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Office of the Chairman

**Surface Transportation Board**  
**Washington, D.C. 20423-0001**

November 5, 1999

The Honorable Daniel Patrick Moynihan  
United States Senate  
Washington, DC 20510

Re: Service in Buffalo Area

Dear Senator Moynihan:

As you may know, last month I had the opportunity to visit Buffalo and to discuss rail service issues with area shippers and the railroads that serve them. I understand and share the concern that I know you have for improving the quality of rail service being provided and the effect of present service levels on Buffalo-area shippers.

At the end of my visit to Buffalo, I stated that I would develop a plan for addressing the current service difficulties so as to minimize their impact on shippers in the region. Today, through letters to the Chief Executive Officers of Norfolk Southern Corporation and CSX Corporation (copies enclosed), I have set such a plan in motion. Our plan, which covers many issues of concern to Buffalo-area shippers, and which requires that certain efforts be undertaken over the course of the next month, will:

1. Build on a request made by Senator Schumer that the railroads address the problems caused by the current configuration of the railroad bridge at CP Draw, by directing the filing of more specific information on all options available;
2. Focus on other ways to improve the rail infrastructure in the area, which all would agree is critical to the issue of congestion and service improvement;
3. Require the railroads to report on ways in which they are assisting one another and are using other available railroads to relieve congestion in the Buffalo area, particularly with a view toward the winter months ahead;
4. Expand upon the "Hotline" initiative currently under way by focusing on additional mechanisms to improve communication between the railroads and Buffalo-area shippers, and on the resolution of service concerns such as transit times;
5. Promote communication by the railroads with shippers on how claims issues will be promptly addressed;

6. Initiate as a formal proceeding the 3-year rate study discussed in the Board's decision approving the Conrail transaction, which will include a review of the application of Board-ordered reduced switching charges and of fees paid by the Canadian National (CN) and Canadian Pacific (CP) railroads; and

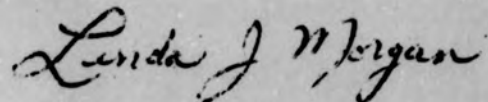
7. Hold CSX to its representations made to the Board that it would work with CN and CP to effect increased access to these carriers for cross-border, truck-competitive traffic, and that it would promote economic development in the region.

What I am most concerned about and what will do the most for the economic health of the Buffalo area is the expeditious restoration of responsive and reliable rail service. I believe that the plan outlined herein will provide the accountability needed to achieve that goal. It also is substantially to what the Board is already doing to monitor the Conrail implementation, and to the Board's ongoing efforts through the Office of Compliance and Enforcement to resolve shipper service complaints informally.

At the conclusion of my visit last month, I agreed to visit the Buffalo area again in 6 months to assess the situation. I would be glad to meet with you at any time to review the implementation of our plan.

If I may be of further assistance in this or any other matter, please do not hesitate to contact me.

Sincerely,



Linda J. Morgan

Enclosures



Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

November 5, 1999

The Honorable Amo Houghton  
United States House of Representatives  
Washington, DC 20515

Re: Service in Buffalo Area

Dear Congressman Houghton:

As you may know, last month I had the opportunity to visit Buffalo and to discuss rail service issues with area shippers and the railroads that serve them. I understand and share the concern that I know you have for improving the quality of rail service being provided and the effect of present service levels on Buffalo-area shippers.

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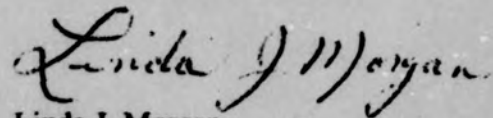
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Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

November 5, 1999

The Honorable Jack Quinn  
United States House of Representatives  
Washington, DC 20515

Re: Service in Buffalo Area

Dear Congressman Quinn:

I appreciated the opportunity to join you in Buffalo on October 18 and to discuss rail service issues with area shippers and the railroads that serve them. I understand and share your concern for improving the quality of rail service being provided and the effect of present service levels on Buffalo-area shippers.

At the end of the meeting, I stated that I would develop a plan for addressing the current service difficulties so as to minimize their impact on shippers in the region. Today, through letters to the Chief Executive Officers of Norfolk Southern Corporation and CSX Corporation (copies enclosed), I have set such a plan in motion. Our plan, which covers many issues of concern to Buffalo-area shippers, and which requires that certain efforts be undertaken over the course of the next month, will:

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Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

November 5, 1999

The Honorable Thomas M. Reynolds  
United States House of Representatives  
Washington, DC 20515

Re: Service in Buffalo Area

Dear Congressman Reynolds:

I appreciated the opportunity to join you in Buffalo on October 18 and to discuss rail service issues with area shippers and the railroads that serve them. I understand and share your concern for improving the quality of rail service being provided and the effect of present service levels on Buffalo-area shippers.

