and numerous smaller solvent lines to service and compete in the major markets. See FSP at 19-28; NYS-10, V.S. Banks at 11-16.⁸ The USRA was unable to implement its preferred plan,

⁷ The USRA was established by the Regional Rail Reorganization Act of 1973, Pub. L. 93-236 ("3R Act"). See NYS-10, V.S. Banks at 11-17.

⁸ The USRA did not favor the creation of a unified Conrail, stating as follows:

Unified Conrail.-- The [Preliminary System Plan] found that this option offered the greatest potential to rationalize facilities, increase efficiency and minimize government cost. Outweighing this, however, was the finding that such a structure would elim-

due mainly to the lagging financial condition of the railroad industry and the refusal of CSX's predecessors to participate. Instead, a unified Conrail was created in 1976, and since that time the major northeastern markets have been denied competitive railroad service options. The financial fortunes of the Nation's remaining Class I railroads long since have recovered, however, and through the 1980s and 90s the carriers themselves embarked on a course of acquisitions and consolidations which now has come to Conrail's door. Particularly in light of Applicants' own acknowledgement of the continuing vitality of the spirit of the FSP, it is entirely proper that the Board's evaluation of the merits of the Primary Application and responsive proposals such as NYS-11/NYC-10 be informed by that Plan.

2. Applicants' Own Proposal Pledges
Allegiance to Congress' Intent
to Promote Rail-to-Rail Competition

In their Application and in portions of their Rebuttal, Applicants and their witnesses go to great lengths to underscore the fact that they are seeking, and have an obligation to achieve a competitive railroad marketplace in the Northeast as envisioned by Congress and the USRA in its FSP. See Application, Vol. 1, V.S. Hoppe at 18; V.S. McClellan at 13, 50. Referring to past

inate competition in a large and important area in the eastern part of the Region and, thus, would compromise one of the basic goals of the Act.

FSP at 16-17.

efforts to restore competition for New York State, for example, Applicants' witness Hoppe states:

The preferred solution, then, was not a Conrail of the shape and size as we know it today or a rail monopoly in all of New York State except the area immediately around Buffalo, but a system under which there would be competitive access to the New York City area both from the north and west, via Cleveland and Buffalo (and from Syracuse and Utica) and from the south, via Philadelphia, Reading, Harrisburg, and points west and south.

Application, Vol. 1, V.S. Hoppe at 14. Mr. Hoppe's testimony concludes:

the transaction proposed by NS and CSX provides even more balanced competition than any of the options considered by USRA's staff in the 1970's. With the implementation of the division of Conrail proposed in the present Application, the goals of Congress and the Administration in 1973 would finally be realized in full.

Id. at 18-19.⁹

Applicants broadly boast of their proposal as one which restores rail competition in New York State, as Congress and the drafters of the FSP sought but ultimately were unable to obtain. Applicants' witness Kalt stresses the claim that within the New York Business Economic Area there currently are approximately 733,000 railcar units of traffic solely served by Conrail, of which some 95 percent will receive dual rail options post-trans-

⁹ NS witness McClellan espouses the same view: "This Conrail transaction cannot be understood in a vacuum. Indeed, this transaction cannot be understood without considering at least 30 years of recent northeastern railroad history." Application, Vol. 1, V.S. McClellan at 2.

action. See CSX/NS-176, Vol. 2A, R.V.S. Kalt at 11. As Dr. Kalt explains, "this rationalization is long overdue. Its delay since Conrail was born of political forces has demonstrably been the source of impediments to productivity, insulation of Conrail from intramodal competition, and unrealized potential for service improvements." Id. at 11-12.

Unfortunately, when faced with probative evidence that their plan falls short of meeting their self-imposed goal of achieving the level of competition envisioned by the FSP (see NYS-10, V.S. Banks at 19-21), Applicants beat a hasty retreat from their earlier testimony and now deride the FSP as merely "a 22-year-old recommendation for restructuring the rail industry [that] is not relevant to this transaction." CSX/NS-176, Vol. 2A, R.V.S. Kalt at 13. It appears that Applicants would trumpet the importance of competition when it suits promotion of their plan for Conrail, then reverse course when other parties propose entirely consistent improvements that Applicants nonetheless believe might interfere with their post-transaction ambitions. Governing law does not -- and Board implementation of that law must not -- permit such partisan selectivity.

It is important to emphasize that the relief being sought by New York/NYCEDC fits securely within Congress', the Board's and Applicants' own standards for the preservation and promotion of intramodal competition in the context of rail mergers and consolidations. To be sure, Applicants' chosen methodology for the establishment of intramodal rail competition

through the creation of shared assets areas -- apparently influenced heavily by the give-and-take of commercial negotiations¹⁰ -- is not a paradigm of clarity. However, further explanations offered in Applicants' Rebuttal reveal a core standard which is relevant to understanding and evaluating their own view of which parties/geographic areas are entitled to post-transaction competitive service.

In this proceeding, the Eighty-Four Mining Company ("EFM"), which is situated near the lines of the former Monongahela Railway, is seeking competitive railroad service through inclusion in Applicants' plan for joint CSX and NS access to a number of mines on the Monongahela. Applicants' justification for their decision not to include EFM within this joint service area is fairly straightforward. Applicants state that prior to the 1992 purchase of the Monongahela by Conrail, coal mines on those lines were served by three carriers; after the 1992 transaction they were served solely by Conrail. Applicants conclude that "[t]he joint access by NS and CSX to the former Monongahela proposed in the Transaction thus represents a reintroduction of competition there." CSX/NS-176, Vol. 2A, R.V.S. Fox at 4 (emphasis in original). In contrast to other Monongahela mines, the EFM property always has been solely served by one carrier, and will continue to be served solely by NS post-transaction. Applicants conclude that because EFM is not seeking the "reintroduc-

¹⁰ See, e.g., id., R.V.S. Kalt at 10.

tion" of competition that was in place at a prior time, EFM's request for competitive access should be denied.

Assuming arguendo that Applicants' standard can be considered consistent with the mandates of Congress and the FSP discussed supra, New York/NYCEDC's case for competitive rail service east of the Hudson River clearly meets it. In New York's Comments, witness Banks reviewed the abundant rail competition that was present east of the Hudson River at the time of the formation of Conrail.¹¹ While it is not necessary to replicate the number of different carriers that previously vied for east-of-Hudson traffic, the end result should be a qualitative restoration of competitive rail service. As summarized by witness Banks:

It cannot be argued that a return to the superfluity of rail intramodal competition (which preceded the PC merger) is either desirable or economically viable. However, a return to the level of competition envisioned in the PSP and FSP for CRC (and other systems) is necessary if the interests of New York are to be finally addressed and satisfied.

NYS-10, V.S. Banks at 11 (emphasis in original). In their Rebuttal, Applicants acknowledge and defend the legitimacy of crafting a plan for the disposition and future operation of Conrail's assets that will "reintroduce" competitive railroad service to areas that once had it, such as the Monongahela

¹¹ There were nine line-haul railroad rate and service options available individually or in combination to shippers east of the Hudson River, with numerous interline connections to the west side. See NYS-10, V.S. Banks at 7-11.

region. The relief sought by New York and NYCEDC in their Responsive Application, which otherwise comports with Congress' intent as manifested in the FSP, is fully consistent with Applicants' approach.

B. Competitive Rail Service Is Needed
To Remediate Direct and Deliberate
Adverse Impacts of Applicants' Proposal

The lay and expert witnesses appearing in support of New York and NYCEDC's Comments and Joint Responsive Application testified to the specific and direct adverse competitive impact that would result if Applicants' plan for the division of Conrail is approved without condition. See, e.g., NYS-10, V.S. D'Arrigo at 3, V.S. Christie at 4, V.S. Firestone at 3; NYC-9, V.S. Riccio at 6-8; NYS-11/NYC-10, V.S. Robertson. Briefly stated, Applicants' plan to partition the greater New York City/Northern New Jersey commercial region (BEA) would take what had been a level transportation playing field for competing shippers and receivers and radically restructure it to favor participants located west of the Hudson River over their east-side counterparts, to the severe and lasting detriment of the latter. See NYS-10, Argument at 14-16. The Verified Statement of Ronald Klempner of American Marine Rail, LLC, included in this Rebuttal, presents further testimony as to the particular, negative effects of Applicants' proposal on the cost and efficiency of outbound transportation of municipal solid waste from the New York City Metropolitan Area. R.V.S. Klempner at 2-4. The trackage rights relief sought

through the Joint Responsive Application is narrowly tailored to remediate these adverse impacts. Id. at 16-18.

Applicants do not deny their plan's disparate treatment of rail shippers similarly situated in all relevant respects save their geographic location.¹² Rather, their basic, general response is to wash their hands of any responsibility for causing a problem that the Board properly can or should remedy.

Their thesis starts with the premise that neither the NJCAA nor any other shared assets area was designed to "remedy competition problems created by the transaction." CSX/NS-176, Vol. 2A, R.V.S. Kalt at 9. Invoking the Board and its predecessor's decisions in prior western railroad merger cases, Applicants argue that in any consolidation it is inevitable that some of the combining firms' customers will benefit more than others, and that it is neither the railroads' nor the Board's responsibility "to maintain competitive balance vis-a-vis shippers' transportation options so that improved service to some shippers would have to be equalized throughout the systems...." Id., Vol. 1, Narrative at VIII-9, citing F.D. No. 32760, Union Pacific Corporation, Et Al. -- Control and Merger -- Southern Pacific Rail Corporation, Et Al., Decision served August 12, 1996 ("UP/SP") at 183, 190. Referring to New York and NYCEDC's Joint Responsive Application, Applicants conclude that "[t]here was one

¹² Applicants do claim that east-of-Hudson shippers would have alternatives that offset their rail service disadvantage. See CSX/NS-176, Vol. 1, Narrative at VIII-13-17. These claims, which New York and NYCEDC submit are without merit, are addressed infra.

Class I carrier before the Transaction in the region East of the Hudson, and there will be one Class I carrier after the Transaction." CSX/NS-176, Vol. 1, Narrative at VIII-12-13.

New York and NYCEDC submit that the unique nature of this case, together with the nature of the threatened harm to east-of-Hudson shippers -- the direct result of a deliberate action by Applicants that isolates one small segment of a larger commercial market -- sets New York and NYCEDC's Joint Responsive Application apart from the more general requests for new or expanded shared assets areas so derided by Applicants. These and other important factors also serve to distinguish New York/NYCEDC's relief from that at issue in UP/SP and BNSF.¹³

As a threshold matter, it cannot legitimately be claimed that creation of the NJSAA was entirely unrelated to concerns over "competition problems." Almost from the time of CSX's initial, solo tender offer for Conrail, the opening of New York City and the Northern New Jersey port areas to intramodal rail competition was widely viewed as a practical prerequisite to ultimate regulatory approval of any Conrail acquisition by another railroad or railroads.¹⁴ It is unrealistic to suggest

¹³ F.D. No. 32549, Burlington Northern Inc., Et Al. -- Control and Merger -- Santa Fe Pacific Corporation, Et Al., Decision served August 23, 1995.

¹⁴ See, e.g., "Conrail Talks Set," Traffic World, February 3, 1997 at 50; "Prospects for Negotiated Peace," Traffic World, January 27, 1997 at 8, 11; "Agency Eyes Even Split Of Conrail; Effect On Competition In East Is A Concern," The Washington Post, January 21, 1997 at C01.

that insofar as the NJSAA is concerned, "competition problems" did not drive Applicants' final proposal, at least in part.

Regardless of the precise extent to which the NJSAA as proposed by Applicants is the product of competitive concerns, the transaction now before the Board and the circumstances of New York and NYCEDC's requested relief are sufficiently unique and distinct from those at issue in UP/SP and BNSF that the dispositions of conditions requests in those cases are inapposite to a proper ruling on the merits of New York and NYCEDC's Joint Responsive Application.

First, this case does not present a straightforward consolidation of existing rail systems, which in the ordinary course would be expected to have myriad, incidental, unequal impacts on particular shippers or shipping regions. CSX and NS have undertaken a deliberate and by their own reckoning "careful"¹⁵ division of Conrail, drawing boundaries and allocating assets with specific foreknowledge of the disparate impacts on prior competitive balances. Thus, unlike the Bunge Corporation in BNSF, east-of-Hudson shippers are not simply part of an unrelated aggregate of customers incidentally disadvantaged by the inevitable consequence of a settlement agreement drawn for other purposes. Compare BNSF, at 39, 99.¹⁶ They are a discrete

¹⁵ See CSX/NS-176, Vol. 1, Narrative at VIII-7.

¹⁶ Similarly, in this case the harm that will be suffered by east-of-Hudson shippers and receivers is clear and unambiguous, unlike the circumstances presented by Bunge. See BNSF at 99; see also pp. 23-29, infra.

segment of an identifiable commercial area, that was deliberately excluded from the benefits of restored competition afforded to the larger balance of that same area.

According to Applicants' witness Kalt, 94.5% of the traffic units in the New York BEA now served solely by Conrail will have dual carrier access after the transaction.¹⁷ Though not so identified by Applicants, east-of-Hudson shippers -- the focus of New York and NYCEDC's trackage rights request -- are the distinct and obviously excluded minority within that region. Extending the benefits of competition to the remaining 5.5% of the New York BEA is a far cry from "equaliz[ing] the competitive situation" throughout the carriers' systems.¹⁸ Applicants themselves propose to equalize the competitive balance in the New York BEA -- for all but 5.5% of the traffic units. New York and NYCEDC ask only that the Board properly intervene to ensure that the process is completed.

A further, important distinction between the instant circumstances and those addressed in UP/SP and BNSF is the nature of New York and NYCEDC's interest. Doubtlessly referring to the former cases, Dr. Kalt offers two (2) reasons why carrier parties to mergers should not be forced to expand the scope of benefits voluntarily granted to particular parties:

¹⁷ CSX/NS-176, Vol. 2A, R.V.S. Kalt at 11.

¹⁸ Id., Vol. 1, Narrative at VIII-9.

First, injecting the private interests of third parties -- parties who do not have their own capital invested in an acquisition -- into pro-competitive negotiations over, e.g., the designation of shared assets, can only introduce a disharmony of interests and deter Applicants who do have their capital on the line. Second, the interjection of the private interests of third parties raises the risk that otherwise pro-competitive actions by Applicants will be sub-optimized....

CSX/NS-176, Vol. 2A, R.V.S. Kalt at 12. Neither of witness Kalt's tenets applies here. Unique among responsive applicants and commenters seeking conditions, New York and NYCEDC have invested over \$600 million in railroad capital projects in the State over the last twenty (20) years alone,¹⁹ including over \$200 million in rail facilities east of the Hudson.²⁰ Virtually all of this investment, which has provided and will continue to provide significant benefits for railroads operating in New York, was made in the interests of promoting economic development throughout the state, including, in particular, the New York City Metropolitan Area. Given their capital commitments, New York and NYCEDC's application to complete the restoration of rail competition is a far cry from the "me-tooism" that Applicants and their witness claim characterize other requests for trackage rights.²¹

¹⁹ See NYS-10, V.S. Utermark at 6.

²⁰ R.V.S. Guinan at 5.

²¹ See CSX/NS-176, R.V.S. Kalt at 6.

Likewise, New York and NYCEDC represent quintessentially public, not private interests. Though obviously supported by individual rail shippers and receivers prejudiced by Applicants' discretionary drawing of shared assets area boundaries, New York and NYCEDC's Joint Responsive Application is regional in focus. A plain reading shows that it is dedicated to the promotion and protection of transportation competition, not particular market competitors. Cf. F.T.C. v. Brown Shoe, 384 U.S. 316 (1966); CSX/NS-176, Vol. 1, Narrative at III-12.

In sum, when properly judged against the pro-competition mandate of governing statutes and Congressional pronouncements (including the FSF) relevant to the Board's evaluation of this unique transaction, New York and NYCEDC's trackage rights request meets the standard for Board imposition of conditions. It is responsive to a specific, identifiable public harm that would result directly from implementation of Applicants' plan for the division of Conrail. At its core, NYS-11/NYC-10 represents an effort by public interest advocates with a substantial capital stake in the relevant rail infrastructure to complete a competitive service restoration that Applicants themselves claim to have undertaken. Moreover, as shown in succeeding sections of this Rebuttal responding to Applicants' various oppositional claims, there are no more reasonable, effective alternatives that will bring about this result.

C. Drayage To and From the
NJSAA Is Not An Effective
Substitute for Competitive Rail Service

Turning more specifically to the situation facing east-of-Hudson shippers and receivers, Applicants argue that the availability of drayage between New York City/Long Island points and the Northern Jersey Shared Assets area effectively affords direct and proximate access to NS line-haul service. See CSX/NS-176, Vol. 1, Narrative at VIII-13. As theorized by their witness Kalt, the fact that 42% of the traffic units originating or terminating east of the Hudson are capable of moving by truck means that "any threat [by CSX] to raise prices outside the immediate vicinity of the [NJSAA] could credibly be met with a threat to terminate rail moves in the [NJSAA] and then ship by truck to eastern New York." R.V.S. Kalt at 15-17.

