STB FD 33388 (Sub 80) 12-15-97 D 184843

UTU/IL-2

Before the

SURFACE TRANSPORTATION BOARD

ORIGINAL

Finance Docket No. 33388 (Sub-No. 36)

RESPONSIVE APPLICATION--ELGIN, JOLIET &
EASTERN RAILWAY COMPANY, TRANSTAR, INC.,
AND I&M RAIL LINK, LLC

Finance Docket No. 33388 (Sub-No. 59)

RESPONSIVE APPLICATION-WISCONSIN CENTRAL LTD.

D

Finance Docket No. 33388 (Sub-No. 80) - 184843

RESPONSIVE APPLICATION--WHEELING & LAKE ERIE RAILWAY COMPANY

COMMENTS

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

Attorney for Joseph C. Szabo

Due Date: December 15, 1997

Before the

SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388 (Sub-No. 36)

RESPONSIVE APPLICATION--ELGIN, JOLIET & EASTERN RAILWAY COMPANY, TRANSTAR, INC., AND I&M RAIL LINK, LLC

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Finance Docket No. 33388 (Sub-No. 80)

RESPONSIVE APPLICATION--WHEELING & LAKE ERIE RAILWAY COMPANY

COMMENTS

These comments are submitted by Joseph C. Szabo,[1/] for and on behalf of United Transportation Union-Illinois Legislative Board.

The captioned proceedings involve responsive applications with respect to the primary application. These responsive applications do not provide justification, or support, for approval of the primary application. The responsive applications, as well as the primary application, would be adverse to rail employment in the State of Illinois, and would adversely affect rail employees.

Denial of the primary application would moot the responsive applications.

1/ Illinois Legislative Director for United Transportation Union, with offices at 8 So. Michigan Avenue, Chicago, IL 60603.

Respectfully submitted,

Gordon P. MacDougall

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

December 15, 1997

Attorney for Joseph C. Szabo

Certificate of Service

I hereby certify I have served a copy of the foregoing upon the following, and upon all parties of record on the Board's service list attached to Decision No. 21, as modified in Decision Nos. 27, 43, and 57, by first class mail postage-prepaid:

Thomas J. Litwiler
Oppenheimer Wolff & Donnelly
1020-19th St., N.W.-#400
WASHINGTON DC 20036

Charles H. White, Jr.
Galland, Kharasch & Garfinkle
1054-31st Street, N.W.
WASHINGTON DC 20007

Jacob Leventhal, ALJ
Federal Energy Regulatory Comm.
WASHINGTON DC 20426

Dennis G. Lyons
Arnold & Porter
555-12th St., N.W.
WASHINGTON DC 20004

Richard A. Allen
Zuckert, Scoutt & Rasenberger
888-17th St., N.W.-#600
WASHINGTON DC 20006

Paul A. Cunningham
Harkins Cunningham
1300-19th St., N.W.-#600
WASHINGTON DC 20036

Gordon P. MacDougall

Washington DC

GORDON P. MacDOUGALL

STB FD 33388 (Sub 80) 12-15-97 D 184837

ORIGINAL

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

D

R. J. CORMAN RAILROAD COMPANY/WESTERN OHIO LINE--
FINANCE DOCKET NO. 33388 (SUB-NO. 63); - 184832

INDIANA & OHIO RAILWAY COMPANY
FINANCE DOCKET NO. 33388 (SUB-NO. 77); - 184833

ANN ARBOR ACQUISITION CORPORATION, D/B/A
ANN ARBOR RAILROAD
FINANCE DOCKET NO. 33388 (SUB-NO. 78); - 184836

WHEELING & LAKE ERIE RAILWAY COMPANY
FINANCE DOCKET NO. 33388 (SUB-NO. 80) - 184837

OAG-8

COMMENTS OF THE OHIO ATTORNEY GENERAL,
OHIO RAIL DEVELOPMENT COMMISSION AND
PUBLIC UTILITIES COMMISSION OF OHIO
TO THE RESPONSIVE APPLICATIONS

Thomas M. O'Leary
Executive Director
Ohio Rail Development
Commission
50 W. Broad Street, 3rd Floor
Columbus, OH 43216

Alfred P. Agler
Director of Transportation
Division, Public Utilities
Commission of Ohio (PUCO)
Borden Building, 5th Floor
180 E. Broad Street
Columbus, OH 43215

ATTORNEYS FOR STATE OF OHIO
PARTIES OF RECORD
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

Doreen G. Johnson
Assistant Attorney General
Chief, Antitrust Section
Mitchell L. Gentile
Thomas G. Lindgren
Assistant Attorneys General
Antitrust Section
State Office Tower, 18th Floor
30 East Broad Street
Columbus, OH 43266-0410
(614) 466-4328

Keith G. O'Brien
John D. Heffner
Robert A. Wimbish
Rea, Cross & Auchincloss
1920 N Street, NW
Washington, DC 20036
(202) 785-3700

Alan Klodell
Assistant Attorney General for
Ohio Rail Development Commission
37 W. Broad Street
Columbus, OH 43216

DATED: DECEMBER 15, 1997

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY --
CONTROL AND OPERATING LEASES/AGREEMENTS --
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R. J. CORMAN RAILROAD COMPANY/WESTERN OHIO LINE--
FINANCE DOCKET NO. 33388 (SUB-NO. 63);

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ANN ARBOR RAILROAD
FINANCE DOCKET NO. 33388 (SUB-NO. 78);

WHEELING & LAKE ERIE RAILWAY COMPANY
FINANCE DOCKET NO. 33388 (SUB-NO. 80)

OAG-8

COMMENTS OF THE OHIO ATTORNEY GENERAL,
OHIO RAIL DEVELOPMENT COMMISSION AND
PUBLIC UTILITIES COMMISSION OF OHIO
TO THE RESPONSIVE APPLICATIONS

In Decision No. 54 served November 20, 1997, the Surface Transportation Board (Board) accepted for consideration and consolidated for disposition with the primary application in STB Docket No. 33388 (and embraced proceedings), responsive applications filed by several parties including R.J. Corman Railroad Company/Western Ohio Line (RJC) in STB Finance Docket

No. 33388 (Sub-No. 63); by Indiana & Ohio Railway Company (I&O) in STB Finance Docket No. 33388 (Sub-No. 77); Ann Arbor Acquisition Corporation d/b/a Ann Arbor Railroad (Ann Arbor) in STB Finance Docket No. 33388 (Sub=No. 78); and by Wheeling & Lake Erie Railway Company (W&LE) in STB Docket No. 33388 (Sub-No. 80).

The Board's November 20 decision provides that interested persons may participate by submitting written comments regarding any or all of the responsive filings accepted for consideration. The decision further provides that such comments must be submitted to the Board by December 15, 1997. In keeping with the Board's procedural schedule, the Ohio Attorney General (OAG), Ohio Rail Development Commission (ORDC) and the Public Utilities Commission of Ohio (PUCO)[1] hereby submit these comments (responses) specifically regarding the responsive applications filed by RJC, I&R, Ann Arbor and W&LE.

INTERESTS OF THE OHIO AGENCY PARTIES

As previously stated, the Ohio Attorney General is charged with the duty of enforcing state and federal antitrust laws and through active participation in these proceedings, seeks to maintain and foster rail competition in Ohio and to preserve rail access for shippers and customers utilizing Ohio's rail transportation system. ORDC is participating by reason of its public interest responsibilities in the area of economic

[1] OAG, ORDC and PUCO previously entered an appearance and jointly filed opposition comments and request for protective conditions in response to the Primary Applicants' proposed Transaction. For convenience, the state agencies will hereafter be referred to as Ohio or State of Ohio.

development; branch line preservation; highway/rail safety and engineering projects; and, passenger and commuter rail line planning and development. PUCO is directly concerned because of its responsibility for ensuring that citizens of Ohio have access to safe and adequate rail service. Each of these agencies has responsibility to protect and foster the public interests of Ohio.

Through OAG, ORDC and PUCO, Ohio has previously stated its opposition to the proposed operation and control of Conrail (CR) lines by the Primary Applicants (CSX and NS) unless the Board adopts protective conditions and other measures to avoid results which would otherwise adversely impact upon Ohio shippers, its rail carriers and on its communities.[2] Ohio now focuses its attention on responsive applications that have been filed by Ohio rail carriers.

STATEMENT

In a proceeding involving a proposed consolidation, merger or acquisition of control of two or more Class I railroads, the Board has broad authority to impose conditions governing the transaction including requiring the granting of trackage rights and access to other facilities. 49 U.S.C. § 11324(a) and 49 C.F.R. § 1180.1(c). Such conditions may be proposed to protect the interests of a competing carrier from the impacts of a transaction or to protect the public from anti-

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[2] Opposition Comments and Request for Protective Conditions, OAG-4 and 5 filed October 21, 1997.

competitive consequences. In both instances the key concern is whether the transaction will result in a lessening of the adequacy of transportation to the public. CSX Corp.--Control--Chessie and Seaboard CII, 303 I.C.C. 521, 577 (1980). Ohio remains convinced that the transaction proposed by the Primary Applicants will have anti-competitive ramifications and will result in serious disruption in the adequacy of transportation within the State of Ohio unless adequate remedial measures, including appropriate grants of responsive applications, are included in any grant of authority sought by the Primary Applicants.

Based on its evaluation of the ramifications of the primary application and information available at the time of its October 21 filing, Ohio stated that it will support the Wheeling & Lake Erie Company fully to the extent that the relief it requests is designed to ensure an independent and viable W&LE after consummation of the primary transaction. In regard to short line railroads serving Ohio shippers, Ohio stated that it supports appropriate remedial measures to cushion the Indiana & Ohio Railroad from diversion of traffic which would otherwise adversely impact upon its viability and its continued ability to provide responsive rail service to Ohio shippers. Ohio also declared its support for appropriate remedial measures to assure that R.J. Corman Railroad will continue to have competitive connections with Class I railroads. With acceptance of the responsive application by the Board on November 20, Ohio is now in a position to reaffirm and refine its previously stated support for W&LE, I&O and RJC. In addition, following review of the responsive application filed by Ann Arbor, Ohio now supports its request for remedial relief.

BACKGROUND

Acting on behalf of all of its constituents, Ohio has endeavored to evaluate the full range of ramifications of the transaction proposed by the Primary Applicants, both positive and negative. In so doing, Ohio has found that it faces numerous serious regional problems that will adversely affect essential transportation services in every corner of the state as demonstrated in the Responsive Applications filed by W&LE, I&O, RJC and Ann Arbor. Thus, Ohio must maintain its opposition to the transaction proposed by the Primary Applicants as previously stated in the October 21 filings (OAG-4 and 5).

OHIO'S INTEREST

For the years 1994-1996 Ohio has led the nation in the number of business expansions and new business locations State.[3] Those accomplishments have been achieved on the basis of Ohio's existing transportation system. Thus, Ohio is very much concerned with any change that could adversely effect the fabric of that transportation system and its ability to competitively respond to the needs of Ohio's economy.

Conrail operates about 1,700 of Ohio's 5,800 rail route miles and is Ohio's largest railroad. CSX operates about 1,460

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[3] Site Selection Magazine, Feb.-Mar. 1997, p. 76.

rail miles in Ohio and NS operates about 960 rail miles in Ohio. Based upon Ohio's economic performance over the most recent 3 year period, it is clear that the State is doing well with the existing rail system.

However, the Responsive Applications supported here by the State of Ohio show that the proposed Primary Transaction would have serious adverse effects on Ohio's economy. W&LE, with 450 route miles in Ohio, faces bankruptcy.[4] Should that occur, major Ohio rail users including steel, stone, plastic and coal companies would be confronted with disruptive uncertainties while their rail service languishes in the bankruptcy courts.

The I&O faces serious repercussions from the proposed Primary Transaction on its newly acquired Diann (Detroit) to Cincinnati rail lines, about 210 miles of which is in Ohio. The result of an I&O failure on this line could well mean that Ohio would be faced with over 120 miles of abandonments as well as diminished rail competition in the Detroit-Cincinnati corridor. In addition, a 30 mile long RJC branch line and the Ohio customers it serves face serious ramifications from the proposed Primary Transaction and possible future abandonment due to prospective loss of its existing access to competing Class I railroads.

As outlined in the responsive applications supported herein, the proposed Transaction threatens about 700 route miles or about 12 percent of Ohio's rail system with the prospect of

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[4] OAG-4, V.S. George Stern at 17.

bankruptcy, loss of rail service or abandonments. Ohio is not seeking to harm CSX or NS by taking lucrative rail traffic away from them or by unfairly favoring the responsive applicants. Rather, Ohio views these responsive applicants as essential facilities which are necessary to maintain a network of competitive, efficient and integrated rail carriers throughout Ohio.

In order to remain a viable regional rail carrier, W&LE seeks access into Chicago so that it can effectively serve customers at its state-o-the-art Neomodal intermodal facility located at Navarre, Ohio. Since CSX and NS appear to not be interested in utilizing this Neomodal facility,[5] we do not propose taking containers or trailers off of CSX or NS ramps in Cleveland or Columbus. Instead, an increase in traffic through this Neomodal facility could be accomplished by taking trucks off of the already congested Ohio highways and then shipping the freight to destinations, such as Chicago, who desire to obtain this rail freight. Further, access to Chicago that is access to the Wisconsin Central, Illinois Central, BNSF, and UPSP, is more likely to help W&LE develop new business not now being handled by rail rather than eliminate any significant bridge traffic which CSX or NS is now handling. Only about 10 to 15 percent of W&LE's current traffic base now originates or terminates on railroads other than Conrail, NS, or CSX.[6]

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[5] OAG-4; Voinovich letter, Ex. 4.

[6] OAG-4; V.S. George Stern, pp. 5, 16.

Similarly, granting I&O access to Washington Court House is a means to allow I&O to preserve traffic it now carries by providing it a route less impacted by delays and congestion caused by Class I carriers, especially in the Cincinnati area. As a final example, the RJC line from Lima to Glenmore is a struggling, stub end branchline which can generate only about 1,200 to 1,500 carloads of grain and fertilizer a year.[7] Depriving this line of the existing access it has to NS will certainly provide no appreciable gain for CSX; but it could make a marginal line an abandonment candidate.

The responsive applications filed by Ohio regional and shortline rail carriers highlight the competitive problems created by the proposed Primary Transaction and underscore the importance of granting of trackage rights to remedy the detrimental impacts on essential transportation services and consequently to Ohio's economy that will otherwise result. The continued economic viability of these carriers, not unlike that of southeastern Ohio coal regions, is of vital importance to maintaining the relative competitive position of Ohio business, including Centerior Energy, one of Ohio's largest electric utilities serving nearly one million customers in northern Ohio. The grant of trackage rights relief to these regional and short line railroads should ensure continued competitive rail access at reasonable rates for Ohio shippers and customers. So too will the Board's grant of responsive application trackage rights

[7] OAG-4, p. 33.

maintain the current competitive situation for Centerior Energy and Ohio coals in the marketplace. Just as the Primary Applicants should not be permitted to choke off the essential service and competitive alternatives presently provided, so too should the Board refuse to allow CSX and NS to essentially eliminate Ohio Class II and Class III railroads' and Centerior's access to its historical coal suppliers for its Cleveland, Ohio, area plants in favor of longer haul, higher revenue generating coal supplies from CSX-only served mines.[8]

The continued availability of W&LE, RJC, I&O and Ann Arbor as viable regional and short line rail carriers maintains essential, competitive alternative service to Ohio bulk commodity shippers and receivers. To the extent delineated herein, and, as previously discussed in its earlier-filed comments, Ohio supports the Board's grant of trackage rights to ameliorate the adverse impact this Primary Transaction will otherwise have on a substantial number of Ohio shippers, customers and communities.

OHIO SUPPORT FOR W&LE

Ohio encourages the Board to mandate that NS and CSX provide concessions to the W&LE sufficient to keep the W&LE a viable operation. The W&LE Responsive Application demonstrates that NS and CSX have not fully comprehended or calculated the damage the proposed transaction will do to the W&LE. Similarly, the STB must recognize that the damage a W&LE bankruptcy would do to the economy of Ohio is real and significant.

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[8] OAG-4, p. 25.

Should W&LE enter bankruptcy, it is possible that another regional railroad might acquire the entire operation. However, Ohio believes that the particular circumstances and economics of the W&LE operation make it much more likely that the W&LE would be divided up in a piecemeal fashion. In that regard, it is plausible that various Class II and III rail carriers would pay a premium to serve large W&LE rail users in the Canton/Massillon area such as Timken, Republic Engineered Steel, and Ashland Petroleum but would not be at all interested in serving the W&LE's aggregate or agricultural shippers in western Ohio, or in preserving the W&LE line in Pennsylvania. A prudent bankruptcy trustee would certainly have good reason to seriously consider the piecemeal option.

A piecemeal breakup of the W&LE would mean the loss of the rail synergies which W&LE now provides. About 70 percent of the 9 million tons of materials W&LE now handles both originate and terminate on the W&LE. See, OAG-4 (Verified Statement of George L. Stern, at 5). Take the eastern part of the W&LE (i.e., the Pittsburgh & West Virginia (P&WV)) away either through a separate sale, or more likely through an abandonment and scrapping, and much of the agricultural and aggregate traffic W&LE now handles will either disappear or be handled by trucks or less cost-effective rail. Take away the Huron Docks, or any line connecting the Docks with the W&LE Ohio River lines, and Wheeling-Pittsburgh Steel looses its alternative service for iron ore. Take away the W&LE line into Cleveland through a separate sale or through the abandonment and track salvage and Reserve Iron looses its preferred option for recyclable scrap and LTV Steel losses a competitive option for receiving coke.

The Board's decisions concerning the W&LE Responsive Application will have a tremendous impact on Ohio. Ohio urges the Board to mandate the actions needed to keep W&LE viable.

OHIO SUPPORT FOR THE INDIANA & OHIO

Ohio continues to support I&O efforts to effectively compete with both NS and CSX to retain traffic I&O currently carries, especially auto related traffic between Flat Rock, Michigan and Cincinnati.

In its responsive application, the I&O makes compelling arguments as to the adverse impacts it will experience in the Springfield to Cincinnati Corridor if the proposed acquisition of Conrail is approved. I&O currently uses trackage rights over Conrail to get from Springfield to Cincinnati. Conrail has never been a strong competitor for north-south traffic such as the Flat Rock to Cincinnati move represents. Further, the I&O trackage rights payments for the use of Conrail's Springfield to Cincinnati line for six trains per day arguably helps Conrail pay for the fixed costs of operating a mainline which Conrail itself only uses for 12 trains per day. See, I&O Resp. App. at 5. Thus, a reasonably "friendly" relationship now exists for I&O's movement over the Conrail line.

If NS takes control over the Conrail Springfield to Cincinnati line as proposed, the situation will change. NS is a strong north-south railroad. Further, NS plans to improve clearances on the line for the movement of double-stack containers. Given recent history in double-stack growth, NS estimates to increase its usage of the Springfield to Cincinnati line from 4 trains per day to 11 trains per day may well be very conservative. (NS operates 4 trains per day on the line because it now has overhead trackage rights on the line for intermodal movements, another example that Conrail views other carriers' use of the line in a positive light.) Thus, for the approximately 70 mile Springfield to Cincinnati move, the I&O could be forced to rely upon a line a competitor will likely be using much more heavily in the future, possibly to an extent that strains capacity.

Given the proposed increase in traffic between Springfield and Cincinnati, the I&O's request to have an alternative route, i.e., Washington Court House to Cincinnati via CSX, is very reasonable and fair. It in no way negatively impacts the NS route; in fact, it would relieve congestion on it.

Neither will the I&O request to use the CSX Cincinnati to Washington Court House line adversely impact CSX. CSX will only run about 3 trains per day on the Washington Court House line. (CSX/NS - 20 at 435). Thus, there is ample room on the line for the additional I&O trains.

Further, the trains which the I&O would transfer to the Washington Court House line currently traverse a congested CSX line, the Mill Creek line in Cincinnati. The Conrail Springfield to Cincinnati line over which the I&O has trackage rights terminates at a junction with the CSX Mil Creek line in Cincinnati. From this point, both Conrail and I&O trains must run over the CSX Mill Creek line to reach interchange points in the CSX Queensgate and NS Guest Street Yards. Thus, the I&O usage of the Washington Court House line frees up capacity on the congested Mill Creek line. <u>See</u>, I&O Resp. Appl. V.S. Michael Burkart at 6.

The I&O also makes compelling arguments for obtaining trackage rights between Monroe and Middletown. Any additional delay in getting rail traffic to and from the I&O Railway's Mason to Monroe line could mean the ultimate abandonment of that marginal branchline. Ohio has spent over one-half million dollars on various improvement projects throughout the last decade on the Mason to Monroe line.

Ohio also supports the I&O trackage rights request between Sidney and Quincy. In regard to the other I&O trackage rights requests, Ohio supports them as they relate to assuring adequate competition and responsive rail service in Ohio.

<u>OHIO SUPPORT FOR R. J. CORMAN RAILROAD</u>

Ohio continues to support RJC's efforts to obtain trackage rights over, or to acquire, the 2.3 miles of track in Lima which will be needed for the RJC Lima to Glenmore operation to connect to NS as well as CSX if the CSX/NS split up of Conrail is approved. Conrail currently owns this track but CSX is slated to acquire it. RJC currently has three viable Class I carrier connections in Lima for the Glenmore line. RJC connects directly with Conrail and indirectly with both CSX and NS through a very inexpensive haulage agreement. Through arrangement with Conrail, RJC itself currently shuttles Glenmore line traffic to either NS or CSX for only $60 per car fee to cross the Conrail track.[9]

If CSX takes over the 2.3 miles of track in question as proposed, it would be in its own self interest to do whatever it could to keep NS from getting any of the Glenmore line traffic. Certainly the switching charges would be much higher than $60 per car. (Conrail lacks a significant economic interest in the Glenmore traffic as the traffic is primarily fertilizer moving in from the south or grain moving to the southeast, areas that are outside the Conrail service area. See, Id.) Thus, in effect, the Glenmore line would not have the same connectivity after the proposed split up as it has today. As a practical matter, it would go from good connection with three Class Is to a single connection (a 3 to 1 situation).

Based on the current low haulage charge, and Conrail's verbal commitment to sell to RJC the 2.3 miles of Conrail track which RJC needs to connect directly with both NS and CSX, the State of Ohio and RJC recently agreed to embark on a $1.5 million rehabilitation project for the Glenmore line based on its access to 3 Class I railroads. See, OAG-4, at 33. State assistance is needed for this 30 mile long, publicly owned line because it is only marginally viable, generating less than 1,500 carloads a

[9] RJC Resp. App. V.S. of M.W. Grubb, Jr., p. 3.

year. Preserving the status quo (i.e., multiple access to Class I railroads) is critical to the long term survival of the Glenmore line.

OHIO SUPPORT FOR THE ANN ARBOR RAILROAD

In our October 21, 1997, filing, Ohio did not address the Ann Arbor situation because we had understood that it would be resolved without STB intervention. Now that Ann Arbor has reluctantly filed a responsive application, the State of Ohio offers its support for Ann Arbor's requests for trackage rights to Chicago to connect with various railroads and for Ann Arbor to connect with the Canadian Pacific at Ann Arbor, MI.

Ohio finds Ann Arbor's description of its projected losses both reasonable and compelling. It is hard to imagine that no mention of Ann Arbor's potential revenue loss of over $3 million annually was included in the NS or CSX filings.

Although Ann Arbor has only a handful of miles of track in Ohio, it is a very important Ohio railroad and it is vital that it be kept economically viable. Ohio and the City of Toledo recently committed to invest many millions of dollars in various infrastructure improvements to convince Jeep to build its new plant in Toledo right next to its current plant.[10] Ann Arbor is a vital part of the entire incentives package to keep Jeep in Toledo. If it is still a viable rail operation after the split

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[10] Gov. Voinovich Release dated July 28, 1997 (attached as Ex. 1).

up of Conrail, Ann Arbor is slated to play a major role in providing switching services to the new plant.

Ohio urges the STB to mandate Ann Arbor's requested trackage rights. As with other Ohio railroads, all Ann Arbor seeks is a chance to compete with NS and CSX so that Ann Arbor can remain viable.

CONCLUSION

Ohio recognizes there are potential benefits for many Ohio rail users which may result from the proposed division of Conrail. However, absent appropriate protective conditions, those benefits would come at a very high cost to Ohio shippers and communities that are depending upon continued accessibility to service currently provided by the regional and short line responsive applicants.