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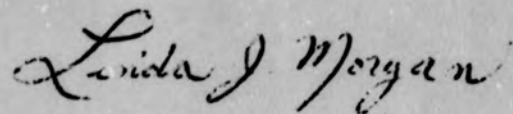
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Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

November 5, 1999

The Honorable John J. LaFalce  
United States House of Representatives  
Washington, DC 20515

Re: Service in Buffalo Area

Dear Congressman LaFalce:

As you may know, last month I had the opportunity to visit Buffalo and to discuss rail service issues with area shippers and the railroads that serve them. I understand and share the concern that I know you have for improving the quality of rail service being provided and the effect of present service levels on Buffalo-area shippers.

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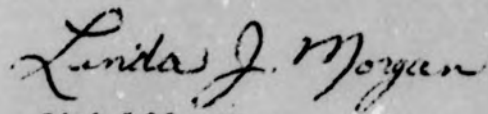
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Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

November 5, 1999

The Honorable Charles E. Schumer  
United States Senate  
313 Hart Senate Office Building  
Washington, DC 20510

Re: Service in Buffalo Area

Dear Senator Schumer:

I appreciated the opportunity to join you in Buffalo on October 18 and to discuss rail service issues with area shippers and the railroads that serve them. I understand and share your concern for improving the quality of rail service being provided and the effect of present service levels on Buffalo-area shippers.

At the end of the meeting, I stated that I would develop a plan for addressing the current service difficulties so as to minimize their impact on shippers in the region. Today, through letters to the Chief Executive Officers of Norfolk Southern Corporation and CSX Corporation (copies enclosed), I have set such a plan in motion. Our plan, which covers many issues of concern to Buffalo-area shippers, and which requires that certain efforts be undertaken over the course of the next month, will:

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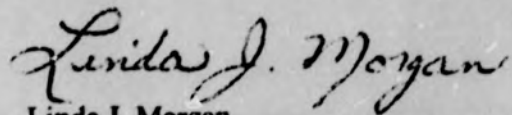
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BUSINESS



Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

November 5, 1999

Mr. John W. Snow  
Chairman, President and  
Chief Executive Officer  
CSX Corporation  
One James Center  
P.O. Box 85629  
Richmond, VA 23285-5629

Re: Service in Buffalo Area

Dear Mr. Snow:

I appreciate all of the hard work expended by you and your company to deal with the service quality issues that have arisen since implementation of the Conrail transaction. I know that service quality has improved in some respects, and I hope that the improvement will continue.

With respect to the Buffalo area, however, there are still service concerns among the shipping public and Members of the New York Congressional delegation, as discussed at the October 18 meeting that I attended in Buffalo. This letter addresses those concerns, in what I believe to be a constructive way, by setting out a plan of action that will show the progress being made in dealing with the service issues most prominently raised at the Buffalo meeting.

1. CP Draw. Concern was expressed about the configuration of the railroad bridge at CP Draw. I know that at the October 18 meeting Senator Schumer asked both railroads to look into the matter and to make recommendations within 30 days. Building upon what Senator Schumer has requested, please provide to the Board, by December 15, 1999, your views, together with those of NS, on the following: (a) all issues associated with rehabilitation and reconfiguration of the bridge, including engineering and financing/funding issues; (b) how a change in the U.S. Coast Guard's "navigability" designation of the Buffalo River upstream from the CP Draw might affect the financial considerations associated with rehabilitation and reconfiguration of the bridge; and (c) any viable alternatives to rehabilitating the bridge that would still provide for improved service levels.

2. Infrastructure in General. Apart from the CP Draw issue, much concern was raised at the October 18 meeting about the general state of the rail infrastructure in the Buffalo area. During the rail service crisis in the West a few years ago, the involved carriers were asked to provide us with detailed reports on their intentions with respect to infrastructure upgrades in the

Houston area. Those reports proved extremely helpful to us and to interested parties. I realize that you are already reporting generally on your infrastructure activities on a monthly basis, but I would appreciate your expanding the construction and capital projects report for November 1999 (due December 1, 1999) and each such monthly report thereafter to include your activities and plans regarding all infrastructure projects anticipated or currently underway in the Buffalo area.

3. Carrier Cooperation. One of the lessons that we learned from the service crisis in the West is that congestion can best be cleared up when all of the carriers serving a region work together. Yet, a principal concern that we heard in Buffalo was that your company and NS do not always communicate productively on issues of concern to shippers. In this regard, both you and Mr. Goode have indicated in the past that your companies have worked together, and will continue to work together and with other carriers, including smaller railroads, to help improve traffic flows and relieve congestion.