New York and NYCEDC submit that the realities of motor freight transportation in the New York City Metropolitan Area contradict Applicants' overly simplistic general theory. The mere fact that less than half of the commodities shipped to and from the region are physically suited to truck transportation²² does not warrant a presumption that drayage would be an effective, competitive alternative to CSX direct rail service under

²² Applicants and Dr. Kalt offer no explanation of how the purported drayage "option" benefits shippers and receivers of the remaining 58% of the studied traffic units that are not truck compatible. Absent Board intervention to restore competitive rail service, shippers of municipal solid waste such as USA Waste (see NYS-10, V.S. Christie) or receivers of forest products such as Fort Orange Paper Company (see FOPC-5), for example, victims of Applicants' selective carving of the New York rail map, are without recourse even under Applicants' theory.

the specific factual circumstances facing east-of-Hudson shippers.

As explained in detail in the accompanying Rebuttal Verified Statement of John F. Guinan, Assistant Commissioner for Passenger and Freight Transportation for the New York Department of Transportation, the principal routes that would be relied upon for drayage to and from the NJSAA are characterized by insufficient capacity and excessive congestion. Both the northern George Washington Bridge-Cross Bronx Expressway Route and the southern Goethals-Verrazano Narrows Bridge route -- the two main arteries for trans-Hudson motor freight between New Jersey and New York City/Long Island -- routinely experience volume/capacity ratios higher than .90, or near gridlock conditions. See R.V.S. Guinan at 7-11. The consequences are inefficiencies and delays that drive up the cost of motor transit precipitously; in addition to higher rates,²³ surcharges of up to \$200 per truckload destined for New York City or Long Island are typical. Id. at 4.

While Applicants and Dr. Kalt argue that the answer to the east-of-Hudson problem is increased reliance on drayage and trucking, public policy mandates all point in the opposite direction. As Mr. Guinan explains, New York has invested hundreds of millions of dollars in infrastructure designed to divert traffic away from trucks and onto other modes -- such as rail.

²³ According to one study, motor carrier costs for transit from rail terminals to east-of-Hudson points average up to \$111 per load higher if the rail terminal is on the west side of the river. See R.V.S. Guinan at 6.

The \$200 million Oak Point Link, which will enable CSX to offer more efficient, lower cost rail service, is a prominent example. Id. at 5. Another is the multi-agency Congestion Mitigation and Air Quality Improvement Program (CMAQ), under which New York and the Port Authority already have spent over \$10 million to subsidize car float operations through New York Harbor specifically to entice freight away from the Goethals-Verrazano Narrows Bridge truck route. Id. at 11. As Mr. Guinan aptly summarizes:

It is simply not logical to expect shippers to realize competitive benefits from drayage over routes so congested that the State would spend over \$200 million in an effort to divert truck traffic away.

R.V.S. Guinan at 9.

Likewise, the practical reality of New York City and the surrounding counties' status as severe non-attainment areas under the federal Clean Air Act contradicts the effectiveness of Applicants' theoretical drayage "option." As witness Guinan and Seth Kaye, Director of the New York City Mayor's Office of Transportation testify, applicable law (e.g., 42 U.S.C. §§7511, 7511a) mandates affirmative actions on the part of both New York State and New York City to adopt and implement measures to reduce motor vehicle use and congestion within the affected areas. See R.V.S. Guinan at 12-13; R.V.S. Kaye at 3-5. The stakes are high; diversion of even 500 units of drayed freight yields fuel combustion reductions that translate into significant reductions in a number of harmful emissions. R.V.S. Guinan at 12-13. New York, NYCEDC and other regional authorities have undertaken a number

of actions -- such as the development of CMAQ -- to fulfill the federal mandates,²⁴ which collectively establish a clear public policy against increased and/or long-term reliance on trans-Hudson motor carriage for freight transportation to and from New York City, Long Island and the eastern Hudson Valley counties. See R.V.S. Kaye at 4.

It is well-established in adjudications before the Board and its predecessor that the question whether motor carriage presents an effective competitive alternative to rail is a fact-based determination, made upon consideration of myriad factors including distance, time, cost relative to rail, volume of the products to be transported, and "[o]ther types of evidence on the feasibility or nonfeasibility of motor carriage as an alternative to rail." Market Dominance Determinations and Consideration of Product Competition, 365 I.C.C. 118, 133 (1981). Where transportation by truck is shown to be inefficient and subject to barriers or limitations not shared by rail, the potential competitive impact of the motor carriage "option" is

²⁴ The December 12, 1997 Draft Environmental Impact Statement issued by the Board's Section on Energy and Environment ("DEIS") preliminarily concludes that Applicants' plan for the division of Conrail will not have a meaningful net impact -- positively or negatively -- on air emissions in the regions that include the New York City Metropolitan Area. See DEIS, Vol. 1, Chapter 4 at pages 4-54 through 4-60. As noted infra, Applicants' plan does not contemplate any increase in trans-Hudson drayage or trucking to or from NS-served points in the NJSA, which is intuitively contrary to Dr. Kalt's thesis. Whatever the case, however, the preliminary conclusions in the DEIS do not change the fact that New York City and the east-of-Hudson counties already are, and after the proposed transaction would remain severe non-attainment areas, with the attendant federal mandates for action.

significantly curtailed. Cf. McGraw Edison Co. v. The Alton & Southern Railway Co., Et Al., 2 I.C.C. 2d, 102, 106 (1986); Dayton Power & Light Co. v. Louisville & Nashville R.R., 1 I.C.C. 2d 375, 383 (1985). In the case of east-of-Hudson shippers, the relevant facts and circumstances -- including available truck capacity on key routes and public transportation and environmental policy -- are stacked heavily against increased reliance on drayage and other motor freight service for the line-haul movement of commercial products into or out of the region. These factors in turn will drive up the already high cost of drayage at the same time that massive public investments (such as the Oak Point Link) facilitate reductions in the cost of rail, which already enjoys distinct economy of scale and scope advantages for most commodities. Properly considered under applicable standards, Applicants' drayage "option" cannot be found to constitute a reasonable, effective competitive alternative.

The experiences of American Marine Rail provided an excellent case-in-point. As explained by witness Klempner, AMR moves significant volumes of municipal solid waste from the New York City area to disposal sites in the south and west. These shipments move in specially-designed containers whose optimum loading weight is ideally suited to rail. If forced to truck the shipments to New Jersey, however, AMR must underload the containers in order to comply with highway and bridge weight limits. The result is more containers to ship the same amount of waste the same distance, driving up AMR's costs relative to its west

side competitors. R.V.S. Klempner at 2-3. Congestion-related delays on the trans-Hudson crossings only serve to exacerbate AMR's cost burden, to the point that motor carriage simply ceases to be a feasible competitive option. As witness Klempner describes, this lack of meaningful alternatives has

AMR's
real-world experience stands in stark contrast to Applicants' theory.

Finally, while Applicants claim a major role for drayage to and from NS in the transportation future of east-of-Hudson shippers, no such expectations were apparent from the original Application. For example, when asked how east-of-Hudson shippers could access NS line-haul service following the transaction, NS' operating plan expert Mr. Mohan cited only a cross-Harbor car float and an interline rail movement with CSX via Albany; drayage through or around Manhattan to New Jersey was not even mentioned. See Mohan Depo. Tr. at 184-87. His CSX counterpart, Mr. Orrison, expressed no concerns that Conrail-captive east side shippers would be anything but CSX-captive after the transaction, and projected no diversions whatsoever from (and considerable traffic growth on) the Hudson Line. See Orrison Depo. Tr. at 48-51; Application, Vol. 3A at 447. Similarly, NS' witness McClellan, who testified that NS would step into Conrail's shoes vis-a-vis drayage to or from New Jersey, only forecast increased NS hauls from general economic growth and

possible truck diversions; his forecast did not include traffic diversions from CSX. See McClellan Depo. Tr. at 252-56.

New York and NYCEDC submit that these witnesses' testimony is consistent with the only reasonable conclusion that can be drawn from the irrefutable traffic congestion and environmental mandates described in detail by Messrs. Guinan and Kaye: drayage to and from the NJSAA does not represent an effective, competitive alternative to CSX rail service for east-of-Hudson shippers. Applicants' challenge to New York and NYCEDC's Joint Responsive Application based on the contrary claim is without merit, and should be rejected.

D. The CP and CN Settlements
Are Not Adequate Substitutes for
Genuine Intramodal Rail Competition

Applicants next claim that the separate settlement agreements reached by CSX with CP/D&H and CN²⁵ will result in improved east-of-Hudson rail access which will allow shippers "in many circumstances, to solicit independent competitive bids from at least two railroads." CSX/NS-176, Vol. 2A, R.V.S. Jenkins at 16. The clear implication is that with these agreements in place, dual rail service via the Hudson Line is not needed in order to provide east side shippers and receivers with the benefits of competition. A review of these agreements, howev-

²⁵ CP also reached a reported settlement with NS. However, Applicants are not claiming that this settlement offers any competitive benefits to east-of-Hudson shippers. See Applicants' Initial Objections to The State of New York's Third Request for Production of Documents (CSX/NS-184) at 2.

er,²⁶ shows that they fall far short of opening the areas east of the Hudson to alternative rail service on a par with that being made available throughout the rest of the New York BEA.

The geographic coverage of the CP-CSX Rate Making Agreement (Document CSX-69-HC-000101-000110) technically includes service to New York City and Long Island. Collectively, however, the terms of the agreement will put its touted "benefits" beyond the reach of most east side shippers.

A prominent, threshold deficiency in the CSX-CP agreement is the

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roughly 130 mile haul from Selkirk to Mott Haven Junction in New York City.²⁸ As calculated by New York's witness Thomas D. Crowley and summarized in his accompanying Verified Statement,

²⁶ Both agreements, to varying degrees, offer CP or CN "access" by allowing them under certain circumstances to offer joint rates using a fixed revenue factor for the CSX portion. Copies of the CP agreement -- and the CSX revenue factor applicable to inbound service over the Hudson Line -- were produced to New York and NYCEDC in response to Motions to Compel (NYS-22 and NYS-23) and orders issued by ALJ Leventhal.

²⁷ Under the terms of Judge Leventhal's production order, only outside counsel for New York and NYCEDC were granted access to the . All other parties, including those represented by counsel on the Restricted Service List, were denied access. To comply with this restriction, the discussed in this Section are included only in the copies of the Highly Confidential version of this Rebuttal that are filed with the Board and served on CSX.

²⁸ Application, Vol. 3A at 447.

the 1995 average operating cost²⁹ for freight service over Conrail's entire system was \$1.01 per car-mile. V.S. Crowley at 2. Calculated on a full-cost basis (including all fixed costs and return on investment), the Conrail system average was \$1.45 per car-mile. Id. The base

under the CP settlement is some higher than even these generous estimates of the cost that CSX would incur in providing service from the Selkirk interchange to New York City.³⁰

Regardless of whether one views as a "reasonable" in an abstract, regulatory sense, it is obvious that if CP must include in any joint service proposal a CP's ability to compete effectively with CSX single-line service priced on the basis of that cost will be severely compromised.³¹ While conditions negotiated by CP with respect to other areas covered by its settlement with CSX may have prompted CP to accept

²⁹ 1995 is the study year used by Applicants for purposes of their own operating cost calculations and savings projections. See Application, Vol. 1, V.S. Klick.

³⁰ They are generous, inter alia, because the cost calculations are system averages that do not reflect economies that would be associated with specific types of traffic (e.g., train-load shipments of single commodities), and because CSX would not own (or need to earn a return on) the 70-mile line between Poughkeepsie and Motu Haven Junction. See NYS-11/NYC-10, V.S. Nelson.

³¹ Single-line service already enjoys general cost and efficiency advantages over joint-line operations, a fact repeatedly emphasized by Applicants. See, e.g., Application, Vol. 2A, V.S. Bryan.

for east-of-Hudson traffic, that and its relationship to CSX's own cost belies the claim that it guarantees CP effective, competitive access to New York City and Long Island.

Costs aside, there are numerous other limitations imposed by the CSX-CP settlement agreement that preclude its seriously being considered as a meaningful substitute for full service trackage rights over the Hudson Line. For example:

- * The ratemaking framework

(CSX-69-HC-000102). While it is not clear whether this reference is to commodity groups or individual consignor/consignee shipments, it plainly excludes many of the shippers that are most in need of competitive rail service,

See NYS-11/NYC-10, V.S. Christie.

- * The agreement purports to cover

-- apparently is excluded from the arrangement.

- * Under the agreement,

(CSX-69-HC-000102). Thus, CSX will have the ability (and the incentive³²) to prefer its own single-line routings over competing routes on outbound shipments, nullifying CP's supposed "access." Likewise,

means, inter alia, that will not have much of a market impact.

³² See, e.g., Docket No. 41242, Central Power & Light Co. v. Southern Pacific Transportation Co., Decision served December 31, 1996 at 6-7, appeal pending Mid-American Energy Co. v. Surface Transportation Board, No. 97-1081, et al. (8th Cir.); 49 U.S.C. §10705(a)(2); NYS-10, Argument at 13.

* CP's right to quote rates for CSX delivery

Id. If a CP transportation proposal includes elements of service guarantees, car supply or other "special features" typical of modern rail contracts,

Id.

* The agreement

presumably for its own account. (CSX-69-HC-000103). Shipments destined for NS-served U.S. points or inbound movements interchanged by CP for NS' account under those parties' separate haulage agreement³³

The effect is to deny New York City and Long Island shippers competition (from NS) for

See NYS-10, V.S. D'Arrigo.

* The CSX established under the agreement are subject to

(CSX-69-HC-000106). Particularly given the established tendency

will put corresponding, upward pressure on any joint rates made with rendering them less competitive over time even for the limited range of shippers and receivers to whose traffic the CP-CSX agreement applies.

* The agreement has no application
CSX/NS-176, Vol. 2A, R.V.S. Jenkins at 16.

no assurances whatever are given to affected shippers or the Board.

The Interchange and Through Route Agreement between CN and CSX,³⁴ while offering

in no sense can be considered an effective substitute for bona fide rail competition east of the Hudson. The agreement specifically excepts from its coverage, and offers no means by which east-of-Hudson shippers can gain access to NS line-haul service in competition with CSX. Moreover,

In short, while the settlements promoted by Applicants undoubtedly may offer benefits to the contracting parties and some of their customers and connections, any positive impact they might have for New York City, Long Island and the eastern Hudson Valley counties is vastly overstated. Certainly, they do not provide a legitimate surrogate or substitute for full access, competitive trackage rights.

E. The Trackage Rights Proposed by
New York and NYCEDC Are Economically Viable

Applicants attack their own Straw Man with the claim that traffic densities on the Hudson Line are insufficient to support service by two (2) competing carriers, as they promptly acknowledge that "[t]he prospects for acceptable densities" is

³⁴ See Document CSX 75-HC-000101-000110.

not "the test to be applied to the grant of trackage rights...." CSX/NS-176, Vol. 1, Narrative at VIII-16. In any event, their argument is in error and reflects a misunderstanding or mischaracterization of New York and NYCEDC's initial evidence.

As witness Andrew C. Robertson explains in his accompanying Rebuttal Verified Statement, the fifty (50) carloads highlighted by Applicants³⁵ represents only an estimate of the existing, Conrail carload traffic that is most likely to shift immediately to a competing rail carrier. R.V.S. Robertson at 2-3. In terms of prospective traffic, the evidence shows, inter alia, that the availability of competitive rail service to terminals east of the Hudson (such as Oak Point Yard) will promote significant diversions of intermodal traffic,³⁶ as well as increased volumes of outbound bulk shipments of commodities such as municipal solid waste. See R.V.S. Klempner at 4. Together with general growth in the demand for rail service that naturally follows the advent of bona fide competition (i.e., lower rates and improved service), this evidence clearly establishes the presence of sufficient traffic and new traffic opportunities to support competitive service by a second carrier over the Hudson Line.

³⁵ CSX/NS-176, Vol. 1, Narrative at VIII-16.

³⁶ Witness Robertson conservatively estimates that between intermodal units per year would be attracted to rail service based east of the Hudson, rather than in New Jersey. R.V.S. Robertson at 3-4.

Applicants' suggestion that the absence of a rail carrier party to NYS-11/NYC-10 means the proposal lacks "realistic economics" (CSX/NS-176, Vol. 1, Narrative at VIII-17) is equally without merit. There is no requirement under applicable precedent that a non-carrier responsive applicant have an agreement with a rail operator in hand before seeking or obtaining trackage rights in a railroad control proceeding,³⁷ and the Board in this case already has confirmed that the identity of New York and NYCEDC's trackage rights operator need not be settled before the rights themselves are granted. See Decision No. 55, served November 20, 1997 at 2; Decision No. 29, served September 11, 1997 at 2-3.

