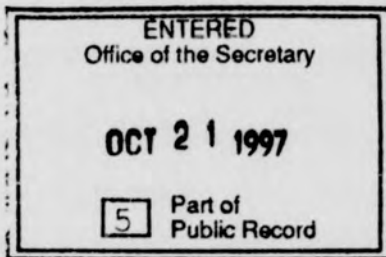


STB FD 33388 (Sub 75) 10-21-97 A 182868



BALL JANIK LLP  
ATTORNEYS

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947

KARL MORELL

kmorell@bjllp.com

October 21, 1997

HAND DELIVERY

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



A

Sns-No. 75  
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 Application on behalf of New England Central Railroad, Inc. Also enclosed is check in the amount of \$4,700 to cover the applicable filing fee and 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*

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

FILED

OCT 21 1997

SURFACE  
TRANSPORTATION BOARD

FEE RECEIVED

OCT 21 1997

SURFACE  
TRANSPORTATION BOARD

ORIGINAL

182868

BEFORE THE  
SURFACE TRANSPORTATION BOARD

SUB 75  
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. 75)

ENTERED Office of the Secretary
<b>OCT 21 1997</b>
<div>5</div> Part of Public Record

NEW ENGLAND CENTRAL RAILROAD, INC.  
--TRACKAGE RIGHTS--  
CSX TRANSPORTATION, INC.

RESPONSIVE APPLICATION OF  
NEW ENGLAND CENTRAL RAILROAD, INC.

FEE RECEIVED

OCT 21 1997

SURFACE  
TRANSPORTATION BOARD

FILED

OCT 21 1997

SURFACE  
TRANSPORTATION BOARD

Dated: October 21, 1997

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.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

STB FINANCE DOCKET NO. 33388

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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

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STB FINANCE DOCKET NO. 33388 (SUB-NO. 75)

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NEW ENGLAND CENTRAL RAILROAD, INC.  
--TRACKAGE RIGHTS--  
CSX TRANSPORTATION, INC.

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NEW ENGLAND CENTRAL RAILROAD, INC.

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New England Central Railroad, Inc. ("NECR"), hereby submits its Responsive Application pursuant to Decision No. 12 in this proceeding, 49 U.S.C. §§ 11321-25, and the Surface Transportation Board's ("STB" or "Board") Railroad Consolidation Procedures, 49 C.F.R. Part 1180. In this Responsive Application, NECR seeks the grant of a condition upon the transaction proposed by CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"), Conrail Inc. ("CRR"), and Consolidated Rail Corporation ("CRC")<sup>1</sup> (collectively referred to as the "Primary

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<sup>1</sup> CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as Conrail.

Applicants")<sup>2</sup> The condition NECR seeks is intended to ameliorate certain of the anticompetitive consequences of the Primary Transaction and to prevent the loss of essential rail services on the NECR rail system. A grant of the requested condition will also promote a safer and more efficient and economical rail transportation system in the New England area. In Decision No. 30, the Board found that NECR's Responsive Application will be a "minor transaction."

In support of this Responsive Application, NECR submits the following information as required by 49 C.F.R. § 1180.6:

**SECTION 1180.6 (a)(1)(i)**  
**DESCRIPTION OF THE PROPOSED TRANSACTION**

NECR requests that the Board condition the approval of Primary Applicants' proposed transaction by granting NECR limited trackage rights between Palmer, Massachusetts and the New Jersey/New York Shared Assets Area as follows:

1. Palmer - West Springfield

Between Palmer, Massachusetts and West Springfield, Massachusetts over the rail line currently owned and operated by CRC and to be acquired and operated by CSXT.

2. West Springfield - Albany

Between West Springfield, Massachusetts and Albany,<sup>3</sup> New York over the rail line currently owned and operated by CRC and to be acquired and operated by CSXT.

---

<sup>2</sup> In their Railroad Control Application filed on June 23, 1997, Primary Applicants seek Board approval for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS (hereinafter referred to as the "Primary Transaction").

<sup>3</sup> The requested right to serve Albany includes the right to serve Albany, Selkirk and Mechanicville, New York for the purpose of interchange with connection carriers. The Delaware and Hudson Railway Company, Inc. ("D&H"), the Guilford Rail System ("Guilford"), and NSR (through a proposed haulage arrangement with the D&H) have interchange facilities at those locations

3     Albany - New Jersey/New York Shared Assets Area

Between Albany, New York and the New Jersey/New York Shared Assets Area<sup>4</sup> over the rail line located on the west side of the Hudson River currently owned and operated by CRC and to be acquired and operated by CSXT.

The term "limited" trackage rights, as used above, includes: (1) the right to operate trains over the lines described; and (2) the right to interchange with all carriers (including shortlines) at all junctions on the lines described.

The Board should retain jurisdiction to establish the level of compensation and other terms in the event the parties are unable voluntarily to resolve these matters through negotiation.

**APPLICANT**

The name, address and telephone number of the Responsive Applicant are:

New England Central Railroad, Inc.  
2 Federal Street  
St. Albans, Vermont 05478  
(802) 527-3411

The name, address and telephone number of counsel to whom questions should be addressed are:

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

---

<sup>4</sup> If NECR's condition is granted, NECR will negotiate with Primary Applicants as to the precise yard or yards in the New Jersey/New York Shared Assets Area that can be used by NECR to interchange traffic.



**SECTION 1180.6(a)(1)(ii)**  
**PROPOSED TIME SCHEDULE**

NECR is prepared to commence operations pursuant to the proposed trackage rights immediately after the effective date of the Board's approval of NECR's Responsive Application. In order to perform the proposed operations under the trackage rights, NECR would need nine crews consisting of 18 employees and 14 locomotives. Some of the employees and locomotives needed for this new service could be shifted from current operations on the NECR system, given the significant traffic diversions NECR is projected to incur. NECR is confident that it can quickly hire additional trained employees and acquire suitable equipment in order expeditiously to institute the new operations.