Therefore, it would be useful if you could provide information on other carriers with which you are now working or will work to assist you with service improvement in the Buffalo area. In particular, to promote continued cooperation and coordination between CSX and NS, I would like you to name formal contacts who will communicate regularly and provide, on a bi-weekly basis beginning with the reporting to be filed with the Board on December 1, 1999, an update as to what is being done and the progress that is being made in improving traffic flows and clearing congestion in the Buffalo area. Also, I would appreciate being informed about your contingency planning for your winter operations in the Buffalo area as part of your December 1<sup>st</sup> report.

4. Customer Service. One of the major sources of shipper frustration throughout the Buffalo area involves customer service, and particularly the inability of shippers to get accurate information on deliveries. In that regard, two concerns remain: first, that there has been no designated Buffalo-area representative who is knowledgeable about the Buffalo area and who can serve as a central contact point for the shippers for all Buffalo-area service issues; and second, that customer service inquiries are not responded to fully such that shippers know the status of either their inquiries or their shipments.

You have agreed to establish a toll-free "hotline" for Buffalo-area shippers. I would like you to report to the Board about your hotline effort. In particular, I would like to know the designated representative responsible for interfacing with customers in this effort, and to have a report submitted each week, beginning with the reporting to be filed on November 24, 1999, that contains a summary of the calls received on your hotline, including referrals from the Board, and indicating the number of service issues that have been resolved and the number that remain pending. As you work with individual shippers on their delivery issues, I would expect that you will also be addressing their concerns about their transit times.

5. Information Technology. Many of the service problems appear to be related to inaccurate data provided by carriers through their information technology systems. I would like



you to expand your existing monthly reporting on information technology, beginning with the December 1, 1999 report, to focus specifically on efforts impacting the Southern Tier and the Buffalo area.

6. Claims. Shippers have expressed concerns about claims issues not yet being addressed and about not understanding fully the procedures for the processing of claims. In this regard, you should communicate fully with shippers as to what information should be assembled and what your procedures for the expeditious resolution of claims will be when a claim is processed. I would appreciate your sharing with the Board, by December 1, 1999, general information regarding your communication with shippers about the claims handling process.

7. Rates. Several shippers have expressed concerns about rate levels. I wanted you to know that the Board will be initiating shortly, subject to a vote by all the Board members, the 3-year rate study for the Buffalo-area discussed in the Board's decision (ordering paragraph 38) approving the Conrail transaction. As part of that study, we will review the application of the Board-ordered reduced switching charges, including the Board's extension of the switching component of the National Industrial Transportation League agreement to certain international rail movements into and out of Niagara Falls and to situations where shortlines paid switching charges to Conrail and where Conrail received switching services from CSX or NS. The study will also examine the Board's imposition, as a condition, of CSX's representation regarding voluntary agreements providing for lower switching fees in certain instances for Buffalo-area movements involving the Canadian Pacific (CP) and Canadian National (CN) railroads. This study will be conducted by way of a formal proceeding, in which you will be asked to participate.

8. Representations. Finally, I would like a report from you by December 1, 1999, on how you are putting into effect the representations that your company made to the Board -- which the Board imposed as conditions to its approval of the Conrail transaction -- that it will work with CN and CP to effect increased access to these carriers for cross-border, truck-competitive traffic, and that it will work with relevant entities in the Buffalo area to promote economic development in the region, particularly through the formation of a committee to explore the issue.

9. Summary. To conclude, I am asking that you submit to Melvin Clemens, the Director of our Office of Compliance and Enforcement, the following information:

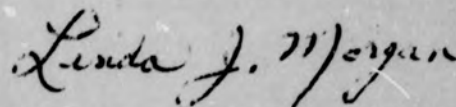
- Building on Senator Schumer's request, jointly, by December 15, 1999, your views concerning the CP Draw issue.
- Monthly, beginning with the December 1, 1999 capital projects report, information regarding infrastructure improvements in the Buffalo area.
- Designation of Buffalo-area contacts responsible for cooperative efforts with other railroads to improve service in the area; and a joint or separate biweekly report beginning with the reporting to be filed with the Board on December 1, 1999, to address cooperative

- efforts to improve service in the area, including winter contingency plans.
- Regarding your hotline, the designation of a representative in this effort; and a weekly report to be filed with the Board beginning on November 24, 1999, concerning the calls received and the status of customer complaint resolution, including concerns about transit times.
  - Monthly, beginning with the December 1, 1999 information technology report, an update on specific computer efforts that should affect Buffalo-area shippers in a positive way.
  - Information on your claims handling process by December 1, 1999.
  - A report by December 1, 1999, on efforts in connection with representations made to the Board about cross-border truck traffic and economic development in the Buffalo area.