As New York and NYCEDC informed Applicants during discovery,³⁸ both CP and the New York & Atlantic Railway (NY&A) have expressed interest in conducting operations over the Hudson Line if NYS-11/NYC-10 is granted. Since that time, neither

³⁹ and a third railroad -- NECR -- has joined them as a candidate, as shown by the attached Verified Statement of NECR Vice President Greg Petersen.

³⁷ See, e.g., UP/SP at 55, 185.

³⁸ See NYS-15 at 4.

³⁹ See Document CSX-69-HC-000101-000110 (CSX-CP settlement agreement); Transcript of Proceedings, November 25, 1997 at 36-38 (stipulation regarding NY&A).

Applicants offer that CP's interest "presumably" has waned as a result of that carrier's settlement with CSX.⁴⁰ However,

and the far broader and more effective access to east-of-Hudson shippers that such rights would offer vis-a-vis the settlement⁴¹ supports the opposite assumption.

Applicants' remaining claim, that expanding NY&A's operations to include the Hudson Line would not "expand[] many horizons for the East of Hudson shippers,"⁴² makes no sense. The requested trackage rights would allow the competing carrier to serve all shippers and distribution centers located between the NY&A interchange at Fresh Pond, NY, and the CP/D&H interchanges at Selkirk and Schenectady, NY. Affording these shippers -- along with current and prospective NY&A shippers -- competitive access to CP (and thereby NS) plainly will expand their horizons beyond sole reliance on CSX, a point underscored by CSX's opposition to New York and NYCEDC's Joint Responsive Application.

⁴⁰ CSX/NS-176, Vol. 1, Narrative at 17.

⁴¹ See pp. 32-33, supra.

⁴² CSX/NS-176, Vol. 1, Narrative at VIII-17.

F. The Trackage Rights Proposed
by New York and NYCEDC Are
Operationally Feasible

Finally, almost as an aside insofar as the relief sought by New York/NYCEDC is concerned,⁴³ Applicants charge that "the proponents of trackage rights East of the Hudson fail to acknowledge, let alone address, a variety of serious physical and operational implementing problems." CSX/NS-176, Vol. 1, Narrative at VIII-18. Specifically, the Applicants cite the presence of passenger trains on the Hudson Line, and an alleged lack of yard space. Their source is the Rebuttal Verified Statement of John Orrison, the same witness who on deposition testified that the Hudson Line could accommodate as many as 50 additional freight trains a day, in peaceful co-existence with passenger trains.⁴⁴ Applicants' argument is without merit.

The operational feasibility of New York/NYCEDC's trackage rights request is addressed at length in their Joint Responsive Application. Witness Walter Schuchmann, an expert with 20 years' experience in railroad operating and related matters, testified from first-hand observation as to the capacity of the subject rail lines and yards to handle the operations of a second carrier. See NYS-11/NYC-10, V.S. Schuchmann at 3-11. His

⁴³ Only a single paragraph of this portion of Applicants' Rebuttal addresses New York/NYCEDC's trackage rights application. The balance focuses on a more complex car float/tunnel/trackage rights proposal submitted by the Hon. Jerrold Nadler and 23 Congressional colleagues. See CSX/NS-176, Vol. 1, Narrative at VIII-19-24.

⁴⁴ See Orrison Depo. Tr. at 51-52.

conclusions were concurred in by witness Donald N. Nelson, President of Metro-North Commuter Railroad, who confirmed that competitive freight service offered by a second rail carrier could be accommodated without conflict with commuter and inter-city passenger operations. Id., V.S. Nelson at 7-8.⁴⁵ Of particular relevance to Applicants' reference to Metro-North passenger trains, Mr. Nelson explained how the imminent availability of the Oak Point Link would allow freight trains to bypass the Harlem Line commuter tracks at Mott Haven Junction -- the same tracks over which the trains referred to by Mr. Orrison in his rebuttal testimony now pass.⁴⁶

Contrary to Applicants' claim, New York and NYCEDC did not ignore issues of operational feasibility raised by their trackage rights request. In fact, the comprehensive and unrebutted testimony of Messrs. Schuchmann and Nelson confirms that this prong of the Board's trackage rights condition standard is fully satisfied.

⁴⁵ Applicants acknowledge, but do not challenge, Metro-North's confirmation of its rights and willingness to negotiate a separate trackage rights agreement with New York and NYCEDC's designated operator, over the portion of the Hudson Line between Poughkeepsie and Mott Haven Junction. See CSX/NS-176, Vol. 1, Narrative at VIII-12, n.11.

⁴⁶ In this regard, it is telling that in his earlier deposition, Mr. Orrison also cited the Oak Point Link as a reason for his conclusion that the Hudson Line could handle significant additional freight traffic without undue risk to passenger service. See Orrison Depo. Tr. at 56.

CONCLUSION

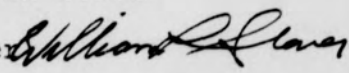
For all the reasons set forth herein and in the accompanying witness testimony, as well as in New York's and NYCEDC's Comments, Applicants' challenges to New York and NYCEDC's track-age rights condition request are without merit. Their Joint Responsive Application should be granted in its entirety.

Respectfully submitted,

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Dated: January 14, 1998

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REBUTTAL VERIFIED STATEMENT
OF
JOHN F. GUINAN

REBUTTAL VERIFIED STATEMENT
OF
JOHN F. GUINAN

My name is John F. Guinan, and I am Assistant Commissioner for Passenger and Freight Transportation of the New York State Department of Transportation. I was appointed to my position by Governor George Pataki, and have managerial responsibility for, among other things, implementation of all policies and initiatives of the State of New York in connection with rail and motor carrier freight transportation to, from or within the State.

The CSX-Norfolk Southern plan for the division of Conrail calls for CSX to take over sole operation of freight service on the Hudson Line, which runs down the east side of the Hudson River from Albany to New York City. As part of its presentation to the Board in this case, New York and the New York City Economic Development Corporation jointly have asked that any approval of the railroads' plan be conditioned on New York and NYCEDC being granted trackage rights over the Conrail lines between interchanges with the Canadian Pacific System near Albany and Poughkeepsie, and between Mott Haven Junction in the Bronx and Fresh Pond in the borough of Queens, where Conrail's line connects with the track of the Long Island Railroad. Together with similar rights obtained through negotiations with Metro-North Commuter Railroad, which controls the line between Poughkeepsie and Mott Haven Junction, these trackage rights would allow a second rail carrier to provide competitive transportation service via the Hudson Line to shippers and receivers in New York City, on Long Island, and in the New York counties east of the Hudson River and south of Albany.

I am offering this testimony in response to certain claims made by CSX and Norfolk Southern and their witness Dr. Joseph Kalt, in a statement that he filed on December 15, 1997 opposing New York and NYCEDC's trackage rights request. Addressing the needs of east-of-Hudson shippers for competitive transportation alternatives, Dr. Kalt says that the services of a second rail carrier are not necessary to accomplish this result. According to Dr. Kalt, much of the freight that moves to and from east side locations is "truckable," that is, it can be shipped by motor carrier. From this he concludes that east side shippers can use a threat to truck their freight across the Hudson to or from Norfolk Southern in the North Jersey Shared Assets Area, as a competitive lever to force CSX to moderate its rail prices and provide more responsive service. RVS Kalt, pp. 14-17.

As Assistant Commissioner for Passenger and Freight Transportation, I am thoroughly familiar with the state of surface transportation facilities and trends in southern New York, and in New York City in particular. Based upon my knowledge and experience, I believe that Dr. Kalt has made an unwarranted and unrealistic assumption about the feasibility of increased reliance on drayage or trucking as an effective, competitive alternative to dual rail service east of the Hudson River. The fact that commodities shipped to and from east-of-Hudson points may be "truckable" does not necessarily mean that trucking in this context represents a meaningful, long-term competitive option. As I shall explain, the congestion and other limitations that plague the major motor carrier routes between New Jersey and New York City/Long Island,

together with the region's status as a "severe non-attainment area" under federal clean air laws, provide major and costly disincentives to greater freight motor carrier use. I believe that these disincentives by no means will be lost on CSX, and will all but neutralize any "leverage" of the sort described by Dr. Kalt.

TRANS-HUDSON
FREIGHT MOTOR CARRIER ROUTE CONGESTION

Motor freight travelling between Northern New Jersey and New York City/Long Island essentially must follow one of three route paths: (1) over the George Washington Bridge north of Manhattan to the Cross Bronx Expressway and beyond; (2) over the Goethals Bridge and Staten Island to the Verrazano Narrows Bridge south of Manhattan, thence to Brooklyn and Queens; or (3) through either the Holland Tunnel (from Jersey City) or the Lincoln Tunnel (from Union City) under the Hudson and into Manhattan. Each of these routes is depicted on my Exhibit ____ (JFG-1), attached hereto.

Traffic congestion in the greater New York Metropolitan Area -- particularly the bridges and tunnels -- long has been a major constraint to full economic development of the region. Area-wide, trucks, buses and automobiles are moving at volumes that approach available lane capacity for more than 18 hours of each 24-hour day. The lost productivity associated with delays in trans-Hudson truck traffic is reflected in the surcharges often imposed by truckload carriers -- up to \$200 per load for

movements with destinations in New York City or on Long Island.

A common measure of traffic congestion is known as the volume-to-capacity or "VC" ratio, which is the ratio of the amount of traffic moving over a particular road segment or bridge lane during a given period to the design capacity of the road or bridge lane. A ratio higher than .50 indicates growing congestion; a ratio of 1.0 or more can mean near-gridlock. The New York area is unparalleled in terms of the 24-hour VC ratios observed on the trans-Hudson crossings. For the crossings controlled by the Port Authority, which include the George Washington Bridge and Holland and Lincoln Tunnels, the total VC ratio over an entire 24-hour period was .49 in one comprehensive study. By comparison, the total VC ratio for most other cities with water crossings subject to periodic congestion rarely exceeds .30. Note that these are total ratios for an entire day; as I discuss later in my Statement and as my Exhibit ____ (JFG-1) shows, the VC ratios for New York crossings during peak use periods -- which include the times in which much drayed or truckload freight would be on the road -- are significantly higher than these 24-hour totals.

Each year, almost \$95 million is spent by the Port Authority on bridge repairs, maintenance and capital projects. In addition the State and City of New York spend approximately \$40 million and \$30 million, respectively, on bridges. According to the Association of American State Highway and Transportation Officials, a truck is the equivalent of six (6) automobiles in terms of its impact on traffic streams and

infrastructure. At normal traffic growth rates (1.9% per year, on average in the New York area), a new traffic lane must be added to the Hudson crossings every ten (10) years just to maintain current service levels. By way of reference, the last major addition was the second level of the George Washington Bridge: six (6) lanes at an average cost of over \$110 million per lane.

Given these stark realities, for decades the focus of New York transportation policy development for the downstate region in general -- and the Hudson crossings in and around New York City in particular -- has been on ways to reduce reliance on motor freight transportation, not increase it. Studies conducted in connection with State-funded construction of the Oak Point Link -- a \$200 million facility designed to divert east-of-Hudson drayed and truckload freight to direct rail -- showed that if even 500 trucks could be so diverted, virtually all of them would be removed from morning and evening peak traffic periods. With 500 trucks the equivalent of 3000 automobiles, at an average speed of 20 mph the diversion would represent an entire lane of auto or bus traffic (each lane has a capacity of about 1600 autos per hour). The impact is even greater as assumed speed is reduced. In terms of societal costs, the Oak Point Link studies showed significant savings in terms of maintenance, congestion, emissions and noise resulting from the removal of 500 trucks from the daily trans-Hudson traffic flow. The same statistics, which are summarized in the table below, would apply in reverse --

showing added costs -- if truck movements were to be increased above study levels:

Summary of Avoided
Round Trip Costs by Truck (1993 Dollars)

East side terminal:	Bronx	Bay Ridge	Deer Park
Maintenance	125.28	180.96	334.08
Congestion	57.18	82.59	100.98
Emissions	1.60	2.32	4.27
Noise	3.24	4.68	8.64
Administrative	0.25	0.36	0.67
Total	187.55	270.91	448.65
Fees	- 4.32	- 6.24	-11.52
Savings per Movement	183.23	264.67	437.13

Source: Oak Point Link, Identification of Specific Market Opportunities, Task 2 Report, August, 1993, p. 5-12..

The burdens and costs of trans-Hudson crossings congestion are reflected in transportation charges as well. The Oak Point Link studies showed that on average, motor freight charges between rail terminals and shippers/receivers in New York City and on Long Island are up to \$111 per load higher if the rail terminal is on the west side of the Hudson. The Bi-State Transportation Forum found that the cost of motor freight transit from northern New Jersey to Long Island was comparable to the cost of transportation from New Jersey to Pittsburgh, some 300 miles farther away.

The general profile of motor transport congestion along the trans-Hudson routes in the New York Metropolitan Area, and the clear public policy focus on reducing freight vehicle traffic whenever possible, contradict Dr. Kalt's rather abstract conclusion that drayage or truckload motor carrier service to and from Northern New Jersey presents an effective, long-term source of competitive leverage for east-of-Hudson

shippers. The prospect becomes even less realistic, however, as one focuses on the specific congestion problems that afflict the few, key crossings upon which these shippers would have to rely.

The two (2) tunnels into Manhattan from New Jersey -- the Lincoln Tunnel and Holland Tunnel -- have restricted overhead clearances, and in the eastbound direction empty onto local, midtown streets. These features effectively would limit their utility as an efficient, cross-Hudson drayage route, even if they were not severely congested with passenger traffic. As a practical matter, then, east side shippers looking to drayage as a competitive option would look to two (2) bridge routes: the northern George Washington Bridge - Cross Bronx Expressway route, and the southern Goethals - Verrazano Narrows Bridge route. I will review the traffic characteristics of each, in turn.

1. The George Washington Bridge Route

The George Washington Bridge, which connects Fort Lee, New Jersey to northern Manhattan, has two (2) levels and carries the largest volume of trans-Hudson traffic -- over 130,000 vehicles per day (including almost 30,000 trucks). Some twenty-five percent (25%) of the daily truck volume moves eastbound during the morning peak period (6:00 to 10:00 a.m.).

The upper deck of the bridge has four (4) lanes in each direction, and the lower deck three (3). With a lane capacity of 1,900 passenger cars per hour ("pcph"), or about 320 trucks, there is an approximate capacity of 7,600 pcph on the upper level and 5,700 pcph on the lower level. As measured by toll plaza throughput, traffic volume on

the upper level during peak periods is approximately 7,300 pcph, or a VC ratio of .96. On the lower deck, measured peak volumes are approximately 4,700, producing a VC ratio of over .82. Particularly on the upper level, these are near gridlock conditions under "normal" circumstances. An accident or other flow interruption would cause a complete breakdown and bring traffic to a standstill.

The situation is perhaps even worse on the Cross Bronx Expressway, which carries bridge traffic to and from connecting routes to Long Island and New England. Built in the 1940s, the CBE was designed to minimize the need to remove standing buildings. As a result, it suffers from a number of physical constraints that keep VC ratios at or near 1.0 over virtually its entire length. These constraints, which affect truck traffic even more than autos, include the following:

- * Most exits are signal controlled at intersections with local streets, leading to timing delays.
- * The CBE has numerous underpasses and tunnels with poor illumination and limited horizontal clearances.
- * None of the CBE's viaducts and underpasses have shoulder or breakdown lanes.
- * Entrance and exit ramps have inadequate acceleration and deceleration lengths, as well as poor sight distances.
- * Service roads are not continuous along the CBE, limiting truck bypass options.

As I noted earlier in my Statement, the current and forecast conditions of severe congestion on truck routes such as the George Washington Bridge - CBE were some of the key factors supporting construction of the Oak Point Link, a \$200 million facility which under the CSX-Norfolk Southern plan would enable CSX to achieve

greater efficiencies in rail movements to and from east-of-Hudson points. It simply is not logical to expect shippers to realize competitive benefits from drayage over routes so congested that the State would spend over \$200 million in an effort to divert truck traffic away.

2. The Goethals - Verrazano Narrows Bridge Route

Reflecting the era when it was designed and built, the Goethals Bridge has two (2) 10-foot lanes in each direction, tight lateral clearances and no shoulders. The Verrazano Narrows Bridge, which carries Interstate 278 between Staten Island and Brooklyn, has six (6) lanes in each direction. Both bridges have steep grades to clear the ship channels. According to a 1997 Coast Guard study, approximately forty percent (40%) of the trips made across these bridges are through trips between New Jersey and the four (4) Long Island counties.