The continued viability of the four responding railroads is essential for the preservation of service and healthy competition in Ohio's rail transportation system. As noted in our Comments filed on October 21, Ohio's largest railroad is being acquired by its second and third largest railroads. The proposed purchase threatens the very existence of the W&LE, Ohio's fourth largest railroad. If the proposed transaction is approved, Ohio's shippers will be faced with a significant decrease in their transportation options due to the loss of Conrail. Additionally, if any of Ohio's regional or short line railroads are forced to cease or to curtail their operations as a result of this acquisition, Ohio's shippers would be severely harmed. Ohio therefore strongly urges the Board to preserve essential rail service and competition in Ohio by granting the conditions requested in the responsive applications as supported herein. These conditions are reasonable and will enable the four responding railroads to continue providing responsive service to Ohio shippers and communities and to compete effectively with the remaining Class I railroads.

Respectfully submitted,

Keith G. O'Brien

ATTORNEYS FOR STATE OF OHIO
PARTIES OF RECORD
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

Thomas M. O'Leary
Executive Director
Ohio Rail Development
Commission
50 W. Broad Street, 3rd Floor
Columbus, OH 43216

Alfred P. Agler
Director of Transportation
Division, Public Utilities
Commission of Ohio (PUCO)
Borden Building, 5th Floor
180 E. Broad Street
Columbus, OH 43215

Keith G. O'Brien
John D. Heffner
Robert A. Wimbish
Rea, Cross & Auchincloss
1920 N Street, NW
Washington, DC 20036
(202) 785-3700

Doreen G. Johnson
Assistant Attorney General
Chief, Antitrust Section
Mitchell L. Gentile
Thomas G. Lindgren
Assistant Attorneys General
Antitrust Section
State Office Tower, 18th Floor
30 East Broad Street
Columbus, OH 43266-0410
(614) 466-4328

Alan Klodell
Assistant Attorney General for
Ohio Rail Development Commission
37 W. Broad Street
Columbus, OH 43216

DATED: DECEMBER 15, 1997

CERTIFICATE OF SERVICE

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

Keith G. O'Brien

EXHIBIT 1

OFFICE OF THE GOVERNOR
GEORGE V. VOINOVICH
COMMUNICATIONS OFFICE

FOR IMMEDIATE RELEASE
July 28, 1997

CHRYSLER TO BUILD NEW $1.2 BILLION ASSEMBLY PLANT IN TOLEDO

COLUMBUS – Governor George V. Voinovich today expressed his extreme gratitude for Chrysler Corporation's decision to locate its new Jeep assembly plant in Toledo. The $1.2 billion project is expected to retain 4,900 jobs at the company's current manufacturing facility in Toledo.

"Today's announcement not only signifies Chrysler's intent to renew its commitment to Ohio, it also validates the company's faith in Ohio's business leadership and the highly skilled workforce at its Toledo facility," Governor Voinovich said. "Chrysler's decision to build this facility in Toledo is a direct result of state and local officials rallying their efforts to maintain Chrysler's presence in Ohio, and more importantly, the city of Toledo. I want to commend Mayor Finkbeiner and Don Jakeway, Ohio Director of Development, for pulling their teams together to develop a comprehensive assistance package that met Chrysler's needs to move this project forward in Ohio."

This announcement came as a result of Chrysler's decision to replace its current antiquated facilities in Toledo which began operations at the turn of the century. Chrysler will build its new Jeep manufacturing facility at the Stickney Avenue site in the city of Toledo and will retain its 4,900 employees at both of its facilities once the new plant is completed. The company had considered several other states, including Michigan for this project.

The State of Ohio has offered Chrysler $6 million over a three year period from the Ohio Industrial Training Program, an Investment Tax Credit valued at $96.6 million based on Chrysler's projected investment in machinery and equipment and a Brownfield Site Clean-up Tax Credit valued at $1.5 million. The state has also offered the City of Toledo the following to assist with this project: a $10 million low-interest loan at an interest rate of 4% for 20 years to offset the cost of eligible infrastructure; a $4.5 million grant from the Road Work Development Account to assist with eligible public road improvements; a $4.5 million grant from the Business Development Account to assist with eligible on or off-site infrastructure costs associated with the project; and a $1 million grant from the Urban and Rural Initiative Program to assist with acquiring, preparing and clean-up of the site for economic development.

In addition, the Ohio Department of Transportation will provide $2 million and the Ohio Rail Development Commission will provide $750,000 for the project.

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For more information, contact Kathie Fleck at (614) 644-0957 or Gail Crawley at (614) 466-2609.

STB FD 33388 (Sub 80) 12-15-97 D 184811

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NEFCO

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING & DEVELOPMENT ORGANIZATION

969 Copley Road, Akron, Ohio 44320-2992 (330) 836-5731 • Fax (330) 836-7703

Christopher Smeiles, Chairman *Joseph Hadley, Jr., Executive Director*

December 12, 1997

RECEIVED DEC 15 1997 MAIL MANAGEMENT STB

VIA HAND DELIVERY

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 715
1925 K Street, NW
Washington, D.C. 20006

Sub 80

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

Dear Secretary Williams:

The Northeast Ohio Four County Regional Planning and Development Organization (NEFCO) hereby submits an addendum to a Response to Responsive Application of Wheeling and Lake Erie Railway (Sub. No. 80) which was filed by the Surface Transportation Board on December 11, 1997 as document "MRTA-2." The enclosed Verified Statement of Ms. Dale Gibbons was inadvertently omitted from the filing. Enclosed is a copy of the original document filed earlier this week with the Verified Statement attached. Please file this addendum with the signed original that you should have already received. I have also included 25 copies of this Response and Verified Statement, along with a diskette containing the entire document in WordPerfect 6.1 format.

I apologize for any confusion this omission may have caused.

Sincerely,

Sylvia R Chinn-Levy

Sylvia R. Chinn-Levy
Economic Development Planner

SRC:rlm

Enclosures

pc: U.S. Secretary of Transportation
Counsel for Applicants
U.S. Attorney General
Hon. Jacob Leventhal

ENTERED
Office of the Secretary
DEC 15 1997
5 Part of Public Record

NEFCO

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING & DEVELOPMENT ORGANIZATION
969 Copley Road, Akron, Ohio 44320-2992 (330) 836-5731 • Fax (330) 836-7703
Christopher Smeiles, Chairman *Joseph Hadley, Jr., Executive Director*

December 12, 1997

RECEIVED DEC 15 1997 MAIL MANAGEMENT STB

VIA HAND DELIVERY

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 715
1925 K Street, NW
Washington, D.C. 20006

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

Dear Secretary Williams:

The Northeast Ohio Four County Regional Planning and Development Organization (NEFCO) hereby submits an addendum to a Response to Responsive Application of Wheeling and Lake Erie Railway (Sub. No. 80) which was filed by the Surface Transportation Board on December 11, 1997 as document "MRTA-2." The enclosed Verified Statement of Ms. Dale Gibbons was inadvertently omitted from the filing. Enclosed is a copy of the original document filed earlier this week with the Verified Statement attached. Please file this addendum with the signed original that you should have already received. I have also included 25 copies of this Response and Verified Statement, along with a diskette containing the entire document in WordPerfect 6.1 format.

I apologize for any confusion this omission may have caused.

Sincerely,

Sylvia R Chinn-Levy

Sylvia R. Chinn-Levy
Economic Development Planner

SRC:rlm

Enclosures
pc: U.S. Secretary of Transportation
Counsel for Applicants
U.S. Attorney General
Hon. Jacob Leventhal

NEFCO

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING & DEVELOPMENT ORGANIZATION

969 Copley Road, Akron, Ohio 44320-2992 (330) 836-5731 • Fax (330) 836-7703

Christopher Smeiles, Chairman *Joseph Hadley, Jr., Executive Director*

December 10, 1997

RECEIVED DEC 15 1997 MAIL MANAGEMENT STB

VIA HAND DELIVERY

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit Attn Finance
1925 K Street, N.W., Room 715
Washington, D.C. 20006

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

Dear Secretary Williams:

Please find enclosed for filing in the above-captioned docket the original and twenty-five (25) copies of a Response to Responsive Application of the Wheeling and Lake Erie Railway (Sub. No. 80). Also enclosed are a 3.5-inch disk containing the text of this response in WordPerfect 6.1 format and certificate of service.

This filing is made by the Northeast Ohio Four County Regional Planning and Development Organization (NEFCO) as a participant of record on behalf of METRO Regional Transit Authority (METRO) and the Summit County Port Authority. The attached document responds to a filing on October 21, 1997 by the Wheeling and Lake Erie Railway requesting trackage rights on rail segments purchased by METRO and transferred to the Summit County Port Authority. NEFCO has filed on behalf of these entities as a regional council representing Portage, Stark, Summit, and Wayne counties and their local governments in northeast Ohio in the areas of regional economic and environmental planning. NEFCO assists its members with issues, such as the creation of a commuter rail system, that have extensive benefits to the four-county region.

Copies of MRTA-2 were served via first-class mail, postage prepaid on the Honorable Jacob Leventhal, counsel for Applicants, the U.S. Secretary of Transportation, All Parties of Record, and the U.S. Attorney General. If you have any questions, please contact me at (330) 836-5731. Thank you.

Sincerely,

Sylvia R Chinn-Levy

Sylvia R. Chinn-Levy
Economic Development Planner

SRC:rlm
Enclosures
pc: U.S. Secretary of Transportation
Counsel for Applicants
All Parties of Record
U.S. Attorney General
Hon. Jacob Leventhal

MRTA-2

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING AND DEVELOPMENT ORGANIZATION

on behalf of

METRO REGIONAL TRANSIT AUTHORITY
AND
SUMMIT COUNTY PORT AUTHORITY

RESPONSE TO RESPONSIVE APPLICATION OF THE WHEELING AND LAKE ERIE RAILWAY

Sylvia Chinn-Levy
Economic Development Planner and Intergovernmental Review Coordinator
Northeast Ohio Four County Regional Planning and Development Organization
969 Copley Road
Akron, Ohio 44320-2992
(330) 836-5731
Filing on behalf of METRO Regional Transit Authority as a Participant of Record

Robert K. Pfaff
General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Blvd.
Akron, Ohio 44301
(330) 762-7267

Charles Zumkehr
Roetzel & Andress Co. LPA
75 East Market Street
Akron, Ohio 44308
(330) 376-2700
Counsel

Dale Gibbons
President Summit County Port Authority
175 South Main St., Suite 207
Akron, Ohio 44308-1308
(330) 643-2068

Dated: December 10, 1997

Deadline: December 15, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING AND DEVELOPMENT ORGANIZATION

on behalf of

METRO REGIONAL TRANSIT AUTHORITY
AND
SUMMIT COUNTY PORT AUTHORITY

RESPONSE TO RESPONSIVE APPLICATION OF THE WHEELING AND LAKE ERIE RAILWAY (Sub. No. 80)

The Northeast Ohio Four County Regional Planning and Development Organization ("NEFCO") is a regional council of local governmental units in Portage, Stark, Summit, and Wayne Counties, Ohio, based at 969 Copley Rd., Akron, Ohio 44320-5731, and a participant of record in this proceeding.

The Summit County Port Authority ("Port Authority"), an authority created and existing under Ohio Revised Code §4582 et seq., by Summit County, a member of NEFCO, is the current owner of two railroad segments, more commonly known as the "Freedom Secondary", between mile post 192.51 in Kent, Ohio and mile post 201.84 in Akron, Ohio; and the "Akron Secondary" between mile post 1.45 in Hudson, Ohio and mile post 8.00 in Cuyahoga Falls, Ohio.[1]

---

[1] The verified statement of Dale Gibbons, President of the Summit County Port Authority, is attached hereto as Exhibit "A".

The METRO Regional Transit Authority ("METRO"), a regional transit authority created and existing under Ohio Revised Code §306, with a mailing address at 416, Kenmore Blvd., Akron, Ohio 44301, funded the purchase of the rail segments with a grant from the Federal Transit Administration of the United States Department of Transportation and transferred ownership to the Port Authority. Furthermore, METRO and the Port Authority entered into an agreement giving METRO certain rights of access and control over the maintenance, operation, rehabilitation and upgrading of the lines in order to promote the mutual objectives of establishing commuter rail services in northeast Ohio.

Wheeling and Lake Erie's Responsive Application (Sub. No. 80) ("W&LE Application") requests operational rights over the Port Authority's lines. Page 11 of Steven Wait's verified statement (page 77 of the Application) states in relevant parts:

> from the present connection with CSX at Summit Street, then operating approximately 0.5 miles east to the former Conrail Akron Secondary (now owned by Summit County) a track 8 miles in length to Hudson, MP 98.[2]

The Application goes on to state later:

> Trains would operate eastward via the W&LE to Summit Street, to access the CSX "New Castle subdivision" for 0.5 miles to the existing connection with the line owned by Summit County to Hudson, Ohio. Another crew would be called on duty at Hudson, the locomotive power divided for each crew, then the appropriate stone distribution centers would be serviced.

This Response to W&LE's Application is for the sole purpose of clarifying the record and making the Surface Transportation Board aware that the rail lines mentioned in W&LE's Application are not owned by Conrail, CSX or Norfolk Southern. These rail lines are owned by the Port Authority. These rail lines, and thus these requests, are therefore not within the

[2] A copy of relevant pages of the Responsive Application of Wheeling & Lake Erie Railway Company are attached hereto as Exhibit "B".

scope of the Conrail merger action. Any interests in these rail lines should not be altered or even addressed in the present action before the Surface Transportation Board.

WHEREFORE, NEFCO, representing its members' interests, on behalf of METRO Regional Transit Authority and the Summit County Port Authority respectfully submits this Response to Wheeling and Lake Erie's request for operating rights over rail line not owned by Conrail, CSX or Norfolk Southern.

Respectfully Submitted,

Charles Zumkehr
Roetzel & Andress Co. LPA
75 East Market Street
Akron, Ohio 44308
(330) 376-2700
Counsel

Sylvia Chinn-Levy
Economic Planner and Intergovernmental
Review Coordinator
Northeast Ohio Four County Regional Planning
and Development Organization
969 Copley Road
Akron, Ohio 44320-2992
(330) 836-5731
Filing on behalf of METRO Regional Transit Authority
and the Summit County Port Authority
as a Participant of Record

Robert K. Pfaff
General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Blvd.
Akron, Ohio 44308-1308
(330) 762-7267

Dale Gibbons
President Summit County Port Authority
175 South Main St., Suite 207
Akron, Ohio 44308-1308
(330) 643-2068

230082_1.WP5

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 1997, I served a copy of the Response to Responsive Application of the Wheeling and Lake Erie Railway on behalf of METRO Regional Transit Authority and the Summit County Port Authority by first class mail, postage prepaid, upon:

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, LLP
888 Seventeenth Street, N.W. Suite 600
Washington, D.C. 20006-3939

Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, NE, Suite 11F
Washington, D.C. 20004-1202

Paul A. Cunningham, Esq.
Harkins Cunningham
1300 19th Street, N.W., Suite 600
Washington, D.C. 20002

Dennis G. Lyons
Arnold & Porter
555 12th St. NW
Washington, D.C. 20004-1202

Janet Reno
U.S. Attorney General
U.S. Dept. of Justice
Tenth St. and Constitution Ave. NW
Washington, D.C. 20530

Rodney Slater
Secretary of Transportation
U.S. Dept. of Transportation
400 Seventh St. SW
Washington, D.C. 20590

Samuel M. Sipe, Jr., Esq.
Steptoe and Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036-1795

and upon all other Parties of Record in this proceeding.

Sylvia R Chinn-Levy

Sylvia R. Chinn-Levy
Northeast Ohio Four County Regional Planning
and Development Organization
969 Copley Road
Akron, OH 44320-2992

175 South Main Street, Suite 207 • Akron, Ohio 44308-1306
Tel: (330) 643-2068 • Fax: (330) 643-2886

SCPA Summit County Port Authority

November 26, 1997

Surface Transportation Board
Secretary Vernon A. Williams
1925 K. Street, NW
Washington, DC 20423-0001

Re: Wheeling and Lake Erie's Responsive Application (Sub. No. 80)

VERIFIED STATEMENT
On behalf of the Summit County Port Authority ("SCPA")

Dear Mr. Williams:

The Summit County Port Authority ("SCPA") is the current owner of two railroad lines, more commonly known as the "Freedom Secondary", between mile post 192.51 in Kent, Ohio and mile post 201.84 in Akron, Ohio; and the "Akron Secondary", between mile post 1.45 in Hudson, Ohio and mile post 8.00 in Cuyahoga Falls, Ohio.

Recently, the SCPA became aware of a proposal before the Surface Transportation Board which could potentially affect SCPA's interests in these two rail lines. In particular, the following Responsive Application (Sub. No. 80) by the Wheeling and Lake Erie requesting operational rights on the SCPA's lines:

> "from the present connection with CSX at Summit Street, then operating approximately 0.5 miles east to the former Conrail Akron Secondary (now owned by Summit County) a track 8 miles in length in Hudson MP 98."

SCPA wants to clarify for the record and make the Surface Transportation Board aware that these rail lines mentioned in this Application are not owned by Conrail, CSX, or Norfolk Southern. These lines were purchased with Federal Transit Administration funding for possible, passenger-rail service; consequently, freight movement is limited to incidental usage. Therefore, these rail lines should not be altered or even addressed in the present action before the Surface Transportation Board.

RECEIVED
DEC 01 97

If you have any questions or need additional clarification, please do not hesitate to contact me.

Sincerely,

Dale Gibbons

Dale Gibbons, President
Summit County Port Authority

State of Ohio)
)
County of Summit)

Verification

Dale Gibbons, being duly sworn on the 26 day of November, 1997, deposes and says that she has read the foregoing, and that it is true and accurate to the best of her knowledge and belief.

DONNA L. MARCINEK, Notary Public
Residence - Summit County
Statewide Jurisdiction, Ohio
My Commission Expires Nov. 29, 2000

Notary public

STB FD 33388 (Sub 80) 12-11-97 D 184744

NEFCO

184744

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING & DEVELOPMENT ORGANIZATION

969 Copley Road, Akron, Ohio 44320-2992 (330) 836-5731 • Fax (330) 836-7703

Christopher Smeiles, Chairman *Joseph Hadley, Jr., Executive Director*

RECEIVED DEC 11 1997 MAIL MANAGEMENT STB

December 10, 1997

VIA HAND DELIVERY

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit Attn Finance
1925 K Street, N.W., Room 715
Washington, D.C. 20006

Sub-80

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

Dear Secretary Williams:

Please find enclosed for filing in the above-captioned docket the original and twenty-five (25) copies of a Response to Responsive Application of the Wheeling and Lake Erie Railway (Sub. No. 80). Also enclosed are a 3.5-inch disk containing the text of this response in WordPerfect 6.1 format and certificate of service.

This filing is made by the Northeast Ohio Four County Regional Planning and Development Organization (NEFCO) as a participant of record on behalf of METRO Regional Transit Authority (METRO) and the Summit County Port Authority. The attached document responds to a filing on October 21, 1997 by the Wheeling and Lake Erie Railway requesting trackage rights on rail segments purchased by METRO and transferred to the Summit County Port Authority. NEFCO has filed on behalf of these entities as a regional council representing Portage, Stark, Summit, and Wayne counties and their local governments in northeast Ohio in the areas of regional economic and environmental planning. NEFCO assists its members with issues, such as the creation of a commuter rail system, that have extensive benefits to the four-county region.

Copies of MRTA-2 were served via first-class mail, postage prepaid on the Honorable Jacob Leventhal, counsel for Applicants, the U.S. Secretary of Transportation, All Parties of Record, and the U.S. Attorney General. If you have any questions, please contact me at (330) 836-5731. Thank you.

ENTERED
Office of the Secretary
DEC 11 1997
5 Part of Public Record

Sincerely,

Sylvia R Chinn-Levy

Sylvia R. Chinn-Levy
Economic Development Planner

SRC:rlm
Enclosures
pc: U.S. Secretary of Transportation
Counsel for Applicants
All Parties of Record
U.S. Attorney General
Hon. Jacob Leventhal

MRTA-2

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING AND DEVELOPMENT ORGANIZATION

on behalf of

METRO REGIONAL TRANSIT AUTHORITY
AND
SUMMIT COUNTY PORT AUTHORITY

RESPONSE TO RESPONSIVE APPLICATION OF THE WHEELING AND LAKE ERIE RAILWAY

Sylvia Chinn-Levy
Economic Development Planner and Intergovernmental Review Coordinator
Northeast Ohio Four County Regional Planning and Development Organization
969 Copley Road
Akron, Ohio 44320-2992
(330) 836-5731
Filing on behalf of METRO Regional Transit Authority as a Participant of Record

Robert K. Pfaff
General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Blvd.
Akron, Ohio 44301
(330) 762-7267

Charles Zumkehr
Roetzel & Andress Co. LPA
75 East Market Street
Akron, Ohio 44308
(330) 376-2700
Counsel

Dale Gibbons
President Summit County Port Authority
175 South Main St., Suite 207
Akron, Ohio 44308-1308
(330) 643-2068

Dated: December 10, 1997

Deadline: December 15, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING AND DEVELOPMENT ORGANIZATION

on behalf of

METRO REGIONAL TRANSIT AUTHORITY
AND
SUMMIT COUNTY PORT AUTHORITY

RESPONSE TO RESPONSIVE APPLICATION OF THE WHEELING AND LAKE ERIE RAILWAY (Sub. No. 80)

The Northeast Ohio Four County Regional Planning and Development Organization ("NEFCO") is a regional council of local governmental units in Portage, Stark, Summit, and Wayne Counties, Ohio, based at 969 Copley Rd., Akron, Ohio 44320-5731, and a participant of record in this proceeding.

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> from the present connection with CSX at Summit Street, then operating approximately 0.5 miles east to the former Conrail Akron Secondary (now owned by Summit County) a track 8 miles in length to Hudson, MP 98.[2]

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[2] A copy of relevant pages of the Responsive Application of Wheeling & Lake Erie Railway Company are attached hereto as Exhibit "B".

scope of the Conrail merger action. Any interests in these rail lines should not be altered or even addressed in the present action before the Surface Transportation Board.

WHEREFORE, NEFCO, representing its members' interests, on behalf of METRO Regional Transit Authority and the Summit County Port Authority respectfully submits this Response to Wheeling and Lake Erie's request for operating rights over rail line not owned by Conrail, CSX or Norfolk Southern.

Respectfully Submitted,

Charles Zumkehr
Roetzel & Andress Co. LPA
75 East Market Street
Akron, Ohio 44308
(330) 376-2700
Counsel

Sylvia Chinn-Levy
Economic Planner and Intergovernmental Review Coordinator
Northeast Ohio Four County Regional Planning and Development Organization
969 Copley Road
Akron, Ohio 44320-2992
(330) 836-5731
Filing on behalf of METRO Regional Transit Authority and the Summit County Port Authority as a Participant of Record

Robert K. Pfaff
General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Blvd.
Akron, Ohio 44308-1308
(330) 762-7267

Dale Gibbons
President Summit County Port Authority
175 South Main St., Suite 207
Akron, Ohio 44308-1308
(330) 643-2068

230082_1.WP5

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 1997, I served a copy of the Response to Responsive Application of the Wheeling and Lake Erie Railway on behalf of METRO Regional Transit Authority and the Summit County Port Authority by first class mail, postage prepaid, upon:

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, LLP
888 Seventeenth Street, N.W. Suite 600
Washington, D.C. 20006-3939

Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, NE, Suite 11F
Washington, D.C. 20004-1202

Paul A. Cunningham, Esq.
Harkins Cunningham
1300 19th Street, N.W., Suite 600
Washington, D.C. 20002

Dennis G. Lyons
Arnold & Porter
555 12th St. NW
Washington, D.C. 20004-1202

Janet Reno
U.S. Attorney General
U.S. Dept. of Justice
Tenth St. and Constitution Ave. NW
Washington, D.C. 20530

Rodney Slater
Secretary of Transportation
U.S. Dept. of Transportation
400 Seventh St. SW
Washington, D.C. 20590

Samuel M. Sipe, Jr., Esq.
Steptoe and Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036-1795

and upon all other Parties of Record in this proceeding.