As previously referenced, the rate study will be conducted separately as a formal proceeding.

I know that you are focused on improving service in the Buffalo area and throughout the East. The steps I am taking in this letter are focused on addressing service concerns raised during my visit in Buffalo, and tracking the progress in restoring service levels important to the continued economic development in the Buffalo area. I appreciate your continued cooperation in this endeavor.

Sincerely,



Linda J. Morgan



Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

November 5, 1999

Mr. David Goode  
Chairman, President and  
Chief Executive Officer  
Norfolk Southern Corporation  
3 Commercial Place  
Norfolk, VA, VA 23510-2191

Re: Service in Buffalo Area

Dear Mr. Goode:

I appreciate all of the hard work expended by you and your company to deal with the service quality issues that have arisen since implementation of the Conrail transaction. I know that service quality has improved in some respects, and I hope that the improvement will continue.

With respect to the Buffalo area, however, there are still service concerns among the shipping public and Members of the New York Congressional delegation, as discussed at the October 18 meeting that I attended in Buffalo. This letter addresses those concerns, in what I believe to be a constructive way, by setting out a plan of action that will show the progress being made in dealing with the service issues most prominently raised at the Buffalo meeting.

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2. Infrastructure in General. Apart from the CP Draw issue, much concern was raised at the October 18 meeting about the general state of the rail infrastructure in the Buffalo area. During the rail service crisis in the West a few years ago, the involved carriers were asked to provide us with detailed reports on their intentions with respect to infrastructure upgrades in the Houston area. Those reports proved extremely helpful to us and to interested parties. I realize



that you are already reporting generally on your infrastructure activities on a monthly basis, but I would appreciate your expanding the construction and capital projects report for November 1999 (due December 1, 1999) and each such monthly report thereafter to include your activities and plans regarding all infrastructure projects anticipated or currently underway in the Buffalo area.

3. Carrier Cooperation. One of the lessons that we learned from the service crisis in the West is that congestion can best be cleared up when all of the carriers serving a region work together. Yet, a principal concern that we heard in Buffalo was that your company and CSX do not always communicate productively on issues of concern to shippers. In this regard, both you and Mr. Snow have indicated in the past that your companies have worked together, and will continue to work together and with other carriers, including smaller railroads, to help improve traffic flows and relieve congestion.

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December 1, 1999 report, to focus specifically on efforts impacting the Southern Tier and the Buffalo area.

6. **Claims.** Shippers have expressed concerns about claims issues not yet being addressed and about not understanding fully the procedures for the processing of claims. In this regard, you should communicate fully with shippers as to what information should be assembled and what your procedures for the expeditious resolution of claims will be when a claim is processed. I would appreciate your sharing with the Board, by December 1, 1999, general information regarding your communication with shippers about the claims handling process.

7. **Rates.** Several shippers have expressed concerns about rate levels. I wanted you to know that the Board will be initiating shortly, subject to a vote by all the Board members, the 3-year rate study for the Buffalo-area discussed in the Board's decision (ordering paragraph 38) approving the Conrail transaction. As part of that study, we will review the application of the Board-ordered reduced switching charges, including the Board's extension of the switching component of the National Industrial Transportation League agreement to certain international rail movements into and out of Niagara Falls and to situations where shortlines paid switching charges to Conrail and where Conrail received switching services from CSX or NS. The study will also examine the Board's imposition, as a condition, of CSX's representation regarding voluntary agreements providing for lower switching fees in certain instances for Buffalo-area movements involving the Canadian Pacific (CP) and Canadian National (CN) railroads. This study will be conducted by way of a formal proceeding, in which you will be asked to participate.

8. **Summary.** To conclude, I am asking that you submit to Melvin Clemens, the Director of our Office of Compliance and Enforcement, the following information:

- Building on Senator Schumer's request, jointly, by December 15, 1999, your views concerning the CP Draw issue.
- Monthly, beginning with the December 1, 1999 capital projects report, information regarding infrastructure improvements in the Buffalo area.
- Designation of Buffalo-area contacts responsible for cooperative efforts with other railroad to improve service in the area; and a joint or separate biweekly report beginning with the reporting to be filed with the Board on December 1, 1999, to address cooperative efforts to improve service in the area, including winter contingency plans.
- Regarding your hotline, the designation of a representative in this effort; and a weekly report to be filed with the Board beginning on November 24, 1999, concerning the calls received and the status of customer complaint resolution, including concerns about transit times.
- Monthly, beginning with the December 1, 1999 information technology report, an update on specific computer efforts that should affect Buffalo-area shippers in a positive way.
- Information on your claims handling process by December 1, 1999.