During the morning peak period, when trucks comprise almost 20% of the traffic, the theoretical capacity of the Goethals Bridge is 2,450 vehicles per hour. Traffic flows throughout the peak period average 2,254 vehicles per hour westbound and 1,757 vehicles per hour eastbound, for average VC ratios of .92 and .72, respectively. During peak hours, however, these congested conditions grow even worse, with a VC ratio of over 1.15 experienced between 7:00 am and 8:00 am. During the evening peak, capacity increases to 2,590 vehicles per hour as the percentage of trucks declines slightly. Still, however, eastbound volumes average 2,686 vehicles per hour, for an average VC ratio of 1.04.

An alternative measure of the quality of traffic service over a route segment is the "level-of-service" or LOS parameter. As defined by the Transportation Research Board, LOS ranges from level "A" to level "F," where LOS-A indicates free-flowing traffic conditions with high speeds, and LOS-F describes breakdown conditions with excessive congestion. LOS-C indicates stable traffic and is generally used as an optimal design objective, while LOS-E is defined as the theoretical capacity of the roadway. According to the 1997 Coast Guard study, the Goethals Bridge averages LOS-E during the evening, and both morning and evening periods experience LOS-F during individual peak hours. As with the Cross Bronx Expressway described above, narrower lanes, the lack of shoulder lanes, span grades, and other physical limitations combine with volume to produce these congested conditions.

At the other end of the southern New Jersey - Long Island route is the Verrazano Narrows Bridge and connecting I-278 corridor, the only truck route from the bridge to Brooklyn and the other Long Island counties. State transportation studies conducted since 1990 show that virtually all of I-278 flows at a VC ratio greater than 1.0. The bridge itself and its connecting ramps show eastbound average traffic peaks of 7,890 vehicles during morning hours, and westbound average peaks of 7,520 during the evening rush. Aerial surveys conducted during peak hours confirm LOS-F conditions in both directions.

As is the case with the George Washington Bridge Route, the congestion conditions that afflict the southern crossing route (particularly during the peak periods) undermine legitimate reliance on increased drayage or other motor transit between

New York City/Long Island and Northern New Jersey as an effective, competitive alternative to CSX rail service, a service which will only become less costly and more efficient as the Oak Point Link comes into full use. In fact, as with the Oak Point Link, New York has made major investments in efforts to reduce truck traffic over this route. Under a comprehensive Congestion Mitigation and Air Quality Improvement Program developed in cooperation with other regional authorities, through 1996 the State and Port Authority had invested over \$10 million to subsidize car float facilities and operations across New York Harbor. This investment was made specifically to divert otherwise drayd freight away from the overcrowded trans-Hudson bridge system, particularly the Goethals - Verrazano Narrows Bridge Route.

ENVIRONMENTAL RESTRICTIONS IN THE NEW YORK CITY AREA

All eight (8) counties within the New York Metropolitan Area are classified as "severe non-attainment areas" for purposes of the federal Clean Air Act. The mandates of this law also contradict a strategy of increased reliance on motor carrier freight transportation as an effective alternative to efficient rail service.

Broadly summarized, the federal mandates for severe non-attainment areas require states and localities to adopt measures to offset new air emissions, and to maintain enhanced motor vehicle monitoring and transportation control measures specifically directed toward reducing vehicle miles and congestion. Failure to comply satisfactorily with this mandate can lead to a loss of valuable federal highway grants, and/or a draconian requirement that new emissions sources offset current emissions on a

2-to-1 basis.

The State of New York takes seriously its commitment to improved urban air quality, and its responsibilities with respect to the severe non-attainment status of Kings, Nassau, Queens, Bronx and other downstate counties. To this end, the State has undertaken a number of steps, including those which I have described, to assist New York City in reducing motor vehicle transit and congestion. Studies conducted for the Oak Point Link, for example, showed that the diversion of 500 units of drayed freight to direct rail delivery east of the Hudson would save almost 5,000,000 gallons of fuel annually. This, in turn, would reduce air emissions by: 2,000,000 pounds of nitrogen oxide; 6,000,000 pounds of carbon monoxide; 423,000 pounds of hydrocarbons; 174,000 pounds of particulates; and 109,000,000 pounds of carbon dioxide.

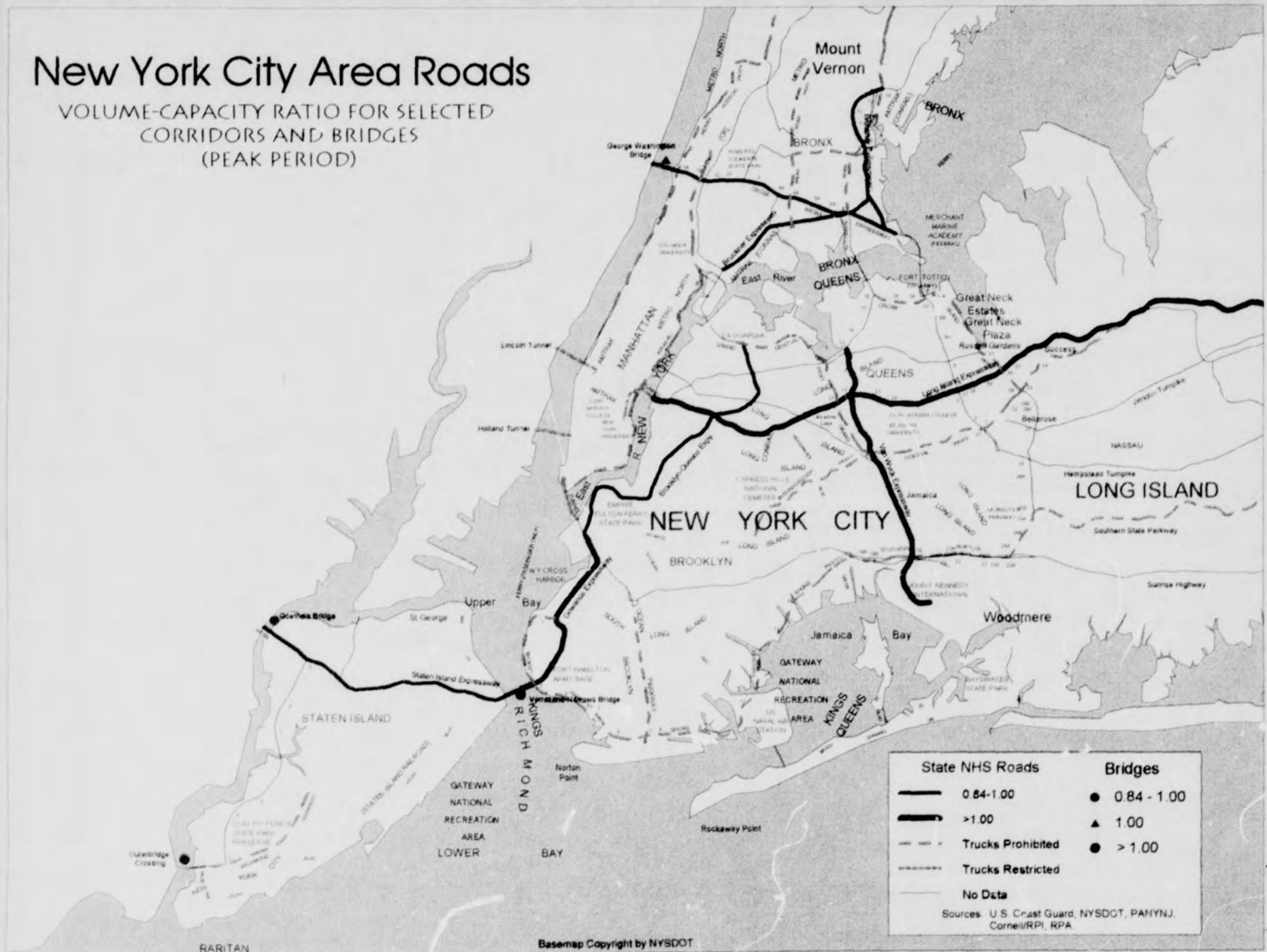
Emissions reductions of this magnitude offer New York opportunities to make major strides toward achieving its air emissions goals. Increased, long-term reliance on motor carriage for trans-Hudson freight transportation is flatly inconsistent with these much-publicized public policy priorities. This inconsistency is another, significant reason why it is not realistic to expect that trans-Hudson drayage will represent a meaningful, competitive alternative for east-of-Hudson shippers to CSX rail service to and from more local terminals. Indeed, environmentally-related freight motor vehicle surcharges or other fees could become more prevalent if the State and local authorities are forced to seek to enact more disincentives to continued reliance on drayage and trucking to or from Northern New Jersey points.

To conclude, in my opinion the realities of trans-Hudson motor carriage in

the New York Metropolitan Area, with the associated facilities congestion, delays, environmental degradations and resulting costs, dispel Dr. Kalt's general thesis concerning the viability of this "option" as a real competitive alternative to CSX rail service. If CSX and Norfolk Southern's plan for the division of Conrail is to be approved, only a condition that brings true, dual carrier rail service to shippers and receivers east of the Hudson will provide an effective antidote to what otherwise would be a CSX transportation monopoly.

New York City Area Roads

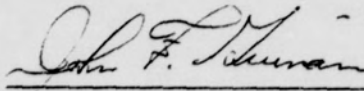
VOLUME-CAPACITY RATIO FOR SELECTED
CORRIDORS AND BRIDGES
(PEAK PERIOD)



Verification


State of New York)
)
) ss:
)
County of Albany)

John F. Guinan, being duly sworn, deposes and says that he has read the foregoing Statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.



John F. Guinan

Subscribed and sworn to before
me this 12 day of January,
1998:



Notary Public in and for the State
of New York

CHARLOTTE BELAK
Notary Public, State of New York
No. 4812518
Qualified in Rensselaer County
Commission Expires 1-31-99

REBUTTAL VERIFIED STATEMENT
OF
SETH KAYE

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

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

**REBUTTAL VERIFIED STATEMENT OF
SETH O. KAYE**

I am Seth O. Kaye, Director of the Mayor's Office of Transportation for the City of New York. In that capacity, I am responsible for coordinating the City's policy on a variety of transportation issues, including aviation, surface transportation, maritime activity, and freight movement. I have also been involved in ensuring that air quality issues are considered in the development of the City's transportation policy. In the formulation of transportation initiatives and related issues, the City places a strong emphasis on creating an environment that is both hospitable to business and that improves the quality of life in New York City. With this in mind, the Mayor's Office of Transportation is very concerned about the impacts of freight movement into and out of New York City.

Nearly 50,000 trucks cross the City's bridges and tunnels daily. These trucks are then routed on only three major truck routes that must provide access to the New York City, Long Island, and Southern New England markets. Endemic traffic

congestion, air pollution, and infrastructure deterioration are some obvious symptoms of this access problem. Given that New York City is accessible to people and goods by only a limited number of bridges and tunnels, rail freight access offers the best alternative for the fast, efficient, and economical movement of goods. To this end, the Mayor's Office of Transportation has been working with NYCEDC in its effort to prevent the expected negative impacts of not providing competition on the Hudson Line. It is important to understand that the impacts of encouraging further truck movements to northern New Jersey for the benefit of competitive rail access is a serious concern for the City with respect to economic development and improving air quality. In recognizing the impact of transportation policy on air quality, the City is concerned that the lack of competitive rail access to New York City will hinder its efforts to improve air quality and to come into compliance with the Clean Air Act.

Pursuant to the Clean Air Act, the United States Environmental Protection Agency ("EPA") has promulgated National Ambient Air Quality Standards ("NAAQS") for six pollutants. Those six pollutants -- known as "criteria pollutants" -- are ozone, carbon monoxide, particulate matter, sulfur dioxide, nitrogen dioxide, and lead. The NAAQS specify the maximum concentrations for each pollutant in the ambient air that EPA has deemed to be adequately protective of human health. As required by the Clean Air Act, for each pollutant, EPA has classified each area in which the pollutant concentration exceeds the applicable NAAQS based on the severity of the pollution. Based on these classifications, the Clean Air Act prescribes certain control measures and establishes deadlines by which each non-

attainment area must come into attainment. The Clean Air Act further provides for sanctions for failure to reach attainment by the applicable deadlines.

The Clean Air Act also requires that each state develop and submit to EPA for approval a State Implementation Plan ("SIP"). The SIP sets forth what measures -- including those mandatory measures prescribed by the Act -- the state will undertake to attain the NAAQS.

EPA has designated the City or a portion of the City as being in non-attainment with three of the six criteria pollutants -- ozone, carbon monoxide, and particulate matter. All three of these pollutants may pose serious threats to human health. Ozone is an irritant that is believed to cause permanent damage to human lung tissue. It particularly affects the young, the elderly, and those suffering from asthma and other respiratory diseases. Carbon monoxide bonds strongly with hemoglobin in the blood, impairs mental functions and fetal development, and aggravates cardiovascular diseases. Particulate matter less than ten microns in diameter ("PM₁₀") can be inhaled into the lungs and can cause respiratory problems.

The City is part of the New York Metropolitan Area ("NYMA"), which EPA has designated as a severe non-attainment area for ozone.¹ Because the City is in severe non-attainment for ozone, the City must reduce emissions so as to attain the NAAQS for ozone by 2007. As a severe non-attainment area, the City must also achieve steady interim reductions in ozone before 2007 so that it will be able to attain the NAAQS by 2007. The NYMA was required to reduce volatile organic

¹ The Clean Air Act sets forth five non-attainment classifications for ozone based on the severity of the ozone pollution: marginal, moderate, serious, severe, and extreme.

compounds -- an ozone precursor -- by 15 percent by 1996 and must further reduce volatile organic compounds by an additional three percent for each year between 1996 and 2007. The Clean Air Act also requires reductions in nitrogen oxides -- another ozone precursor.

Trucks and other motor vehicles are a major source of ozone precursors in New York City. For example, in its Proposed Revision to the New York SIP dated March 1997, the New York State Department of Environmental Conservation indicates that in 1990, motor vehicles were responsible for 43 percent of the total emissions of volatile organic compounds and 43 percent of the total emissions of nitrogen oxides in the NYMA. Moreover, heavy duty diesel vehicles are responsible for a disproportionately large share of the emissions of nitrogen oxides from on-road vehicles in the NYMA.

Among the measures undertaken by the City and State to reduce ozone pollution are preconstruction review and stringent controls on stationary sources, more stringent vehicle inspection and maintenance programs, reformulated fuels, and reformulated consumer products (such as paints, hairsprays, and deodorants).

The City also suffers from carbon monoxide pollution. EPA has classified the City as a moderate non-attainment area for carbon monoxide.² Motor vehicles are a large contributor to the City's carbon monoxide pollution problem. The City and State have made efforts to reduce carbon monoxide emissions by conducting preconstruction review of proposed projects to ensure compliance with the carbon monoxide standards, implementing traffic control measures and measures to reduce

² The Clean Air Act sets forth two classifications for both carbon monoxide and particulate matter non-attainment areas: moderate and serious.

vehicle miles travelled, and controlling stationary sources of carbon monoxide, among other things.

Finally, New York County (Manhattan) has been designated by EPA as a moderate non-attainment area for PM₁₀. Diesel engines (such as those used in trucks that would likely be used to transport goods to rail lines across the Hudson River) are a major source of particulate pollutants.

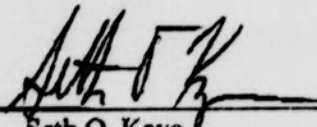
Compliance with the ozone and particulate matter NAAQS may become more difficult in the future because EPA has recently promulgated stricter NAAQS for both pollutants based on a review of scientific data to determine whether the existing NAAQS are sufficiently protective of public health. The stricter ozone and particulate matter NAAQS may require the City and State to take additional measures to come into compliance.

As set forth above, motor vehicle emissions are major contributors to ozone, carbon monoxide, and particulate matter pollution in New York City. The need for additional truck trips in the City in order to carry goods to New Jersey will likely impede efforts to improve the City's air quality. Moreover, the added congestion that may be caused by increased truck trips could increase the emissions attributable to idling vehicles.

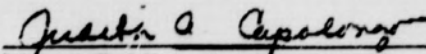
In sum, reliance on motor carrier freight transportation between New York City and Northern New Jersey will have a negative impact upon the City from both an economic perspective, as well as an air quality perspective. For that reason, NYCEDC's Responsive Application, which is designed to relieve motor vehicle congestion by offering freight shippers competitive rail service along the East side of the Hudson River, should be approved.

VERIFICATION

I, Seth O. Kaye, verify under penalty of perjury that I have reviewed the foregoing Rebuttal Verified Statement, and that all of the facts stated therein are true and correct. Further, I certify that I am qualified and authorized to verify and file this Rebuttal Verified Statement on this 14th day of January, 1998.