Sylvia R Chinn-Levy

Sylvia R. Chinn-Levy
Northeast Ohio Four County Regional Planning and Development Organization
969 Copley Road
Akron, OH 44320-2992

STB FD 33388 (Sub 80) 11-19-98 D 192310

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 192309

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

FINANCE DOCKET NO. 33388 (SUB-NO. 80) 192310

RESPONSIVE APPLICATION OF
WHEELING & LAKE ERIE RAILWAY COMPANY

D

WLE-12

**REPLY OF WHEELING & LAKE ERIE RAILWAY COMPANY
TO "RESPONSE" AND ARGUMENT
FILED BY CSX ON NOVEMBER 10, 1998**

William A. Callison
V.P. Law & Government Relations
Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, OH 44613
(330) 767-3401

Keith G. O'Brien
Robert A. Wimbish
Rea, Cross & Auchincloss
Suite 570
1707 "L" Street, N.W.
Washington, D.C. 20036
(202) 785-3700

Counsel for the Wheeling &
Lake Erie Railway Company

November 19, 1998

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

FINANCE DOCKET NO. 33388 (SUB-NO. 80)

RESPONSIVE APPLICATION OF
WHEELING & LAKE ERIE RAILWAY COMPANY

WLE-12

REPLY OF WHEELING & LAKE ERIE RAILWAY COMPANY TO "RESPONSE" AND ARGUMENT FILED BY CSX ON NOVEMBER 10, 1998

Wheeling & Lake Erie Railway Company ("W&LE") hereby submits its reply to the "Response of CSX Corporation and CSX Transportation, Inc. to Petition[1] of Wheeling & Lake Erie Railway Company for Clarification and Further Instruction" (CSX-166). W&LE

[1] W&LE notes that it did not identify its filing of October 21, 1998 (WLE-10) as a "Petition." Instead, W&LE submitted WLE-10 as a status report and a request for additional Board action (consistent with the Board's directions in Ordering Paragraph 68 of it Decision No. 89) in an effort to permit its negotiations to move forward in those instances where the parties have reached an impasse. WLE-10 was never intended as a formal "petition," because W&LE understood that the Board's continued oversight and monitoring of the implementation of protective conditions did not contemplate or require such procedural strictures.

submits this reply, as it stated it would do in WLE-11, to address the various substantive claims and arguments CSX has raised against W&LE for the first time during the course of the Board's review and oversight of the subject Transaction. For the reasons set forth below, W&LE urges the Board to see through CSX's rhetoric, reject CSX's narrow interpretation of the protective conditions extended to W&LE, and take action consistent with W&LE's requests in WLE-10 to conclude negotiations between W&LE, CSX and NS.

W&LE submits the subject filing to address the three issues where it has reached an impasse with CSX, and for which W&LE requested and outlined additional Board action in WLE-10. Specifically, W&LE urges the Board to assist in resolving the continuing disputes between the parties over the following issues: (1) the appropriate scope of W&LE's access to Lima, OH (including access to shippers within the Lima terminal area), (2) W&LE's access to shippers along CSX's Benwood-Brooklyn Junction line, and (3) W&LE's access to additional aggregate traffic.

With respect to the first disputed matter, W&LE notes that it was granted, among other things, "haulage or trackage rights access to Lima, OH, including a connection to the Indiana and Ohio Railroad." Decision No. 89 at 109 (emphasis added).[2] Further, with respect to the second and third subjects in dispute,

---

[2] The way that CSX interprets Decision No. 89, one would think that the Board granted W&LE access to Lima "for the sole and exclusive purpose of affecting an interchange there with the Indiana and Ohio Railroad." The Board clearly did not employ this or any other limiting language of that sort. Instead, W&LE believes that the Board left it to the parties to flesh out the details concerning the scope of W&LE's additional access to Lima.

the Board "required" the applicants -- CSX and NS -- to negotiate with W&LE concerning "mutually beneficial" arrangements, "including allowing W&LE to provide service to aggregate shippers or to serve shippers along CSX's main line from Benwood to Brooklyn Junction, WV." Id. As is relevant here, and consistent with the Board's directions, W&LE has engaged in discussions with CSX regarding W&LE's proposed access to Lima because W&LE has selected a trackage rights route to Lima over lines owned and/or to be operated by CSX. Furthermore, W&LE and CSX shippers have attempted to pursue with CSX Benwood-Brooklyn Junction service arrangements. Despite W&LE's efforts to negotiate a settlement consistent with the Board's orders, serious disagreements between W&LE and CSX obviously remain concerning the scope of relief that the Board intended to convey to W&LE, and it is abundantly clear that these fundamental disagreements will persist unless the Board takes further action.

During the course of negotiations with CSX following Decision No. 89, W&LE and CSX agreed to arrangements permitting W&LE to exercise trackage rights to Lima,[3] and CSX informed W&LE that, with respect to aggregate and Benwood-Brooklyn Junction matters, there is nothing to negotiate. On these two issues, CSX has consistently defied the Board's instructions by declaring that

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[3] W&LE is disappointed by CSX's accusation that W&LE has repudiated its trackage rights agreement with CSX. CSX-166 at 6. To the contrary, W&LE intends soon to execute and will abide by the terms of the trackage rights agreement it has already negotiated, but it hastens to point out that the agreement it believes it does have with CSX leaves for further resolution the extent of W&LE's access to industry and other carriers at Lima. W&LE adequately addressed this point in its letter to the Board dated October 30, 1998.

there is nothing "mutually beneficial" in the conditions, and CSX thus dismisses the Board's conditions as mere "suggestions." Further, CSX seems to assert that the Board lacks any real expectation that meaningful arrangements on either of these two subjects would or could be concluded -- that it is enough somehow that the parties simply talk about them.

W&LE access to Lima, OH

As the Board is well aware, W&LE did not request trackage rights or other access to Lima in its responsive application. Thus, while it is pleased to have the opportunity to shore up its financial position by serving this new location, W&LE has never before had the chance to outline its proposed service to Lima. CSX argues, however, that because W&LE did not request access to local industry at Lima (a feat that would require W&LE to read the Board's mind), W&LE should be denied the opportunity to develop a meaningful and competitive presence in this market.[4] CSX challenges the Board to choose in favor of remediation rendered ineffective by its narrow application, rather than permit W&LE to have a fighting chance to compete for additional traffic in the Lima area in aid of its ability to continue to provide essential

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[4] CSX argues that "overhead trackage rights" access to Lima literally precludes W&LE from the right to serve shippers within the Lima terminal. Consistent with its position regarding its access to Toledo (and the related impasse with NS on this point), W&LE points out that "overhead" trackage rights should be interpreted only to preclude access to shippers <u>until</u> it reaches the Lima terminal. W&LE is not now and never has requested access to customers located between Carey and Lima, OH.

service.

No matter what CSX may claim is the only applicable basis for extending relief to rail carriers, the fact remains that the Transaction clearly threatens W&LE's future viability, and that it therefore threatens also W&LE's ability to furnish essential service to its customers.[5] (Although CSX seems to want to re-litigate the issue,[6] the Board has clearly found that W&LE does indeed provide essential services and that these essential services are threatened by the Transaction. Compare, CSX-166 at 12-13 with Decision No. 89 at 108.) The Board extended to W&LE an opportunity to address and compensate for Transaction-related losses, with the intent of preserving W&LE and its essential service. The relief the Board extended to W&LE is intended and designed as a form of remediation, and access to Lima (including effective trackage rights operations to and from this point) is a component of that

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[5] At page 14 of CSX-166, CSX seems to issue an oblique criticism of the Board's decision to grant the relief it did, even when such relief is interpreted in a light most favorable to CSX. Despite the many supportable bases for the Board's statements in favor of promoting regional and short line railroads in an era when major consolidations create vast imbalances between the interests of Class I railroads and their smaller counterparts, CSX seems particularly irate that the Board would base its relief, in part at least, upon the policy objective of cultivating and protecting the important functions of smaller railroads.

[6] W&LE notes that much of CSX-166 is devoted to the issue of W&LE's projected losses and the legal bases under which the Board may, in major railroad transactions, impose protective conditions in favor of adversely affected railroads such as W&LE. CSX's extensive re-litigation would have been far more appropriate either during the course of the Board's review of W&LE's responsive application or in response to W&LE's request for reconsideration and clarification (WLE-9).

remediation.[7]

As it has asserted in earlier filings, W&LE would be able to derive no appreciable economic benefit from its access to Lima if W&LE is only permitted to interchange what little traffic may develop between IORY and itself. W&LE has also already established why its trackage rights operations to and from Lima would be a far preferable service option. See, WLE-10 at 13-14 (footnote 10). It has proposed to the Board in WLE-10 a reasonable formula for operations to Lima that will work, and that will render W&LE's access meaningful and beneficial. CSX's "proposal" would, on the other hand, render the Board's protective condition ineffective and deprive W&LE of the opportunity to seek out important new traffic opportunities.

To the extent that W&LE requests interchange access to RJ Corman (a Class III carrier serving the Lima area) and, among other access rights, direct access to the Clark Oil Refinery/BP refining complex, CSX is incorrect to assert that W&LE's is truly an "entirely new" request for additional relief. To the contrary, CSX repeatedly quotes from selected portions of WLE-4 (W&LE's responsive application) to allege that, in requesting access to new

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[7] In its latest filing, CSX asks the Board to re-visit the remediation it has extended to W&LE. Perhaps CSX is attempting to have the Board lose sight of the fact that, in the case of Lima (and in other cases where the parties have reached impasse over the interpretation of the Board's directions), the remediation should address the Board's concerns and be effective to the task. If the Lima condition is interpreted to convey to W&LE little or no remedial value (as CSX would prefer), then the Board's objectives are thwarted, and W&LE's essential services remain in jeopardy.

service destinations (such as Toledo and Chicago), W&LE merely sought to expand its access to other rail carriers and its market reach.[8]

Benwood to Brooklyn Junction and aggregate service

W&LE and CSX have strong differences of opinion concerning whether the Board, by requiring the parties negotiate on both Benwood-Brooklyn Junction service and W&LE's access to additional aggregate traffic, intended meaningful, affirmative relief as W&LE believes, or whether the Board's directions serve merely as friendly "suggestions" to explore service arrangements, even if such exploration and negotiations result in no final progress (as CSX interprets the Board's conditions).

On the basis of the record before it, the Board seems to have fully contemplated that the parties would, if urged by the Board, enter into certain arrangements wherein CSX would permit W&LE to provide service to customers along CSX's Benwood-Brooklyn Junction line. (Similarly, the Board appears to have expected that NS and CSX both would, through further negotiations, extend to W&LE access to various stone shippers in Ohio.) The Board has even gone so far as to mention in more than one of its decisions the possibility that such arrangements would help to address the

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[8] In its most recent filing, CSX itself observes that W&LE was granted "conditions designed to give W&LE the opportunity to expand its market reach and to provide a regional network that could offer better service to customers and yield operational benefits to W&LE to help shore up its shaky financial condition." At the very least, as CSX itself acknowledges, the Board has given W&LE "the opportunity to enhance its rail network through connections with other shortline carriers in order to better serve its customers." CSX-166 at 13.

concerns of such shippers as Lafarge Ohio (formerly Redland Ohio, Inc.), Wyandot Dolomite, Inc., National Lime & Stone Company, Bayer,[9] and PPG Industries. Certainly the Board would not have mentioned such potential arrangements -- and would not have given the above-listed shippers any false hope -- if the Board expected that there would be no meaningful negotiations, and thus no truly beneficial results.

W&LE has approached the Benwood-Brooklyn Junction and aggregate issues with the understanding that they were intended as a part of the affirmative relief it received. Indeed, W&LE perceives this portion of the Board's order to include a mandate to produce meaningful results. Why else would the Board require the parties to report back to it concerning "mutually beneficial" arrangements? If there is nothing of mutual benefit to be derived from negotiations on either subject, then why does CSX nonetheless acknowledge that it is required to participate in what <u>it</u> must regard as "sham" settlement discussions?

Between the lines, CSX conveys a disheartening message regarding the central issue in W&LE's discussions with CSX -- W&LE access to shippers on the Benwood-Brooklyn Junction line. Specifically, in CSX's opinion, the Board's direction concerning this matter is a hollow, ill-informed but perhaps well-intended

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[9] In its Decision No. 96 (footnote 42 at page 18), the Board reiterates its expectation that CSX and W&LE will engage in "good faith" negotiations regarding Bayer "and any other shipper" along the Benwood-Brooklyn Junction line. Good faith negotiations must, of course, be premised on the understanding that there is indeed something to be negotiated.

"suggestion." CSX acknowledges that it has been urged to "negotiate," but asserts that it is under no obligation to "conclude" any such arrangements.[10]

Conclusion

CSX-166 speaks volumes concerning the status of negotiations between W&LE and CSX. It demonstrates CSX's unyielding determination to "interpret" the Board's relief in favor of W&LE into oblivion, and to effectively nullify any effective remediation for W&LE. W&LE, on the other hand, proposes a reasonable interpretation of the Board's orders. It has demonstrated why it believes that the Board did not limit W&LE's access to Lima solely for the purpose of interchanging there with IORY, and it has shown why local access to Lima (in addition to interchange with RJ Corman and access to the Clark/BP refinery complex) is consistent with the Board's protective conditions.

CSX has made it abundantly clear that it sees no point in the Board's direction that the parties negotiate arrangements for W&LE's access to CSX's Benwood-Brooklyn Junction line or additional aggregate business. CSX has also made clear its intent to avoid any further progress with W&LE toward a reasonable conclusion of

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[10] CSX has announced to the Board that it has already extended to W&LE "a number of proposals" concerning mutually beneficial arrangements. CSX-166 at 6. The CSX proposals contain three movements, but none contemplate W&LE local service for Benwood-Brooklyn Junction customers. W&LE has stated that it will discuss these movements with CSX, but not in exchange for giving up all rights to a protective condition it believes the Board intended and which is critical to its post-merger viability.

Board-ordered negotiations. CSX's position in CSX-166, however, is contradictory, for, while it endeavors to read out of the conditions any true economic benefit to W&LE, CSX also acknowledges that the protective conditions granted to W&LE spring from the Board's abiding concern for W&LE's future viability and W&LE's ability to continue to provide essential services.

The Board should take action to assure that the remediation extended to W&LE is given its full effect. For this reason, and as it has argued in the preceding sections, W&LE respectfully requests that the Board reject CSX's exceedingly narrow interpretation of the protective conditions the Board has extended to W&LE. Instead, W&LE urges the Board to take the expedited action it has promised consistent with what W&LE has requested in WLE-10, and give clear direction to the parties so that the subject negotiations may move forward and reach a prompt resolution of these remaining issues prior to the upcoming "Split Date."

Respectfully submitted,

Keith G. O'Brien

Robert A. Wimbish

Keith G. O'Brien
Robert A. Wimbish
Rea, Cross & Auchincloss
1707 "L" Street, N.W.
Suite 570
Washington, D.C. 20036
(202) 785-3700

William A. Callison
V.P. Law & Government Relations
Wheeling & Lake Erie Ry. Company
100 East First Street
Brewster, OH 44613
(330) 767-3401

Counsel for the Wheeling & Lake Erie Railway Company

DATED: November 19, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 1998, I have served the foregoing W&LE-12 by hand delivery on the following counsel for Norfolk Southern Corporation and Norfolk Southern Railway Company and CSX Corporation and CSX Transportation, Inc.:

Richard A. Allen
Zuckert Scoutt & Rasenberger, L.L.P.
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006-3939

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

Samuel M. Sipe, Jr.
Steptoe & Johnson LLP
1330 Connecticut Ave.
Washington, D.C. 20036

Robert A. Wimbish

Robert A. Wimbish
Rea, Cross & Auchincloss
1707 "L" Street, N.W.
Suite 570
Washington, D.C. 20036

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 192176

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

FINANCE DOCKET NO. 33388 (SUB-NO. 80) 192177

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RESPONSIVE APPLICATION OF
WHEELING & LAKE ERIE RAILWAY COMPANY

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WLE-11

REPLY TO REPORT AND PROPOSAL OF NORFOLK SOUTHERN REGARDING CONDITIONS IMPOSED BY DECISION NO. 89 CONCERNING THE WHEELING & LAKE ERIE RAILWAY COMPANY

AND

RESPONSE TO STATUS REPORT FILED BY CSX ON OCTOBER 21, 1998

William A. Callison
V.P. Law & Government Relations
Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, OH 44613
(330) 767-3401

Keith G. O'Brien
Robert A. Wimbish
Rea, Cross & Auchincloss
Suite 570
1707 "L" Street, N.W.
Washington, D.C. 20036
(202) 785-3700

Counsel for the Wheeling & Lake Erie Railway Company

November 10, 1998

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

FINANCE DOCKET NO. 33388 (SUB-NO. 80)

RESPONSIVE APPLICATION OF
WHEELING & LAKE ERIE RAILWAY COMPANY

WLE-11

REPLY TO REPORT AND PROPOSAL OF NORFOLK SOUTHERN REGARDING CONDITIONS IMPOSED BY DECISION NO. 89 CONCERNING THE WHEELING & LAKE ERIE RAILWAY COMPANY

AND

RESPONSE TO STATUS REPORT FILED BY CSX ON OCTOBER 21, 1998

Wheeling & Lake Erie Railway Company ("W&LE") hereby submits its response to the "Report and Proposal of Norfolk Southern Regarding Conditions Imposed by Decision No. 89 Concerning the Wheeling [&] Lake Erie Railway [Company]" (NS-71), and to CSX's letter of October 21, 1998, reporting to the Board the status of negotiations between CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and W&LE.

As the Board is now aware by virtue of the reports that various parties filed with the Board on October 21, 1998, W&LE,

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"), and CSX have endeavored to conclude negotiations in accordance with Ordering Paragraph 68 of Decision No. 89.[1] W&LE has been able successfully to progress certain settlement negotiations with NS and CSX, and some of the arrangements necessary to implement the protective conditions extended to W&LE have either been achieved or the parties have reached suitable agreements in principle.

However, as W&LE-10 and NS-71 both reflect, W&LE and NS disagree fundamentally on two key issues -- (1) local access for W&LE in Toledo, and (2) the terms for the extension of the Huron Dock lease. In addition, W&LE has already reported to the Board that it has reached an impasse with CSX concerning -- (1) the scope of W&LE's competitive presence at Lima, and (2) W&LE's access to customers along CSX's line from Benwood to Brooklyn Junction. Finally, as is also noted in W&LE-10, the parties have failed to arrive at any specific terms on aggregate service, because of the preconditions (concerning Benwood-Brooklyn Junction service) that CSX and NS have placed upon any aggregate service arrangements.

NS-71 in many ways illustrates the nature of negotiations between W&LE and NS. Negotiations have been businesslike, but difficult. NS has not only embraced the most narrow interpretation

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[1] As W&LE noted in W&LE-10, the scope of the protective relief extended to W&LE, and the motivations therefore, are more thoroughly set forth at pages 107-109 of the Board's Decision No. 89. Thus, W&LE again urges the Board to interpret and apply the provisions of Ordering Paragraph 68 consistent with the related discussion of W&LE at pages 107-109 od Decision No. 89.

of the Board's Ordering Paragraph 68, it also mis-characterizes the nature of the relief the Board extended to W&LE and does not properly portray certain requests contained in W&LE's responsive application, especially with respect to W&LE's access to Toledo and the extension of the Huron Dock lease. For these reasons, and to protect its interests and the essential services it provides, W&LE has chosen to respond.

W&LE is also responding in part to CSX's October 21st letter to the Board. However, considering the brevity of CSX's report of that date, and in light of CSX's own stated intention to respond substantively to W&LE-10 no later than November 10, 1998, W&LE asserts the right to respond more fully to CSX's substantive remarks at a later date, insofar as CSX could have and should have submitted such remarks on October 21st.

Background

The Board may well recall the compliment of protective relief W&LE sought in its responsive application (W&LE-4). W&LE requested, among other things, operating access to Chicago, Toledo, and Brooklyn Junction. It also requested additional access to stone producers and terminals in the Ohio area, and it urged the critical importance of an extension of its lease of and access to NS' Huron Dock facilities. In Decision No. 89, The Board denied large portions of what W&LE had requested. On the other hand, the Board did extend to W&LE certain protective conditions, partly in accordance with what W&LE had requested in W&LE-4.

But the Board did not undertake only a "cut and paste" approach to W&LE-4, and it did not fashion its conditions strictly upon that document. Instead, the Board was motivated primarily to preserve a viable and competitive W&LE -- a rail carrier that the Board has recognized provides essential services. Furthermore, the protective conditions it granted to W&LE reflect the Board's expressed desire to address the concerns of the State of Ohio, Ohio-based stone producers, certain captive shippers in West Virginia such as PPG Industries, the Stark Development Board/Neomodal, and U.S. Senators and Congressmen from Ohio, Pennsylvania, and West Virginia who voiced strong concerns over maintaining W&LE's viability. To interpret and apply the conditions the Board extended to W&LE without considering these additional factors (as NS attempts to do in NS-71) misses the point and unduly restrains not only the intended reach of the conditions but also W&LE's ability to persevere as a regional carrier.

Toledo, Ohio

In NS-71, NS says that it opposes W&LE's efforts to negotiate access (via reciprocal switch) to industry at Toledo. NS bases it position on the misleading assertion that W&LE requested (and got) only overhead trackage rights to Toledo, and that no local access of any kind is contemplated in the Board's Decision No. 89. What is true is that W&LE sought trackage rights between Bellevue and Toledo, but W&LE never construed such rights to preclude it from local access to industry once it reached Toledo.

(Indeed, as NS itself acknowledges, W&LE never requested "overhead" trackage rights.) Obviously, the difference between NS and W&LE -- and the point where NS mis-characterizes W&LE's prior request for relief -- concerns the extent to which W&LE trackage rights to Toledo were to be "overhead," as that term is used by the Board.

W&LE never specifically requested the right to serve all customers along NS' Bellevue - Toledo main line, but it has not relinquished its interest in establishing a competitive presence in Toledo (in order to make its trackage rights viable and the protective condition meaningful). In fact, W&LE intended for its proposed access to Toledo to permit it to compete for local traffic in that market. W&LE identified one particular industry to which it sought direct, physical access at Toledo -- British Petroleum's coke facility. NS seems to forget this point when it claims that, by granting W&LE access to Toledo only for the limited purposes of interchanging traffic there with Ann Arbor and "other railroads," W&LE got exactly what it wanted. In Decision No. 89, the Board said nothing about British Petroleum. It did, however, grant W&LE "access to Toledo," which, when applied to mean that W&LE was provided with local access, would obviate the need for any discussion on the subject of British Petroleum coke traffic.[2]

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[2] W&LE notes that the Board has recently, in its Decision No. 96, addressed again the fact that the protective conditions it has extended to W&LE are intended to preserve W&LE as a viable and effective regional carrier. In that Decision, the Board recognizes that the conditions it has granted to W&LE must ensure the continuation of the essential services that W&LE provides. Also, W&LE stresses that it has engaged in a most reasonable approach to ensuring effective access to Toledo. Rather than insist upon direct physical access to a number of industries in

As mentioned above, NS makes much of the fact that W&LE did not explicitly describe access to local industry at Toledo in its responsive application (except for British Petroleum), and ignores the fact that the relief extended to W&LE addresses not only W&LE's responsive application, but also the concerns of various interested parties that support or today rely upon W&LE's essential services. Perhaps NS has lost sight of the fact that W&LE did not ask for operating rights to and from Lima. That condition is just another example of where the Board expanded and modified the scope of W&LE's relief beyond what W&LE sought in W&LE-4.

In light of the numerous parties who support W&LE and considering the Board's stated intent to preserve the essential services and future viability of W&LE, the Board clearly has it in its power to expand or otherwise modify the conditions that W&LE requested, and that is exactly what it did in the case of Toledo access. In any event, as W&LE has already pointed out in W&LE-10, it must be afforded access to local industry at Toledo in order to make effective and competitive its trackage rights service to this new market. NS cannot reasonably argue that W&LE's proposed trackage rights operations to and from Toledo -- if permitted solely for interchange with CN and Ann Arbor -- would adequately "prevent further erosion of W&LE's financial viability due to this transaction." See, Decision No. 89 at 109.

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that market, W&LE has offered to compete in Toledo by way of much less intrusive reciprocal switch arrangements. See, W&LE-10 at 18.