**SECTION 1180.6(a)(1)(iii)**  
**PURPOSE**

The purpose of the requested condition is threefold. First, to ameliorate the loss of essential rail services on the NECR rail system. Second, to remedy certain anticompetitive effects of the Primary Transaction on shippers and shortlines in the New England area. Third, to improve the operating economies and efficiencies of NECR and other shortlines in the area.

NECR stands to lose between \$1.6 million (Primary Applicants' estimate) and \$8 million (NECR's estimate) in revenue annually as a result of the projected traffic diversions to CSXT and NSR if the Primary Transaction is approved. The loss of these revenues would have a devastating effect on NECR and force NECR significantly to reduce service systemwide and to discontinue service altogether on the marginal sections of NECR's rail system. The requested conditions would enable NECR to reach new markets and attract new traffic to the NECR line to offset some or all of the traffic CSXT and NSR would divert. The revenues generated from this

some or all of the traffic CSXT and NSR would divert. The revenues generated from this new traffic would enable NECR to continue providing essential rail service to its on-line customers.

Primary Applicants claim that the Primary Transaction will erase the commercial boundary line separating CRC from the rest of the rail network and establish competitive rail service to many areas in the northeast. The New England area, however, has either been forgotten by Primary Applicants or unilaterally excluded to the competitive disadvantage of shippers and shortlines in this region. While Primary Applicants may have erased some commercial boundary lines, they have erected a new competitive wall along the Hudson River, separating customers in New England from the rest of the northeast. The condition sought by NECR would go a long way to resolving the economic disadvantages New England shippers and shortlines would suffer under Primary Applicants' proposal. The requested trackage rights would enable NECR to offer New England shippers and shortlines alternative access to Class I carriers in the Albany area and in the New Jersey/New York Shared Assets Area.

The requested condition would also improve the overall operations of shortlines in the region. For example, by providing NECR a connection with its corporate affiliate, Connecticut Southern Railroad, Inc. ("CSO"), both of these carriers would be able significantly to improve their operating efficiencies. NECR would also be able to interchange traffic with the Housatonic Railroad Company, Inc. ("HRRC") at Pittsfield, Massachusetts. With these new connections, NECR, CSO and HRRC would enjoy new marketing opportunities for traffic moving between their respective lines and over the major Class I gateways in the Albany and northern New Jersey areas. Similar efficiencies and marketing opportunities would be gained by NECR's other shortline connections. Shippers in the New England region would benefit from the ability of



NECR and its shortline connections to negotiate competitive rates over the Class I gateways and offer access to new markets.

**SECTION 1180.6(a)(1)(iv)**  
**NATURE AND AMOUNT OF NEW SECURITIES OR**  
**OTHER FINANCIAL ARRANGEMENTS**

No new securities or other financial arrangements will be required for NECR to consummate the proposed transaction and commence operations under the requested trackage rights. NECR does not anticipate the need to acquire any additional facilities to commence operations pursuant to the requested trackage rights. The additional locomotives NECR would need would be leased or purchased and funded with cash or through existing credit facilities.

**SECTION 1180.6(a)(2)**  
**PUBLIC INTEREST JUSTIFICATIONS**

The requested trackage rights are in the public interest because they would redress the harm that would result from the Primary Transaction to the essential services provided by NECR to the customers it serves. Granting the requested condition would enable NECR to continue providing its shippers adequate and possibly improved rail service. The projected traffic diversions from NECR would force NECR to cover its fixed costs from a declining traffic base thereby increasing its per unit cost which would have to be passed on to its remaining customers. These increased costs would have a spiraling downward trend. As the per unit cost for NECR's service increases, some of NECR's remaining customers would be forced to switch to other transportation modes or go out of business which, in turn, would only further increase NECR's per unit cost and drive away additional customers.

Primary Applicants claim significant public benefits in the form of safer highways, reduced fuel consumption and reduced highway damage by diverting traffic from truck to rail. If NECR is forced to curtail or reduce rail service as a result of the traffic diversions to Primary Applicants, many of NECR's customers would have no option other than to divert their shipments to trucks. This result would be detrimental to the public interest for the very reasons explained in the Primary Application.

Also, the requested trackage rights would ameliorate certain of the anticompetitive effects of the Primary Transaction in the New England area. NECR would be able to increase the competitive options otherwise available to shippers and shortlines in New England by offering a direct, efficient and competitive alternative to CSXT.

New England today is served by only one Class I railroad: CRC. Primary Applicants will undoubtedly claim that their proposed transaction will not disadvantage shippers or shortlines in New England, since CSXT is simply stepping into the shoes of CRC and thus maintaining the status quo. The substitution of CSXT for CRC, however, will competitively disadvantage shippers and shortlines in the New England area in at least two fundamental respects. First, shippers captive to CRC in New England will be competitively disadvantaged vis-à-vis their competitors located in areas that will be opened to rail competition. Primary Applicants readily admit that shippers gaining new rail competition will benefit from reduced rates and improved service. Second, CSXT will be a much larger and eminently more dominant carrier than CRC is today. For shippers in New England that currently have the option of forwarding their traffic to either the CSXT or NSR rail system, CRC offers a neutral or indifferent gateway service. These shippers today are able to bargain with CSXT and NSR for better rate and service options. If the

Primary Transaction is approved without appropriate conditions, CSXT will have a strong economic incentive to favor its own routes by raising rates or reducing service for any traffic moving to the NSR destinations.

In addition, the trackage rights between Palmer and West Springfield would enable NECR and CSO to reduce costs by coordinating their operations. The new connections with CSO and HRRC would provide new joint marketing opportunities with NECR for traffic that moves today by truck. NECR would also be able to provide the other shortline connections with more efficient routings, access to additional markets and increased rail options.