Seth O. Kaye

Subscribed and sworn to
before this 14th
day of January 1998.


~~Notary Public~~ Commissioner of Deeds

~~My commission expires:~~

JUDITH A. CAPOLOGO
Commissioner of Deeds, City of New York
No. 5-1425
Cert. Filed in New York County
Commission Expires October 23, 1999

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REBUTTAL VERIFIED STATEMENT
OF
RONALD KLEMPNER

PUBLIC VERSION

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

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

REBUTTAL VERIFIED STATEMENT OF RONALD KLEMPNER

I am Ronald Klempner, Manager of American Marine Rail, LLC ("AMR"). My main office is at 843 Red Road, Teaneck, New Jersey 07666. I am submitting this Verified Statement in support of the Responsive Application of the New York City Economic Development Corporation ("NYCEDC") and New York State ("NYS" or "the State") for trackage rights in favor of a second rail carrier over the lines of railroad on the East Side of the Hudson River between Fresh Pond in New York City and Selkirk Yard. My company is in the business of shipping solid waste by rail to the West and South, and by rail around the East Coast from our facility that is adjacent to Oak Point Yard in the Bronx.

I have worked on issues related to transportation of liquid, hazardous, chemical, medical and solid waste for a total of seven (7) - eight (8) years. In my work before joining AMR, I

was personally responsible for arranging for rail shipments of various waste materials from New York City and surrounding areas for one of the nation's leading waste companies. In both my current and previous capacity, I had extensive experience with Conrail, CSX, Norfolk Southern and a number of short and regional rail lines. Prior to both experiences, I was associated with the law firm of Kassel, Newirth and Geiger in New York, a firm which has since merged with Morgan, Lewis & Bockius.

NYCEDC and NYS are correct that we need another way of securing direct rail access for shippers on the East Side of the Hudson River and New York Harbor; CSX and Norfolk Southern are wrong to suggest that direct rail competition is not necessary. It is. Trucking our product from our facility near Oak Point in the Bronx to New Jersey is not a meaningful option. The cost is much higher, and the increased pollution that will result from the increased truck traffic will burden an area -- the Bronx -- that is already one of the most severe non-attainment areas due to the congestion of truck traffic that exists on the area's highways.

First, let me explain why trucking is not a real option for my company. To get out of the Bronx for movement south, we have no option other than the George Washington Bridge. The bridge, and highways and arteries leading to the bridge, however, are often congested with Northeast traffic and rush hour traffic. To move our shipments by truck to Newark rather than all the way by rail is more expensive, as we can not use the containers as efficiently. When shipping by rail all the way, we can maximize the weights in and volumes of the containers and fewer containers are required. On the other hand, when shipping by truck, we must comply with lower highway and road bridge weight and width restrictions. It takes approximately six (6) times as many trucks than rail cars, or 250 times as many trucks than "unit trains," to move

the waste we will handle.

To me, it is clear that my company will suffer a loss of competitive alternatives for shipment to the south, no matter what CSX and Norfolk Southern say about the presence of competition in New Jersey. Currently, with Conrail taking our shipments south, there are two alternatives for the all-rail moves we prefer -- Conrail can deliver to CSX at Washington, D.C. or to Norfolk Southern at Hagerstown, Maryland. As a result, we can now negotiate rates and the other issues that arise in the context of arranging for rail transportation. If this transaction is approved, CSX will have the ability to favor its own route for movements to the south. If CSX is the only direct rail service to the south, our negotiating leverage will be substantially reduced.

At first, my fears about the loss of ability to negotiate reasonable rates and transportation terms were based only on my general understanding of the market that I have been working in for several years. However, a recent experience with CSX confirmed that my worst fears would be realized if CSX gained the sole ability to provide single line service for our shipments. Previously, I have obtained quotes from Conrail for movements of fewer than five (5) cars per day (in customer provided cars) which ranged from per ton for movements of 350 to 500 miles involving numerous yard transfers and some steep grades (especially in Northwestern Pennsylvania). Recently, I sought a quote from Conrail for a unit train of 60 or more cars of waste moving in my own cars that would commence after the proposed transaction is completed, to a destination less than 485 miles away with no grades. The Conrail marketing person directed me to CSX since CSX is slated to acquire that particular destination point. At first, CSX quoted a rate of almost per ton, and refused to quote a unit train rate which I understand Norfolk

Southern has frequently provided in the past. Because of economies of scale, lack of yard transfer requirements and other efficiencies, it has been my experience that unit train pricing can be less than one-half of the rate for single cars or small groups of cars. When I questioned CSX's marketing representative, her first response was that I could resort to trucks if I did not like the company's rates. She then refused to discuss future rates on advice of counsel.

The outbound transportation of municipal solid waste from New York City and the surrounding area has enormous growth potential in the coming years, particularly with the looming closure of the Fresh Kill land fill in Staten Island. However, the consummation of this transaction, as proposed, and the absence of competitive rail alternatives east of the Hudson does not present an attractive picture for our industry in the New York City area, where shipment by rail is the most efficient and safest means of transportation. Closure of Fresh Kill will mean that approximately 11,700 tons of waste per day, 6 days per week will require transportation elsewhere. That is approximately 585 trucks per day, or 3,510 trucks per week. If CSX does not have competition for rail service and all of this waste is forced to be trucked to New Jersey, the cost will be enormous and the emissions from the trucks will increase substantially.

Contrary to what I understand CSX and Norfolk Southern have said in their reply to the NYCEDC and the State's application, trucking is not a meaningful, long-term option for municipal waste transportation, and there does exist a real, serious need for a second rail carrier to serve directly the markets on the east side of the Hudson River and New York Harbor. American Marine Rail, like other shippers in that market, will be best served if the STB approves the joint NYCEDC/NYS application.

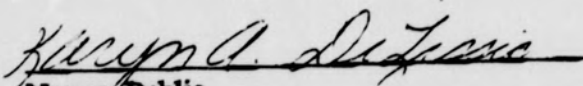
VERIFICATION

I, Ronald Klempner, verify under penalty of perjury that I have reviewed the foregoing Rebuttal Verified Statement, and that all of the facts stated therein are true and correct. Further, I certify that I am qualified and authorized to verify and file this Rebuttal Verified Statement.

Executed on this 13th day of January, 1998.


Ronald Klempner

Subscribed and sworn to
before me this 13
day of January, 1998.


Notary Public

My commission expires:

KARYN A DeLISSIO
Notary Public of New Jersey
My Commission Expires October 4, 2000

953640-1

REBUTTAL VERIFIED STATEMENT
OF
ANDREW C. ROBERTSON

PUBLIC VERSION

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

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

SUPPLEMENTAL VERIFIED STATEMENT OF ANDREW C. ROBERTSON

My name is Andrew C. Robertson. I previously submitted testimony in support of the State of New York and the New York City Economic Development Corporation's request to the STB to condition the proposed acquisition of Conrail by CSX and Norfolk Southern on the provision of third-party competitive rail service on the East Side of the Hudson through full service trackage rights. My testimony included an analysis of the current and immediately prospective carload rail traffic in the New York area that would be available to a new competitor on the East Side line. I determined that the traffic base on the East Side of the Hudson is large enough to support two competitors.

In their rebuttal, the CSX-NS witnesses made several objections to New York and NYCEDC's request. Applicants claim that adequate traffic does not now exist on the East Side of the Hudson to support two viable carriers (RVS Orrison, p.124). Further, to the extent that new rail traffic growth potential exists in New York, Applicants argue

that CSX will be motivated by the presence of NS in New Jersey to aggressively compete for it through lower rates and better service, and that a second rail carrier on the east side therefore is unnecessary (RVS Kalt, p.17). The purpose of this Rebuttal Statement is to respond to these claims, which I find to be without merit.

In my earlier verified statement, I carefully analyzed Conrail's existing rail carload traffic in New York and New Jersey. Assuming some diversion from CSX and NS at New Jersey points and aggressive marketing typical of most new entrants by the carrier that will operate the trackage rights the City and State are seeking here, I identified enough existing rail carload traffic to support daily train service to New York. Put another way, my analysis looked only for traffic currently moving by rail that conservatively could be characterized as likely for immediate diversion. In this respect, Applicants apparently misunderstood the scope of my analysis. My volume estimates did not presuppose additional rail traffic growth that could be expected with the return of vigorous rail competition to New York. Nor did I make assumptions regarding intermodal traffic diversions or the potentially greater diversions from CSX that would result once the new carrier became an established market participant. In suggesting that my earlier testimony somehow "conced[ed] the prospect of low traffic density" (Narrative, p.VIII-16), Applicants mischaracterize my purpose and conclusions.

In preparation for this Rebuttal Statement, I returned to the 1996 Conrail traffic files submitted by Applicants to review intermodal traffic in the region and estimate the intermodal potential for a new carrier in New York. Conrail today only moves rail intermodal traffic through its terminals in Northern New Jersey. Applicants have admitted that a substantial part of that traffic is then drayed across the Hudson to New York shippers (RVS Kalt, p.17). Because of proximity, a New York-based intermodal

service in the Bronx or on Long Island would have a significant economic advantage over NS and CSX operations in Northern New Jersey, a point confirmed by the data shown in New York witness John Guinan's Rebuttal Statement. Therefore, considerable diversions to a new intermodal competitor are likely. My first step was to isolate existing Conrail intermodal traffic in New Jersey that could move efficiently by rail over the East Side Line to New York. I eliminated all Conrail intermodal traffic to and from the Southeast, and to or from NS, CSX and Conrail-served points. It is likely that much of Conrail's existing traffic to and from New York will continue to move through New Jersey terminals simply because NS and CSX will command the best routes to the region, and will control any joint line pricing by virtue of their route dominance. I assume 100% of that traffic will remain with CSX and NS, which is conservative given the strong potential for alliances between the trackage rights carrier and NS to offer competition for CSX. Nonetheless, almost trailers move beyond NS-CSX-CR territory to/from points north and west of New York. Given the recognized cost advantages of rail over motor carriage that Applicants repeatedly cite, this potential traffic would be available to the new carrier. Using the assumptions from my previous study that 10% of Conrail's New Jersey traffic is actually originated or terminated in New York, the new carrier could attract between trailers per year to a new east side intermodal service.

Additionally, growth in intermodal (especially in the Bronx) is highly likely if the new carrier can provide competitive service to the Chicago gateway and connections to UP and BNSF. Mr. Anthony Riccio, who previously submitted a verified statement in this case, has testified that major shippers of California produce to Hunts Point Market in the Bronx are prepared to shift traffic from truck and New Jersey-based

intermodal service to a Bronx-based intermodal terminal if competitive rail service is available. Studies performed for New York in connection with construction of the Oak Point Link which are referenced in Mr. Guinan's rebuttal testimony, confirm potential for growth. Small package consolidators and LTL motor carriers, as well as shippers of municipal solid waste (such as American Marine Rail, whose manager also has submitted testimony favoring trackage rights), would supply outbound volumes to balance the inbound moves of fresh fruits and vegetables. In contrast to Applicants' statements, there is indeed a substantial base of rail carload and intermodal traffic that logically and profitably could be captured by a New York-based competitor. Furthermore, forecasts of additional traffic growth are not speculative; major shippers are now prepared to support competitive rail service if it is initiated.

My analysis supports the conclusion that there is enough existing and potential rail carload and intermodal traffic to support a new competitor in New York. CSX witness Kalt claims that most New York traffic can be served by drayage from intermodal facilities in the North Jersey Shared Assets Area because it is "non-bulk" in nature (RVS Kalt p.17). He does not address the traffic of those shippers of bulk freight that will not be able to rely on trucking to NS to check CSX. The statement of Ronald Klempner of AMR submitted with this filing is a clear indication of the difficulties New York shippers of bulk commodities will face without vigorous rail competition.

As Kalt assures us, CSX will be motivated to serve new sources of New York traffic only if it feels that its marginal revenues will surpass its marginal expense. With its major commitment to New Jersey, CSX logically will try to maximize the use of those assets while minimizing its investment in New York. Given the choice for serving intermodal traffic from existing New Jersey terminals or new New York facilities, CSX

will have the incentive to do exactly as Conrail has done. While a New York based operation may have traffic potential not available to CSX's New Jersey terminals, and would be attractive to a new market entrant, it is reasonable to conclude that CSX's incremental revenues from this traffic may not surpass the fixed costs of building and operating facilities in New York to compete with CSX's own New Jersey terminals. The duopoly in North Jersey means that CSX and NS will have essentially the same cost structure and little motivation to compete for New York traffic, other perhaps than traffic handed to them on the west side of the Hudson before or after a costly truck trip over congested Hudson crossings. A new competitor in New York will not have the monopolist's choice; its revenues are entirely dependent on its commitment to maintaining and operating facilities in New York. With two New York rail competitors, economics of competition will maximize the use of rail transport, a low cost transportation alternative with major benefits to New York's economy.

It is my conclusion that New York's market can support two rail competitors east of the Hudson River, especially if one of those carriers had its primary operations for the region located in New York. Without direct competition in New York, CSX will be motivated by economics to limit rail service on the East side of the Hudson and to maximize use of its larger New Jersey facilities with transload and drayage. In his testimony, Mr. Guinan explains in detail the many reasons why this scenario is an inadequate and ineffective option from the State, City and shippers' perspectives. Consequently, New York shippers can anticipate a continuation of present levels of subpar service now offered by Conrail. Only the addition of a new and independent competitor on the East Side of the Hudson will ensure that New York receives the economic and environmental advantages of rail service.

VERIFICATION

I, Andrew C. Robertson, verify under penalty of perjury that I have reviewed the foregoing Supplemental Verified Statement, and that all of the facts stated therein are true and correct. Further, I certify that I am qualified and authorized to verify and file this Supplemental Verified Statement. Executed on this 13 day of

January, 1998.

Andrew C Robertson
Andrew C. Robertson

Subscribed and sworn to
before me this 13
day of January, 1998.

Arthur Jay Teichberg
Notary Public

My commission expires:

June 30, 1998

ARTHUR JAY TEICHBERG
Notary Public, State of New York
No. 9299300
Qualified in Nassau County
Commission Expires June 30, 1998

REBUTTAL VERIFIED STATEMENT
OF
THOMAS D. CROWLEY

**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**

Verified Statement
of
Thomas D. Crowley
President
L. E. Peabody & Associates, Inc.

On Behalf of
The State of New York

Due Date: January 14, 1998

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L.E. Peabody & Associates, Inc. The Firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314. My qualifications and experience are attached to this verified statement as Exhibit__ (TDC-1).

I have been requested by the State of New York to calculate Conrail's system average variable costs expressed on a per car-mile basis. The State of New York also requested that I calculate Conrail's system average full costs per loaded or empty car-mile.

Conrail's average 1995 variable cost per car-mile is developed in Table 1, Line 3 below. All of the values included in Table 1 below were taken from Conrail's 1995 Uniform Railroad Costing System ("URCS") formula which was developed by the Surface Transportation Board ("STB"). The major components of Conrail's variable costs include: 1) roadway capital and maintenance costs; 2) locomotive capital, fuel and maintenance costs; 3) crew wages; 4) train dispatching costs; 5) car inspection costs; 6) train suppliers and expenses; 7) signals and interlocker expenses; 8) end of train devices capital and maintenance costs; 9) crossing protection costs; 10) drawbridge operating costs; 11) costs associated with clearing wrecks; 12) damage to property costs; 13) billing costs; 14) costs related to switching at origin, destination, interchange and intermediate locations; 15) freight car capital and maintenance costs; 16) loss and damage costs; and, 17) claims costs for cars handled.

Conrail's average 1995 full cost per car-mile is developed in Table 1, Line 5 below. Conrail's full costs reflect Conrail's total variable costs plus total constant costs. Constant costs are those expenses and the portion of return on investment which do not vary with fluctuations in traffic volume. Rather, they are occasioned by the operation as a whole and include both

constant expenses and constant return on investment in road property. The return portion of constant costs, like the variable portion, is calculated at the pre-tax current cost of capital level.

<p>Table 1 Conrail's Average Variable and Full Costs Per Car-Mile -- 1995</p>		
<p><u>Item</u> (1)</p>	<p><u>Source</u> (2)</p>	<p><u>Amount</u> (3)</p>
<u>Variable Cost</u>		
1. Conrail's Total Variable Cost (millions)	URCS, D8L614C1	\$2,569.8
2. Conrail's Total Loaded and Empty Car-Miles (millions)	URCS, A1L114C1	2,542.2
3. Conrail's Average Variable Cost Per Car-Mile	(Line 1 ÷ Line 2)	\$1.01
<u>Full Cost</u>		
4. Conrail's Total Full Cost (millions)	URCS, D8L613C1	\$3,692.2
5. Conrail's Average Full Cost Per Car-Mile	(Line 4 ÷ Line 2)	\$1.45

Based on Conrail's 1995 URCS formula, Conrail realized an average variable cost of \$1.01 per car-mile and an average full cost of \$1.45 per car-mile.