On a related note, in NS-71, NS attempts to revise the Board's Decision No. 89 by prohibiting W&LE to connect with "other" carriers at Toledo. W&LE has taken the Board's Ordering Paragraph 68 at its plain meaning where it permits W&LE to interchange with Ann Arbor and "other railroads" at Toledo. Specifically, W&LE seeks fully to implement the Board's order by arranging to interchange with those railroads, including CSX and NS, that are now or may in the future be present at Toledo. (Among other things, interchange with NS and CSX at Toledo could improve service to many W&LE customers, including Neomodal for shipments to and from points west.) W&LE submits that, if the Board had intended for its order to preclude interchange with NS and CSX at Toledo, or if it intended for W&LE to interchange only with specific railroads, it would have identified by name each and every railroad with which W&LE was permitted to interchange, rather than employ the general term "other railroads." NS' efforts to limit W&LE's interchange options at Toledo should be rejected accordingly.

Finally, W&LE disagrees with NS' position that negotiations on W&LE's use of trackage at NS' Homestead (sometimes referred to as "Holmstead") Yard in Toledo and the construction of a diamond crossing at Bellevue, OH, are "other matters" which "do not relate to trackage rights access to Toledo." See, NS-71 at 4. To the contrary, these two negotiation topics are directly linked to W&LE's proposed trackage rights operations to and from Toledo, and must be viewed as a component of the Toledo-based conditions the Board granted to W&LE. While negotiations on these two topics are moving forward, W&LE urges the Board to make clear that these issues are appropriate subjects to be considered by the Board, should an impasse later arise.

Huron Dock

The basic dispute between NS and W&LE concerning the extension of W&LE's lease of the Huron Dock revolves around the level of payments and the term of the extended lease. The full details of the lease extension have proven difficult to complete, because the Board's order mandated only an "extension," without mention of an appropriate extension term. W&LE seeks a fifteen-year extension of the pre-existing lease (with a subsequent renewal, at W&LE's option, for another 15-year term), with lease payments tied to the existing lease rate (with an annual adjustment for inflation). In NS-71, NS argues in favor of what is really a "re-negotiated lease" with terms and lease rates that differ significantly from those found in the existing lease. W&LE has already stated that it requires a lease term longer than the mere five years that NS is offering if W&LE's financial future is to be secure. See, W&LE-10 at 20 (footnote 11).

W&LE maintains that NS is not abiding by the terms of Decision No. 89, insofar as NS offers a re-negotiation of W&LE's use of the Huron Dock, rather than a true extension of the existing lease terms. Moreover, given how important W&LE's continued access to the Huron Dock is to its future economic health,[3] W&LE asserts that NS has in no way supported its position that W&LE should enjoy access to these facilities for only another five years, or that NS is free to impose commodity restrictions and tonnage surcharges on W&LE operations at the Huron Dock. [NS argues that W&LE should prepare itself to be deprived of the Huron Dock facilities within a five year period -- that is, to have enough time to "adjust to the post-Transaction operating environment" (NS-71 at 8) -- and it has engaged in negotiations with W&LE with this mindset.]

Finally, NS takes some exception to W&LE's request for an easing/recision of the commodities restrictions contained in the existing lease,[4] because, as NS alleges, such proposals go "far beyond the 'extension' of the lease ordered by the Board." Id. In response, W&LE wishes to re-affirm its commitment to negotiations with NS on the Huron Dock and stresses that, if NS continues to insist upon newly-established (i.e., "higher") lease rates (rather than a true extension of the existing rentals with reasonable adjustments for inflation) and new tonnage clauses, then W&LE must

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[3] W&LE has already highlighted how its continued access to the Huron Dock is critical to W&LE financial future. See, W&LE-10 at 20. Thus, W&LE cannot stress enough the importance of a long-term arrangement for the use of this facility.

[4] As NS is very well aware, the commodities restrictions and tonnage surcharges effectively permit it to "regulate" the level of competition W&LE will be able to offer at the Huron Dock post-transaction, when W&LE-NS competition will assuredly intensify. Naturally, competition is equally the motivation behind NS' efforts to have the Board impose the shortest possible extension of W&LE's lease. Once W&LE is removed from Huron Dock, NS expects that it will no longer face competition from W&LE at any Lake Erie transload facility.

obtain concessions with respect to the commodity restrictions NS had previously imposed.

Aggregate Service

As NS accurately reports in NS-71, it has discussed other arrangements such as "'allowing W&LE to provide service to aggregate shippers,' but [the parties] have not yet reached agreement." Id. at 4. W&LE wishes again to make clear that NS and CSX have treated the aggregate service matter as a mutually exclusive option to W&LE's concluding arrangements with CSX on Benwood-Brooklyn Junction service. See, W&LE-10 at 26-29. Thus, W&LE requests that the Board make clear to NS and CSX that it must explore aggregate service arrangements with W&LE regardless of what progress W&LE may achieve with CSX concerning the Benwood-Brooklyn Junction service issue. The Board must make clear that the aggregate service and Benwood-Brooklyn Junction issues are not mutually exclusive negotiating subjects, and that progress on one should not and must not preclude progress on the other.

CSX Report

CSX's untitled status report letter filed with the Board on October 21st offers a very abbreviated synopsis of what progress CSX believes it has made with W&LE concerning negotiations mandated under the Board's Ordering Paragraph 68 of Decision No. 89. Most of that short letter deals with CSX's negotiations concerning W&LE's operations to and from Lima, OH, but CSX also indicates that it is discussing with W&LE "mutually beneficial arrangements for other service to shippers." CSX October 21st Letter at 2.

CSX subsequently issued a letter, dated October 23, 1998, wherein CSX's counsel expressed "surprise" concerning the contents of W&LE-10 and W&LE's reports of certain negotiating impasses (which CSX's counsel seems to have thought had already been resolved). In its October 23rd letter, CSX also asserted the right to reply to W&LE-10. Because of the serious nature of the comments contained in CSX's October 23rd letter to the Board, and because CSX specifically requested certain clarifications from W&LE, W&LE promptly responded to that document with a letter dated October 30, 1998. W&LE's letter of October 30 did not represent (and should not have been interpreted by any party to be) W&LE's reply to CSX's status report letter of October 21st.

By comparison, CSX's report on the status of negotiations with W&LE was far less comprehensive than was NS' or W&LE's October 21st filings, and its brevity surprised W&LE. In fact, W&LE believes that CSX's report falls short of what the Board expected to receive from each of the negotiating parties on October 21st. W&LE anticipates, given CSX's stated intent to file a reply to W&LE-10, that CSX will, for the first time (unlike NS), submit substantive comments on many issues that could have and should have been contained in CSX's October 21st report to the Board. Rather than try to anticipate what CSX is likely to include in its "reply" (a document that W&LE expects will more closely parallel what both NS and W&LE submitted to the Board on October 21st), W&LE hereby informs the Board that it will respond to CSX's comments within ten days. Unless W&LE is afforded the opportunity to respond to CSX's "reply" at a later date, it will be unfairly prejudiced by CSX's tactic of withholding both its substantive comments concerning the progress of negotiations (and those impasses that remain) and its proposals for their full resolution until much later in the subject proceeding.

Conclusion

For the reasons set forth above and in W&LE-10, the Board should approve and impose the terms proposed by W&LE for the conditions contained in Ordering Paragraph 68 of Decision No. 89. Further, for the reasons set forth above and in W&LE-10, W&LE requests the Board to intervene and offer clarification and further instruction to the parties in those instances where negotiations have failed to progress or where differing interpretations of the Board's orders have resulted in impasse.

Respectfully submitted,

Keith G. O'Brien
Robert A. Wimbish
Rea, Cross & Auchincloss
1707 "L" Street, N.W.
Suite 570
Washington, D.C. 20036
(202) 785-3700

William A. Callison
V.P. Law & Government Relations
Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, OH 44613
(330) 767-3401

Counsel for the Wheeling & Lake Erie Railway Company

DATED: November 10, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 1998, I have served the foregoing W&LE-11 by hand delivery on the following counsel for Norfolk Southern Corporation and Norfolk Southern Railway Company and CSX Corporation and CSX Transportation, Inc.:

Richard A. Allen
Zuckert Scoutt & Rasenberger, L.L.P.
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006-3939

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

Robert A. Wimbish

Robert A. Wimbish
Rea, Cross & Auchincloss
1707 "L" Street, N.W.
Suite 570
Washington, D.C. 20036

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CSX-166

PUBLIC

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388 '92/73

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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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Finance Docket No. 33388 (Sub-No. 80)

192174

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RESPONSIVE APPLICATION OF
WHEELING & LAKE ERIE RAILWAY COMPANY

RESPONSE OF CSX CORPORATION
AND CSX TRANSPORTATION, INC. TO
PETITION OF WHEELING & LAKE ERIE RAILWAY COMPANY
FOR CLARIFICATION AND FOR FURTHER INSTRUCTION

MARK G. ARON
PETER J. SHUDTZ
CSX Corporation
One James Center
901 East Cary Street
Richmond, VA 23129
(804) 782-1400

P. MICHAEL GIFTOS
PAUL R. HITCHCOCK
CHARLES M. ROSENBERGER
CSX Transportation, Inc.
500 Water Street
Speed Code J-120
Jacksonville, FL 32202
(904) 359-3100

DENNIS G. LYONS
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004
(202) 942-5000

SAMUEL M. SIPE, JR.
CAROLYN DOOZAN CLAYTON
Steptoe & Johnson LLP
1330 Connecticut Avenue
Washington, DC 20036
(202) 429-3000

Counsel for CSX Corporation and CSX Transportation, Inc.

November 10, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

Finance Docket No. 33388 (Sub-No. 80)

RESPONSIVE APPLICATION OF
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RESPONSE OF CSX CORPORATION
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PETITION OF WHEELING & LAKE ERIE RAILWAY COMPANY
FOR CLARIFICATION AND FURTHER INSTRUCTION

CSX Corporation and CSX Transportation, Inc. ("CSXT") (collectively, "CSX") hereby submit this response to Wheeling & Lake Erie Railway Company's ("W&LE") Petition for Clarification and For Further Instruction (W&LE-10,) (hereinafter referred to as "October 21 Petition"). In that pleading W&LE petitioned the Board "to clarify, provide further instruction and confirm the scope of the protective conditions" that the Board imposed on behalf of W&LE in STB Finance Docket No. 33388, CSX Corporation, et al. – Control and Operating Leases/Agreements – Conrail, Inc. et al., (Decision No. 89) (served July 23, 1998). WLE-10 at 1. CSX respectfully submits that W&LE's October 21 Petition must be denied for two reasons.

First, W&LE is not in fact seeking "clarification" of Decision No. 89. Instead, what W&LE is really seeking is to expand the scope of the Board's decision. It asks the Board to reconsider and impose additional conditions on CSX. With respect to the Board's order providing W&LE overhead trackage rights to Lima, Ohio, W&LE asks the Board to impose additional local rights that not only go beyond the condition that the Board imposed in Decision No. 89, but beyond anything that W&LE initially asked for in its responsive application. Such new conditions can only properly be sought through a petition to reopen (with the required showings), not through a petition for clarification. Similarly, with respect to the Board's order instructing the parties to "negotiate concerning mutually beneficial arrangements," W&LE asks the Board to construe its order as including conditions that have no benefit to CSX, including certain conditions previously requested by other parties that the Board specifically denied. As such, W&LE's pleading is not a petition for clarification, but an untimely petition for reconsideration.

Second, even if the Board were to view the October 21 Petition as seeking clarification of Decision No. 89, there is no basis for granting the relief sought by W&LE. The language of Decision No. 89 is plain and requires no clarification. The Board ordered overhead trackage rights to Lima -- not local trackage rights and not reciprocal switching. As to anything besides the overhead trackage rights to Toledo, Lima, and Huron Dock, the Board required the parties to "negotiate . . . concerning mutually beneficial arrangements;" it did not require CSX to enter into arrangements of no benefit to it. The relief sought by W&LE is overreaching and should be denied.

BACKGROUND

W&LE's responsive application (WLE-4) in this proceeding vastly overestimated the financial impact that the Transaction would have on W&LE and sought a panoply of conditions that were largely unrelated to any allegedly anti-competitive impacts of the Transaction. W&LE claimed potential yearly gross revenue losses of between $12 and $15 million, in sharp contrast to applicants' estimate that W&LE could potentially lose approximately $1.4 million per year from increased competition as a result of the Transaction. Relying on its inflated projections, W&LE claimed that its financial viability would be seriously threatened and that approval of the Transaction without the imposition of numerous measures proposed by W&LE would result in the bankruptcy and ultimate demise of W&LE and thus loss of "essential services" for W&LE's shippers. Against this dire background, W&LE urged the Board to impose conditions designed, not to alleviate direct anti-competitive effects of that Transaction, but in effect to subsidize W&LE's operations. In the words of W&LE Chairman and CEO, Larry Parsons, W&LE sought:

> (1) Haulage and trackage rights to Chicago: to Belt Railway of Chicago and rights for interchange with all carriers; (2) Haulage and trackage rights from Bellevue to Toledo, Ohio; (3) Lease to own the Huron Branch (Shinrock to Huron) and Huron Dock on Lake Erie; (4) Trackage rights from Benwood to Brooklyn Junction and its yard facilities for commercial access to captive shippers PPG and Bayer; (5) Stone traffic access: Bucyrus, Alliance, Redlands, Spore, Wooster, Macedonia, Twinsburg and Ravenna, Ohio; (6) Haulage and Trackage rights with commercial access to Wheeling Pittsburgh Steel at Allenport, Pa; (7) Haulage and trackage Rights on CSX New Castle Subdivision for commercial access to Ohio Edison Power plant at Niles, Ohio and to Erie, Pennsylvania for interchange to the Buffalo & Pittsburgh; (8) Lease to own the Randall Secondary from Cleveland, MP 2.5 to Mantua, MP 27.5; (9) Trackage rights and commercial access to Reserve Iron & Metal (2 to 1 shipper); (10) Trackage rights and commercial access to Weirton Steel; (11) Reverse Joint Facility maintenance obligations; (12) Guarantee of fairness and nondiscriminatory treatment on any haulage and trackage rights granted.

WLE-4, Parsons V.S. at 33-34.

In Decision No. 89, the Board found that W&LE's projections of traffic revenue losses of $12-$15 million were significantly overstated; that the annual traffic diversion that W&LE would probably experience as a result of the transaction would more likely represent between $1.4 and $3.0 million in lost revenue; and that much of that loss would be due to new, more efficient routings rather than to any enhancement of applicants' market power. Decision No. 89 at 108. Moreover, the Board found that the extensive conditions that W&LE sought were "a substantial overreach both in terms of geographic scope and financial impact" and that W&LE certainly "has not justified $11 million of new traffic" or "such intrusive conditions as permitting it to extend its operation over applicants' lines all the way to Chicago." Id. at 109. However, in light of W&LE's current financial condition (unrelated to the Transaction), coupled with the potential revenue losses, the Board determined to grant certain rights to W&LE:

> . . . We will require applicants to provide: (a) overhead haulage or trackage rights access to Toledo, OH, with connections to the Ann Arbor Railroad and other railroads there; (b) an extension of W&LE's lease for the Huron Docks and trackage rights access to the Huron Docks over NS' Huron Branch; (c) overhead haulage or trackage rights to Lima, OH, including a connection to the Indiana and Ohio Railroad. Further, we will require that applicants negotiate with W&LE concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregate shippers or to serve shippers along CSX's main line from Benwood to Brooklyn Junction, WV. If these parties are unable to agree on a solution with regards to items (a), (b) and (c) within 90 days of the service date of this decision, we will institute expedited proceedings to resolve these matters. Finally, we expect the parties to inform us of any mutually beneficial arrangements that they have reached.

Decision No. 89 at 109.

On August 12, 1998, W&LE filed a timely petition for reconsideration of the Board's decision in which it asked the Board to declare that it had erroneously understated the magnitude of W&LE's projected revenue losses, assertedly because the amount of the revenue losses would be critical to negotiations with the applicants. W&LE asked the Board to rule upon its petition "only in the event that W&LE was unable to reach a suitable agreement within the dictates of the Board's Decision No. 89" in which case "[r]e-assessment of the magnitude of the loss would then be relevant and critically important should the Board be called upon to set the terms for the protective conditions imposed." WLE-9 at 4. No request was made for additional conditions or for modification of the conditions granted by Decision No. 89. The Board denied the petition on the ground that the actual amount of the traffic loss "makes no material difference" as it was not the Board's intention to indemnify W&LE against these losses dollar for dollar. Decision No. 96 at 18 (served Oct. 19, 1998).

Following the Board's issuance of Decision No. 89, sometime after October 2, 1998, W&LE elected to reach Lima by way of trackage rights over a CSX route from Carey, OH to Lima via Upper Sandusky rather than over an NS line and CSX did not object.[1] Accordingly, CSX representatives entered into good faith negotiations with W&LE to establish satisfactory terms for a trackage rights agreement. Upon resolution of all terms covering the grant of overhead trackage rights to Lima, on October 20, 1998, CSX submitted a formal trackage rights

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[1] As W&LE elected to reach Toledo by way of trackage rights over NS, issues raised by W&LE concerning arrangements for W&LE's trackage rights to Toledo and issues related to Huron Docks, which is also served by way of NS, are being addressed by NS. In this pleading, CSX will address those issues raised in the W&LE petition that concern W&LE's trackage rights to Lima and negotiations concerning mutually beneficially arrangements, including service to shippers on CSXT's main line between Benwood and Brooklyn Junction, WV.

agreement to W&LE for execution, one day before the October 21, 1998 deadline for the parties to notify the Board if they could not resolve this matter.

CSX representatives also entered into good faith negotiations with W&LE concerning mutually beneficial arrangements, and on October 16, 1998, submitted to W&LE for its consideration a number of proposals. Among these (subject to shipper consent) were proposals concerning movements involving a shipper on the Benwood-Brooklyn Junction line. The details of that proposal cannot be disclosed in the public version of this filing because the proposal is part of ongoing settlement negotiations and has substantial commercial ramifications.

W&LE brushed off CSX's October 16 proposal of mutually beneficial arrangements, saying that while W&LE was "more than willing to discuss any 'mutually beneficial' issues," it wanted one of the list of things it had asked for in its responsive application[2] but which the Board had quite clearly not given it in Decision No.89: "we believe the STB granted W&LE local rights from Benwood to Brooklyn Junction."[3] As to the trackage rights to Lima, W&LE did not execute the overhead trackage rights agreement that had been negotiated by the parties and proffered by CSX. Instead it filed its October 21 Petition in which it alleged that negotiations with CSX were at an impasse because the parties fundamentally disagree concerning the scope of W&LE's access to Lima and the Board's intentions in requiring the parties to negotiate mutually beneficial arrangements. WLE-10 at 4-5. W&LE now claims that in addition to the overhead trackage rights to Lima with rights to interchange with IORY, the

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[2] See item (4) of the quote from WLE-4 on page 3 above.

[3] Letter of October 16, 1998, from W&LE's Larry Parsons to CSX's Christopher P. Jenkins ("Parsons October 16 letter"), attached as Exhibit 1 .

Board also intended to include rights to interchange with R. J. Corman Railroad ("RJC")[4] and trackage rights to Clark Oil Refinery and to the BP refining complex at Lima, access to other industries at Lima through the imposition of reciprocal switching at an arbitrary figure of $184 per car[5] and the designation of yard track and related facilities for the assembly and staging of W&LE traffic at Lima. WLE-10 at 23-24.

W&LE also contends in its October 21 Petition that that portion of the Board's order in Decision No. 89 requiring applicants to "negotiate with W&LE concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregate shippers or to serve shippers along CSX's main line from Benwood to Brooklyn Junction, WV" (Decision No. 89 at 109) should be construed as a direct order to "conclude" such arrangements and that the arrangements must include W&LE service to aggregates producers and W&LE local trackage rights on the Benwood-Brooklyn Junction line, even though no benefits to CSX flowing from either arrangement have been identified. WLE-10 at 25. Moreover, W&LE contends that any such arrangements must also address all issues raised by PPG Industries and Bayer Corporation, shippers located on the Benwood-Brooklyn Junction line, despite the fact that those parties' requests for relief were expressly denied by the Board in Decisions Nos. 89 and 96. WLE-10 at 29. Finally, in its October 21 Petition W&LE again dismisses CSX's October 16 proposal as to

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4 CSX opposes W&LE's request for additional trackage rights to interchange with RJC at Lima, as well as its requests for trackage rights to local industries. There was no request for interconnection with RJC in W&LE's responsive application and there is nothing in the record that would support such a grant.

5 W&LE has presented no evidence to support the $184 figure.

mutually beneficial arrangements on the ground that while W&LE "welcomes CSX's proposal, this proposal does not satisfy the Board's directions." WLE-10 at 27-28.

In short, W&LE is willing to accept nothing less than full access to industries at Lima and unrestricted trackage rights to CSX's Benwood to Brooklyn Junction line, including direct access to PPG, Bayer and all other shippers on the line, in addition to expanded service access to the aggregates shippers. W&LE asks the Board to "clarify" that it intended all that W&LE now seeks.

ARGUMENT

I. W&LE'S PETITION FOR CLARIFICATION IMPROPERLY SEEKS RELIEF THAT CAN ONLY BE GRANTED THROUGH A PETITION TO REOPEN OR FOR RECONSIDERATION

A. W&LE Seeks Rights at Lima That Not Only Go Beyond the Board's Order, But Also Beyond Anything That W&LE Sought in Its Responsive Application and Request for Conditions

W&LE's responsive application and request for conditions did not seek access to Lima, as W&LE acknowledges, but rather sought a haulage agreement, with underlying trackage rights, from Bellevue to Toledo, Ohio, <u>for an interchange with AA, CN and IORY.</u> WLE-4, Wait V.S. at 74. The purported purpose of this request was to enhance the scope of W&LE's rail network through the addition of new connections with other rail carriers. As W&LE's operating witness testified:

> By the addition of a series of relatively short and simple connections, the W&LE will have the ability to bring many efficiencies to rail transportation in this region. In addition, W&LE seeks the ability to establish new interchanges that will develop traffic patterns that do not exist today. With a location central to a geographic area that includes the heart of Conrail, the W&LE needs to reach out to connections that make sense for our customers, and to provide a *real* transportation alternative.

WLE-4, Wait V.S. at 68 (emphasis in original). W&LE's Vice President of Marketing and Sales also emphasized the importance to W&LE of reaching new connections:

> In short, we have the infrastructure and ability to remain a meaningful and competitive railroad in our region with the addition of the relatively modest connections outlined in Messrs. Parsons and Wait's statements.

WLE-4, Thompson V.S. at 92.

In analyzing the "corrections" to the "anti-competitive aspects of the NS/CR combination" that would be necessary to keep W&LE viable, Mr. Thompson stated that W&LE's rationale was to "match the conditions to presently identifiable W&LE traffic flows to preserve competitive alternatives, or to provide operational flexibility which may, in part help preserve W&LE's viability." Id. at 97. To that end, he testified that the haulage and underlying trackage rights to Toledo "would replace a connection lost in the Conrail realignment" and "provide a new outlet for inbound and outbound traffic to Canadian National, Ann Arbor and the Indiana and Ohio Railroad." Id. at 98. Thus, in its responsive application W&LE's emphasis as to reaching Toledo was unequivocally on gaining access to AA, CN and IORY, thus expanding the reach of its service network for its existing customers.

The Board granted that request by requiring the applicants to provide overhead trackage rights to Toledo with connections to AA and other railroads. Contrary to the apparent understanding of W&LE, there is no available interchange with IORY at Toledo; thus, although the Board could have simply granted trackage rights to Toledo for interchange with the carriers there, the Board granted overhead trackage rights to Lima to enable W&LE to connect with IORY. W&LE elected to reach Lima via trackage rights over a CSX line between Carey, Ohio and Lima via Upper Sandusky because that line is considerably less congested than the alternative NS Bellevue-Fostoria-Lima route. See Parsons October 16 Letter. Now, however, W&LE claims that it cannot "derive sufficient economic benefit by merely forging a connection with IORY" (WLE-10 at 22) and therefore admittedly is seeking additional conditions:

> W&LE requests that the Board extend the scope of the relief at Lima to include direct access to the BP properties and refining complex and to the Clark Oil Refinery at Lima and interchange with the R.J. Corman Railroad Co. – Western Ohio Line (hereafter, "RJC"), a short line rail carrier also serving the Lima area.

WLE-10 at 21 (emphasis added).