The condition sought by NECR would not impose any unreasonable operating problems on the rail line between Palmer and northern New Jersey, or in the region generally. The condition would also not detract in any material respect from the public benefits the Primary Applicants expect to achieve from the Primary Transaction. Primary Applicants claim public benefits of nearly \$1 billion per year. *See CSX/NS-18 at 2.* NECR estimates that it will generate approximately \$7 million dollars in annual revenues from the trackage rights operations, which is less than the revenues NECR expects to lose to Primary Applicants. Most of these revenues would be generated from overhead traffic originating in Canada and moving to New York.

#### **SECTION 1180.6(a)(2)(i) EFFECT ON COMPETITION**

The requested condition would enhance intermodal and preserve intramodal competition in the market served today by NECR.

By extending its network and gaining access to alternative Class I rail service, NECR and its connecting shortlines would be better able to compete with trucks for traffic moving to and from the New England area.

The requested trackage rights would also serve as a bench mark for CSXT's single-line service. Primary Applicants extol the benefits of single-line versus joint-line rail service throughout the Railroad Control Application. NECR is not seeking to compete head-to-head with CSXT. Rather, the requested condition will enable NECR to offer shippers and other shortlines a joint- or multi-line service option to CSXT's proclaimed vastly superior single-line service. NECR is confident that the condition it seeks would enable NECR to retain some of the traffic that would otherwise be diverted to Primary Applicants and attract new traffic to make up for the losses it will incur as a result of the Primary Transaction. In any event, the condition will be beneficial to intramodal competition in New England by enabling NECR to act as a restraint on CSXT rate increases and service deficiencies in this area.

#### **SECTION 1180.6(a)(2)(ii) FINANCIAL CONSIDERATIONS**

In the Railroad Control Application, Primary Applicants estimate that CSXT and NSR would divert \$1,600,000 in revenues annually from NECR if the Primary Transaction is consummated. *See CSX/NS-18* at 82. NECR estimates that the diversions will be much higher and that NECR stands to lose approximately \$8 million in annual revenue. NECR's gross revenues for 1997 are projected to be about \$16.8 million. Based on Primary Applicants' own conservative traffic diversion analysis, NECR stands to lose \$1.6 million in revenues, or a 10 percent decline. NECR estimates revenue losses of \$8 million, or almost a 50 percent decline.

The requested trackage rights would enable NECR to recoup these losses by being able to retain some of the traffic Primary Applicants would otherwise divert and attract new traffic. Thus, the additional revenue NECR would be able to generate from the trackage rights would enable NECR to continue providing efficient and economical service to its customers.

**SECTION 1180.6(a)(2)(iii)**  
**EFFECT ON FIXED CHARGES**

NECR does not expect any increase in fixed charges resulting from the operations proposed in this Responsive Application.

**SECTION 1180.6(a)(2)(iv)**  
**EFFECT ON ADEQUACY OF TRANSPORTATION**

Granting the condition sought by NECR would have a positive effect on the adequacy of transportation in the New England region. The requested trackage rights are necessary to preserve essential services now performed by NECR. Most of NECR's customers are dependent on rail service to meet their transportation needs which cannot economically be met by other modes of transportation. For example, customers located on the NECR receiving forest products from Canadian origins have no practical or economic alternative to NECR's rail service.

Accordingly, if the condition requested by NECR is not granted, shippers dependent on NECR will lose essential rail service.



**SECTION 1180.6(a)(2)(v)  
EFFECT ON EMPLOYEES**

Granting the condition sought by NECR should have no impact on the employees of Primary Applicants. The condition would simply enable NECR to retain some of the traffic CSXT and NSR would divert from NECR and provide NECR the opportunity to compete for new traffic to offset its losses.

The condition would have a positive impact on NECR employees in that NECR would have to increase its work force. NECR does not yet know precisely how many employees would have to be laid off if the condition is not granted. With a loss of \$1.6 million, as Primary Applicants predict, NECR would most likely have to lay off eight employees. With a loss of \$8 million, as NECR estimates, significantly more employees would need to be laid off.

**SECTION 1180.6(a)(2)(vi)  
EFFECT OF INCLUSION OF OTHER RAILROADS**

Not applicable to this Responsive Application.

**SECTION 1180.6(a)(3)  
OTHER SUPPORTING STATEMENTS**

NECR anticipates that its Responsive Application will be supported by shippers, shortlines and governmental entities in separate filings with the Board.



**SECTION 1180.6(a)(4)**  
**OPINION OF COUNSEL**

The opinion of NECR's counsel that the condition requested in this Responsive Application satisfies the requirements of law and will be legally authorized and valid if approved by the Board appears at the end of the narrative of the Responsive Application.

**SECTION 1180.6(a)(5)**  
**LIST OF STATES**

NECR operates in the States of Vermont, New Hampshire, Massachusetts and Connecticut. The rail line over which NECR seeks trackage rights is located in the States of Massachusetts, New York and New Jersey.

**SECTION 1180.6(a)(6)**  
**MAP**

A map showing the rail lines of NECR and the rail line over which NECR seeks trackage rights is attached as Exhibit 1.

**SECTION 1180.6(a)(7)(i)**  
**NATURE OF TRANSACTION**

The condition NECR seeks to have imposed on the Primary Application is a grant of trackage rights as described above under Section 1180.6(a)(1)(i).

**SECTION 1180.6(a)(7)(ii)**  
**AGREEMENTS**

A draft agreement setting forth the significant terms proposed is attached as Exhibit 2.

**SECTION 1180.6(a)(7)(iii)**  
**CONSOLIDATED COMPANY INFORMATION**

Not applicable to this Responsive Application.

**SECTION 1180.6(a)(7)(iv)**  
**COURT ORDER**

Not applicable to this Responsive Application.