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

THOMAS D. CROWLEY, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof and that the same are true as stated.

Thomas D. Crowley
Thomas D. Crowley

Sworn to and subscribed
before me this 13th day
of January, 1998.

Witness my hand and official seal.

Carol J. Volley
My Commission Expires July 31, 2001

STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering Association.

The firm of L. E. Peabody & Associates, Inc. specializes in solving economic, marketing and transportation problems. As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United

STATEMENT OF QUALIFICATIONS

States. The nature of these studies enabled me to become familiar with the operating and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected both railroad terminal and line-haul facilities used in handling various commodities to various destinations in all portions of the United States. These field trips were used as a basis for the determination of the traffic and operating characteristics for specific movements of coal, both inbound raw materials and outbound paper products to and from paper mills, crushed stone, soda ash, aluminum, fresh fruits and vegetables, TOFC/COFC traffic and numerous other commodities handled by rail.

I have presented evidence before the Interstate Commerce Commission ("ICC") in Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines - Nationwide which is the proceeding that established the methodology for developing a maximum rail rate based on stand-alone costs.

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the ICC for the development of variable costs for common carriers with particular emphasis on the basis and use of Rail Form A. I have utilized Rail Form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.^{1/}

^{1/} Rail cost finding has been the cornerstone of this firm. Dr. Ford K. Edwards the senior partner of the firm Edwards & Peabody*, was the major architect in the development of Rail Form A. Mr. Peabody carried on this tradition of innovative cost finding until his retirement in 1983. Mr. Peabody's work included participation in the Tennessee Valley Authority's ("TVA") computerization of Rail Form A. Mr. Peabody was a member of a committee of transportation consultants which was organized to assess the TVA procedure in order to make available more complete and simplified input data for the Rail Form A computer program.

* Subsequent to the retirement of Dr. Edwards in 1965, the firm name was changed to L. E. Peabody & Associates, Inc.

STATEMENT OF QUALIFICATIONS

I have also analyzed in detail, the Uniform Railroad Costing System ("URCS") and presented the results of my findings to the ICC in Ex Parte No. 431, Adoption of the Uniform Railroad Costing System for Determining Variable Costs for the Purposes of Surcharge and Jurisdictional Threshold Calculations. I have been involved in the URCS process, either directly or indirectly, since the first interim report of the contractors was released.

I have frequently presented both oral and written testimony before the Surface Transportation Board (and its predecessor, the Interstate Commerce Commission), Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations, including interest. I have also presented testimony in a number of court and arbitration proceedings concerning the level of rates and rate adjustment procedures in specific contracts.

Since the implementation of the Staggers Rail Act of 1980, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of shippers. Specifically, I have advised shippers concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity, and cost-based ancillary charges. In particular, I have advised shippers on the theory and application of different types of rate adjustment mechanisms

STATEMENT OF QUALIFICATIONS

for inclusion in transportation contracts. As a result of assisting shippers in the eastern and western portions of the United States, I have become familiar with operations and practices of the rail carriers that move traffic over the major rail routes in the United States as well as their cost and pricing practices.

In the two recent Western rail mergers that resulted in the creation of BNSF and UP/SP, I reviewed the railroads' applications including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that existed before the proposed mergers. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

I have participated in various proceedings involved with the division of through rates. For example, I participated in ICC Docket No. 35585, Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al. which was a complaint filed by the northern and midwestern rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and midwestern rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, Notice of Intent to File Division Complaint by the Long Island Rail Road Company.

VERIFIED STATEMENT
OF
GREG PETERSEN

VERIFIED STATEMENT
OF
GREG PETERSEN

My name is Greg Petersen, and I am the Vice President of the New England Central Railroad Company (NECR). I am making this statement on behalf of NECR, in connection with the Joint Responsive Application submitted in this proceeding by the State of New York and the New York City Development Corporation (NYS-11/NYC-10).

NECR is a Class III rail carrier providing rail service over approximately 343 miles of track between East Alburg, Vermont and New London, Connecticut. NECR is an active participant in this proceeding in its own right. As a responsive applicant in docket No. 33488 (Sub-No. 75) (NECR-4), NECR is seeking trackage rights over three sections of rail line between Palmer and West Springfield, Massachusetts; West Springfield and Albany, New York; and Albany and the North Jersey Shared-Asset Area via the rail line on the west side of the Hudson River, as a condition of approval of the Primary Application.

The Joint Responsive Application submitted by New York and NYCEDC requests trackage rights in favor of a rail carrier to be nominated by these public entities over the Hudson Line between Schenectady and Selkirk, New York and Fresh Pond Junction, New York, along the east side of the Hudson River. The stated purpose of this

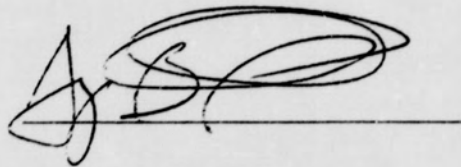
relief is to provide competitive rail service to shippers and receivers located in New York City, on Long Island and in the counties of the eastern Hudson River Valley.

I am making this Statement to confirm that if New York and NYCEDC's Joint Responsive Application is granted, and subject to negotiation of satisfactory operating terms and conditions, NECR would apply to be selected as New York and NYCEDC's trackage rights operator over the Hudson Line.

Verification

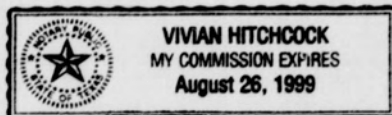
State of Texas)
)
) ss:
)
County of Bexar)

Greg Petersen, being fully sworn, deposes and says that he has read the foregoing Statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.



Subscribed and sworn to before
me this 12th day of January,
1998.

Vivian Hitchcock
Notary Public in and for the State of Texas



APPENDIX
OF
DEPOSITION AND HEARING
TRANSCRIPT EXCERPTS

D. MICHAEL MOHAN

1 A. I don't have that particular
2 understanding. The reference to east of New York
3 City in response to your question would have
4 included New England. With respect to
5 arrangements that may be in place between CP or
6 GTI and CSX, the expanded CSX system, I have no
7 knowledge of what those might be.

8 Q. Perhaps I need to go back to my earlier
9 question then. Did you consider in developing
10 your operating plan how shippers in New York City
11 and Long Island seeking to avail themselves of
12 Norfolk Southern line haul service from the
13 Northern New Jersey terminal area would do that,
14 would accomplish that?

15 A. The short answer is yes. But the
16 principal assumptions are that a significant
17 portion of the intermodal traffic handled over
18 Northern New Jersey terminals has an ultimate
19 destination in the greater New York/Long Island
20 area.

21 Q. Without putting words in your mouth
22 then, are you suggesting that from your
23 perspective, in developing the operating plan,
24 New York City and Long Island were viewed as a
25 consumption market as opposed to a freight

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1 origination area?

2 A. I really couldn't say that, I really
3 couldn't characterize it that way, no. We were
4 given traffic to work with from the traffic
5 witness and the traffic models and created an
6 operational network from that information.

7 Q. Okay. And, in that operational network
8 then, how does a freight shipper in New York City
9 or Long Island access Norfolk Southern line haul
10 service?

11 A. With -- I would have to answer the
12 question without specific reference to the
13 operating plan. The options as I understand them
14 would be that a shipper in New York City would
15 have access either to a CSX single-system line
16 haul or to an interchange which would be a matter
17 between CSX, GTI, and/or CP in the Albany area.

18 And at that point the haulage
19 arrangement between CP and NS would come into
20 play for accessing the NS system. And also
21 understand that there are barging options
22 available.

23 Q. Taking the first item first, am I
24 correct then that the rail option initially would
25 require the cooperation of CSX in order to access

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1 Norfolk Southern via Albany?

2 A. If the barge options were not used and
3 if the traffic were not intermodal, that would be
4 correct.

5 Q. Now, how about the barge option, can
6 you describe the barge option for me as best you
7 can?

8 A. I understand there is a float operation
9 from Greenville, New Jersey, to some point in The
10 Bronx.

11 (Discussion off the record.)

12 MR. DOWD: Let's go back on the
13 record.

14 BY MR. DOWD:

15 Q. The barge operation from Greenville to
16 Brooklyn, what consideration in your operating
17 plan is given with respect to the facilities
18 configuration at Greenville to handle that
19 traffic?

20 A. There is none explicitly in the
21 operating plan.

22 Q. Does your operating plan include any
23 assumptions or projections of volumes of traffic
24 that would move via that barge option?

25 A. Only to the extent that the traffic

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1 witness was able to deduce from the data
2 available to him that that would be a viable
3 routing option.

4 Q. Okay. My question is was the traffic
5 expert able to deduce that, is that traffic
6 included in your operating plan?

7 A. It's not visible to us.

8 Q. Okay. How about the CSX/GTI, CP, NS
9 through Albany rail option, does your operating
10 plan assume any traffic moving that way?

11 A. I don't specifically recall.

12 Q. If it's there, it's not very prominent
13 in the plan; would that be a fair statement?

14 A. That would be a fair statement.

15 Q. On page 20 again in your verified
16 statement, at the bottom of the page, you
17 describe the Conrail shared assets operations,
18 the CSAO. And you referred to this entity being
19 managed by a general manager reporting to a board
20 of directors of Conrail appointed by CSX and NS.

21 Am I correct or do you understand that
22 Norfolk Southern and CSX would each appoint an
23 equal number of directors to the board for CSAO?

24 A. That's my understanding from a reading
25 of the application.

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JOHN ORRISON

1 handles?

2 MS. CLAYTON: Would you identify the
3 Hudson River line.

4 BY MR. DOWD:

5 Q. I'm sorry, I thought I already did.
6 The east side of the line.

7 A. We would have to look at the actual
8 volume of traffic that was in the current base
9 case and then look at the planned volume of
10 traffic to give you the exact answer to your
11 question.

12 Q. Okay.

13 A. We do hope to have growth of freight
14 business in this area.

15 Q. What is the basis for that hope?

16 A. That there are a number of
17 opportunities for industrial development, there's
18 a large market that could consume goods that are
19 delivered to the New York side, there's a history
20 of heavy freight train operations to New York
21 over this line. The last 50 years it's been in
22 decline. It looks like there's opportunities to
23 develop and grow that business.

24 Q. And what are the principal commodities
25 that you have in mind when you talk about

1 opportunities to grow business down the Hudson
2 River line?

3 A. Example commodities would be
4 refrigerated boxcar traffic which are fresh foods
5 that are coming from the West Coast to New York
6 City.

7 Q. Fresh food from the West Coast comes to
8 New York City today, correct?

9 A. That's correct.

10 Q. How does it get there today?

11 A. It comes along these lines and down the
12 Hudson line to Oak Point Yard, and then it goes
13 into the various terminals that convey the food
14 from the freight cars to trucks.

15 Q. And what other commodities are coming
16 down that line today?

17 A. There's freight of all kind.

18 Q. Would you turn to page 447 of the
19 volume, please. And this is a page of tables
20 showing Conrail train densities. And I'd like
21 you to go down the line there and stop at the
22 second reference to MO on in the left-hand
23 column. Do you see that?

24 A. I have found the designation MO, New
25 York.

1 Q. Where is MO, New York?

2 A. I don't exactly know where MO, New York
3 is.

4 Q. Is MO in New York City, without knowing
5 exactly what point it is?

6 A. I would not want to speculate that it
7 is, no.

8 Q. Well, am I reading this correctly that,
9 wherever MO, New York, is, that your plan
10 projects that freight traffic between MO and
11 Poughkeepsie will not change?

12 A. The number of freight trains will not
13 change.

14 Q. And similarly, from Poughkeepsie to
15 Stuyvesant, New York, that will not change?

16 A. That is correct, will not change.

17 Q. And lastly, from Stuyvesant to
18 Rensselaer?

19 A. Will not change.

20 Q. And again from Rensselaer to Selkirk?

21 A. Will not change.

22 Q. Okay. With acknowledgment of our
23 curiosity about exactly where MO is, are you
24 comfortable that the line from MO to Poughkeepsie
25 to Stuyvesant to Rensselaer to Selkirk is

1 basically the Hudson River line?

2 A. I know that parts of these line
3 segments are on the Hudson River line, yes.

4 Q. Well, let me ask you this, if I were to
5 tell you to assume that MO is in New York City,
6 have we got the Hudson River line here?

7 A. Okay.

8 Q. Yes?

9 A. Yes.

10 Q. What is your understanding of the
11 freight traffic capacity of the Hudson River
12 line?

13 A. It's infinite capacity.

14 Q. Infinite capacity?

15 A. There is always a capacity limit. But
16 there are two to four tracks on that line.

17 Q. Okay.

18 A. So that you could run many more freight
19 trains than are out there today.

20 Q. Do you have any idea how many more?
21 It's not really infinite, right?

22 A. Well, no, it's not infinite. But it
23 would be into a very high range of trains, 30,
24 40, 50.

25 Q. And could those freight trains

1 peacefully coexist with Metro North?

2 A. They would have to work their train
3 schedules in so as not to affect the movement of
4 Metro North trains.

5 Q. From your perspective as the man in
6 charge of the operating plan, do you consider it
7 feasible that the schedules could be meshed so
8 that the freight traffic on the Hudson River line
9 could increase significantly?

10 A. Yes.

11 Q. Do you believe that that increase could
12 occur without any additional upgrades or
13 infrastructure improvements on the line?

14 MS. CLAYTON: What time period are you
15 talking about right now?

16 BY MR. DOWD:

17 Q. Well, let's assume growth commencing in
18 the three years following consummation of the
19 transaction, assuming it's approved. So current
20 condition of the line.

21 A. Are you asking me to speculate beyond
22 what we've developed in this operating plan?

23 Q. No, No. You've testified that you
24 believe that the Hudson River line has capacity
25 for significant increases in freight traffic and

1 bottom of the Hudson line and go -- it's on
2 pillars in the water. And it goes down to a
3 point called the Harlem River Yard area.

4 Q. What's your understanding of the
5 purpose of the Oak Point link?

6 A. My purpose of it was to help for the
7 development of intermodal and other freight
8 operations in the Oak Point area.

9 Q. So, when you testified that you think
10 the Hudson River line can handle significant
11 additional freight traffic, is one of the reasons
12 you have in mind that the Oak Point link allows
13 that bypass of some of those commuter tracks?

14 A. That's one of the cases, yes.

15 Q. Turn, if you would, to page 213 of
16 volume 3A. And, at the bottom of that page,
17 under the heading shared assets area, there's a
18 description of the shared assets areas being
19 managed by something called the Conrail shared
20 assets operation or CSAO. Is it your
21 understanding that the CSAO will have a board of
22 directors appointed equally by NS and CSX?

23 A. It is my understanding, yes.

24 Q. Do you have any understanding as to
25 whether the CSAO will have any ability to itself

JAMES W. McCLELLAN

1 Q. Can you describe that operation,
2 please.

3 A. Sure. I don't think the exact
4 interchange point has been determined yet, but
5 let's suppose it would probably be Albany. CSX
6 from, say, a local station on Norfolk Southern
7 would take a car to Albany and give it to CSX and
8 they would take it down the Hudson River and
9 deliver it to the destination on their lines.

10 Q. So you're saying that, aside from Cross
11 Harbor, this method that you just described is
12 the other means you would use?

13 A. It's an interline movement with CSX,
14 yes.

15 Q. Other than those two ways, are there
16 other ways that Norfolk Southern plans to compete
17 for that traffic?

18 A. Not for carload traffic. Now, for
19 intermodal traffic, of course, we'll do what
20 Conrail does today, we'll dray from New Jersey.

21 Q. Do you have any knowledge of the
22 capacity of the Cross Harbor Railroad operation?

23 A. No, I don't. I've been told a lot of
24 Cross Harbor stories, but I really have no
25 particular knowledge of it.

1 Q. Do you project that, as a result of the
2 transaction, traffic on the Cross Harbor
3 operation will increase or decrease?

4 A. We do not have -- there are no --
5 nothing in the operating or traffic studies that
6 addresses future volumes on the Cross Harbor
7 Railroad.

8 Q. And, aside from what's in the
9 application, do you have any knowledge of that?
10 It's not in the application. Do you have any
11 knowledge of it other than that?

12 A. I've been to New York a million times
13 to talk to people including the Cross Harbor
14 Railroad. And there are all sorts of plans to
15 increase capacity, get a new rate operator, throw
16 the old operator out, et cetera, et cetera, et
17 cetera, I'm aware of all those. But, in terms of
18 facts -- I've seen some brochures. I haven't
19 seen too many facts, however.

20 Q. What is Norfolk Southern's
21 understanding as to the state of the Cross Harbor
22 operation, its viability as a link from east of
23 the Hudson to Norfolk Southern lines?