As previously referenced, the rate study will be conducted separately as a formal proceeding.

I know that you are focused on improving service in the Buffalo area and throughout the East. The steps I am taking in this letter are focused on addressing service concerns raised during my visit in Buffalo, and tracking the progress in restoring service levels important to the continued economic development in the Buffalo area. I appreciate your continued cooperation in this endeavor.

Sincerely,

*Linda J. Morgan*  
Linda J. Morgan

STB    FD    33388    (Sub 69)    12-1-98    J    192441

**WEINER, BRODSKY, SIDMAN & KIDER**  
ATTORNEYS AT LAW

PROFESSIONAL CORPORATION

1350 NEW YORK AVENUE, N.W., SUITE 800  
WASHINGTON, D.C. 20005-4797  
(202) 628-2000  
TELECOPIER (202) 628-2011

192441



November 23, 1998

RICHARD J. ANDREANO, JR.  
JAMES A. BRODSKY  
JO A. DeROCHE  
CYNTHIA L. GILMAN  
KAREN R. GUSTAVSON\*  
DON J. HALPERN  
MICHAEL W. KARDASH\*  
MITCHEL H. KIDER  
SUSAN L. KORYTKOWSKI  
SHERRI L. LEDNER  
TODD A. NEWMAN  
HOWARD D. REITZ, JR.  
LEAH SCHMULEWITZ\*  
MARK H. SIDMAN  
RUGEN' A. SILVER  
JOHN D. SOCKNAT  
MICHAEL S. WALDRON\*  
HARVEY E. WEINER  
ROSE-MICHELE WEINRYB  
JOSEPH F. YENOUSKAS

\*NOT ADMITTED IN D.C.

**BY HAND**

Hon. Vernon A. Williams  
Secretary  
The Surface Transportation Board  
Case Control Unit  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

ENTERED  
Office of the Secretary

DEC 01 1998

Part of  
Public Record

NYAR No. 8

Re: STB 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; Responsive Application -- State of New York, by and through its Department of Transportation, and the New York City Economic Development Corporation

Dear Secretary Williams:

Pursuant to Decision No. 102 of the Surface Transportation Board in the above-referenced proceeding, New York & Atlantic Railway ("NYAR") hereby files its request to be placed on the service list in this proceeding. Accordingly, enclosed for filing are 25 copies of this request. Also enclosed is a 3.5-inch disk containing this filing formatted in Word Perfect.

Materials should be sent to the following address:

Mark H. Sidman  
Weiner, Brodsky, Sidman & Kider, P.C.  
1350 New York Avenue, N.W.  
Suite 800  
Washington, D.C. 20005-4797  
(202) 628-2000 (telephone)  
(202) 628-2011 (facsimile).



**WEINER, BRODSKY, SIDMAN & KIDER, P.C.**

**Hon. Vernon A. Williams**

-2-

November 23, 1998

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,

Rox. Mahala May 9

## Rose-Michele Weinryb

**Enclosure**

F:\97035\001\trmwParty of Recod.doc

## CERTIFICATE OF SERVICE

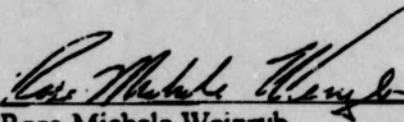
I hereby certify that on December 1, 1998, a copy of the foregoing request of New York & Atlantic Railway to be placed on the service list in STB Finance Docket No. 33388 (Sub-No. 69) was served by first-class mail, postage pre-paid on:

William L. Slover  
Slover & Loftus  
1224 Seventeenth St. N.W.  
Washington, D.C. 20036-3003

Charles A. Spitulnik  
Hopkins & Sutter  
888 Sixteenth St. N.W.  
Washington, D.C. 20006

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

George W. Mayo, Jr.  
Hogan & Hartson, LLP  
555 Thirteenth St., N.W.  
Washington, D.C. 20004-1109

  
Rose-Michele Weinryb

97035\001\trmwcert\fservFTV.doc

STB    FD    33388    (Sub 69)    11-30-98    J    192434

192434

# SOUTH WESTERN REGIONAL PLANNING AGENCY

DARIEN GREENWICH NEW CANAAN NORWALK STAMFORD WESTON WESTPORT WILTON  
1 SELLECK STREET, SUITE 210, EAST NORWALK, CT 06855 TEL: (203) 866-5543 FAX: (203) 866-6502

November 25, 1998

Mr. Vernon A. Williams, Secretary  
Office of the Secretary  
Surface Transportation Board  
1925 K Street NW, Room T11  
Washington DC 20423-0001



**Re: STB Finance Docket No. 33388; Sub-No. 69**  
**Decision No. 102**  
**Request for Copies of Filings**

Dear Secretary Williams:

I am a party of record in the above-referenced proceeding.