**SECTION 1180.6(a)(7)(v)**  
**PROPERTY INCLUDED IN THE PROPOSED TRANSACTION**

The trackage rights requested by NECR are over a very limited portion of the rail lines sought to be acquired by CSXT in the Primary Transaction. *See* "Description of Proposed Transaction" under Section 1180.6(a)(1) and the map attached as Exhibit 1.

**SECTION 1180.6(a)(7)(vi)**  
**PRINCIPAL ROUTES**

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 connects with the Canadian National Railway Company at East Alburg, Vermont; Vermont Railway, Inc., at Burlington, Vermont; Washington County Railroad Corp., at Montpelier Jct., Vermont; the Guilford Rail System at White River Jct., and Brattleboro, Vermont; Green Mountain Railroad Corp., at Bellows Falls, Vermont; Claremont Concord Railroad Corp., at Claremont Jct., New Hampshire; CRC and Massachusetts Central Railroad Corp., at Palmer, Massachusetts; and the Providence and Worcester Railroad Company at New London, Connecticut.

The trackage rights NECR seeks are over three sections of a rail line totaling approximately 256 miles in length.<sup>5</sup> With a grant of the requested trackage rights, NECR will be able to operate from Palmer to West Springfield, which is a junction of NECR's affiliate, the CSO, to Pittsfield for a connection with HRRC, and on to the Albany area for connections with NSR, the D&H and Guilford. At the northern New Jersey terminus, NECR would have a direct connection with NSR and CSXT.

**SECTION 1180.6(a)(7)(vii)**  
**GOVERNMENTAL FINANCIAL ASSISTANCE**

No governmental assistance will be sought to consummate the transaction sought in this Responsive Application.

**SECTION 1180.6(a)(8)**  
**ENVIRONMENTAL DATA**

NECR has submitted an Environmental Verified Statement (NECR-3) pursuant to Decision No. 38, stating that no environmental documentation is required for NECR's Responsive Application pursuant to the provisions of 49 C.F.R. § 1105.6(c)(2). NECR hereby reconfirms that no environmental documentation is required for the grant of this Responsive Application.

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<sup>5</sup> The length of the rail segment between Palmer and West Springfield is 18 miles, the segment between West Springfield and Selkirk is approximately 98 miles, and the segment between Selkirk and the New Jersey/New York Shared Assets Area is approximately 140 miles.

**SECTION 1180.8(b)**  
**OPERATING PLAN-MINOR**

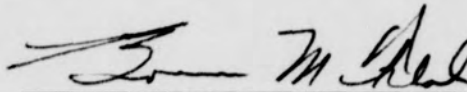
A copy of NECR's operating plan is attached as Exhibit 15.

**CONCLUSION**

For the foregoing reasons, NECR respectfully urges the Board to grant, as a condition to approving the Railroad Control Application, the trackage rights requested in this Responsive Application.

**SECTION 1180.4(c)(2)(i)**  
**SIGNATURES, OATHS, AND CERTIFICATIONS**  
**OF APPLICANT'S EXECUTIVE OFFICERS**

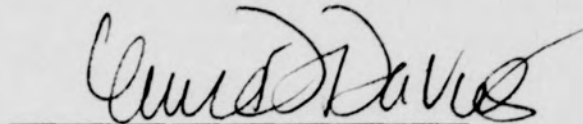
I, Bruce M. Flohr, declare under penalty of perjury that I am President and a Director of New England Central Railroad, Inc., responsive applicant herein, that I am one of the executive officers duly authorized to sign, to verify and to file this Responsive Application on behalf of New England Central Railroad, Inc., that I have knowledge of the matters contained in this Responsive Application, and that the statements made in this Responsive Application are true and correct to the best of my knowledge and belief.



Bruce M. Flohr

Executed on October 17, 1997

I, Laura D. Davies, hereby certify that I am Corporate Secretary of New England Central Railroad, Inc., responsive applicant herein, and that Bruce M. Flohr, President and a Director of New England Central Railroad, Inc., is duly authorized to sign, to verify, and to file this Responsive Application on behalf of New England Central Railroad, Inc.



Corporate Secretary

Dated this 17<sup>th</sup> day of October 1997, at San Antonio, Texas.

**SECTION 1180.6(a)(4)**  
**OPINION OF COUNSEL FOR**  
**NEW ENGLAND CENTRAL RAILROAD, INC.**

As counsel for New England Central Railroad, Inc. ("NECR"), I am familiar with the transaction proposed in the Responsive Application of NECR. It is my opinion that the transaction proposed in NECR's Responsive Application meets all requirements of law, will be legally authorized and valid if approved by the Surface Transportation Board, is within the corporate power of NECR, and will not result in any breach, violation or default of any provision of NECR's Articles of Incorporation or Bylaws.

BALL JANIK LLP

By: Karl Morell

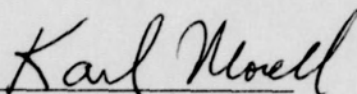
Karl Morell  
Suite 225  
1455 F Street, N.W.  
Washington, D.C. 20005

Attorney for New England Central  
Railroad, Inc.

Dated this 20th day of October, 1997.



Respectfully submitted,

A handwritten signature in cursive script, reading "Karl Morell". The signature is written in dark ink and is positioned above a horizontal line.