24 A. My understanding is it's not doing very
25 well. It has financial problems. And there's a

1 question of who the future operator will be.

2 Q. Could you describe in more detail the
3 financial problems that you referred to?

4 A. That's all I've been told mainly by
5 Port Authority and City of New York officials,
6 that the company has problems, financial
7 problems.

8 Q. And does Norfolk Southern anticipate
9 investing in the operation?

10 A. We haven't considered it one way or
11 another, we just haven't considered it, no.

12 Q. So you're aware that there are problems
13 with it, it might not be a viable route from east
14 of the Hudson to Norfolk Southern lines?

15 A. It may not be a viable route under the
16 present operator. I understand some other
17 operators including the New York and Atlantic are
18 vying to take over the services. I did not get
19 the sense that the service was going away. I got
20 the sense that that the current operator might go
21 into default.

22 I also got the sense the current
23 operator very much wants to stay in business. So
24 there seems to be a healthy competition to
25 perform that service. The question is I don't

1 know who will get awarded the service at the end
2 of the day.

3 Q. Does Norfolk Southern support one
4 operator or another?

5 A. We have not taken a position, no, we
6 have not. We just don't have enough facts. We
7 have not studied it, we don't know.

8 Q. As far as trucking as a method of
9 taking traffic into New Jersey, is it your
10 expectation that that trucking will increase or
11 decrease significantly after the transaction is
12 approved?

13 A. We expect a substantial increase in
14 intermodal traffic, diversions from highway. So,
15 in essence, the traffic is already moving. But,
16 for the long haul portion, it will shift to
17 rail. So there will be a lot more rail traffic.
18 That doesn't mean there's going to be a lot more
19 truck traffic because the traffic is already
20 moving by truck.

21 Q. So after the transaction, as a result
22 of Norfolk Southern's efforts to compete for the
23 east of the Hudson traffic, do you anticipate
24 that the trucking traffic will increase or
25 decrease substantially?

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1 A. Our intermodal traffic -- what will
2 happen here is what is now a truck movement from
3 Atlanta to Long Island we hope and we plan will
4 become a rail movement to Northern New Jersey and
5 then a truck movement on to Long Island. So, if
6 you were standing at the Verrazano Narrows
7 Bridge, you would see the truck. Now it comes
8 all the way from Atlanta over the highway.

9 In the future we would hope and our
10 plans are for it to come by rail to Northern New
11 Jersey and go across the bridge still by truck.
12 As the markets grow, total volumes will
13 increase. That's how that works.

14 Q. Are there particular limitations with
15 respect to the commodity type that can be shipped
16 by trucks to and from east of the Hudson area?

17 A. There are restrictions on the tunnels.
18 I'm sure a HAZMAT can't be shipped, but I don't
19 know of any restrictions on the Verrazano Narrows
20 Bridge or I-84 I think up in Newburgh. And that
21 crosses Tappan Zee down -- I used to live up at
22 Croton.

23 Let's see. The Tappan Zee Bridge.
24 Tarrytown, bingo. So there are three bridge
25 crossings. And you can go across the George

HEARING TRANSCRIPT
NOVEMBER 25, 1997

1 JUDGE LEVENTHAL: All right. Mr. Harker?

2 MR. HARKER: Should I do that now? Okay.

3 MR. DOWD: Sure.

4 MR. HARKER: Mr. Dowd on behalf of New
5 York State also propounded some interrogatories with
6 respect to any agreement and document requests as well
7 with respect to any agreement that we might have with
8 New York and Atlantic Railroad.

9 I am informed by CSX that there is no
10 agreement between CSX and New York and Atlantic
11 Railroad which would preclude the exercise by New York
12 and Atlantic Railroad of trackage rights granted to it
13 by the Board should the Board conclude at the
14 conclusion of this proceeding that that's what it
15 wanted to do. And it was my understanding on the
16 basis of that representation that Mr. Dowd was willing
17 to withdraw the motion with respect to the New York
18 and Atlantic.

19 In addition, let me go on to say that CSX
20 also does not have an agreement -- that didn't quite
21 come out right. Neither does CSX have an agreement
22 with the Anacostia and Pacific, which is the New York

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1 and Atlantic Railroad's parent company, which would
2 preclude the exercise by the New York and Atlantic
3 Railroad of trackage rights granted to it by the Board
4 pursuant to this proceeding.

5 In addition, the CSX does have a
6 settlement agreement with the Chicago South Shore
7 Railroad, which operates out in Chicago. They don't
8 operate in New York.

9 I understand Mr. Dowd's concern was that
10 there might be something in that settlement agreement
11 since the Chicago railroad is an affiliate of the New
12 York and Atlantic that might have precluded in some
13 indirect or direct way New York and Atlantic from
14 exercising trackage rights granted to it by the Board.

15 I have informed him that that is not the
16 case. The settlement agreement with Chicago does not
17 involve and does not mention the New York and Atlantic
18 Railroad.

19 MR. DOWD: Just subject to the
20 clarification that the trackage rights to which Mr.
21 Harker refers are the rights requested by the state in
22 its responsive application.

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1 MR. HARKER: I agree.

2 MR. DOWD: And with that clarification, we
3 accept that stipulation and will withdraw the document
4 request.

5 JUDGE LEVENTHAL: All right. Very well.
6 Does this order now moot also the Philadelphia
7 Beltline Railroad and New York Economic Development
8 Corporation motions?

9 MR. SPITULNIK: Yes, Your Honor, it does.

10 JUDGE LEVENTHAL: All right. So that's
11 disposed of. The reasons I am ordering discovery are
12 that I find that the need to know outweighs all the
13 other considerations argued by Mr. Harker in this
14 matter. I find that the information sought is
15 relevant or may lead to relevant information in this
16 matter.

17 All right. That disposes of those
18 motions.

19 MR. DOWD: Thank you, Your Honor.

20 MR. SPITULNIK: Thank you, Your Honor.

21 MR. HARKER: Your Honor, this is --

22 JUDGE LEVENTHAL: Now we have the

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CERTIFICATE OF SERVICE

I certify that I have this 14th day of January, 1998, served Highly Confidential copies of the foregoing Joint Rebuttal Statement of the State of New York and the New York City Economic Development Corporation by hand upon Applicants' counsel:

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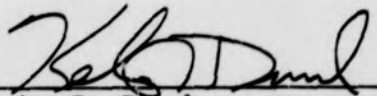
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I further certify that copies of the Public Version of the foregoing Joint Rebuttal Statement were served by first class mail, postage prepaid on:

The Honorable Rodney E. Slater
Secretary
U.S. Department of Transportation
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Washington, D.C. 20590

The Honorable Janet Reno
Attorney General of the United States
U.S. Department of Justice
10th & Constitution Ave., N.W., Room 4400
Washington, D.C. 20530

and upon all other parties of record in Finance Docket No. 33388.


Kelvin J. Dowd

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(Sub 69)

12-15-97

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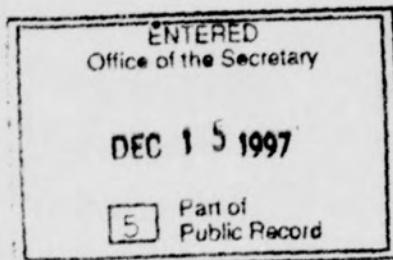
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388-Sub 69

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

FOPC-5

COMMENTS OF
THE FORT ORANGE PAPER COMPANY
SUPPORTING THE STATE OF NEW YORK



John D. Heffner
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Suite 420, 1920 N St., N.W.
Washington, D.C. 20036
(202) 785-3700

Counsel for
Fort Orange Paper Company

Dated: December 15, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

FOPC-5

COMMENTS OF
THE FORT ORANGE PAPER COMPANY
SUPPORTING THE STATE OF NEW YORK

Pursuant to the schedule adopted by the Surface Transportation Board ("the Board") on July 23, 1997, Fort Orange Paper Company ("Forge") originally filed comments in the above-captioned proceeding on October 21, 1997. Forge opposed the acquisition and partition of Consolidated Rail Corporation ("Conrail") by CSX Transportation ("CSX") and Norfolk Southern Railroad ("NS") absent a grant of local trackage rights on Conrail's Albany-New York Hudson Division to Canadian Pacific Railway ("CP Rail") and the New York State Department of Transportation ("NYSDOT") or its designee. Forge also opposed the CSX/NS Conrail acquisition and partition without the imposition of the traffic and rate conditions discussed in those comments.

On October 21, 1997, NYSDOT filed a Responsive Application seeking local trackage rights for it or its designee on Conrail's Hudson Division. These rights would extend between (i) the point of connection with the Delaware & Hudson Railway ("D&H") at CP-160 near Schenectady, NY and CP-75 near Poughkeepsie, NY; (ii) between the point of connection with D&H at Selkirk Yard and CP-75 near Poughkeepsie, NY; and (iii) between Mott Haven Junction, NY and the point of connection with the lines of the Long Island Rail Road near Fresh Pond, NY via Harlem River Yard.¹ Also shortly after October 21, 1997, Forge learned that CP Rail executed a settlement agreement with CSX with the result that it did not submit any Responsive Application for local trackage rights on the Hudson Division. Under the Board's July 23, order, Forge is entitled to submit and is now submitting additional comments limited to these developments.

Forge has carefully reviewed NYSDOT's filing. Forges believes that NYSDOT's application will go a long ways towards resolving the competitive problems suffered by "East of the Hudson" parties such as itself. Because NYSDOT is the only party seeking trackage rights over the Hudson Division, it is imperative that the Board grant its application in order to insure competitive rail service.

¹ Metro-North Commuter Railroad ("Metro-North") has agreed to grant NYSDOT local trackage rights over the portion of the Hudson Division between Poughkeepsie and Mott Haven which it controls and operates pursuant to a long term lease. NYSDOT seeks a declaration from the Board that Metro-North may grant unrestricted trackage rights over these lines to a rail carrier other than Conrail or CSX.

THE NYSDOT RESPONSIVE APPLICATION

As the Board is aware from previous filings, Forge is small business and rail freight customer of Conrail located at Castleton-on-Hudson, NY, just South of Rensselaer on the East Side of the Hudson River. There it manufactures clay coated, recycled box board for packaging food, hardware, and other consumer products. Forge utilizes Conrail for inbound loads of kaolin clay and scrap paper used in manufacturing its product. Forge uses motor carrier service to ship its outbound product. For all practical purposes, Conrail presently has an effective monopoly over many of Forge's inbound (raw material) transportation needs. Conrail's monopoly is in due in part to the fact that it is the only rail carrier serving Forge's plant, that many of Forge's suppliers cannot or do not wish to use motor carrier service to transport material to Forge, and that Forge's plant is not equipped to handle inbound truckloads of raw material. See Verified Statement of Daniel D. Luizzi, attached hereto.

Forge's two principal inbound freight shipments -- clay and waste paper -- are exempt from regulation. 4. CFR 1039.11; Rail Exemption - Transp. Of Selected Commodity Groups, 9 I.C.C.2d 969 (1993). In deciding to exempt these commodities from regulation, the Board's predecessor agency -- the Interstate Commerce Commission -- reasoned that the shippers and receivers of these commodities enjoyed numerous competing transportation alternatives. Accordingly, the ICC concluded that market forces

in the form of vigorous competition offered by other carriers and modes were sufficient to constrain the rates offered by serving rail carriers and insure high quality service. To the extent that market forces were inadequate to regulate rates and service, the exemption provisions of the former 49 U.S.C. 10505 [now 49 U.S.C. 10502] contained a mechanism (subsection (d)) to allow parties to petition the ICC (and now the Board) to revoke an exemption and file a rate complaint.

In reality, Forge's inbound transportation needs are captive to Conrail's service as noted above. Should this application be granted without conditions, CSX's monopoly will merely replace that of Conrail and nothing else will change. Moreover, if case precedent is any indication, Forge has no reason to expect that it will have any more success in revoking a commodity exemption than the other few petitioners who have sought such action from the ICC or the Board. See, e.g., Rail Exempt Misc. Agricultural Commodities, 8 I.C.C. 674 (1992); ICC Docket No. 40774, American Rail Heritage, Ltd. D/B/A Crab Orchard & Egyptian Railroad, Transportation Concepts, Inc., And the Grafton & Upton Railroad Company v. CSX Transportation, Inc. (served June 16, 1995). Accordingly, Forge regards NYSDOT's requested relief as the only practical solution for its competitive problems.

Forge's October 21 comments address four particular concerns.² First, the "East of Hudson" customers will be at a competitive disadvantage because this transaction appears to give rail customers west of the Hudson River competitive rail service which the "East of Hudson" customers will lack. CP Rail's Responsive Application would have addressed that concern by giving many customers including Fort Orange access to at least two competing railroads (CSX direct, NS through CP Rail, and also CP Rail direct). In view of the fact that CP Rail did not file a Responsive Application seeking access to the Hudson Division, a grant of NYSDOT's application is the only way to ensure competitive rail service for "East of Hudson" customers such as Forge.

A second widely held concern involves what has come to be known as "1 to 2 service." This term refers to those situations where one carrier such as Conrail presently handles an entire move from origin to destination and, as a result of this Conrail transaction, that haul will be divided amongst two carriers. The division of Conrail proposed here is more or less unique in the history of ICC or STB regulated rail mergers. While previous transactions may have involved some minor line

² Forge also noted in its October 21 comments that a grant of CP Rail's Responsive Application would make available to Forge direct service to and from both suppliers and customers in eastern Canada located on CP Rail. Conrail's present pricing policies discourage this traffic. Direct connections at Albany between NYSDOT or its designated carrier and CP Rail will facilitate movement of that traffic.

divestitures, this acquisition marks the first major instance where one company was divided more or less evenly among two or more carriers. Technically, the installation of a second competing carrier on the Hudson Division will not cure the "1 to 2 service" problem. Assuming that the transaction was approved without conditions, a move today from Lancaster or Hazleton, PA, to Forge's Castleton, NY, plant (an all Conrail move) would entail two carriers. That traffic would move by NS from Pennsylvania to Selkirk³ and by CSX from Selkirk to Castleton. If the NYSDOT application is granted, whoever is NYSDOT's designated carrier would handle the traffic between Selkirk and Forge's plant. While the freight would be physically interchanged between two or more carriers, it is likely that the participating carriers will negotiate marketing arrangements (a haulage agreement, revenue factor, or similar arrangement) that will give Forge many of the advantages of single line service. Although NS and CSX could just as well agree to such joint line solutions, they have not done so to date to the best of Forge's knowledge. NS and CP Rail have.⁴

Forge's third concern involves the loss of Conrail as a "neutral connection" to either CSX or NS on traffic to or from the South. As Daniel Luizzi has previously testified, the bulk

³ Under a haulage agreement negotiated between NS and CP Rail, CP Rail would handle NS' traffic over its line between Binghamton and Selkirk.

⁴ Forge understands that the CP Rail settlement agreement with CSX may include similar arrangements but it is unfamiliar with the details.

of Forge's inbound traffic has been kaolin clay originating at points on NS. See Luizzi V.S. dated October 21, 1997, at 2. If Conrail's acquisition is approved without conditions, Forge will be at a decided disadvantage. CSX which does not directly serve these origins will want the longest haul possible. It will want to handle the traffic from an NS/CSX interchange in the Deep South direct to Castleton. NS will have such a small part of the haul that it may lose interest in pricing the traffic at competitive levels. Conversely, if NS hauls the traffic most of the way to Castleton, CSX may want or need such a high switching rate in the Albany area, that this traffic becomes unattractive. For the reasons stated above, Forge believes that granting the NYSDOT Responsive Application will address this concern. Forge will have direct CSX access on any traffic having CSX origins. Conversely, it anticipates that the carrier designated by NYSDOT will give it effective access to CP Rail at Albany and, through it, NS.

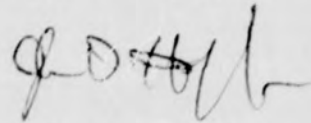
Finally, in its prior comments, Forge expressed great concern that CSX would view the Hudson Division as sort of a "poor sibling" to the River Division which runs on the West Side of the Hudson River between Selkirk and Jersey City. The grant of NYSDOT's application will ensure that there are two railroads vying for shipper's traffic. This increased level of competition should be sufficient to ensure that CSX stays sufficiently interested in the Hudson Division to rescue it from the branch

line status it had achieved under Conrail. Competition from both CSX and NYSDOT's designated carrier hopefully should ensure rate competition⁵, freedom from light density surcharges, good transit times, service reliability, and adequate frequency.

CONCLUSION

Forge appreciates the opportunity to express its concerns over the acquisition and operation of Conrail by CSX and NS. For all of the reasons stated above, Forge supports the Responsive Application filed by NYSDOT as the most effective means of assuring that parties East of the Hudson River such as itself get the same competitive benefits that many parties West of the Hudson River will soon enjoy.