In November 24, 1998, this office reviewed a copy of Decision No. 102, which, at paragraph 3 of its order, permitted "any other party who submits a request in writing on or after the service date of this decision" to be entitled to continue to receive service of copies of all the CP/CSX/NYCEDC/NYDOT filings.

Freight transportation in our region is or will be directly affected by the content and result of the filings concerning the condition being addressed in this case.

Please advise if any further action on my part is required.

Thank you for your attention to this matter.

Respectfully submitted,

ENTERED  
Office of the Secretary

DEC - 1 1998

Part of  
Public Record

Richard C. Carpenter, AICP  
Executive Director

RCC:pp

cc: John McHugh, Esq., McHugh & Sherman  
Edward D. Greenberg, Esq., Providence E. Worcester RR Co.  
Richard A. Allen, Esq., Norfolk Southern Corporation  
Scott M. Zimmerman, Esq., Norfolk Southern Corporation  
Peter J. Shultz, Esq., CSX Corporation  
Heidi Edens, Esq., Providence and Worcester RR Co.

PpdonnerA:csx.ltr

EQUAL OPPORTUNITY EMPLOYER



STB    FD    33388    (Sub 69)    11-27-98    J    LAW

SONNENSCHN NATH & ROSENTHAL

CHICAGO  
LOS ANGELES  
NEW YORK  
SAN FRANCISCO  
ST. LOUIS

1301 K STREET N.W.  
SUITE 600, EAST TOWER  
WASHINGTON, D.C. 20005

November 24, 1998

(202) 408-6400  
FACSIMILE  
(202) 408-6399

DIRECT LINE  
(202) 408-6351

By Fax and Mail

George W. Mayo, Jr  
Hogan & Hartson, L.L.P.  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004-1109

Kelvin J. Dowd, Esq.  
Slover & Loftus  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036

Dennis G. Lyons, Esq.  
Arnold & Porter  
555 12th Street, N.W.  
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Charles A. Spitulnik, Esq.  
Hopkins & Sutter  
888 16th Street, N.W.  
Washington, D.C. 20006



Re: Finance Docket No. 33388, CSX and Norfolk Southern — Control  
and Lease — Conrail  
Finance Docket No. 33388 (Sub-No. 69), Responsive Application — State of New  
York, By and Through Its Department of Transportation, and the New York City  
Economic Development Corporation

Dear Counsel:

In accordance with the requirements of STB Decision No. 102, served November 20, 1998, I ask that you serve me with copies of the public version, and any confidential or highly confidential versions, of further submissions you make in this proceeding, including the submissions due on November 30 and December 10. Given the accelerated schedule imposed by the Board, I ask that you serve me by hand.

Thank you for your attention to this request.

Sincerely yours,

L. John Osborn

cc: Hon. Vernon A. Williams, Secretary  
Administrative Law Judge Leventhal

STB    FD    33388    (Sub 69)    11-10-98    J    192178

192/78

**HOGAN & HARTSON**  
L.L.P.



**GEORGE W. MAYO, JR.** ENTERED  
PARTNER Office of the Secretary  
DIRECT DIAL (202) 637-5679

NOV 10 1998

November 10, 1998

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

Part of  
Public Record

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

J

**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 not been able 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.

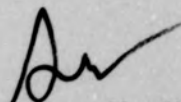


HOGAN & HARTSON L.L.P.

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

Accordingly, as contemplated by the Board's decision, CP requests that a proceeding addressing the matter be initiated. CP suggests that the Board establish a procedural schedule pursuant to which CP, CSX, and other interested parties (including the State of New York and the New York City Economic Development Corporation) would submit simultaneous opening argument and evidence on January 8, 1998 or 50 days after initiation of the proceeding (whichever is later), simultaneous reply argument and evidence 30 days thereafter, and simultaneous rebuttal argument and evidence 15 days thereafter.