KARL MORELL

Of Counsel

BALL JANIK LLP

1455 F Street, N.W.

Suite 225

Washington, D.C. 20005

(202) 638-3307

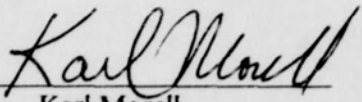
Attorney for:

NEW ENGLAND CENTRAL

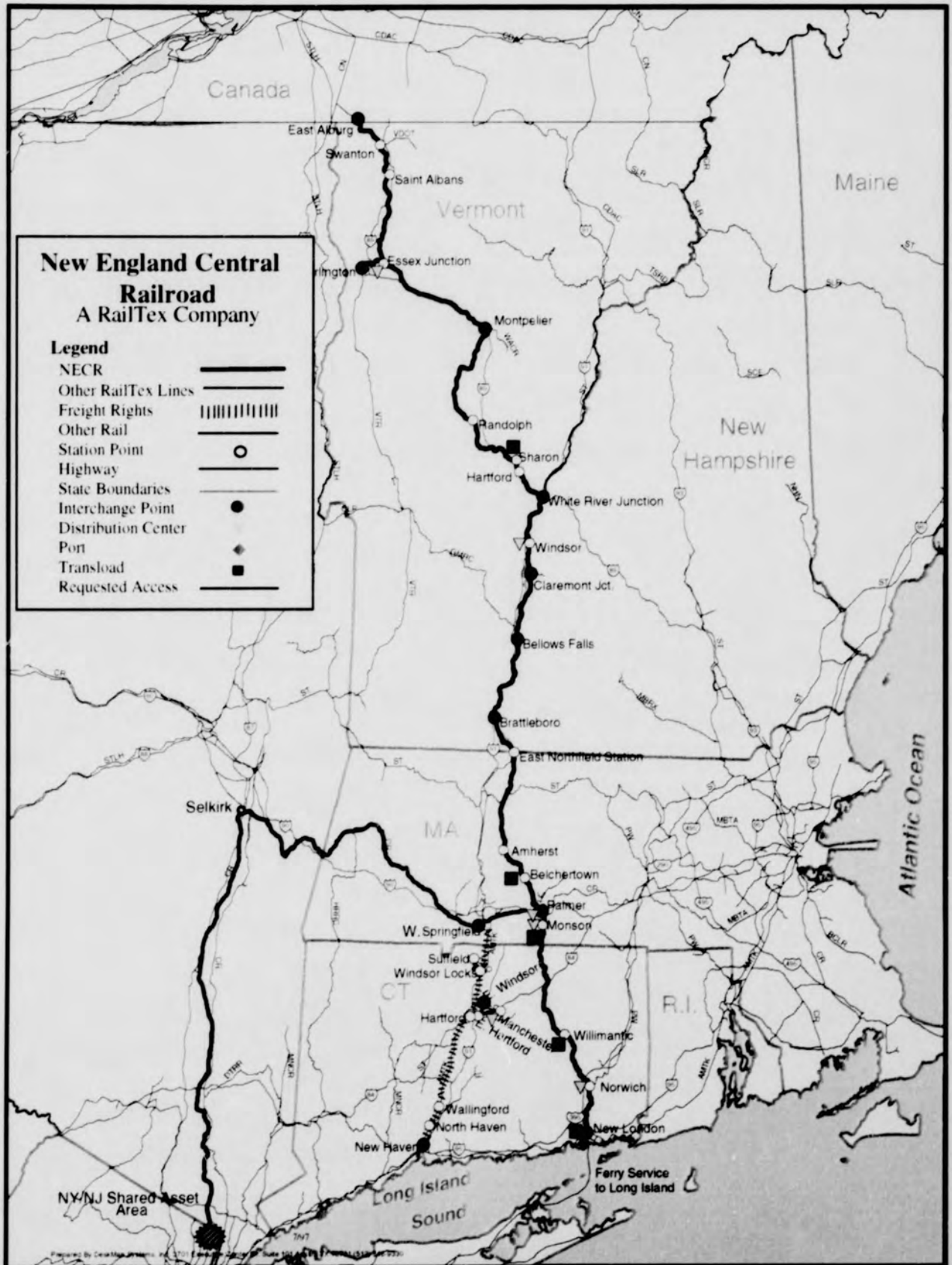
RAILROAD, INC.

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of October, 1997, I caused a copy of the Responsive Application of New England Central Railroad, Inc. (NECR-4) to be served on counsel for Primary Applicants by Hand Delivery and on Administrative Law Judge Jacob Leventhal and all other Parties of Record by first class mail, postage prepaid.

  
Karl Morell

# EXHIBIT 1



**EXHIBIT 2**

**TRACKAGE RIGHTS AGREEMENT**

between

**CSX TRANSPORTATION, INC.**

and

**NEW ENGLAND CENTRAL RAILROAD, INC.**

## AGREEMENT

THIS AGREEMENT, entered into as of this \_\_\_\_ day of \_\_\_\_, 199\_\_, by and between CSX TRANSPORTATION, INC., (hereinafter referred to as "CSXT" or "OWNER") and NEW ENGLAND CENTRAL RAILROAD, INC. (hereinafter referred to as "NECR" or "USER"),

WHEREAS, the Surface Transportation Board, in its decision in 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, served \_\_\_\_\_, (1) approved the acquisition by CSX Corporation and CSX Transportation, Inc., and Norfolk Southern Corporation, and Norfolk Southern Railway Company of control of Conrail, Inc., and Consolidated Rail Corporation, and (2) the division of the assets of Conrail, Inc., and Consolidated Rail Corporation by and between CSX Corporation and CSX Transportation Inc., and Norfolk Southern Corporation and Norfolk Southern Railway Company; and

WHEREAS, the Surface Transportation Board conditioned the control of Conrail, Inc., and Consolidated Rail Corporation on, among other things, the grant of trackage rights as set forth further in the Responsive Application of NECR, dated October 21, 1997; and

WHEREAS, CSXT desires to provide NECR with the rights requested in said Responsive Application; and

WHEREAS, NECR is agreeable to receiving said rights and desires to conduct operations over said rights under the terms and conditions herein and hereafter set forth,

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

### **SECTION 1. GRANT OF TRackage RIGHTS**

(a) Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate in limited trackage rights, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of Owner's railroad (hereinafter referred to as the "Subject Trackage"):

1. Between Palmer, Massachusetts, and West Springfield, Massachusetts, over the rail line formerly owned and operated by CRC and acquired and operated by CSXT;

2. Between West Springfield, Massachusetts, and Albany, New York, including the right to serve Selkirk and Mechanicville, New York, for the purpose of interchange with connection carriers, over the rail line formerly owned and operated by CRC and acquired and operated by CSXT; and



3. Between Albany, New York, and the New Jersey/New York Shared Assets Area over the rail line located on the west side of the Hudson River, formerly owned and operated by CRC and acquired and operated by CSXT.