W&LE's request is unfounded. There was no request for interchange with RJC or for trackage rights to Clark Oil Refinery anywhere in W&LE's responsive application; nor was there was any request for trackage rights to local shippers at Lima in the responsive application, nor any discussion of such access in the accompanying testimony of W&LE's marketing and operating witnesses.[6] W&LE made clear in its responsive application that it sought to reach IORY through overhead trackage rights. In fact, W&LE took great pains to show that its requests for access to AA, CN and IORY were to preserve service for existing

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[6] In its responsive application, W&LE did seek access to BP for a specific movement of coke to Cressup, WV. WLE-4, Wait V.S. at 74. Other than that, there was no indication of other additional traffic to be generated through local trackage rights at Toledo. Rather, W&LE's operating witness testified that W&LE would commence through service to Toledo by operating one train per day in each direction between an existing connection with NS at Yeomans, OH and Toledo for interchange with the Ann Arbor Railroad ("AA"), Canadian National ("CN") and IORY and that additional traffic would include loaded hoppers of petroleum coke received from BP. WLE-4, Wait V.S. at 82. [[[

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movements through "the addition of relatively modest connections." W&LE-4, Thompson V.S. at 92. W&LE witnesses emphasized that such connections would provide alternatives to congested routes and thus better service for existing customers. WLE-4, Thompson V.S. at 97-98. Similarly, in its Brief filed on February 23, 1998, W&LE distinguished its requests for conditions seeking haulage and underlying trackage rights to protect existing traffic flows (which included its request for haulage or trackage rights to Toledo to connect with other carriers there, including IORY) from those seeking market access to specific customers. See WLE-8 at 37-43. There was no mention of commercial access to industries located at Lima.

Moreover, although W&LE raised the issue of local trackage rights in the initial meeting with CSX and NS, CSX made clear that it would grant only the overhead trackage rights ordered by the Board and the parties accordingly proceeded with negotiations for overhead trackage rights. W&LE's October 16 letter to CSX gives no indication that granting local rights was still an issue. See Parsons October 16 letter. For W&LE now to seek "clarification" that the Board's order includes local trackage rights at Lima is specious.[7] W&LE clearly is

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[7] See Letter to STB from CSX counsel dated October 23, 1998. As that letter indicates, by October 20, CSX was under the understanding that W&LE had dropped whatever claims of local industry access on the Lima route it had made earlier in the negotiations and was content to work out the terms of overhead trackage rights in satisfaction of the Board's condition insofar as it involved Lima. It now develops that W&LE intended to engage in apparently final negotiations of an overhead trackage rights agreement, and only then to seek local access by W&LE from the Board, without any corresponding renegotiation of the material provisions in the overhead rights agreement, which, of course, might be viewed differently by CSX in the context of local add-on rights. CSX does not believe that this is a constructive and businesslike way to conduct negotiations. A letter of October 30, 1998, from W&LE's counsel to the Board says that CSX should have been aware that the issue of local access was being reserved by W&LE because (i) that issue was discussed at a meeting of W&LE, NS and CSX on August 13, 1998, which launched the negotiations, and (ii) W&LE stated in a letter to Norfolk Southern's John Friedmann that it had reached an impasse with CSX over local access on the Lima line and "cc's" of that letter had gone to two people at CSX (neither of whom was conducting the Lima trackage rights negotiations). Letter of October 30, 1998 at 2 n. 1) But obviously the fact that a

(Continued ...)

attempting to expand the Board's order to gain commercial access that was not even contemplated in W&LE's original requests.

This new request apparently stems from several meetings between W&LE and IORY as a result of which W&LE now claims that the connection will not generate as much benefit as it had anticipated when it originally told the Board how important it was for W&LE to reach IORY. WLE-10 at 22-23. Therefore, W&LE seeks reopening of the Board's decision and the imposition of new conditions granting market access at Lima in order to ensure that W&LE "will generate sufficient traffic and revenue opportunities to permit W&LE to sustain its trackage rights operations." WLE-10 at 23.

The usual purpose of imposing conditions on control transactions is to ameliorate any adverse affects of the transaction on competition or to preserve essential services that will be lost as a direct result of the transaction. The conditions as a general matter are not intended to assure that individual competitors remain viable. In this instance, the Board carefully considered the effects of the Transaction and found it to be pro-competitive and in the public interest. Moreover, it did not find that any W&LE shippers will suffer a direct loss of competitive alternatives as a result of the Transaction or that any shippers will lose essential services. While the Board acknowledged that W&LE provides essential services, it did not make any

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negotiating position is taken at the beginning of negotiations is not indicative of what the position is toward the end; characteristically in negotiations the parties abandon their more extreme positions as time goes on. And why the CSX people should have looked at W&LE's letter to Norfolk Southern to find out that the issue of local access was being reserved against CSX (and why the same statement was not made in a W&LE letter to CSX, possibly one directed to the officer conducting negotiations), is not explained by W&LE. Notwithstanding these factors, which suggest a highly unconventional way of negotiating a deal, to put it gently, CSX is willing to stand on the terms in its proffered trackage rights agreement with respect to overhead trackage rights, which the Board's decision contemplates.

determination that loss of such services was even threatened as a result of the Transaction. Rather, the Board found that W&LE had dramatically overstated its case and sought expansive conditions that were not justified. Nonetheless, the Board granted certain limited conditions designed to give W&LE the opportunity to expand its market reach and to provide a regional network that could offer better service to customers and yield operational benefits for W&LE to help W&LE shore up its shaky financial condition. The Board expressly denied W&LE's numerous requests for direct commercial access. Having been given the opportunity to enhance its rail network through connections with other shortline carriers in order to better serve its customers as it requested in its responsive application, W&LE now argues, in circular fashion, that it does not have enough traffic to support through train operations over its extended network and therefore must seek additional commercial access.

W&LE is actually seeking to reopen the Board's decision to consider entirely new requests for the imposition of local trackage rights and for an interchange with RJC. A petition to reopen may be granted only upon demonstration of material error, new evidence, or substantially changed circumstances. 49 C.F.R. §1115.4. W&LE has neither asserted nor demonstrated any such grounds for reopening. It relies on its failure to derive sufficient benefit from the new connection that it sought with IORY in order to claim additional needs. W&LE 's claim that it has not been able to negotiate with IORY a satisfactory level of additional traffic is not sufficient. As W&LE itself proclaimed throughout its responsive application, it did not seek guarantees that it would benefit from conditions the Board might impose, but only the opportunity to do so.

Neither can W&LE claim any changed circumstances. W&LE's claimed need for additional revenues through local service at Lima stems from the Board's denial of W&LE's

requests for direct commercial access to specific shippers at other locations, which would have given W&LE greater opportunities to increase its traffic and revenues than those available through the conditions granted by the Board. However, in Decision No. 89, the Board found that the commercial access W&LE sought was not justified. In Decision No. 96, the Board reaffirmed that finding by refusing to reassess the revenue losses and stating that the amount of the losses was not material. Thus, W&LE has not stated grounds sufficient to justify reopening Decision No. 89 and its petition should be denied.

B. W&LE'S Request for Broad Interpretation of the Board's Order Concerning Negotiations for Mutually Beneficial Arrangements Is in Fact a Petition for Reconsideration of Conditions That the Board Denied or Declined to Impose

In its responsive application, W&LE specifically requested, among other things, local trackage rights on the Benwood-Brooklyn Junction line (WLE-4 at 33-34), trackage rights to PPG and Bayer (WLE-4 at 33-34), access to provide single-line service in moving BP coke traffic from Toledo to Cressup, WV via a more direct route (WLE-4 at 74) and commercial access to various and sundry aggregates shippers (WLE-4 at 33-34). In Decision No. 89, the Board quite properly declined to impose any of these conditions. In addition, it denied PPG's separate request for second carrier service from W&LE. Decision No. 89 at 123. Instead, the Board imposed three specific conditions granting overhead trackage rights to Toledo and to Lima for interchange with other rail carriers and trackage rights and access to Huron Docks. These three conditions were more than sufficient; arguably they went beyond STB/ICC precedent for granting protection to railroads. Nonetheless, the Board went further and -- perhaps to ensure that the parties had indeed examined all private sector opportunities and would continue to seek new opportunities -- directed the parties to negotiate to determine whether there were any mutually beneficial arrangements that could be reached that would provide W&LE opportunities to increase revenues, including proposals for expanded service to aggregate shippers or trackage rights to serve shippers on the Benwood-Brooklyn Junction line.

With remarkable bravado, W&LE contends that the Board "made clear" that service to aggregate shippers and trackage rights to serve shippers on the Benwood-Brooklyn Junction line "are considered an integral part of protection granted W&LE and are intended, at least in part, to address the concerns of aggregate shippers such as National Lime and Stone Company, Wyandot Dolomite, Inc., Redland Ohio, Inc., (now Lafarge, Inc.), and the competitive concerns of PPG Industries and Bayer Corporation (Natrium, WV facilities)." WLE-10 at 6. W&LE further contends that the negotiations required by the Board must result in arrangements that include all of the above outcomes, even those which were requested in the responsive application and denied in Decision No. 89.

W&LE's interpretation that the parties <u>must</u> reach agreement providing W&LE direct physical access to shippers along the lines mentioned as examples in the final sentence of Ordering Paragraph No. 68 in Decision No. 89, as an integral part of the remedial conditions, is nonsense. If the Board had intended to impose all of those conditions, it would have done so explicitly in the same terms as it did for conditions (a), (b) and (c) and with a similar time limit and a provision for expedited Board resolution in the event that the parties could not reach agreement. The logical interpretation of the directive that the parties attempt to negotiate mutually beneficial arrangements is that the Board intended the parties to explore all options to determine whether there were any arrangements that would benefit <u>both</u> W&LE and applicants.

W&LE's argument that the Board intended to use the word "and" rather than "or" in describing proposals to be considered underscores the flaw in its interpretation.[8] "Or" or "and" is irrelevant; the references in the final sentence are examples. The Board did not impose any particular arrangement, but required the parties to explore options to determine whether there were any mutually beneficial arrangements and it gave as examples the aggregate shippers and Benwood-Brooklyn Junction line as possibilities for consideration. In that context, use of the word "or" is clearly appropriate, as would have been "and."

The intent of the Board to have the parties pursue private sector negotiations rather than to impose conditions is confirmed by the Board's denial of a request filed by Bayer Corporation on September 21, 1998. Bayer explicitly asked the Board to "clarify" Decision No. 89 by directing the applicants to conclude an arrangement with W&LE permitting W&LE to serve Bayer and other shippers on the line to Brooklyn Junction, WV. The Board denied that request, restating its expectation that CSX would pursue negotiations in good faith regarding Bayer and any other shipper along the line. Decision No. 96 at 18 n.42. Interpreting the Board's order to encourage the parties to find private sector opportunities of mutual advantage without Board intervention is consistent both with the clear language of Decision No. 96 and with Board practice and policy.[9]

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[8] W&LE claims that the Board committed a "drafting error" in using the disjunctive "or" rather than the conjunctive "and" in connection with the requirement to negotiate mutually beneficial arrangements, including service to aggregate shippers or service to shippers on the Benwood-Brooklyn line. WLE-10 at 9.

[9] See, e.g., STB Ex Parte No. 575, Review of Rail Access and Competition Issues (served Apr. 17, 1998); see also Decision No. 96 at 13 (In denying the Nadler Delegation's request for reconsideration, the Board noted that it encouraged the parties to continue to negotiate mutually beneficial settlements, and observing that it had imposed ample relief for transaction-related harms.)

W&LE also has asserted incorrectly that CSX has refused to negotiate with respect to arrangements for aggregate shippers or for shippers located on the Benwood-Brooklyn Junction line. [[[

]]] Rather, it is W&LE who has refused to consider these proposal as complying with the Board's order, putting them aside because, as Mr. Parsons stated in his October 16 letter to CSX,

> [W]e believe the STB granted W&LE local rights from Benwood to Brooklyn Junction. . . . If we cannot agree on the fundamental interpretation of the STB's grant of local rights from Benwood to Brooklyn Junction, then we are at an impasse on this issue and will submit the issue of the STB's intended meaning for determination with our October 21st submission to the Board.

Indeed, W&LE adamantly contends that it is entitled to direct access to aggregate shippers and open access to all shippers on CSX's Benwood-Brooklyn Junction line.[10]

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[10] In Mr. Parsons' October 2, 1998 letter to John H. Friedmann, attached as Exhibit B to W&LE counsel's October 30, 1998 letter to the Board, Mr. Parsons expressed W&LE's version of what "mutually beneficial" means:

> The STB also directed us to negotiate an agreement concerning mutually beneficial arrangements "including allowing W&LE to provide service to aggregate shippers or to serve shippers along CSX's line between Benwood and Brooklyn Junction" and to inform the Board of agreements reached. We believe that the Board expected that the parties would negotiate agreements and asked that we implement them with mutually agreeable terms.

So, according to Mr. Parsons, the essential "deal" was mandatory and the details were all that were left for "mutual agreement."

CSX is willing to continue discussions of its October 16 proposal and to identify other opportunities that are truly mutually beneficial. CSX is not willing to provide W&LE local trackage rights to all shippers on the Benwood-Brooklyn Junction line because it does not make business sense for CSX to allow W&LE to use its line and facilities and directly serve CSX customers with no reciprocal benefits for CSX. Such an outcome would be contrary to the plain language of the Board's order requiring the parties to negotiate <u>mutually beneficial</u> arrangements.

W&LE's request for "clarification" of the scope of the Board's order requiring negotiations concerning mutually beneficial arrangements is, in reality, a request for reconsideration of the Board's Decision No. 89. W&LE wants the Board to impose as conditions a complete package of access rights allowing W&LE to provide direct service to all aggregates shippers, and local access to all shippers on the Benwood-Brooklyn Junction line, including direct access to PPG and Bayer, regardless of whether any benefits flow to CSX. The Board appropriately stopped short of imposing such conditions and left the parties to negotiate private sector arrangements if they could agree to arrangements that were mutually beneficial.[11]

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[11] In support of its claim that the Board intended to provide broad remedial assistance to W&LE, W&LE asserts as a basis for such relief that the Board embraced a policy dedicated to promoting and preserving the important functions provided by carriers such as W&LE. W&LE likens such relief on its behalf to the Board's grant trackage rights to Texas-Mexican Railroad in <u>UP/SP</u> to promote NAFTA and international trade objectives. WLE-10 at 11, n.7. However, the policy favoring international trade considerations was not the only basis for granting rights to Tex-Mex. The Board found that "a partial grant of Tex Mex's responsive application is required to ensure the continuation of an effective competitive alternative to UP's routing into the border crossing at Laredo." Finance Docket No. 32760, <u>Union Pacific et al. – Control and Merger – Southern Pacific et al.</u> ("<u>UP/SP</u>"), Decision No. 44 at 149 (served Aug. 12, 1996). Although the grant of trackage rights improved Tex Mex's financial condition and benefited international trade, those incidental results were not the sole grounds for relief. The relief granted alleviated certain adverse effects of the merger and was narrowly tailored to address a specific immediate competitive harm to shippers resulting from the merger. In contrast, here the Board has not found any imminent adverse impact of the transaction on W&LE

(Continued ...)

W&LE's petition should be treated as an untimely request for reconsideration and should be denied. As with reopening, reconsideration of a Board action may be granted only upon a showing of material error, new evidence, or substantially changed circumstances. ICC Finance Docket No. 32549, Burlington Northern Inc. – Control and Merger – Santa Fe Pacific Corp., 1995 ICC Lexis No. 291, at *5 (Nov. 3, 1995). W&LE has not met those criteria.[12]

Moreover, W&LE 's October 21 Petition comes over two months after the deadline for filing a petition for reconsideration. W&LE claims that it could not have raised its requests earlier because it became aware of the impasse only at the close of negotiations. The only impasse arose from the fact that applicants read the conditions as they were written. Moreover, W&LE did submit a timely petition for reconsideration/clarification (WLE-9) and expressed no dissatisfaction with the language of the conditions that the Board imposed. Surely, in the course of preparing that petition and contemplating negotiations with applicants, W&LE must have realized that the benefits it sought required either a self-serving interpretation of the scope of the Board's order or reconsideration of denied requests and it could have sought such relief on a timely basis. W&LE's last minute attempt to resuscitate stricken requests or give birth to new ones should be denied.

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customers and W&LE is seeking relief based exclusively on the policy favoring preservation of regional carriers.

[12] W&LE has not alleged that the Board's purported "drafting error" is material error, but even if it had, the context of the order makes clear that there was no error.

II. EVEN IF THE BOARD WERE TO ACCEPT W&LE'S PLEADING AS A PETITION FOR CLARIFICATION, THE DECISION DOES NOT REQUIRE CLARIFICATION

As the Board noted in Decision No. 96, a prior decision may be clarified where there appears to be a need for a more complete explanation of the action taken therein. Decision No. 96 at 7. See also UP/SP, Decision No. 57 at 3 (served Nov. 20, 1996). In clarifying prior decisions, the Board has looked at the language of the decision to determine whether there is any ambiguity. The Board also has considered the concerns that prompted it to make its decision and the Board's intent in making its decision. However, the Board has declined to go beyond its original decision by fundamentally altering the conditions it imposed.[13]

There is no need for clarification of the Board's Decision No. 89 concerning the W&LE conditions. The language is unambiguous – the Board explicitly imposed three conditions that conform to requests made by W&LE in its responsive application and further provided an opportunity for the parties to negotiate mutually beneficial arrangements.

A. The Plain Language of the Board's Decision Grants Only Overhead Trackage Rights to Lima

The Board expressly granted W&LE overhead trackage rights to Lima with rights to connect to IORY. The grant of overhead trackage rights for the purpose of connecting with IORY was consistent with W&LE's requests. W&LE did not seek access to Toledo or Lima per

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[13] See, e.g., UP/SP, Decision No. 57 at 6 (refusal of Board to clarify its initial decision with regard to amount of traffic to be opened up to BNSF under the contract modification condition); UP/SP, Decision No. 74 at 5-6 (served Aug. 29, 1997) (refusal of the Board to broaden the definition of 2-to-1 shipper for the purposes of the contract modification condition).

se, but only access to the named carriers, including IORY. Moreover, W&LE sought new connections in order to "bring many efficiencies to rail transportation in this region" (WLE-4, Wait V.S. at 68), to provide operational flexibility and more efficient routes (WLE-4, Thompson V.S. at 97-98) and to provide opportunities to develop new traffic patterns (WLE-4, Wait V.S. at 68). The overhead trackage rights conditions imposed by the Board were intended to enhance W&LE's rail network and to provide W&LE the opportunity to achieve the efficiencies that it sought. The plain language of the order makes clear that local rights at Lima were not included.

W&LE's current request for access to shippers in Lima is at best an afterthought, said by W&LE to arise out of its professed disappointment regarding the amount of new interchange traffic it says it will be able to generate with IORY. Unmet expectations do not justify "clarifying" a condition to expand its scope. Indeed, the Board has frequently stated that a grant of conditions affording opportunities does not guarantee success.[14]

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[14] W&LE's reliance on the contract modification condition that the Board imposed on the UP/SP merger to assure that BNSF would have access to sufficient traffic to sustain its operations is misplaced. In UP/SP, the trackage rights were granted to BNSF to ameliorate the immediate loss of competitive alternatives to shippers on the line who, prior to the merger, were served by both UP and SP. However, as most of those shippers were under contract to UP or SP, trackage rights without a provision for contract modification would have been useless. The contract modification provision was for the protection of the shippers. It allowed BNSF to hit the ground running, and immediately serve points where loss of competition was imminent. The purpose of the conditions was not to ensure income for BNSF, but to "help ensure that the BNSF trackage rights will allow BNSF to replicate the competition that would otherwise be lost when SP is absorbed by UP." UP/SP, Decision No. 44 at 145. In its November 20, 1996 decision clarifying its initial decision the Board stated:

> The contract modification condition opens up traffic to BNSF, but does not guarantee that BNSF will actually receive that traffic. The condition merely allows a 2-to-1 shipper to put up for bidding traffic that had previously been committed by contract either to UP or SP. The shipper need not tender any traffic to BNSF, and is free to reject the contract modification condition in its entirety.

(Continued ...)

In a recent decision in this proceeding, the Board rejected a request for clarification of Decision No. 89 filed by New England Central Railroad ("NECR") in which NECR sought to expand the scope of the condition granted on its behalf. Decision No. 100 (served Nov. 6, 1998). Like W&LE, in its responsive application NECR had overstated the financial impact that it would suffer as a result of the Transaction and sought various conditions, including trackage rights that would enable it to connect with its affiliate, Connecticut Southern Railroad ("CSO"). Like W&LE, NECR argued for relief beyond that granted by the literal language of the Board's condition, arguing that the Board must have intended such broad relief to make NECR whole. The Board rejected that argument, noting that its intent in granting the trackage rights was not to indemnify NECR against losses dollar for dollar, but to give NECR the opportunity to achieve operating cost savings and to obtain additional traffic to ensure that provision of services to existing traffic would not be impaired. Id. at 3. The same reasoning should apply here.

B. The Board's Order Concerning Negotiations of Mutually Beneficial Arrangements Is Also Clear on its Face

W&LE's request for clarification of the Board's order concerning negotiations of mutually beneficial arrangements is inconsistent with the plain language of the order. Decision

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UP/SP, Decision No. 57 at 5 (emphasis added). Here, the Board has provided opportunities for W&LE to reach new markets through overhead trackage rights and new connections. The purpose was not to ameliorate any immediate loss of competition to shippers, but to provide opportunities for W&LE to enhance its financial situation through more efficient routes or new connections, thus aiding W&LE's ability to continue to provide service to existing customers. The risk of competitive loss in this instance is not imminent (or even likely to occur).

No. 89 requires applicants "to provide" (a) overhead trackage rights to Toledo and connections with regional carriers, (b) access and trackage rights to Huron Docks and (c) overhead trackage rights to Lima with connections to IORY, and provided a time frame for the parties to establish terms and a mechanism for Board intervention if the parties could not agree on terms within that time frame. The Board further stated:

> . . . we will require that applicants negotiate with W&LE concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregate shippers or to serve shippers along CSX's main line from Benwood to Brooklyn Junction, WV. . . . Finally, we expect the parties to inform us of any mutually beneficial arrangements that they have reached.

Decision No. 89 at 108. The Decision clearly distinguishes between conditions (a), (b) and (c) which must be met and as to which the parties must agree on terms or have the terms set by the Board, and the requirement to "negotiate with W&LE concerning mutually beneficial arrangements." There is no language stating that any particular arrangement must be concluded. There is no requirement to come to the Board to establish the terms. There is no time limit or expectation that an arrangement necessarily will be made that provides benefits to both W&LE and applicants. The order simply requires the parties to explore all options to identify "mutually beneficial arrangements" and report any that are reached.

W&LE's request for the imposition of direct physical access to PPG and Bayer is also inconsistent with the plain language in Decisions Nos. 89 and 96. In denying PPG's separate request the Board found that PPG had not demonstrated any harm due to the Transaction. While the Board acknowledged that PPG might gain some relief if the parties should agree on arrangements on the Benwood-Brooklyn Junction line, it did not direct relief for PPG. Similarly, in Decision No. 96, the Board denied Bayer's request to direct the applicants to conclude an arrangement with W&LE, and required only that the parties negotiate in good faith to find private sector arrangements of benefit to both W&LE and applicants. The Board's Decisions Nos. 89 and 96 are clear and W&LE's petition should be denied.

CONCLUSION

For the foregoing reasons, W&LE's Petition for Clarification and for Further Instruction should be denied.

Respectfully submitted,

Dennis G. Lyons/SMS

MARK G. ARON
PETER J. SHUDTZ
CSX Corporation
One James Center
901 East Cary Street
Richmond, VA 23129
(804) 782-1400

P. MICHAEL GIFTOS
PAUL R. HITCHCOCK
CHARLES M. ROSENBERGER
CSX Transportation, Inc.
500 Water Street
Speed Code J-120
Jacksonville, FL 32202
(904) 359-3100

DENNIS G. LYONS
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004
(202) ~~942-5000~~

Samuel M. Sipe

SAMUEL M. SIPE, JR.
CAROLYN DOOZAN CLAYTON
Steptoe & Johnson LLP
1330 Connecticut Avenue
Washington, DC 20036
(202) 429-3000

November 10, 1998

Counsel for CSX Corporation and CSX Transportation, Inc.

EXHIBIT 1

WHEELING & LAKE ERIE RAILWAY COMPANY

Larry R. Parsons
Chairman & Chief Executive Officer
330-767-3401 (Ext. 1293)

100 East First Street
Brewster, OH 44613
Fax: 330-767-4327

FAX: 904-359-1243
AND U. S. MAIL

October 16, 1998

Mr. Christopher P. Jenkins
VP Chemicals Marketing
CSXT
500 Water Street - J880
Jacksonville, FL 32202

Dear Chris:

This will respond to your letters of October 5th and 16th, Pete Schudtz's letter of the 15th, and follow-up on our October 13th hi-rail trip to Lima on the CSXT route.