Respectfully submitted,



John D. Heffner
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(202) 785-3700

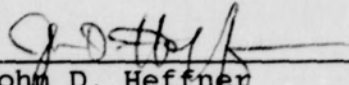
Counsel for
Fort Orange Paper Company

Dated: December 15, 1997

⁵ Forge shares the concerns of many shippers who worry that the premium paid by CSX and NS for control of Conrail will be reflected in higher rates.

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of December 1997 served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof first class mail, properly addressed with postage prepaid.



John D. Heffner

. . .
VERIFIED STATEMENT
OF
DANIEL D. LUIZZI

1. My name is Daniel D. Luizzi. My business address is 1900 River Road, Castleton, NY 12033. I am employed as Director of Operations for Fort Orange Paper Company ("Forge"). I am the very same Daniel D. Luizzi who prepared a Verified Statement on October 21, 1997, and caused that statement and the related Comments to be filed with the Surface Transportation Board.

2. I have reviewed the Responsive Application filed in these proceedings by the New York State Department of Transportation. It is my understanding from counsel that CP Rail which had been considering filing a Responsive Application with the Board seeking local service trackage rights from Selkirk to New York City on Conrail's Hudson Division has decided not to do so. Forge enthusiastically endorses NYSDOT's application as the only way to ensure competitive rail service to shippers such as itself on the East Side of the Hudson River.

3. My reason in submitting this further statement here is to impress upon the Board the effective transportation monopoly which Conrail presently has over much of Forge's inbound traffic. If CSX acquires Conrail's Hudson Division lines and operations without the sort of conditions requested in NYSDOT's Responsive Application, that monopoly will be perpetuated.

4. Conrail presently has a rail transportation monopoly over Forge's traffic due to the simple fact that it is the only rail carrier serving Forge's plant. It has an effective

transportation monopoly as well because many of Forge's suppliers cannot or do not wish to use motor carrier service to transport inbound material to Forge. In other words, if Forge had no rail access, it would be severely limited as to the number of suppliers with whom it could do business. Having that rail access gives Forge a greater choice of raw material suppliers. Also Forge's plant is an older facility not equipped to handle inbound truckloads of certain raw materials. In order to handle these products, it must transload them from truck to a company owned rail line which serves its plant buildings. It then moves this traffic around its plant by rail.

4. It is for these reasons that Forge requires competitive rail service. Truck service does not provide effective competition to rail on inbound traffic. A grant of NYSDOT's application ensures that Forge will have competitive rail service.

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VERIFICATION

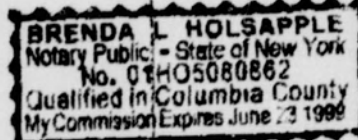
STATE OF _____)
COUNTY OF _____) SS:

Daniel O. Luzzi, being duly sworn, deposes and
says that he has read the foregoing statement, knows the facts
asserted there are true and that the same are true as stated.

Subscribed and sworn to before me this 15th day of
December, 1997.
Notary Public of State of New York

Brenda L. Holsapple

My Commission expires: 6/23/99



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A T T O R N E Y S

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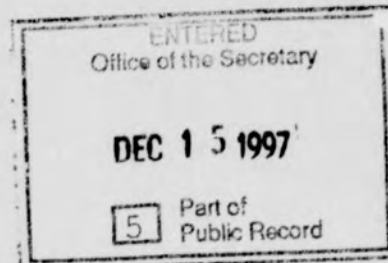
KARL MORELL



December 15, 1997

HAND DELIVERY

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



SUB 69
RE: STB Finance Docket No. 33388, CSX CORPORATION AND CSX
TRANSPORTATION INC. NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY--CONTROL AND
OPERATING LEASES/AGREEMENTS--CONRAIL INC. AND
CONSOLIDATED RAIL CORPORATION

Dear Secretary Williams:

Enclosed for filing please find the original and 25 copies of the Responsive of New England Central Railroad, Inc., to the Joint Responsive Application of the State of New York and the New York City Economic Development Corporation. Also enclosed is a 3.5 inch diskette containing the filing in WordPerfect 5.2.

Please time and date stamp the extra copy of the filing and return it with our messenger.

If you have any questions, please contact me.

Respectfully,

Karl Morell
Attorney for:
NEW ENGLAND CENTRAL RAILROAD, INC.

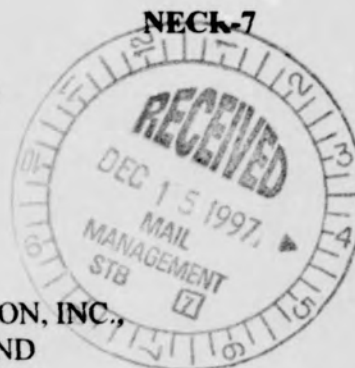
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

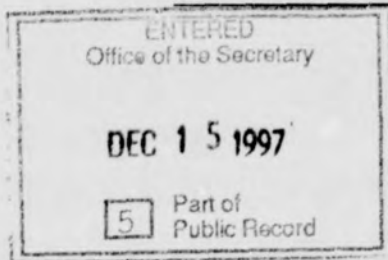
CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTINUED AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION



STB FINANCE DOCKET NO. 33388 (SUB-NO. 69)

THE STATE OF NEW YORK, BY AND THROUGH ITS DEPARTMENT OF
TRANSPORTATION -- TRACKAGE RIGHTS OVER LINES OF CONSOLIDATED RAIL
CORPORATION AND DECLARATION CONCERNING TRACKAGE RIGHTS
RESTRICTIONS ON LINES OF METRO-NORTH COMMUTER RAILROAD COMPANY

RESPONSE OF NEW ENGLAND CENTRAL RAILROAD, INC., TO THE JOINT
RESPONSIVE APPLICATION OF THE STATE OF NEW YORK AND THE NEW YORK
CITY ECONOMIC DEVELOPMENT CORPORATION



Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorney for:
NEW ENGLAND CENTRAL
RAILROAD, INC.

Dated: December 15, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

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



STB FINANCE DOCKET NO. 33388 (SUB-NO. 69)

THE STATE OF NEW YORK, BY AND THROUGH ITS DEPARTMENT OF
TRANSPORTATION -- TRackage RIGHTS OVER LINES OF CONSOLIDATED RAIL
CORPORATION AND DECLARATION CONCERNING TRackage RIGHTS
RESTRICTIONS ON LINES OF METRO-NORTH COMMUTER RAILROAD COMPANY

RESPONSE OF NEW ENGLAND CENTRAL RAILROAD, INC., TO THE JOINT
RESPONSIVE APPLICATION OF THE STATE OF NEW YORK AND THE NEW YORK
CITY ECONOMIC DEVELOPMENT CORPORATION

Pursuant to Decision No. 12 in this proceeding, New England Central Railroad, Inc.
("NECR"), hereby submits its Response to the Joint Responsive Application (NYS-11/NYC-10)
filed by the State of New York, acting by and through its Department of Transportation ("New
York") and the New York City Economic Development Corporation ("NYCEDC") on October
21, 1997.

BACKGROUND

NECR is a Class III rail carrier providing rail service over approximately 343 miles of track in the States of Vermont, New Hampshire, Massachusetts and Connecticut. On October 12, 1997, NECR filed its Responsive Application seeking limited trackage rights between Palmer, Massachusetts and the New Jersey/New York Shared Assets Area via West Springfield, Massachusetts and Albany, New York. NECR is seeking these trackage rights to remedy certain anticompetitive effects of the proposed division of Conrail by CSX and NS¹ ("Primary Transaction"), to ameliorate the loss of essential rail service on the NECR rail system, and to improve the operating economies and efficiencies of shortline railroads in the New England area.

As explained in NECR's Responsive Application, the Primary Transaction, if approved without appropriate conditions, would competitively disadvantage shippers and shortline railroads in the New England area by arbitrarily creating a competitive divide along the Hudson River. Shippers located in certain areas west of the Hudson River would benefit from rail competition and enjoy reduced rates and improved rail service. Shippers and shortlines east of the Hudson River would remain captive to a single Class I carrier and, thus, be competitively disadvantaged vis-à-vis their competitors open to rail competition. In addition, shippers in New England would lose their current options of forwarding traffic via Conrail to either CSX or NS. Once CSX replaces Conrail, CSX will have a strong economic incentive to favor its own routes and disadvantage routings to NS and other carrier destinations.

¹ Conrail Inc. and Consolidated Rail Corporation are referred to as Conrail; CSX Corporation and CSX Transportation, Inc. are referred to as CSX; and Norfolk Southern Corporation and Norfolk Southern Railway Company are referred to as NS.

In their Joint Responsive Application, New York and NYCEDC seek unrestricted trackage rights in favor of a rail carrier other than Conrail or CSX to be designated jointly by New York and NYCEDC between: (1) the point of connection with the Delaware & Hudson Railway ("D&H") at CP-160 near Schenectady, New York and CP-75 near Poughkeepsie, New York; (2) the point of connection with D&H at Selkirk Yard and CP-75 near Poughkeepsie, New York; and (3) Mott Haven Junction, New York and the point of connection with the lines of the Long Island Railroad near Fresh Pond, New York via the Harlem River Yard. NYS-11/ NYC-10 at 1-2.

As with the relief requested by NECR, New York and NYCEDC seek to introduce competitive rail service east of the Hudson River. The trackage rights sought by New York and NYCEDC are intended to ameliorate the same anticompetitive impacts of the Primary Transaction on shippers located east of the Hudson River that were identified by NECR in its Responsive Application. *See* NYS-11/ NYC-10 at 4-5, and 7-9; and NYS-10 Argument at 13-20.

RESPONSE OF NECR TO JOINT RESPONSIVE APPLICATION

NECR shares many of the concerns expressed by New York and NYCEDC concerning the anticompetitive effects that would result from the lack of rail competition and the substitution of CSX for Conrail east of the Hudson River. While the geographic focus of the trackage rights sought by NECR is largely different than the trackage rights sought by New York and NYCEDC (NECR seeks relief for shippers and shortlines in the New England states whereas New York and

NYCEDC seek relief for shippers in New York City, Long Island and the Hudson Valley counties east of the Hudson River), the trackage rights requests are compatible and complementary. NECR, therefore, supports the Joint Responsive Application of New York and NYCEDC.

NECR's Responsive Application and the Joint Responsive Application have the common goal of rectifying similar anticompetitive impacts of the Primary Transaction east of the Hudson River. In its Responsive Application, NECR explained that the Primary Transaction, if approved without appropriate conditions, would competitively disadvantage shippers and shortlines in the New England area in at least two fundamental respects. First, shippers in New England would be competitively disadvantaged vis-à-vis their competitors located in areas west of the Hudson River that will be opened to rail competition. Second, the substitution of CSX for Conrail would exacerbate the competitive disadvantage, since New England would no longer have available the services of a Class I carrier that is indifferent to routings over other connecting rail carriers. *See* NECR-4 at 5-8; V.S. Carlstrom at 7.

In the Joint Responsive Application and the Comments submitted by New York, the same concerns are raised. For example, New York and NYCEDC demonstrated the severe competitive disadvantage shippers located immediately east of the Hudson River would suffer vis-à-vis their counterparts in the New Jersey/New York Shared Assets Area. *See* NYS-11/NYC-10 at 7-10; and NYS-10 Argument at 13-20. New York and NYCEDC also explained at length how the substitution of CSX for Conrail would exacerbate the competitive disadvantage for shippers located east of the Hudson River. *See e.g.*, NYS-11/NYC-10 V.S. Robertson at 4-7.

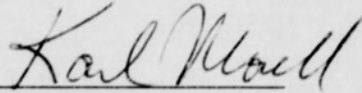
NECR and New York/NYCEDC share a commonality of interests: extending similar benefits of intramodal rail competition to shippers and shortlines east of the Hudson River that CSX and NS propose to confer on shippers west of the Hudson River. Given this commonality of interests, NECR joins in, and fully supports, the trackage rights sought by New York and NYCEDC.

Apparently, there is a short segment of track over which both NECR and New York/NYCEDC seek trackage rights: the Conrail line segment between CP-187, east of the Hudson River, and Selkirk Yard. NECR sees no conflict in these limited overlapping requests and does not expect any operational problems if both requests are granted. NECR anticipates handling only two trains a day, one each way, over this line segment. NECR-4, Exhibit 15 at 1. Similarly, New York and NYCEDC anticipate that up to two additional trains will move over this segment under their requested trackage rights. NYS-11/NYC-10 at 9. Accordingly, NECR views the trackage rights it seeks to be operationally compatible with those sought by New York and NYCEDC. To ensure that there are no operational conflicts, NECR hereby commits not to seek any preferential access to the line between CP-187 and the Selkirk Yard. If the trackage rights requests in both NYS-11/NYC-10 and NECR-4 are granted, NECR proposes to operate over that line segment on an equal and non-discriminatory basis with the carrier jointly designated by New York and NYCEDC.

CONCLUSION

For the reasons explained above, NECR supports the Joint Responsive Application of New York and NYCEDC. The trackage rights sought by New York/NYCEDC are compatible with, and complimentary to, the trackage rights sought by NECR. Both sets of trackage rights seek to ameliorate the same competitive problems the Primary Transaction would cause to shippers and shortlines east of the Hudson River.

Respectfully submitted,



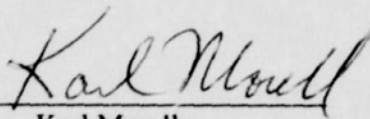
KARL MORELL
Of Counsel
BALL JANIK LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for:
NEW ENGLAND CENTRAL
RAILROAD, INC.

Dated: December 15, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 1997, I caused a copy of the Response of New England Central Railroad, Inc. to the Joint Responsive Application of the State of New York and the New York City Economic Development Corporation (NECR-7) to be served on Administrative Law Judge Jacob Leventhal and all Parties of Record by first class mail, postage prepaid.


Karl Morell

STB

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(Sub 69)

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HOPKINS & SUTTER

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

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DETROIT OFFICE 2800 LIVERNOIS SUITE 220 TROY, MI 48063-1220

ALICIA M. SERFATY
(202) 835-8049

October 21, 1997



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

Re: CSX Corporation and CSX Transportation Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation, Finance Docket No. 33388 (Sub-Nos. 54 and 69)

Request for Waiver of Filing Fee

Dear Secretary Williams:

18137

Accompanying this letter is an original and twenty-five (25) copies of the Joint Responsive Application of the State of New York and the New York City Economic Development Corporation (NYC-10 and NYS-11) for filing in the above-referenced dockets. To this letter I am attaching a check in the amount of \$4,700.00 as the required filing fee under 49 C.F.R. § 1002.2(f)(40)(v) for the Joint Responsive Application. However, pursuant to 49 C.F.R. § 1002.2(e), NYCEDC hereby requests a waiver of this fee on the ground that it is acting on behalf of the City of New York, New York, a local government entity. While NYCEDC is itself a private non-profit corporation created by the City of New York, see Description of Responsive Application To Be Filed By The New York City Economic Development Corporation (NYC-2) at 1 (filed Aug. 22, 1997), it entered an appearance in this proceeding specifically on behalf of the City of New York, see Notice of Intent to Participate of the New York City Economic Development Corporation (NYC-1) (filed June 2, 1997), rather than in its own interest.

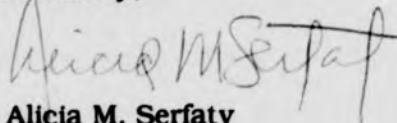
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Secretary Williams
October 21, 1997
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Granting a waiver of this filing fee would be in the best interest of the public because of the City's status as a governmental entity and because of the public interest functions of NYCEDC. Had the City entered an appearance in this proceeding in its own name, rather than through NYCEDC, it would be automatically exempt from the filing of the fee under 49 C.F.R. § 1002.2(e)(1) as a local government entity. Instead, it became a party of record through NYCEDC, whose mission is to serve as a catalyst for public and private investment to promote the long term viability of the City, and to attract and provide opportunities to the City's businesses and citizens. See NYC-2 at 1. As part of that public interest mission, NYCEDC is responsible for securing transportation access to the region's markets and overseeing the City's freight transportation and distribution facilities. *Id.* at 1-2. Therefore, NYCEDC is advancing the public-oriented governmental interests of the City in this proceeding, and merits a waiver of the filing fee. Indeed, denial of this request for waiver would subject the City to different treatment relative to other similarly situated governmental parties in this proceeding, one of which is the State of New York, NYCEDC's co-responsive applicant here.

In sum, because NYCEDC is acting on behalf of the City of New York, New York in this proceeding, it requests a waiver of the enclosed filing fee for its Responsive Application.

Sincerely,



Alicia M. Serfaty

Enclosures

cc: The Honorable Jacob Leventhal
All parties of record