Respectfully,



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)   10-1-97   K   182277

182277

**SLOVER & LOFTUS**

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER  
C. MICHAEL LOFTUS  
DONALD G. AVERY  
JOHN H. LE SEUR  
KELVIN J. DOWD  
ROBERT D. ROSENBERG  
CHRISTOPHER A. MILLS  
FRANK J. PERGOLIZZI  
ANDREW B. KOLESAR III

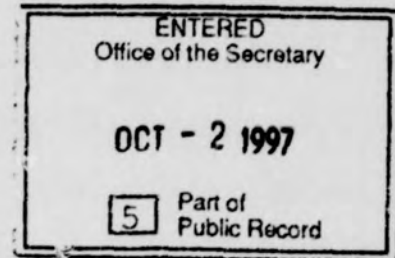
K



October 1, 1997

BY HAND DELIVERY

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



Re: 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

Dear Secretary Williams:

Enclosed for filing, in accordance with Decision No. 29 in Finance Docket No. 33388, please find an original and twenty-five (25) copies of the Verified Statement of James A. Utermark, on behalf of the State of New York (NYS-9).

An additional copy of the Statement also is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

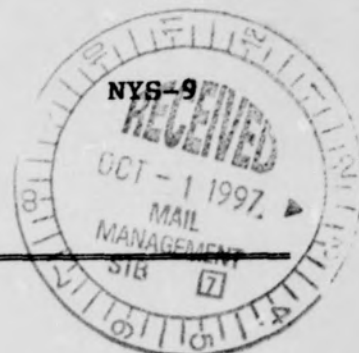
Sincerely,

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

KJD:cef  
Enclosures

182277

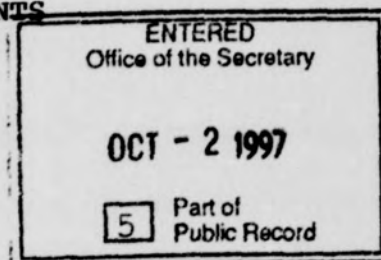
BEFORE THE  
SURFACE TRANSPORTATION BOARD



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)

VERIFIED STATEMENT  
OF  
JAMES A. UTERMARK  
CONCERNING ENVIRONMENTAL AND  
HISTORIC REPORTING REQUIREMENTS



THE STATE OF NEW YORK BY AND  
THROUGH ITS DEPARTMENT OF  
TRANSPORTATION

OF COUNSEL:

Slover & Loftus  
1224 Seventeenth Street, NW.  
Washington, D.C. 20036

By: William L. Slover  
Kelvin J. Dowd  
Jean M. Cunningham  
Slover & Loftus  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

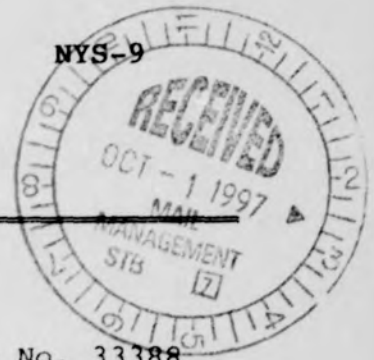
Dated: October 1, 1997

Attorneys and Practioners



BEFORE THE  
SURFACE TRANSPORTATION BOARD

NYS-9



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)

VERIFIED STATEMENT  
OF  
JAMES A. UTERMARK  
CONCERNING ENVIRONMENTAL AND  
HISTORIC REPORTING REQUIREMENTS

My name is James A. Utermark and my office address is 1220 Washington Avenue, Albany, New York 12232. I am Director of the Freight & Economic Development Division of the New York State Department of Transportation. I am authorized to submit this Statement on behalf of the State of New York, acting by and through its Department of Transportation.

I am making this Statement pursuant to Decision No. 12 and Decision No. 29 in the primary proceeding (Finance Docket No. 33388), which require New York, as a Responsive Applicant, either to prepare and submit a Responsive Environmental Report pursuant to applicable Board rules, or to demonstrate that the transaction that is the subject of New York's Responsive Application is exempt from environmental and historic impact reporting

requirements. Based upon my review of the record assembled thus far in the primary proceeding, and other information currently available to me, it is my conclusion that New York's Responsive Application qualifies under the exemption set forth at 49 C.F.R. Part 1105.6(c)(2), and that as such, an Environmental Report is not required. Likewise, I conclude that the subject transaction is exempt from historic impact reporting requirements, in accordance with 49 C.F.R. Part 1105.8(b)(3).

A. New York's Responsive Application

The Responsive Application to be filed by New York on October 21, 1997 will seek the imposition of the following conditions on approval of the Primary Applicants' proposal for the division of Conrail:

1. Full service trackage rights in favor of a rail carrier unaffiliated with the Primary Applicants, to be designated by New York, over the lines of Conrail between points of connection with the Delaware & Hudson Railway ("D&H") at CP-160 near Schenectady, New York and Selkirk Yard near Selkirk, New York, and CP-75 near Poughkeepsie, New York; and

2. Full service trackage rights in favor of a rail carrier unaffiliated with the Primary Applicants, to be designated by New York, over the lines of Conrail between the point of Conrail ownership at Mott Haven Junction ("MO"), New York and the point of connection with the lines of the Long Island Railroad near Fresh Pond ("MONT"), New York, via the

Harlem River Yard.