The term "limited" trackage rights, as used above, includes: (1) the right to operate trains over the lines described; and (2) the right to interchange with all carriers (including shortlines) at all junctions on the lines.

## **SECTION 2. USE OF SUBJECT TRACKAGE**

(a) User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the right to grant to other persons rights of any nature in the Subject Trackage.

(b) Owner shall have exclusive control of the management and operation of the Subject Trackage.

(c) User shall have the right to operate in either direction over the Subject Trackage.

## **SECTION 3. COMPENSATION**

(a) The compensation for operations under this Agreement shall be set at the levels as follows:

## **SECTION 4. PAYMENT OF BILLS**

(a) All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

(b) Bills rendered pursuant to the provisions of this Agreement shall include direct labor and material costs, together with the surcharges, overhead, percentages, and equipment rentals in effect at the time any work is performed by Owner.

## **SECTION 5. MAINTENANCE OF SUBJECT TRACKAGE**

(a) Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Furthermore, except as may be otherwise provided in Section 11 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its directors, officers, agents, or employees



for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

(b) Owner shall also perform, at the expense of User, such additional maintenance as User may request.

#### **SECTION 6. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS**

(a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

(b) Any additional connections to the Subject Trackage which may be required shall be constructed, maintained, repaired, and renewed as follows:

(i) User shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User which connect the respective lines of the parties hereto; and

(ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.

#### **SECTION 7. ADDITIONS, RETIREMENTS, AND ALTERATIONS**

(a) Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

(b) If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communications or signal facilities, for purposes beyond that required for Owner's operation, Owner shall have the option:

(i) to make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities; or,

(ii) to deny such request.

## **SECTION 8. MANAGEMENT AND OPERATIONS**

(a) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

(b) User, in its use of the Subject Trackage, will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotive, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars, or equipment which exceed the width, height, weight, or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars, or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner, which consent will not be unreasonably withheld. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents, and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

(c) The trains, locomotives, cars, and equipment of User, Owner, or any other present or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(d) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

(e) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.

(f) In the event Owner and User agree that Owner should provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement

under which User shall bear all cost and expense for any such additional employees, including, without limitation, all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

#### **SECTION 9. MILEAGE AND CAR HIRE**

All mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

#### **SECTION 10. CLEARING OF WRECKS**

Whenever User's use of the Subject Trackage requires rerailing, wrecking service, or wrecking train service, Owner shall perform such service, including the repair and restoration of road bed, track, and structures. The cost and expense thereof, including, without limitation, loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 11 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

#### **SECTION 11. LIABILITY**

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with the Trackage Rights granted in this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, User being involved, without the trains, locomotives, cars, or equipment of, or in the account of, Owner being involved, User shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 10 hereof, and shall forever protect, defend, indemnify, and save harmless Owner and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of Owner or its directors, officers, agents, or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of Owner being involved, without the trains, locomotives, cars, or equipment of, or in the account of User being



involved, Owner shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 10 hereof, and shall forever protect, defend, indemnify, and save harmless User and its director, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of User or its directors, officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of both Owner and User being involved, Owner and User shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including, without limitation, lading), and equipment operated by each of them and for injury to and death of each of their directors, officers, agents, and employees, and persons in each of their care and custody. All liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including, without limitation, the Subject Trackage) and for any damage to or destruction of the environment whatsoever, including without limitation, land, air, water, wildlife, and vegetation, so occurring shall be borne equally by Owner and User, including, without limitation, all cost and expense referred to in Section 10 hereof. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers, agents, or employees.

(d) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both parties to this Agreement being so involved, and such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), car(s), or caboose(s) of, or in the account of, only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost, and expense in connection with the loss, damage, destruction, injury, and death so occurring, including without limitation all cost and expense referred to in Section 10 hereof, and said party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against any such liability, cost, and expense.

(e) In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of

said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) Notwithstanding the provisions of Section 16(f) of this Agreement, for the purposes of this Section 11 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

## **SECTION 12. INVESTIGATION**

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

(c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Twenty Five Thousand Dollars (\$25,000).

(f) Nothing in this section shall modify or supersede the provisions of Section 11 hereof.

### **SECTION 13. DEFAULT AND TERMINATION**

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right, at its option, after first giving thirty (30) days' written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

### **SECTION 14. ARBITRATION**

Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, experts, and counsel. The compensation, costs, and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

### **SECTION 15. ABANDONMENT OF SUBJECT TRACKAGE**

Notwithstanding the provisions of Section 19 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than one hundred twenty (120) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from



any liability which may have arisen or be incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

#### **SECTION 16. GENERAL PROVISIONS**

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

(d) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

(e) As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars, or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

(f) All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

#### **SECTION 17. SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that User shall not transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder to any person, firm, or corporation without obtaining the prior written consent of the Owner, which consent will not be unreasonably withheld, except that the rights granted by this Agreement shall pass to the successor of substantially all of the property of User.

**SECTION 18. NOTICE**

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

[\_\_\_\_\_]

[\_\_\_\_\_]

**SECTION 19. COMMENCEMENT, TERM, AND TERMINATION**

(a) This Agreement shall take effect on \_\_\_\_\_, 1998 ("Commencement Date"), and shall continue in full force and effect for a period of 99 years from said Commencement Date.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the date first above written

WITNESS:

CSX TRANSPORTATION, INC.

\_\_\_\_\_

\_\_\_\_\_

WITNESS

NEW ENGLAND CENTRAL RAILROAD, INC.