We have elected the CSXT route to Lima primarily because the route has considerably less congestion than the NS Bellevue-Fostoria-Lima route. We believe we had agreed in August that we would accept the "merger" trackage right rate of 29¢/car/mile (and have also agreed with NS for that rate over the NS Toledo route). Because the STB ordered these trackage rights without imposing restrictions, we do not agree to restrict whatever level of traffic we may be able to obtain to a train a day each way.

There are two proposals we would make: 1) we would like to purchase the CR track from the I&O interchange to the Clark refinery and 2) effect interchange with RJ Corman via this CSXT route.

Finally, we have now more information on what you term "mutually beneficial" commercial issues. While we are more than willing to discuss any "mutually beneficial" items, we believe the STB granted W&LE local rights from Benwood to Brooklyn Junction. We again suggest the "merger" trackage rights rate of 29¢/car/mile would be appropriate. If we cannot agree on the fundamental interpretation of the STB's grant of local rights from Benwood to Brooklyn Junction, then we are at an impasse on this issue and will submit the issue of the STB's intended meaning for determination with our October 21st submission to the Board.

We look forward to hearing from you.

Very truly yours,

Larry R. Parsons

LRP:ald

C: Peter J. Shudtz, Esq. - CSX, Corp. VP Law & General Counsel
David L. Houchin - CSX, Asst. VP Joint Facilities
John H. Friedmann - NS, Director Strategic Planning
James W. McClellan - NS, Senior VP Planning

OCT 16 '98 04:38PM W&LE PRESIDENT 216 767 4327 P.2

CERTIFICATE OF SERVICE

I, Carolyn D. Clayton, certify that on November 10, 1998, I have caused to be served a true and correct copy of the foregoing CSX-166, "Response of CSX Corporation and CSX Transportation, Inc. to Petition of Wheeling & Lake Erie Railway Company for Petition For Clarification and For Further Instruction" to all parties on the Service List in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means.

Carolyn D. Clayton

Carolyn D. Clayton

STB FD 33388 (Sub 80) 7-17-98 D 189918

189918

PPG

PPG Industries, Inc.
One PPG Place Pittsburgh, Pennsylvania 15272 USA Telephone: (412) 434-2967 Facsimile: (412) 434-2545

ENTERED
Office of the Secretary
JUL 17 1998
Part of
Public Record

RECEIVED
JUL 17 1998
MAIL
MANAGEMENT
STB

L. Blaine Boswell
Vice President
Public Affairs

June 29, 1998

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

ENTERED
Office of the Secretary
JUL 17 1998
Part of
Public Record

RE: STB Finance Docket 33388 (Sub. No. 80)

Dear Mr. Williams:

PPG Industries, Inc. is a major manufacturer of chemicals, protective coatings, glass and fiber glass with over 20,000 employees in the nation. One of our major chemicals manufacturing plants is located at Natrium, WV, and this plant currently is captive to only the rail services of CSX Transportation.

In our original submission to the Surface Transportation Board with respect to this docket, we requested the Board to establish competitive access to our Natrium plant and other chemicals plants in the area by granting trackage rights to the Wheeling and Lake Erie Railway from the CSX interchange at Benwood, WV, to Brooklyn Junction, WV. Our request was subsequently endorsed by Senators Jay Rockefeller and Robert Byrd and Congressman Robert Wise.

We have now had an opportunity to review the draft of the STB's ruling with respect to this important matter as part of the overall ruling on STB Finance Docket No. 33388. We are very pleased that the Board addressed our request but are quite concerned about the relative lack of specificity of the draft ruling which is stated as follows:

"We also will require that applicants negotiate with W&LE concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregate shippers or to serve shippers along CSX's line from Benwood to Brooklyn Junction, WV".

We are concerned that this draft ruling could be open to a variety of interpretations that could result in the failure of the railroads to reach any negotiated agreement that provides a basis for practical competitive rail access and service. Accordingly, we would like to respectfully request the Board, at the appropriate time, to clarify the draft ruling to make it absolutely clear that it is the intention of the Board that rights be granted to the WL&E for local service to Brooklyn Junction from the CSX Benwood interchange with haulage and underlying trackage rights.

We understand that, to date, no action has been taken by CSX to initiate negotiations with the W&LE on the important matter of competitive access from Benwood to Brooklyn Junction, WV, in order to provide rail service to our plant at Natrium, WV. This inaction underlines our belief that a clarification of the draft ruling is needed.

We are advised that the WL&E is willing to accept NS/CSX merger reciprocal trackage rights charges at 29 cents per mile and will negotiate for a reasonable haulage rate. However, if the railroads cannot reach an agreement between themselves within a reasonable period of time, we believe that the Board should establish reasonable trackage and haulage rates at a level that will permit the W&LE to compete for our traffic business at Natrium, WV,

The positive action that will result from this requested clarification, along with the other clarifications requested by the WL&E, will go a long way to ensuring that the WL&E is a financially sound and vigorous railroad for the forward period. A "healthy" WL&E is of great benefit to PPG and many other shippers in West Virginia and Ohio.

I hereby certify that a copy of this request has been served upon all parties of record in this proceeding by first class mail, properly addressed with postage prepaid.

Respectfully submitted,

L. Blaine Boswell

L. Blaine Boswell

cc: All Parties of Record

STB FD 33388 (Sub 80) 1-26-98 D 185387

185387

OHIO STEEL
Pride & Progress

OHIO STEEL INDUSTRY ADVISORY COMMISSION / OHIO DEPARTMENT OF DEVELOPMENT
P.O. Box 1001 COLUMBUS, OH 43266-1001 (614) 466-4551 FAX (614) 644-1789

RECEIVED
JAN 26 1998
MAIL
MANAGEMENT
STB 7

D

January 23, 1998

The Honorable Vernon A. Jordan
Office of the Secretary
U. S. Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 33388 -SUB80 CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control Operating Leases/Agreements-Conrail, Inc. and Consolidated Rail Corporation.

"**Comments, protests or requests for conditions**" re: the Wheeling & Lake Erie Railway Company.

Dear Secretary Williams:

The attached statements, filed on behalf of member steel companies by the Ohio Steel Council, reflect continued interest in the future viability of the Wheeling & Lake Erie Railway Company as a result of the proposed rail merger. The letter from Harold Kelly, Co-Chairman of the Ohio Steel Council, addresses concerns of the Council and Republic Engineered Steels, Inc. regarding adequate rail movement in the Chicago area. Another letter from Wheeling Pittsburgh Steel Corporation, which had been sent previously to you by the corporation, attests to its interest in having the W&LE continue to serve its steel-making operations in several communities in Ohio. Twenty-five copies of these statements are provided.

Please date stamp the enclosed extra copy of this letter and return in the enclosed self-addressed stamped envelope.

Respectfully submitted,

Charles Hesse

Charles S. Hesse
(for the Ohio Steel Industry Advisory Council)

Charles Hesse Associates
7777 Bainbridge Road
Chagrin Falls, OH 44023-2124

ENTERED
Office of the Secretary
JAN 27 1998
5 Part of Public Record

cc: Enclosure
Counsel of Record

OHIO STEEL
Pride & Progress

OHIO STEEL INDUSTRY ADVISORY COMMISSION / OHIO DEPARTMENT OF DEVELOPMENT
P.O. BOX 1001 COLUMBUS, OH 43266-1001 (614) 466-4551 FAX (614) 644-1789

January 22, 1998

The Honorable Vernon A. Williams
Secretary
U.S. Surface Transportation Board
1825 K Street, N.W.
Washington, DC 20423

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

Dear Mr. Williams:

The Onio Steel Industry Advisory Council (the "Council") which, in part, is composed of 10 steel companies that produce more than 95 per cent of all manufactured steel in the State of Ohio, hereby files this Reply Statement. A balanced, competitive-freight rail system is critical to these companies and future economic development opportunities both in Ohio and the region. The Surface Transportation Board must ensure the viability of short line and/or regional carriers whose presence is often the life blood of those businesses which rely on local railroad service. Several steel companies are concerned that the Wheeling & Lake Erie Railway Company (the "W&LE") remain a viable railroad because it provides essential service to several companies of the Ohio steel industry. The Council filed a statement of general support in October but has continued to observe these proceedings and would like to supplement its comments. The Council apologizes that this filing is late but it is believed the Surface Transportation Board should be as fully informed as possible as it makes decisions on the captioned matter.

The W&LE has provided timely and competitive service which has been critical to its steel customers but the proposed acquisition by Norfolk Southern of virtually all of the Conrail lines in eastern Ohio will severely affect W&LE's market position. As we earlier stated, any action that might lead to the eventual demise of the W&LE would be detrimental to several of our steel companies.

While we reiterate our general support for helping the W&LE remain a viable railroad competitor post merger, we also note that one of W&LE's requested conditions is access to the Chicago gateway. The Council also supports this condition because Chicago is an important gateway for many steel companies and W&LE's access would both enhance competition to this market as well as help keep the W&LE viable. We urge that the Surface Transportation Board ensure that the proposed merger and restructuring of the railroads also maintain the long-term viability of the Wheeling & Lake Erie Railway Company.

Sincerely,

Harold V. Kelly

Harold V. Kelly
Co-Chairman
Ohio Steel Industry Advisory Council

HVK/sa

State of Ohio)
)
County of Stark)

VERIFICATION

Harold V. Kelly being duly sworn on the 22nd of January 1998, states that he has read the foregoing, and that it is true and accurate to the best of his knowledge and belief.

Harold V. Kelly

Harold V. Kelly

Sheree A. Amos

Notary Public

My Commission expires: February 20, 1998

Wheeling-Pittsburgh
STEEL CORPORATION

JAMES E. MULDOON
VICE PRESIDENT
PURCHASING, TRAFFIC & RAW MATERIALS

January 14, 1998

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Attn: STB Finance Docket No. 33388
1925 K Street, NW
Washington, DC 20423-001

Dear Sir:

I am James Muldoon, Vice President Purchasing, Traffic, and Real Estate for Wheeling-Pittsburgh Steel Corporation. Before coming to Wheeling-Pittsburgh Steel Corporation, I was General Manager of Purchasing, United States Steel in Pittsburgh, PA. I have spent 34 years in the steel business, most of them at United States Steel.

Wheeling-Pittsburgh Steel Corporation is the 9th largest steel producer in the United States. We have operations in the states of Ohio, West Virginia, and Pennsylvania. The largest operations are located in Ohio along the Ohio River between Steubenville, Ohio and Martins Ferry, Ohio.

Our Ohio operations are supported by two railroads, Conrail and the Wheeling and Lake Erie. I understand that if the acquisition of Conrail is approved, the Norfolk Southern will take the place of Conrail.

The Wheeling and Lake Erie Railway, though a class II regional railroad, provides a necessary, essential service to Wheeling-Pittsburgh Steel Corporation. We are concerned that the proceedings, if approved without conditions to keep the W&LE viable, would leave us with only one railroad to serve our needs. Wheeling and Lake Erie brings an essential degree of service, reliability, and rate rationalization that is necessary for the highly competitive demands of the steel business.

We support those Wheeling and Lake Erie efforts to remain viable before the Surface Transportation Board and urge the Surface Transportation Board to insure the Conrail purchase not lead to the demise of the Wheeling and Lake Erie Railway.

1134 MARKET STREET, WHEELING, WEST VIRGINIA 26003 • (304) 234-2800 • FAX: (304) 234-2261

State of [redacted] WEST VIRGINIA

County of OHIO

VERIFICATION

James E. Muldoon being duly sworn on 14th January, states that he has read the foregoing and that it is true and accurate to the best of his knowledge and belief.

James E. Muldoon

Sworn to before me this 14th day of January, 1998.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANE Y. DUNCAN
Wheeling-Pittsburgh Steel Corp.
1134 Market Street
Wheeling, West Virginia 26003
My Commission Expires Oct. 28, 2007

Notary Public

STB FD 33388 (Sub 80) 1-14-98 D 185212 1/2

185212

PUBLIC - REDACTED

WLE-7

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 80)

CSX and NS -- CONTROL -- CONRAIL

REPLY OF RESPONSIVE APPLICANT WHEELING & LAKE ERIE RAILWAY COMPANY

D

William A. Callison, Esq.
Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, OH 44613
Tel: (330) 767-3401

Charles H. White, Jr.
Robert L. Sullivan
Galland, Kharasch & Garfinkle, P.C.
1054 Thirty-First Street, N.W.
Washington, D.C. 20007
Tel: (202) 342-5200

W&LE

January, 1998

PUBLIC - REDACTED

WLE-7

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 80)

CSX and NS -- CONTROL -- CONRAIL

REPLY OF RESPONSIVE APPLICANT WHEELING & LAKE ERIE RAILWAY COMPANY

William A. Callison, Esq.
Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, OH 44613
Tel: (330) 767-3401

Charles H. White, Jr.
Robert L. Sullivan
Galland, Kharasch & Garfinkle, P.C.
1054 Thirty-First Street, N.W.
Washington, D.C. 20007
Tel: (202) 342-5200

W&LE

January, 1998

TABLE OF CONTENTS

SUMMARY NARRATIVE

The Reply Statements submitted herewith underscore the extraordinarily difficult position the Wheeling & Lake Erie Railway Company ("W&LE") has been placed in by the primary application. Norfolk Southern, the progenitor of W&LE and its heretofore joint line partner in competitive efforts against Conrail, will now assume Conrail's position in the territory served by W&LE. Mr. Larry Parsons outlines the magnitude of the harm this market inversion will cause W&LE and its dependent shippers, many of which had been previously neglected or demarketed by the Class I carriers operating in northeastern Ohio, (see also the Statement of Reginald Thompson). Indeed, Mr. Parsons shows, by means of NS' own settlement offer, that NS well recognizes the perilous position W&LE now faces, yet the Primary Applicants now steadfastly oppose any W&LE relief.

Mr. Parsons also demonstrates the extensive improvements which his management team has brought to W&LE despite an attempt to malign that team by NS expert witness Williams. In this he is strongly supported by Mr. Ed Burkhardt, a well-respected railroad manager identified by the NS witness as an individual who would have achieved a different status for W&LE.

Despite these improvements, however, W&LE remains at serious risk as a result of both the underlying transaction, and the Primary Applicants' now adamant opposition to any W&LE relief. In that light, Mr. Parsons reiterates that, unfortunately, conditional inclusion remains one alternative before the Board.

Mr. Reginald Thompson, W&LE's Vice President of Marketing, clearly shows the scope of W&LE's vulnerability. Conducting a study of <u>all</u> of W&LE traffic by STCC and individual move, Mr. Thompson has submitted a complete traffic analysis under seal. This report confirms that

W&LE will suffer a diversion of about a third of its revenue by virtue of the market inversion to be caused by the NS/Conrail combination in the territory served by W&LE. Mr. Thompson's analysis and conclusions are confirmed by expert witness Pinkerton who restates his methodology and conclusions arising therefrom.

W&LE President Steven Wait demonstrates the operating feasibility of W&LE's requested conditions. Rather than the hyperbolic fears of NS witness Friedmann, Mr. Wait calmly shows that W&LE presently operates safely and efficiently on both the NS and CSX systems, and that its proposed conditions will not disrupt, but may, in certain instances, even improve the Primary Applicants' operations. Further, given the importance of Chicago access to many shippers on W&LE, statements supporting this condition are supplied.

Finally, in light of the controversy which has arisen concerning the importance of coal traffic to the start up W&LE -- and, therefore, its original price and debt structure -- statements by an important original equity investor and coal purchaser are submitted. This places W&LE's original financial structure, and its current challenges for management, in context.

In conclusion, the reply statements show W&LE's extraordinary vulnerability under the market inverting primary application. We also believe this vulnerability is shared by those W&LE shippers previously neglected or demarketed by the Class I's. Essential services, not just the W&LE corporate form, are at risk here.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub. - No. 80)

REPLY VERIFIED STATEMENT

OF

LARRY R. PARSONS

My name is Larry Parsons. I am Wheeling & Lake Erie's ("W&LE") principal policy witness and provided testimony in our Responsive Application. The purpose of this testimony is to reply to certain statements made by representatives of the Primary Applicants in their rebuttal.

Despite the strong, sharp tone of the Applicants' response which claims the W&LE to be both failing and opportunistic, Applicants simply continue to ignore solid evidence of W&LE's merger related diversions which are at the heart of our requested conditions. The magnitude of our losses is the fundamental issue before the Board and the key to the resolution of our dispute with the Applicants. Put simply, we would not be before the Board in this fight for our survival if we agreed with Applicants' analysis of our losses. The settlement offer made to us by Applicants was worth substantially more than their own estimate of our losses but obviously less than our estimate and not enough to make us viable. If the W&LE substantiates its merger related losses, demonstrates that it provides essential services and shows its requested relief is reasonable and appropriate to those losses, then the ameliorating, procompetitive conditions for access should be granted, or in the alternative, the remedy of inclusion should be evaluated. I would like to stress again that conditions for competitive access is our strong preference to inclusion for all the reasons stated in our October filing.

W&LE faces nothing short of a complete inversion of its competitive market in these proceedings. As I earlier stated in October our spin-off "parent," NS, has largely been our joint line partner in competition against Conrail and CSXT.[1/] Now, with its purchase of Conrail lines in our territory NS will effectively become our principal competitor. (It will be so because it will control both origination and destination i.e., a "single line" competitor). I cannot imagine a more dramatic sea-change facing any connection-dependent regional carrier. This dramatic shift has caused my management team fundamentally to reassess our future. This shift provides the most extreme example of structural market change for a carrier our size in the past 50 years of rail mergers in this country. This is essentially a case where a railroad franchise is sold and then, less than a decade later, is disenfranchised by the franchisor by virtue of its complete competitive realignment of the marketplace. It has forced us to rethink our entire marketing approach and will challenge us in the extreme. As I noted in October, this is especially true of those areas specifically identified by the Department of Justice in its analysis of the NS attempt to acquire Conrail in the mid 80's. The NS argues that my belief that the W&LE divestiture had something to do with the DOJ analysis and the NS's desire to control Conrail is a "fundamental theory" and grossly inaccurate. I believe it is not a fundamental theory of ours but that the NS obsession with Conrail is obvious to all concerned and even admitted when Mr. McClellan discusses why the NS acquisition of Conrail will not have the service consequences of the UP/SP merger. ("Conrail was the dominant rail merger item on the

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1/ In fact this marketing partnership was one of the very foundations of the creation of the new W&LE. NS/W&LE and their partnership was acknowledged as a key to W&LE's viability. See the excerpts from the Woodside Report attached hereto as Appendix A which describes the importance of the partnership with NS.

management agenda at both NS and CSX for many years. In that process both CSX and NS learned a lot about Conrail". (McClellan Rebuttal Verified Statement p4, HC 334)

The Primary Applicants barely acknowledged our contingent request that the Board retain jurisdiction to order inclusion if the merger market inversion causes W&LE bankruptcy. However, this alternative request for inclusion is critical to our overall request for relief. If we cannot receive from the Board relief in the form of conditions adequate to overcome the merger's reversal of our original operating and marketing rationale, then inclusion unfortunately remains the other alternative.

The conditions we seek will provide W&LE only with the opportunity to compete in the new competitive environment, to continue to provide the essential services to those shippers who have come to rely on W&LE and that have given us strong support. It is truly unfortunate that discussions between NS and W&LE stopped at the threshold of the responsive applications' due date when we were so close to achieving a private sector opportunity to survive. I will speak more of this below.

While substantial additional documentation of W&LE merger related revenue diversions will be contained in Verified Statements of Messrs. Thompson and Pinkerton, I believe certain criticisms of NS witness Williams should not go unanswered in my Statement. First, with respect to Woodside's original presale analysis, the importance of continuing coal movements to the new W&LE was well understood from the outset. Indeed, Mr. Williams of the Woodside Group states that "Our discussion of Coal Traffic in the Business Plan, which is reproduced in Attachment JWH-W&LE-1, recognized the importance of coal traffic to the W&LE, and discussed the future of the existing coal movements to be assumed by the W&LE within the context of the Clean Air Act." CSX/NS-177, HC-768. The cited Woodside Business Plan states that "[i]n order to assess the likelihood that projected volume of W&LE's Coal Traffic would continue to move in future, we interviewed... the coal user, Cleveland Electric Illuminating Company"(Id at HC-817). The Plan goes on to specifically identify the individual purportedly interviewed; Mr. R. A. Soucie, of Coal Purchasing and Transportation, CEIC. Mr. Soucie's Verified Statement submitted herewith questioning Mr. Williams' earlier statement raises serious doubts as to his credibility and his current defense. (See also Verified Statements of Mort Lowenthal and Al Pinkerton).

In addition, I take issue with Mr. Williams' statement that if W&LE had good management it might not be in the imminent danger it faces today, calling W&LE a "failing" company.[2] W&LE's management team has not only preserved its system but strengthened the W&LE through extraordinary efforts. Despite the critical loss of coal traffic, W&LE's management team has essentially rebuilt and restructured the regional carrier.[2] We have more than doubled our non-coal revenues; restructured and remained in compliance with our debt obligations (now $16 million rather than the $17 million referred to by NS - see generally our bankers Verified Statements in our opening Responsive Application); we have significantly improved our primary shop's capabilities with capital improvements; we have rebuilt approximately 1/3 of our GP-35 locomotives with new mechanical and electrical systems and added Q-tron 1000 microprocessors which have significantly improved their performance and initiated a similar program to rebuild all our SD-40s which will also have the microprocessors installed; in addition, we have restructured our car fleet. Slow orders across the system are at an all time low and profit sharing for employees at an all time high. Our operating ratio for the last two quarters has averaged 81.5%. These results belie the picture of current "structural" infirmities drawn by Applicants' witnesses. I believe that our recent success in

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[2] In attacking the "failures" of W&LE's Management Team and Board of Directors (HC-769-70), Mr. Williams lists "capable railroad managers who, presumably, could have done better with the W&LE Business Plan." Among those listed is Ed Burkhardt, a member of the W&LE Board, who submits his statement of this issue.

wit' tanding the 10 ½ month strike of our largest customer is also a measure of our current operational and financial performance.[3]

In addition, as I noted in our October filing, we have also acquired and developed rail properties known as the Akron Barberton Cluster and the Sandyville and the Benwoo l lines which have resulted in significant traffic growth. Balar ng acquisitions with the "rationalizing" abandonments, W&LE now operates 864 miles on its system (approximately 1/3 of which is over Class I trackage rights) with improving revenues and traffic on a per route mile basis. Our record financial performance in the last two quarters is an indication that the W&LE has turned around for the time being and would succeed were it not for the prospect of our joint line partner (NS) becoming our principal competitor by virtue of the Conrail acquisition. However, as to our long term future, our whole competitive market will turn upside down as result of the Conrail acquisition. Thus, it is important to draw the distinction between our current financial status and the threat of long term structural problems caused by the proposed merger.

Our Vice President of Marketing, Mr. Reggie Thompson, supported by our outside expert, Mr. Al Pinkerton, carefully analyzed the revenue impacts of this vast change in our rail market. Mr. Thompson studied our complete customer base by STCC code, and each movement under each of those classifications. He applied detailed, specific and realistic diversion rules reflecting the

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[3] We acknowledge the NS comment that we sought expedited approval from the STB for the abandonment of the Massillon Branch but this does not demonstrate anything other than a prudent management course to seek and conserve cash during a prolonged down turn caused by a strike of our biggest customer. Moreover, this abandonment is also consistent with our efforts to "rationalize" our system which Applicants claim we have "avoided" Rebuttal Narrative, HC-400. Appendix B shows that we have had 9 abandonments (or joint relocation projects) representing 65 miles of rationalization over the last 5 years. For a railroad our size, this demonstrates an aggressive effort to ratic alize our route structure.

profound changes which would be caused by the merger and confirmed that W&LE will suffer an excess of $12 million in diversions as a direct result of the Conrail transaction.[4] Mr. Thompson's detailed analysis of the whole W&LE traffic base is submitted under seal as an exhibit to his reply testimony.