In addition, to the extent necessary to allow the trackage rights to be used to provide effective competition for rail freight service proposed under the Primary Application to be provided by CSX to shippers located east of the Hudson River and south of Albany, New York will seek a declaration that Metro-North Commuter Railroad Company may negotiate and grant trackage rights to another rail carrier to provide freight service between CP-75 and Mott Haven Junction, New York, notwithstanding any contrary limitations arising under agreements between Metro-North and Conrail.

Given the purpose that would be served by the foregoing rights and conditions, it is not possible at this time to forecast precisely how many trains would operate over the subject lines. Ultimately, train frequency will be determined by shippers' demand for service. Initially, however, New York estimates that the level of additional freight traffic over the subject lines is not expected to exceed one (1) or two (2) trains each day on any of the involved line segments.

B. Environmental and Historic Reporting Exemptions

Under 49 C.F.R. Part 1105.6(c)(2), an environmental assessment need not be prepared in connection with a Responsive Application seeking trackage rights, if the granting of the requested rights will not result in changes in carrier operations over the subject lines that exceed the thresholds established in

49 C.F.R. Part 1105.7(e)(4) or (5). Likewise, 49 C.F.R. Part 1105.8(b)(3) provides that historic impact reports will not be required for trackage rights applications "which will not substantially change the level of maintenance of railroad property."

As described below, I conclude that the trackage rights and other relief to be requested by New York in its Responsive Application does not propose operational changes that would exceed any of the applicable thresholds. Specifically:

1. It is not expected that exercise of the trackage rights to be requested in the Responsive Application will result in any diversion of traffic from rail to motor carriage. As such, neither of the thresholds described at 49 C.F.R. Part 1105.7(e)(4)(iv)(A) or (B) will be exceeded.

2. According to 1995 traffic data relied upon by the Applicants, the Conrail and Metro-North lines that are the subject of New York's Responsive Application handled between 21 and 146 trains per day during the study year. See Application, Volume 3(A), page 447. A projected initial increase in rail freight traffic of only one (1) or two (2) trains per day does not exceed either the 100%/eight (8) trains per day general threshold of 49 C.F.R. Part 1105.7(e)(5)(i)(A), or the 50%/three (3) trains per day threshold for Clean Air Act non-attainment areas under 49 C.F.R. Part 1105.7(e)(5)(ii)(A).

3. Given that the Responsive Application seeks trackage rights which, once exercised, are expected to result



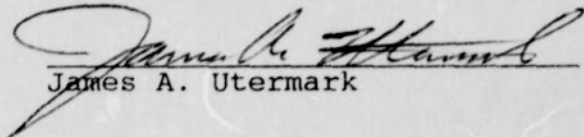
initially in only a minimal increase in rail freight operations, there should be little or no related impact on the level of necessary railroad property maintenance. As such, New York's Responsive Application meets the standard for an historic reporting exemption under 49 C.F.R. Part 1105.8(b)(3).

On the basis of the foregoing, I conclude that under the applicable Board rules referenced in Decision No. 29 in Finance Docket No. 33388, no environmental or historic documentation is required in connection with New York's Responsive Application.

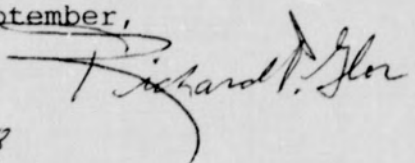
Verification

State Of New York     )  
                              )  
                              ) ss:  
                              )  
County of *ALBANY*     )

James A. Utermark, 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.

  
James A. Utermark

Subscribed and sworn to before  
me this 29<sup>th</sup> day of September,  
1997:

  
RICHARD P. GLOR  
Notary Public, State of New York  
Qualified in Erie County  
No. 4731427  
Commission Expires May - 31, 1998

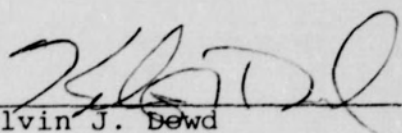
Notary Public in and for the State  
of New York

My Commission Expires May 31, 1998

. . .

Certificate of Service

I hereby certify that I have this 1st day of October, 1997, caused copies of the foregoing document to be served by first-class mail upon Administrative Law Judge Leventhal and upon all parties of record, as listed on the official service list issued by the Board on August 19, 1997 in Decision No. 21.

  
Kelvin J. Dowd