\_\_\_\_\_

\_\_\_\_\_

## **EXHIBIT 15**

### **OPERATING PLAN - MINOR**

If the Primary Application is approved by the Board, NECR will be forced to make major operational changes on its current system. Some services will have to be reduced and others eliminated. Employees will need to be laid off and equipment sold or redeployed to affiliated companies. If the condition requested by NECR is granted by the Board, NECR will be able to reassign employees and locomotives to the new extended service NECR would provide to the Albany and north New Jersey areas.

In order to accommodate the new operations to the Albany and northern New Jersey areas and provide efficient service to NECR customers and shortline connections, NECR would need nine crews, consisting of 18 individuals, and 14 locomotives. The proposed operations between Palmer and West Springfield would require two crews stationed in Palmer and three locomotives. NECR would operate over this segment seven days per week and handle an average of 2 trains a day, one each way. The proposed operations between West Springfield and the Albany area would require two crews based in West Springfield and three locomotives. NECR expects that it would also operate over this segment seven days a week and handle an average of 2 trains a day, one each way. The proposed operations between the Albany area and the New York/New Jersey Shared Assets Area would require five crews based in Kingston, New York and eight locomotives. NECR expects that it would operate over this segment seven days a week and handle an average of 2 trains a day, one each way.

NECR does not anticipate the need for any discontinuances or abandonments as a result of the proposed transaction in this Responsive Application. There are no commuter operations

on the lines over which NECR seeks trackage rights. NECR's proposed operations over the line would not impact Amtrack's passenger service.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO. 33388

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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. 75)

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NEW ENGLAND CENTRAL RAILROAD, INC.  
--TRACKAGE RIGHTS--  
CSX TRANSPORTATION, INC.

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**VERIFIED STATEMENT  
OF  
DALE CARLSTROM**

My name is Dale Carlstrom. I am Senior Vice President and General Manager of New England Central Railroad, Inc. (NECR). I am submitting this statement in support of the Responsive Application being filed by NECR in Finance Docket No. 33388, seeking trackage rights between Palmer, Massachusetts and the New Jersey/New York Shared Assets Area over the rail line currently owned by Consolidated Rail Corporation (CRC) and to be acquired by CSX Transportation, Inc. (CSXT) via West Springfield, Massachusetts and the Selkirk-Albany, New York area.



I have worked in the railroad industry since 1979. I began my career with the Soo Line Railroad first in Minneapolis, Minnesota and later in Fond du Lac, Wisconsin, working in various operating positions, in industrial engineering and the intermodal department. After a short stint with Gelco CTI Container Leasing, I was hired in 1988, by RailTex, Inc. I first worked in the Acquisitions Department and later became General Manager for six of RailTex's railroads, including the NECR.

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 connects with the Canadian National Railway Company (CN) at East Alburg, Vermont; Vermont Railway, Inc., at Burlington, Vermont; Washington County Railroad Corp., at Montpelier Jct., Vermont; the Guilford Rail System at White River Jct., and Brattleboro, Vermont; Green Mountain Railroad Corp., at Bellows Falls, Vermont; Claremont Concord Railroad Corp., at Claremont Jct., New Hampshire; CRC and Massachusetts Central Railroad Corp., at Palmer, Massachusetts and the Providence and Worcester Railroad Company at London, Connecticut.

NECR commenced operations in February 1995, with approximately 85 employees, 26 locomotives, and a small fleet of railcars. NECR has grown steadily at a rate of approximately 10 percent a year since operations began. Currently, NECR has a work force of 104 employees and operates a fleet of 20 locomotives. We have yard facilities at St. Albans, Vermont, White River Jct., Vermont, Brattleboro, Vermont and Palmer, Massachusetts. NECR also operates mechanical repair shops at St. Albans and Palmer.

NECR operates with two-man crews and has made numerous operational changes in the past three years that has improved our operating efficiency. At the same time, we have been able

to improve service to our customers through flexible work rules and employee training. The operating efficiencies we have been able to achieve enable us today to handle most cars over our system from interchange at the Canadian border to customer locations in Massachusetts and Connecticut and back to the Canadian border in three days or less.

NECR serves the states of Vermont, New Hampshire, Massachusetts and Connecticut. The combined population of the on-line market areas is 10.2 million. The railroad passes mainly through undeveloped land in the states of Vermont and New Hampshire, then through central Massachusetts and central Connecticut which are also mainly rural. So far, the Massachusetts area, primarily Palmer, has ranked first in volume and revenues for NECR. Four of the largest distribution centers are located in this area. From this region, NECR penetrates markets in the states of New York, New Jersey, Pennsylvania, South Carolina and Virginia with lumber and forest products originating in Canada.

There are approximately 75 active rail shippers located on the NECR rail system that are served on-line. We currently operate 12 trains daily and handle approximately 34,000 carloads per year. NECR's estimated gross revenues for 1997 are \$16.8 million. Approximately 25 percent of our business is bridge traffic handled between the other connecting shortline and Class I railroads that use NECR as a bridge carrier.

NECR's customer base, including overhead traffic, by commodity group and the percentage of NECR's estimated 1997 revenue by commodity group are as follows:

### **Customer Base and Percentage of Revenues**

<b>Industrial Group</b>	<b>Percentage of NECR Revenue</b>
Lumber and Wood Products	24.3
Pulp or Allied Products	19.4
Primary Metals	14.4
Hazardous Materials	7.6
Clay, Concrete, Glass, Stone	7.2
Waste or Scrap Materials	6.3
Food or Kindred Products	4.5
Chemicals or Allied Products	4.1
Farm Products	3.9
Non-Metallic Minerals	2.3
Intermodal	2.5
Other	3.5

The vast majority of our on-line customers are captive to NECR and have no other direct rail service options. While our main competition is trucks, motor carrier service would not be a practical or economic long-term transportation service alternative for most of our customers. For example, our forest product customers located in Vermont, Massachusetts and Connecticut depend on economical rail service for shipments originating as far away as western Canada and the northwestern region of the United States.