I believe that NS fully recognized the impact of these diversions and the corresponding peril the merger holds for W&LE. NS indicated to us that its preliminary offer was an order of magnitude greater than any offer it was prepared to make to other protestants. I believe this is NS's recognition of our true position in this case and that its offer belies its own estimate of $2 million of diversions purported to be suffered by W&LE. It is important to note that the other Applicant, CSXT, refused all requests for concessions and has failed to document in a specific manner the $500,000 revenue gain they claim we will receive from new CSXT traffic. To now leave the W&LE without a settlement and at the same time to oppose vigorously all attempts at our sustaining viability by procompetitive conditions creates an unattractive, uncharacteristic picture of the Applicants.[5] Because of the vital importance of this case for the very existence of W&LE I have taken the extraordinary step of including NS's last offer under seal. The NS appears angered by a request for substantial cash to bring down our debt load as part of our negotiations. We suggested this under one settlement scenario where our revenues and route system would be sharply curtailed. However, it is important to note that no discussion or counter offer to that scenario ever took place. Without attempting to further characterize the letter I do believe its content sharply contrasts with Applicants'

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[4] While Mr. Pinkerton notes in his Verified Statement that our projections do not account for an economic downturn, I would like to reemphasize it here as I did in my October Statement. We have attempted to be reasonable and conservative in our projections.

[5] It is also unwarranted given the comparison of the relative sizes for the W&LE and the Conrail enhances NS. W&LE's revenues will be a mere one half of one percent of the combined NS/Conrail revenues.

present degree of emphasis on how little the W&LE is harmed and opposing all W&LE's requested relief (Appendix C, under seal). I need to reemphasize that we believe that this offer, while substantial, would not make us viable in the post merger market.

It is ironic that by calling W&LE a "failing company", NS clearly understands that the essential services provided by W&LE are now in jeopardy. It is also ironic that the NS believes (or, at least, argues) that W&LE provides no "essential" service. While we clearly believe that our service is superior to that our surrounding Class Is, we know the real proof is demonstrated in the broad, strong support given to us by our shippers in this proceeding. Applicants nonetheless believe we should fail so Applicants can serve our shippers (although obviously without doing so by way of inclusion). Apparently Applicants believe that all our shipper support amounts to nothing and that should allow them to reenter markets they have recently departed.

As my colleague Reggie Thompson states, supporting shippers and other entities (CSX/NS-176, p. H.C. - 391), rely on W&LE to provide services that the Class I's have essentially abandoned. Moreover, the Neomodal facility, which embodies a significant pioneering experiment inpublic/private partnership, clearly needs a viable W&LE to survive. Important political, public policy, and regional development issues are at stake here.

In short, we at W&LE have used our best management efforts to preserve, strengthen, and keep W&LE viable. W&LE management has overcome its early financial problems. It is turning a "failing company" into a viable and meaningful competitor, one that has been effective by consistently providing flexible, customer oriented service. While we clearly believe that our service is superior to that of our surrounding Class I's, we know the real proof is demonstrated in the broad, strong support given to us by our shippers in this proceeding. The W&LE should now be given the opportunity to complete that process by means of the pro-competitive conditions proposed in our Responsive Application. Without procompetetive conditions the structural changes to our entire market will make even heroic management efforts to no avail. Unavoidably, we must look at inclusion as a possible alternative to bankruptcy if the STB does not grant sufficient procompetitive access. And under a bankruptcy scenario everybody loses, especially our shippers, but even connecting Class I carriers. This is especially so since many of our shippers would go 2 to 1 in the event of our inclusion.

In conclusion, W&LE has shown specific, detailed diversionary losses related to the merger broken down by individual movements (i.e., with a 100% traffic study - see Mr. Thompson's and Mr. Pinkerton's Verified Statements and the traffic study Exhibit submitted under seal). We have also shown that W&LE provides essential service to shippers, some previously neglected or demarketed by NS, CR and CSX. All our shippers, as well as those previously spurned by the Class Is, deserve and demand continued W&LE service and we ask the STB to grant the conditions appropriately predicated upon our well documented merger related losses.

State of Ohio)
)
County of Stark)

VERIFICATION

Larry R. Parsons being duly sworn on 9th January, 1998, states that he has read the foregoing, and that it is true and accurate to the best of his knowledge and belief.

Larry R. Parsons

Larry R. Parsons

Sheryl L. Durant

Notary Public

My Commission expires:

Sheryl L. Durant
Notary Public, State of Ohio
My Commission Expires August 29, 1999

THE
WOODSIDE
CONSULTING
GROUP

BUSINESS PLAN
FOR THE
WHEELING & LAKE ERIE RAILROAD

Prepared For

Wertheim Schroder & Co. Inc.

March 1990

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P.O. Box 620622 2925 Woodside Road Woodside, California 94062 (415) 851-8131

none of the overhead traffic projected to be moved by WLE is likely to be lost.

WLE-NS Marketing Alliance

An important factor in the WLE's commercial future is its marketing agreement with Norfolk Southern. This marketing agreement, which is entitled Marketing Alliance, provides generally that the two Companies will work together in the future both to continue existing and promote future traffic flows between points on their two Systems.

In our view, this is a particularly attractive feature which resulted from the WAC's negotiations of the WLE transaction with NS. This is so because of the extent and intensity of competition within the WLE's service territory which exists as intramodal (other railroad), intermodal (truck and barge), geographic (other producers), or product (other products) competition. Although WLE's primary railroad competitor is Conrail, CSX and other railroads also compete for selected traffic flows. Accordingly, WLE's continued relationship with NS in the continuing competition both to retain and to increase its traffic base is an extremely important and valuable feature of this transaction.

The entire Marketing Alliance is contained in Appendix K. As a review of that document will indicate, it is the clear intent of both WAC and NS to function cooperatively in the continuing movement of traffic over their two Systems for at least the initial term of 10 years. Thus, as stated by that Agreement:

"It is the intention of Norfolk Southern Corporation and its rail subsidiaries (NS) and Wheeling Acquisition Corporation (New Railroad) to structure and maintain, throughout the term of this agreement, a cooperative marketing alliance. The objective of the alliance is to encourage and develop joint business and traffic opportunities profitable to each party, and beneficial to the shipping public. It is understood that the carriers will act in their own best interests to foster such joint opportunities, and together mutually benefit from such cooperative efforts.

"The lines to be purchased or leased by New Railroad from NS (the Sale Lines) and lines of NS are so situated that substantial marketing and economic benefits to the parties and the public can be achieved by means of cooperative arrangements between the two companies, including but not limited to equipment usage, joint rates, marketing and industrial development efforts. Such arrangements will benefit the public by reducing transportation costs. Such arrangements will also benefit the parties to this agreement by strengthening the viability of the Sale Lines and enabling each party to conduct more efficient and economical rail operations." (Marketing Alliance, Introduction, page 1)

From a commercial activity perspective, the Joint Line Marketing Efforts to be undertaken by WLE and NS in order to attract traffic are set forth in Section 11 of the Marketing Alliance as follow:

"NS and New Railroad agree that each party will actively market services and solicit traffic via the joint NS-New Railroad routes established at and/or subsequent to Closing and will use all reasonable efforts to develop and promote the joint services contemplated by this Agreement, when to the mutual benefit of the parties. Such marketing, development, and promotion of joint services shall, to the extent permitted by law, include cooperative market analysis and research, sharing of appropriate market intelligence, and development of joint pricing and/or service proposals to customers. Each party shall attempt to influence unrouted traffic originating or terminating at points served by New Railroad but not served by NS to move via NS-New Railroad joint routes whenever geographically and commercially feasible." (Marketing Alliance, Section 11, page 17)

THE WOODSIDE CONSULTING GROUP

Other specific provisions of the Marketing Alliance provide for the continuing oversight of such joint marketing efforts, sales support, and the adoption of rates, routes, divisions, and transportation contracts by the two carriers. The Marketing Alliance specifically addresses coal marketing, which we will discuss in the Coal Traffic Section of this Chapter. It also provides that NS shall continue to market NS' existing bulk distribution centers at Akron, Barberton, and Brewster, OH as a part of the NS Bulk Distribution Network.

In addition, the Marketing Alliance provides that an Electronic Data Interchange (EDI) will be maintained between NS and WLE in order to encourage joint line traffic flows and benefit their customers. Further, Section 9 of the Marketing Alliance specifically requires both WLE and NS to provide appropriate data to NS' information systems which, in turn, can be accessed by WLE in accordance with the following provision:

> "NS will provide to New Railroad and to New Railroad's customers access to NS data bases through the NS Thoroughbred Quickfo (TQ), or a successor, program, including rate inquiry, car tracing, fleet inquiry, message switching, and bill of lading information. NS Marketing Support Service will assist New Railroad and its customers in use of the TQ programs to promote the flow of NS-New Railroad joint line traffic.
>
> "New Railroad agrees that it will electronically furnish to NS traffic and operating information necessary to permit participation of New Railroad in the automated interline Car Location Message system and other TQ programs, and NS agrees to provide Marketing Support Services management expertise to assist New Railroad in implementing such participation." (Marketing Alliance, Section 9, page 16)

Importantly, the Marketing Alliance also commits both carriers to coordinating their train operations so that adequate service will be provided to their joint customers, as the following provision states:

> "NS and New Railroad shall expedite and arrange train operations at Bellevue, Hagerstown, and Cleveland by establishing operating and interchange schedules and other such matters so as to facilitate the movement of joint line NS-New Railroad traffic. The parties recognize that the extent of connecting train service at any given time will be influenced by available volumes of traffic that may fluctuate during the term of this Agreement." (Marketing Alliance, Section 10, page 16)

WLE Customer Concentration

As is usually the case with regional railroads, WLE's traffic is concentrated by a limited number of major customers which include coal and limestone shippers, steel mills, scrap dealers, chemical plants, food processors, grain producers and roofing manufacturers.

Table II-3 shows a "Customer List", drawn from WAC's original Business Plan. As stated in Table II-3, based on 1987 NS data, only fifteen customers accounted for more than 70% of WLE's anticipated revenue. Because of this traffic concentration, our shipper interviews focused on the major movements generated by these most important customers.

WLE's Principal Movements of Local, Forwarded and Received Traffic

Table II-4 shows "WLE Principal Movements of Local, Forwarded, and Received Traffic." The principal movements shown by Table II-4 constitute 76% of WLE's 1988 Pro Forma Revenues for the local, forwarded, and received classes of traffic combined. These principal movements were selected as those generating more than $100,000 in annual revenue.

CONSUMMATED ABANDONMENTS BY WHEELING & LAKE ERIE RAILWAY COMPANY

Docket	Caption	Name of Line	Mileage	Service Date
FD32194	Wheeling & Lake Erie Railway Company & Columbus & Ohio River Railroad Company--Joint Relocation	Jewett-Bowerston Relocation Project (including abandonment of W&LE's line)	11.5	12/16/92

AB-227 Sub-No.	Caption	Name of Line	Mileage	Service Date
3X	The Wheeling & Lake Erie Railway Company--Abandonment Exemption--In Jefferson, Harrison and Belmont Counties, OH	Saginaw Branch, Adena-St.Clairsville	14.5	04/05/93
4X	Wheeling & Lake Erie Railway Company--Abandonment Exemption----In Wayne and Stark Counties, OH	Dalton Branch	9.4	05/31/94
5X	Wheeling & Lake Erie Railway Company--Discontinuance of Trackage Rights Exemption--Fayette and Westmoreland Counties, Pa	Westmoreland Branch Joint with CSXT abandonment	9.56	10/21/94
6X	Wheeling & Lake Erie Railway Company--Abandonment Exemption -- In Stark County, OH	Canton/Aultman Line Jointly with CSXT discontinuance of operations	0.7	03/12/97
7X	Wheeling & Lake Erie Railway Company--Abandonment Exemption --In Wyandot County, OH	Carey Spur	2.3	02/04/97
8X	Wheeling & Lake Erie Railway Company--Abandonment Exemption -- In Huron County, OH	Milan Branch	2.3	12/05/96
10X	Wheeling & Lake Erie Railway Company--Abandonment Exemption	Massillon Branch	5.65	11/07/97
11X	Wheeling & Lake Erie Railway Company--Abandonment Exemption--In Harrison and Jefferson Counties, OH	Georgetown Branch	11.4	10/30/97

PROPOSED ABANDONMENTS (NOT CONSUMMATED) THAT RESULTEDIN SUBSTANTIAL FUNDS TO WHEELING & LAKE ERIE RAILWAY COMPANY

AB-227 Sub-No.	Caption	Name of Line	Mileage	Date
2X	The Wheeling & Lake Erie Railway Company-Abandonment Exemption --In Stark, Wayne and Medina Counties, OH	Brewster-Spencer Line	40.7	1994
9X	The Wheeling & Lake Erie Railway Company-Abandonment Exemption In Jefferson and Harrison Counties, OH	Valley Line	30.5	1996

HIGHLY CONFIDENTIAL

(REDACTED)

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub.- 80)

REPLY VERIFIED STATEMENT

OF

REGINALD M. THOMPSON

I. INTRODUCTION

My name is Reginald M. Thompson. I am Vice President of Marketing and Sales for the Wheeling and Lake Erie Railway Company ("W&LE"). I submitted a Verified Statement in the Responsive Application of the Wheeling and Lake Erie to Finance Docket No. 33388. In that filing, I described the losses to the Wheeling and Lake Erie Railway because of the acquisition of CR by both the NS and CSXT. In this filing I will defend and reaffirm the methodology used in identifying those losses.

The Primary Applicants raise a question as to my ability to make an informed study of W&LE's expected diversions (see Rebuttal Narrative CSX/NS-176 HC-392). My past experience on the KCS and my first hand knowledge of the W&LE total traffic base, however, fully qualifies me for this assignment.

I joined the W&LE in 1992 as Vice President Marketing and Sales. Before that, I held various management level positions in the Marketing Department at the Kansas City Southern Railway Company from 1980 until 1992. I was Assistant Vice President-Marketing for several years before my departure for the W&LE. While at the KCS, I participated in numerous merger, acquisition, and traffic diversion studies including Union Pacific/Missouri Pacific, Burlington Northern/St. Louis San Francisco, ATSF/SP and others.

The purpose of this reply statement is to explain my methodology and conclusions, and to respond to the erroneous assertions and criticisms in the Applicants' Rebuttal Statements, especially that of John H. Williams.

Methodology

In his rebuttal statement Mr. John Williams of the Woodside Group, states his confusion because my analysis is based on the W&LE fiscal year. Mr. Williams seems to have some difficulty understanding the methodology used in our traffic loss study and calling it an "apples and oranges comparison". This is not the case. While we are not a giant system with an unlimited budget to commission new data systems and formats, the actual data we studied gave an accurate, "real world" picture of our extreme vulnerability in this case. The fiscal year for the Wheeling and Lake Erie runs between July 1st and June 30th There are still 12 months contained in the data and the carloads and revenues continue month after month. Further, the W&LE is not a enormous system like the NS or CSXT. Thus, I was able to look at 100% of the traffic for the W&LE for the 12 month period reported. Unlike my complete date base analysis, Mr. Williams relies on a simple (sometimes misleading and unreliable) 1% waybill sample. Given the relatively small sample produced vis-à-vis the total traffic base, errors arising out of studying non-typical traffic samples have a magnified effect. In addition, the errors in Mr. Williams's study are relatively obvious. Please refer to my memorandum to Mr. L. R. Parsons dated 7/19/97 submitted in Appendix B of W&LE-4 page 58. In this memo, I point out the fact that the losses Mr. Williams does identify are for the most part not losses at all. The stations that are identified as bearing the losses are either local on the W&LE (where no loss is likely to occur), commodities destined for locations which have no operations to support that commodity, or in the case of a place called "Waltz", a non-existent station (not that I can identify nor can the Official Guide, Open and Prepaid).

Let me further expand on the methodology used in my 100% study. Our diversion rules are based on a complete change of competitive circumstances initiated by the division of Conrail between NS and CSX. Our current condition is that NS relies on the Wheeling and Lake Erie to extend its reach into markets that it could not otherwise serve. One example is U. S. Steel at Irvin, PA , and another is Wheeling Pittsburgh Steel at Mingo, OH. We rely on the NS to partner with us for competitive joint rates, equipment and marketing help to compete against our largest class I competitor-Conrail as well as CSXT. The Norfolk Southern Railway after the acquisition will become the competition. (It will be so because it will control both origination and destination i.e., a "single line" competitor).

I analyzed each move by STCC code to see if and how this most fundamental shift is going to affect my railroad. Let me give some examples of traffic not diverted by Williams. W&LE and NS partner to move chemicals out of the Pittsburgh area to Geismar, Louisiana. The current competition is both CR and CSXT. Post acquisition, when NS and CSXT will each be directly serving this shipper in the Pittsburgh area there will be no need for W&LE's interim service.. A 100% diversion of this traffic is not only reasonable, but also virtually certain. Another example: W&LE and NS partner to move steel and steel products outbound from the Canton, Ohio area. The current competition is CR. Post acquisition, NS will be stepping into the shoes of CR. Not only does NS know the rate, it now will have a single line haul opportunity. There will be no need for a Wheeling and Lake Erie partnership. Another 100% loss of traffic. The "diversion rules" I employed are straight-forward and realistically grounded, i.e., for traffic that is moving in conjunction with NS where NS will assume CR's position as competitor, the W&LE will suffer the loss of business. The dominance of single line service over two line is reiterated throughout the Applicants statements in support of their revenue growth projections.

Having the benefit of his extensive experience as consultant to the founders of the "new" W&LE when it was being established under the original management team I find it surprising that Mr. Williams cannot seem to figure out routing as it concerns the NS and W&LE. Mr. Williams states in his rebuttal, "It should be noted that information about routing and other participating carriers is not included in any of W&LE's computer listings". Mr. Williams should know that just about all traffic interchanged between the NS and W&LE is done at Bellevue, Ohio. As far as the beyond carriers are concerned, it really does not matter in calculating W&LE's vulnerability. At Hagerstown, MD, the W&LE interchanges only grain to the NS. This grain terminates on the NS; therefore, there are no "beyond" carriers. Again, Mr. Williams should know this fact given his experience as consultant for W&LE's founders and as author of the voluminous Woodside Report which presented projections for the creation of the W&LE. Perhaps this is a good example of the benefits of using a 100% data base informed by first hand experience versus a so called "expert" waybill sample approach where only a small fraction of the traffic data is used and *no* direct knowledge of the specific customer/commodity traffic flows is applied.

It is important to illustrate the effort we made in establishing our diversion loss study. Please refer to Exhibit A (under seal). In this exhibit, I have shown on a move by move basis (including specific shippers, origins, destinations, carloads and revenue which was not disclosed in my earlier Verified Statement) why the W&LE will suffer the losses as projected. All of my conclusions are articulated on an individual move basis. I have gone so far as to acknowledge a defunct customer that is no longer on the W&LE and have removed its carloads and revenues from the loss consideration. The loss study in Exhibit A is based on real world facts and over 17 years of railroad experience.

SUMMARY OF METHODOLOGY

The diversionary losses that I have identified result from competitive market inversion (an interline partner becoming a single line competitor) that will result in losses exceeding $12,000,000.00 (twelve million) per year for 1996. Extending that from the near term, as was done by Mr. Pinkerton in his verified statement (see Pinkerton, WE-4), demonstrates that the losses grow in the future years. Beyond that, the losses would grow larger as opportunities fade away. The resulting loss amounts to something in the neighborhood of 30 to 33% of the W&LE's total revenue for FY 2001, an intolerable situation for any rail carrier, and especially a highly leveraged regional.

The difference between my loss projections and those of Mr. Williams raises a serious question: if the NS really believes its consultant's projected losses, why did they offer a settlement valued substantially beyond the $2,000,000.00 (See L. R. Parson's Reply Statement Appendix C) I believe the answer becomes clear: NS does recognize the severity of the harm and probably includes our losses in their projected gains due to single line service.

II. RELIEF BASED ON W&LE's REQUESTED CONDITIONS WILL NOT RESULT IN A WINDFALL

The Applicants have misconstrued our statements of loss and the relief sought. I illustrated our possible "gains" in a simple chart located on page 107 of my opening verified statement. [W&LE-4] Once again is it important to point out the paragraph that states "..the

Wheeling & Lake Erie Railway is asking for access to these places. There are no guarantees that this will produce one dime of revenue". The future of our railroad rests on our ability to compete. We compete by allowing shippers to benefit from our efforts at keeping and maintaining rate levels and service levels that are competitive. Even if our requested conditions are granted, as I show in my chart, W&LE may still not be made whole. A carrier could go broke with such a "windfall".

III. W&LE PROVIDES "ESSENTIAL SERVICES" WHICH WILL BE JEOPARDIZED BY PRIMARY APPLICANTS' DIVERSIONS

For example, Conrail stated it was abandoning the Akron area and the Akron Regional Development Board was created. The business people of that city knew the loss of its serving railroad would be devastating. They tried working with CR but to no avail; CR was pulling out. Fortunately, Wheeling Corporation came in and formed the Akron Barberton Cluster Railway, an affiliate of the W&LE. This sister railroad of the Wheeling and Lake Erie has done a magnificent job of servicing the customers in the Akron area. In conjunction with the W&LE as its partner, the service and rates enjoyed in the Akron area (in competition with CSXT) have never been better. (Please see verified statement of Mr. James Johnson, Empire Wholesale Lumber, WE-4 in October 21st filing). While Conrail was pulling out of the Akron market, CSXT was leaving the Canton, Ohio market. This time the W&LE purchased the rail line that the much larger Class I operator found too insignificant to keep and leased another portion of the line. By acquiring this line, W&LE kept rail movements flowing for American Refining Group (Please see verified statement of Ms. Susan Lerch, American Refining Group, WE-4), Fulton Lumber Company (Please see verified statement of Mr. Charles S. Bolender, Fulton Lumber Co., WE-4), Schneider Lumber Company (Please see verified statement of Mr.

Donald Schneider, Schneider Lumber, WE-4) and others. To use a quote from Mr. Schneider that I believe sums up the general attitude of huge systems like NS and CSX (that will be much, much larger after the acquisition). "The Conrail mainline, as you know, runs through Canton, about six blocks from our lumberyard and they were never interested in reciprocal switching to us, can you imagine what NS would be like? They are not even close to Canton. I guess if I were you, I'd let the little guy do what he's trying to do, and probably try to help him as much as I could. I know we are".

I believe this and the many other like statements that can be found in the verified statements submitted by our shippers state clearly that the W&LE is providing essential service, customer focused consistent service, is an excellent rate "policeman" (please see verified statements of Jim Johnson, Empire Wholesale; William W. Lowery,Annaco, Inc.; Gary Hauanstein, County Mark Co. Op.). We must be allowed to continue in business *because the W&LE is an important part of their business.* Large systems such as NS, CSXT and CR will never have the focus, desire or willingness to do what we -- a customer-oriented regional railroad-- do. I fear this will become, even more apparent after the acquisition and the two remaining giants in the east face, the operating problems now plaguing the two large western roads.

I want to state that it is not just small to mid size shippers that feel this way. Larger shippers such as United States Steel, Timken Company, Gencorp all have solid positive opinions about the Wheeling and Lake Erie. Let me give another example. This quote is from Mr. Stanford Hagler of GenCorp Specialty Polymers (as information, GenCorp shipped in excess of 2,000 carloads on the W&LE in 1996): "The W&LE has provided excellent rail service to satisfy the needs of our facility as we strive to meet the service expectation of our customers in other regions. This level of service is essential and has been provided in spite of its heavy debt load. They have been able to grow their business to remain a viable and cost effective provider of services. Essential to GenCorp is the continued presence of proceeding if their needs to compete in the markets are not given proper consideration". Even United States Steel, knowing that the Wheeling and Lake Erie will not longer necessarily play a role in their traffic after the acquisition of CR by NS and CSXT (remember, CSXT already serves USX and NS will step into the shoes of CR), gives the W&LE high marks for its high standards of service and rates (the Applicants seem to make light of the serious nature of this loss referring to "the silence from U. S. Steel"). I am including a verified statement from U. S. Steel to fortify my remarks.

IV. CHICAGO ACCESS IS A REASONABLE AND NECESSARY CONDITION

One of the conditions sought by W&LE is access to Chicago via haulage with underlying trackage rights. In this Reply, I have included several additional verified statements from shippers that support this condition on behalf of the W&LE. Why would these shippers express such strong support? The answer is before you. The Wheeling and Lake Erie Railway would continue its long-standing role of providing shippers with outstanding service at market competitive rates. The rate discipline the W&LE can bring to this important operational corridor has real impact throughout our service area and will be significant post merger, if granted. I have used many examples above to illustrate the success we have achieved using this strategy. Other verified statements already submitted also bear this out. Why then do the Applicants make such a loud protest about this condition? Applicants' understand the rate and service pressure. I believe it is the same reason that our shippers support the W&LE gaining access to Chicago.