In 1996, NECR experienced a 12 percent increase in carloads and estimates a 10 percent increase in 1997. NECR's largest percentage increase in traffic during the last year has come from bridge traffic which now accounts for approximately 25 percent of our business. Bridge traffic continues to represent NECR's best growth potential because we are able to connect competitively with other rail carriers throughout our system. Our service to distribution centers has also increased due to our competitive connections with Class I and shortline carriers. Approximately 90 percent of the product handled to these distribution centers is forest products.

The lifeblood of the NECR system is the connections with other rail carriers; the connections keep us and our customers competitive. These connections are also beneficial to the other shortlines in the region and the customers located on those carriers. The NECR connects with seven shortlines in New England and we work with those carriers on a daily basis to jointly market our rail systems.

Over the past few years, NECR has seen its financial situation improve. By increasing carloadings and reducing operating expenses, NECR has managed to reduce its operating ratio from 80 percent in 1996, to approximately 76 percent in 1997. We consider our operation to be very "lean" and NECR management is constantly striving to reduce costs. Recently, we were able to reduce locomotive costs by adding more powerful SD-40's, which allowed us to reduce our fleet from 26 to 20 locomotives.

In their Application to control CRC, CSXT and Norfolk Southern Railway Company (NSR) estimate that NECR would suffer \$1,600,000 in annual revenue losses from traffic diversions mainly to CSXT. NECR estimates that annual revenue losses from traffic diversions will more likely be about \$8,000,000. Currently, approximately 50 percent of the carloads moving over the NECR are forest products coming to the NECR via CN from Canada. CSXT and NSR serve producers of forest products in the southeast United States. After the proposed carve up of CRC, CSXT and NSR will be able to use their significantly enhanced market power to the northeast to displace forest products moving into the northeast from Canada.

NECR has already witnessed some of the impacts of the CRC carve up on NECR and its customers. Some traffic moving to distribution centers located on the NECR that originates on CSXT has lately shifted to distribution centers located on CRC. Once CSXT takes over the CRC

rail lines in New England, this shift in traffic movements will become much more dramatic to the detriment of NECR and the customers located on its line.

A reduction of \$1.6 million in gross revenue, as CSXT and NSR project, would have a significant effect on NECR's ability to provide service to customers located on our rail line. We estimate that in order to offset the \$1.6 million in gross revenues, NECR would have to cut approximately \$1.4 million in expenses. If NECR loses \$8 million, as we project, we would be forced to reduce our costs by nearly \$7 million. This would have a drastic and possibly fatal effect on NECR.

The loss of a significant portion of NECR's forest products business would force us dramatically to reduce service over the entire system and stop service altogether on the marginal sections. Some of NECR's customers that face an elimination or reduction in rail service or would otherwise be adversely affected by the diversions to CSXT and NSR are Maple Leaf, Northwest Warehouse, and Quaboag.

In addition to service reductions, NECR would be forced to increase rates for its remaining customers to offset some of the revenue losses. The service reductions and rate increases would have a downward spiraling effect as more and more NECR customers are negatively impacted by their loss of efficient and economical rail service from NECR. As these customers lose business or are forced out of business altogether, traffic levels on the NECR would further decline forcing NECR to take even more drastic steps to stop the hemorrhaging losses.

Trucks are not a practical alternative for shippers served by NECR, as previously explained. Most of the products shipped over the NECR move to distribution centers in New



England. These customers located on the NECR could not economically have their products shipped by truck from western or eastern Canadian locations and remain competitive.

If the trackage rights requested by NECR are granted, NECR would have access to new markets for overhead traffic from Canada and for traffic from its on-line customers and connecting shortlines. Access to these new markets could result in NECR attracting up to 100 additional carloads per day of overhead traffic originating in Canada. Also, NECR's ability to connect with its affiliate, the Connecticut Southern Railroad, Inc. (CSO), would enable NECR to attract about 5,000 carloads a year of traffic moving to and from the CSO. The projected increase in bridge traffic could produce \$5 million in gross revenues a year for the NECR and the local traffic to and from the CSO could increase revenues by \$2 million a year. These increases in revenue would come close to offsetting the losses NECR will most likely experience from the traffic diversions to CSXT and NSR.

Shippers in New England that currently have the option of receiving traffic from, or forwarding traffic to, locations on either CSXT or NSR via CRC will lose rail competition as a result of the CRC carve up. For these shippers and the shortlines in New England, such as NECR and CSO, CRC acts as a neutral intermediary carrier, preferring neither CSXT nor NSR. Once CSXT takes over the CRC routes in New England, CSXT will have the ability and incentive to raise rates on traffic moving to and from NSR locations. Many shippers in New England dependent on rail service will see a reduction in rail competition and have fewer markets in which to compete.

In conclusion, the control of CRC by CSXT and NSR will have a devastating impact on NECR. NECR stands to lose significant revenues as a result of traffic diversions to CSXT and

NSR: \$1.6 million by CSXT's and NCR's estimates and about \$8 million by NECR's estimate. Either one of these estimates will result in a loss of essential services to customers located on the NECR, the only difference being the magnitude of the harm. The vast majority of NECR's on-line customers are dependent on NECR's economical rail service and have no viable transportation alternatives. The condition requested by NECR would enable NECR to recoup most of the projected revenue losses and permit NECR to continue providing its customers efficient and economical rail service. The requested condition would also remedy the loss of rail competition in New England and provide shippers and shortlines a competitive option to CSXT.

## VERIFICATION

I, Dale Carlstrom, verify under penalty of perjury that the foregoing Verified Statement is true and correct to the best of my knowledge and belief.

Dale Carlstrom  
Executed on 10/16/97