Finally, John H. Friedmann in his rebuttal statement claims the W&LE obtaining trackage rights to Chicago, "..would add a substantial burden to a carrier that has not demonstrated the ability to support the overhead burden it is currently carrying". Mr. Friedmann apparently does not know that the Wheeling and Lake Erie complies with all its bank obligations. (See verified statement for Mr. Fred Zagar, Bank of America, WE-4 and Mr. Ed DeSalvio, Bank of New York, WE-4). I believe Applicants protest vigorously because they are concerned with W&LE's potential rate constraints.

I do believe, however, that we will provide a competitive service in terms of both rates, customer service, and reliability which overall will help W&LE remain viable in order to continue to serve its loyal customers.

V. REPLY TO SPECIFIC ARGUMENTS

There are certain arguments put forth by Messrs. Williams and McClellan that warrant additional comment. I will address Mr. Williams "phantom train" referring to our W&LE/NS intermodal run-through train, the iron ore dock at Huron, Ohio and United States Steel traffic.

United States Steel

James McClellans' rebuttal statement expends some effort asserting that the W&LE does not provide essential service. In the very first paragraph on page 15, Mr. McClellan claims "...most of the W&LE's major customers are served by other, stronger railroads. These jointly served customers do not seem concerned about the future of W&LE or their transportation options. Indeed, USX, W&LE's largest customer, supports the transaction. That is hardly the action of a customer concerned about the loss of essential service."

Two points need to be made. First, I am enclosing a letter from U.S. Steel concerning W&LE and the fine job is done and is doing for United States Steel. This is hardly a customer that does not seem concerned about the future of the W&LE. Second, Mr. McClellan states U. S. Steel is our largest customer. While this is not true, U. S. Steel is one of our larger customers.

The point is, USX is important to the W&LE and this is admitted by Mr. McClellan. USX, however, will cease to be a customer of the W&LE after this acquisition is finished.

Current business outbound from USX via W&LE/NS has been growing. The loss of this customer and revenue is significant.

Finally, Mr. Williams in his first analysis of traffic loss, did not even include USX as a loss. In his rebuttal statement, he "allows" for a loss of around $950,000. Facts are facts, USX is served by CR, CSXT & W&LE. Which of the two Class I's serving USX after NS steps into CR shoes is going to interline with the W&LE and reduce their own revenues to do so?

The Phantom Train

In his rebuttal statement Mr. Williams points out that the NS/W&LE intermodal run through train took place in FY 1997. This is true. He claims because this is outside the Board's adopted calendar year of 1995, this is not relevant. It is, however, relevant as a measure of lost revenue in the "real world" sense. It is also relevant due to the fact we had been working with NS on this run through train in the latter half of 1995, all of 1996, and commenced operations in 1997. What Mr. Williams failed to disclose was that this "phantom train" was a 5 year term Haulage agreement which NS stopped running about the time NS and CSXT reached agreement about the split of Conrail. The new route NS thus gained would take trains from Hagerstown over double track, double stack cleared main line of Conrail making the W&LE route no longer necessary. The NS abruptly stopped running rains over the route after we had spent $500,000 in rehabilitation of main line and bridges to accommodate the double stack traffic. The Board needs to know this full story in order to be able to appreciate the harm vested on W&LE.

The NS did discuss service problems and as our work papers show, the average transit time for the run through was about four hours longer than contemplated. What is not discussed, however, was that an important source of the delays was in the Bellevue yard on the NS and many CSXT temporary slow orders or trackage rights. In the meantime, W&LE was spending its relatively scarce capital dollars to improve the right of way on the east end of our system. This was done to improve and enhance the running time for the NS trains. Once NS became a partner in the split up of CR, however, the intermodal run through train abruptly ended.

Huron Iron Ore Dock

Mr. Williams apparent lack of understanding on the movement of iron ore off Lake Erie to Wheeling Pittsburgh Steel has led him to state that the W&LE would suffer no loss due to NS assuming CR's position at Wheeling Pittsburgh Steel. Conrail currently enjoys a dominant market position of iron ore delivery because of the Pinney Dock case. Wheeling Pittsburgh Steel simply cannot allow W&LE to handle more than 25% of it's inbound ore requirements until the year 2000. At that point, 100% of the potential iron ore traffic would be available to competitively bid. See Mr. Pinkerton's Verified Statement (WE-4). NS rationally maximizing profits, will not allow another railroad to capture this traffic. NS owns Huron Dock. Before NS knew they were going to purchase CR, they agreed to a short term lease with W&LE. Once NS has direct access to Wheeling Pittsburgh Steel and to Ashtabula docks it is highly likely that it will maximize its ownership leverage and not allow Huron Dock to handle a single ton for W&LE by simply using current "out" clauses in the Lease or by refusing to renew the Lease.

CONCLUSION

As opposed to Mr. Williams' traffic sample analysis of merger losses, I have looked at the vulnerability of all of our traffic on a move by move, commodity by commodity basis to arrive at an evaluation of our merger related losses. I believe my Statement and my Exhibit demonstrate in detail the extent to which the proposed merger will harm the W&LE.

State of Ohio)
)
County of Stark)

VERIFICATION

Reginald M. Thompson being duly sworn on 9a January, 1998, states that he has read the foregoing, and it is true and accurate to the best of his knowledge and belief.

Reginald M. Thompson

Reginald M. Thompson

Sheryl L Durant

Notary Public

My Commission expires: Sheryl L. Durant
Notary Public, State of Ohio
My Commission Expires August 29, 1999

APPENDIX A

HIGHLY CONFIDENTIAL

(REDACTED)

U. S. Steel
600 Grant Street
Pittsburgh, PA 15219-2749
412 433 3155
Fax 412 433 3085

G. M. Bleakley
General Manager-Traffic

December 23, 1997

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Attn: STB Finance Docket No. 33388
1925 K Street, NW
Washington, DC 20423-001

Dear Sir:

U. S. Steel, as you may know, has been an early advocate of the NS and CSX plans for the acquisition and division of Conrail; and has filed support letters on behalf of both the accelerated review process and the acquisition plan. We fully expect to see significant merger synergy's with both petitioners, and to date have been particularly pleased with the proactive focus of the NS as they lay the foundation for a smooth transition.

Although we are unflagging in our support of the acquisition, we have for many months expressed our wishes to the NS and CSX that they make every possible effort to recognize the service record of the W&LE as they attempt to make their preacquistion, intercarrier accommodations. It would now appear as though the three railroads were not able to come to terms and that the ultimate decision will rest with the STB.

I am not in a position to judge the merits of the extensive W&LE application -- only a small portion of which has little if any direct relevance to our current participation - nor do I intend to project myself upon the NS's plans for the future use of their acquired CR routes. Nevertheless, I am not reluctant to stand as a character reference for the service record that the W&LE has built during the years that they have served our Pittsburgh producing facilities. Although the W&LE is equipment poor and is today dependent upon their NS connections, it has from inception been service responsible and performed exceptionally well in handling our time-sensitive NS destined steel business.

Respectfully yours,

Gary M. Bleakley

Gary M. Bleakley
General Manager - Traffic

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub. - No. 80)

REPLY VERIFIED STATEMENT

OF

WILBERT A. PINKERTON, JR.

I. INTRODUCTION

My name is Wilbert A. Pinkerton, Jr. and I am a Director of Putnam, Hayes & Bartlett, Inc., based in Cambridge, Massachusetts. On October 21, 1997 I submitted a Verified Statement (including my experience and qualifications) which presented the results of my assessment of the revenue losses and resulting financial impact which the W&LE would suffer if the NS-CSX-CR transaction were approved without relief for the W&LE. As shown in my Statement the financial condition of the W&LE would be severely affected, and its ability to continue to provide rail services to its customers would be seriously jeopardized.

The purpose of this Reply Statement is to address the principal questions about my earlier Statement which are contained in the Rebuttal Narrative of the Norfolk Southern (NS), in the Rebuttal Verified Statement of Mr. James W. McClellan and in the Rebuttal Verified Statement and Attachment of Mr. John H. Williams on behalf of the NS. As the discussions in the following sections show (and as shown in the Reply Verified Statement of Mr. Reginald Thompson of the W&LE) some of the questions raised are based upon factual errors by Mr. Williams, and others appear to be the result of misunderstanding or overlooking information presented in my initial Verified Statement. In addition, Mr. Williams suggests an alternative methodology for forecasting which is not generally accepted and which would produce results which greatly understate the potential damage to the W&LE (and also would not produce the growth in revenue projected for the combined NS/CR and NS/CSX).

Based upon my analysis in preparing this Statement, including use of the most recent data regarding W&LE's performance, the loss estimates presented in my earlier Statement are confirmed, and may actually be conservative.

II. THOMPSON'S LOSS ANALYSIS

In my earlier Statement I described my approach, which included use of a traffic loss study conducted by Mr. Reginald Thompson who is Vice President, Marketing and Sales of the W&LE. That study was performed at a detailed customer / origin - destination level which I reviewed carefully with Mr. Thompson and others to confirm the individual traffic levels for 1996, as well as the vulnerability for loss (principally to the NS) if the proposed division of Conrail occurred. As presented in Mr. Thompson's Reply Verified Statement, Mr. Willliams is in error regarding the facts in several of his attacks on the Thompson Study, and in addition his position regarding the ability of the W&LE to compete with two line service against NS single line service is inconsistent with generally accepted experience in rail competition. Further, it is inconsistent with the very premise upon which NS and CSX base their ambitious projections for revenue growth from the division of Conrail because of the resulting opportunity for greatly expanded single line service.

Mr. Williams' discussions regarding W&LE's losses for intermodal traffic (his "Phantom Train") and the iron ore movements out of Huron Dock (his "Pinocchio Iron Ore" movements) are fully addressed by Mr. Thompson, and I concur with his position on both. It is clear that with the Conrail lines being transferred to the NS, there will never be a need for them to work in conjunction with the W&LE to provide direct (vs. circuitous) intermodal service to the auto industry in the Midwest. Thus W&LE will have no opportunity to reestablish the service which was begun in 1997, with an initial expectation of at least five years of operation as contained in the original contract. Regarding iron ore, based upon W&LE's current market penetration under the restrictions of the Pinney Dock Agreement, it is very reasonable to expect that their traffic would increase following removal of those restrictions. The projections in my Statement are based upon comparable penetration but with the total market being available, in contrast to the 25 percent limit previously in effect under the Pinney Dock Agreement.

In sum, I continue to view Mr. Thompson's loss analysis to be valid. However, as is clearly stated in his analysis, he used FY 1996 data and thus estimates for future years must be adjusted for the growth or decline in business expected from the specific customers which make up the traffic lost.

III. RELIANCE UPON W&LE's 1996 FIVE YEAR PLAN AND COMPARISONS TO ACTUAL RESULTS

In Mr. Williams' Rebuttal Verified Statement he raises questions regarding my use of W&LE's 1996 Five Year Plan [1] as a basis for projecting future year traffic losses. As I described in my earlier Statement, in order to develop estimates of traffic losses for future years it was

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1] See Appendix B of Pinkerton Verified Statement.

necessary to adjust the 1996 losses in Mr. Thompson's anaylsis to reflect future growth or declines. The 1996 Five Year Plan (prepared October 25, 1996) was the most recent detailed planning effort conducted by W&LE management and included projections by commodity type with widely varying rates of change to reflect specific customer / commodity/ competition changes. Based upon a review of the assumptions in the Plan, and W&LE's performance against the Plan, the growth rates in it were applied to Thompson's loss estimates for FY 1996 by commodity to develop loss estimates for FY 1999, 2000 and 2001 - the first three years in which the impact of the proposed transaction would be felt by W&LE.

As noted above, W&LE's performance compared to the 1996 Plan was evaluated to determine its applicability as a base for projecting future losses. Mr. Williams questions this point and suggests that an earlier plan, prepared in 1994 would be a better basis for forecasting W&LE's future. However, actual performance to the Plans exposes the bias of this suggestion. Table 1 on the next page presents data which show that W&LE's line haul revenue in FY 1997 exceeded the 1996 Plan (when adjusted for the Wheeling Pittsburgh Steel Company strike) and based upon continuation of results in the first and second quarter of FY 1998 it will again surpass the 1996 Plan for line haul revenue. Table 1 also contains revenue projections from the 1994 Plan which Mr. Williams suggests as a better basis for estimating future W&LE performance. The problem with this suggestion is obvious since W&LE's adjusted revenue exceeded the 1994 Plan by 25% in FY 1997, and is expected to be nearly 29% higher than the 1994 Plan in FY 1998.[2]

2] In contrast to these favorable comparisons, the projections for W&LE revenue contained in the March 1990 Woodside report were overstated by 22% for FY 1991, 21% for FY 1992, and 16% for FY 1993.

Net line haul revenue is used in this analysis because it is a critical determinant of W&LE's future viability. Carload analysis is needed to evaluate individual business segments and to provide the basis for revenue and cost projections. However, W&LE has experienced a large shift in commodity mix due in part to the loss of the coal (more than $9.0 million per year) which was viewed as critical for W&LE (see Williams' Statement and others for discussion of earlier Woodside projections for coal, commentary on its importance to W&LE and the Woodside projections for W&LE revenue, and subsequent loss of the traffic).

TABLE 1

Net Line Haul Revenue Comparisons

Actual vs. 1994 and 1996 Plans

July 1 - June 30 Fiscal Years

	1994	1995	1996	1997	1998	1999	2000	2001
1996 Plan (October 25, 1996)	N/A	N/A	N/A	36186	41549	43976	46109	47628
Actual	32101	35800	34294	40979 [1]	42464 [2]			
1994 Plan (May 7, 1994)	32394	29658	30901	32815	32990			
Actual/1994	.99	1.21	1.11	1.25	1.29			

1] Adjusted to reflect impact of Wheeling Pittsburgh Steel Company strike; $6.2 million in FY 1997 and $1.0 million in FY 1998
Source: W&LE Plans; W&LE financial reports

2] Projection based on actual net line haul revenue in first six months of $21.2 million, including adjustment for Wheeling Pittsburgh Steel Company strike which ended in August 1997

IV. FORECASTING METHODOLOGY

Mr. Williams raises questions regarding the forecasting methodology used in developing estimates for carload and revenue losses for FY 1999, 2000, and 2001, and suggests an alternative. Mr. Williams suggests the average of the previous five years as a basis for estimating future years - a method that would grossly underestimate future levels for any company which is growing, and most certainly would underestimate W&LE's revenue in future years.[3] To consider a more broadly accepted method for evaluating historical performance and estimating future revenues, i.e. annual growth rates over time, the data shown in Table 2 were produced. Beginning in 1992 W&LE has enjoyed revenue growth in all years but 1996, including the effects of the lost coal traffic and other shifts in business. Also, note that the annualized rate for 1992-97 is 6.8% while the rate for the years 1999-2001 in the W&LE's 1996 Five Year Plan is not the 'hockey stick' suggested by Williams, but only 3.9% which could be viewed as conservative in light of W&LE's most recent results. For comparison it is interesting to note the data in Table 3 which was presented in the Applicants' Summary of Benefits Exhibits (pp.123-127, Volume 1 of 8). Both NS and CSX are projecting extremely high annual growth rates (158 - 182%) for revenues attributable to the division of Conrail in the first three years following the transaction. This dramatic growth in revenue is a critical component in achieving the projected financial benefits for shareholders without undue pressure on rates for customers. It can be assumed that revenue losses projected for the W&LE represent a portion of the gains for NS and CSX.

3] This method clearly would not produce the accelerated revenue growth contained in the revenue projections for the combined NS-CR and NS-CSX after the division of Conrail.

TABLE 2
Net Line Haul Revenue Growth

	Actual						Projected	1996 Plan		
	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Net Line Haul Revenue ($000)	29500	29800	32101	35800	34294	40979	42464	43976	46109	47628
Annual Growth Rate (%)		1.0	7.7	11.5	(4.2)	19.5	3.6	3.6	4.9	3.3
% Change 1992-97					38.9					
Annual Growth Rate (%) 1992-97					6.8					
% Change 1992-98							43.9			
Annual Growth Rate (%) 1992-98							6.2			
% Change 1998-2001										12.2
Annual Growth Rate (%) 1998-2001										3.9

TABLE 3

NS/CSX REVENUE INCREASES
($ MILLION)

	NS					CSX				
	Year 1	Year 2	Year 3	% Change	Annual Rate (%)	Year 1	Year 2	Year 3	% Change	Annual Rate(%)
Gross Revenue Gains	148.3	395.5	494.3	333.3	182.6	104.2	243.2	347.3	333.3	182.6
Net Revenue Gains	89.9	239.7	299.6	333.3	182.6	58.1	108.4	145.9	251.1	158.5

Source: Applicants' Volume 1 of 8, pp. 123-127

V. IMPACT OF TRAFFIC LOSSES UPON FINANCIAL CONDITION OF W&LE

The carload and revenue losses which will occur for the W&LE if the NS-CSX-CR transaction is approved will seriously threaten the viability of the W&LE in the very near term as shown in my original Verified Statement (Pinkerton, Appendix C; pp. 37-42). Even with the revenue growth achieved through the first half of FY 1998, and continuing to achieve the revenue projections contained in the 1996 Five Year Plan, the losses lead to a cash deficit of $4.2 million in 2001.[4] This result is based upon the very conservative assumption that the impact in the first year following the transaction is only 50% of the projected losses, with the full impact being felt in FY 2000 and FY 2001. This conservative assumption produces revenue losses of only $9.3 million in FY 1999, less than the $12.7 million in Mr. Thompson's study using 1996 as a base. The losses in FY 2000 are about $1 million greater than Mr. Thompson's figure, and reach $15.0 million for FY 2001.

VI. SUMMARY

Contrary to the assertions in the Rebuttal Narrative and in Mr. Williams' Verified Rebuttal Statement, my loss projections and resulting impacts upon the W&LE's financial condition are founded on the most current data available and generally accepted methodology. Further, the projections are consistent with W&LE's performance in recent years and reflect a portion of the projected benefits which NS and CSX expect to gain from their division of Conrail. The approach

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4] In the event of an economic downturn revenues from the business which W&LE could retain would be lower, resulting in even larger cash deficits.

used by Mr. Williams to assess the losses to the W&LE predictably produces very low estimates, but it is based upon erroneous assumptions (see Mr. Thompson's response to Mr. Williams) and is inconsistent with other parts of the Applicants' case which includes very rapid growth in revenues due to expanded single line service. Further, the methodology suggested by Mr. Williams for developing projections of W&LE losses is not applicable for forecasting, and certainly would not produce the projections contained in any of the applicants' statements regarding their revenue growth.

The potential anticompetitive issues confronting the W&LE are real and significant, and will seriously threaten its viability in a very short time. While the current management team has met its planned revenue levels (inspite of the loss of more than $9 million in coal revenue included in the proforma statements in the earlier Woodside report for W&LE March 1990), the market restructuring resulting from the division of Conrail will make it impossible for the W&LE to continue on its current path toward long term stability.

State of Ohio)
)
County of Stark)

VERIFICATION

Wilbert A. Pinkerton, Jr. being duly sworn on 9th January, 1998, states that he has read the foregoing, and that it is true and accurate to the best of his knowledge and belief.

W. A. Pinkerton, Jr.
Wilbert A. Pinkerton, Jr.

Sheryl L. Durant
Notary Public

My Commission expires: Aug 29, 1999

Sheryl L. Durant
Notary Public, State of Ohio
My Commission Expires August 29, 1999

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub. - No. 80)

REPLY VERIFIED STATEMENT

OF

STEVEN W. WAIT

My name is Steve Wait, I am Wheeling & Lake Erie's ("W&LE") principal operations witness and provided testimony in our Responsive Application. The purpose of this testimony is to reply to certain statements made by representatives of the Primary Applicants in their rebuttal.

As I reviewed Mr. Orrison's (CSXT) and Mr. Friedmann's (NS) verified statements in rebuttal to W&LE operating plans in regards to our request for conditions, I was amazed at how history and facts could be twisted to the point I didn't recognize the railway they described.

How can we be lead to believe that the W&LE is so inefficient, incompetent and inexperienced, when we safely move in to CSXT and NS yards, over their main lines abiding by their rules and performing a necessary service for our joint customers each day, every day?

Our supervision in the field is excellent and all have Class I railroad backgrounds. As we are granted the opportunity to compete to Chicago and Toledo, we will expand our "hands on" approach with seasoned field expertise from within and without our current organization. Their charge will be to focus on safety, rules compliance and professionalism while coordinating with NS and CSXT supervision. We do so now on over 260 miles of trackage rights. Our crews are well schooled. We are not a small failing short line as was characterized. We are a proud professional group of 350 dedicated railroaders. We operate with up to 50 crew starts per day with an average of 22 trains on the railroad at any given time. We take up to 100 car trains each day in and out of the NS Bellevue yard and the CSXT Willard Yard. Additionally we make daily interchange with numerous other yards and connections. Real people, real trains, real qualifications and superior service. The facts and history show we work well with CR - NS - CSXT now and our focus will be to do so in the future. [1]

Our safety record in all categories has been improving and we are in the top eight of twenty regionals in our reporting group. For Mr. Friedmann to compare CSXT and NS injury ratios to W&LE is misleading and non-productive. The ratios never address severity. W&LE has had minor injuries reported with very few lost time days and no fatalities. Our record while operating on trackage rights is perfect with zero derailments, zero accidents, zero injuries. Using Mr. Friedmann's logic in comparing NS safety data to W&LE or that of CSXT's would make it impossible to justify allowing CSXT to operate any portion of CR.

We currently support the financial "burdens" of operating over trackage rights. Mr. Friedmann ignores the upside of opportunity and only discusses the downside of costs. We have managed good service for great business for seven years on trackage rights. Why now with the

1] It should be noted that our Chairman & CEO while at the merging UPRR-SPRR had oversight of BNSF trackage rights usage under the new conditions granted by the STB in 1996. Earlier in 1995, he implemented on day one with the BNSF merger operations on 3,000 miles of trackage rights for SPRR requiring allocation of crews, locomotives, scheduling and supervision. W&LE will use this expertise to gear-up for "day one" operations to Chicago, Toledo, Niles, Ohio and Brooklyn Junction, West Virginia. The assertion we lack experience is groundless.

NS-CSXT acquisition of CR will that change? Why does Mr. Friedmann question our ability to control cost? When he questions our financial fortitude to accomplish the conditions we seek, Mr. Friedmann ignores our success in establishing a very successful switching and terminal carrier in 1994.

The Akron Barberton Cluster Railway was formed from certain CR properties in Summit and Portage counties and with the former ABB Railway. This start up was during more challenging times including W&LE restructuring efforts. Never the less we attracted the necessary capital through a private placement for a 100% funding facility. [2] Train crews were hired, trained and certified for operations over two railroads including trackage rights on CSXT.

Three and one-half years later this sister company to W&LE continues to operate with an exemplary reputation for service, safety and cooperation.

Will we meet the challenge of the conditions we seek from the Board? Our actions speak louder than Mr. Friedmann's unsupported assertions.

Throughout their verified statements there rings a loud call to deny conditions to W&LE to compete on the basis of congestion and ... "considerable operating difficulties." Using stick arrow diagrams and convoluted discussions of operations, the confusion attempted does not answer the question. Will the added train or two a day from W&LE on any corridor - - - the very ones we occupy today - - - even if extended by miles, detract so much from their Class I's service as to make the proposed rights totally unworkable? We do propose to coordinate times, schedules and windows

2] On the third anniversary of operations a party was held with all ABCR customers and employees to "burn the mortgage." ABCR is debt free and highly profitable with a 57% operating ratio.

as we do today. We do not expect preferential treatment, only fair and balanced handling.

If the congestion is so overwhelming to Mr. Friedmann and Mr. Orrison, can the merger itself really be justified?

Some specific points need further clarification i.e.,

(page 7 v.s. of Friedmann): Randall secondary: . . . no "reason put forward by W&LE to force divestiture." Clearly this was a stated goal by CR before acquisition talks by CSXT or NS began. That is to divest themselves, CR, of the Randall secondary. We do not look to NS to do anything other than that which seemed prudent to CR Management and which we are perfectly located and suited to serve.

The low density nature of the line from Cleveland to Manatua, Ohio, and its proximity (with a connection to be built) to our daily local service in the surrounding area appear logical for improved customer service and new competitive opportunities.

(page 10 v.s. of Friedmann): In regards to possible delays and the physical plant conditions on W&LE between Orrville, Ohio, and Bellevue, Ohio, we mentioned this relief valve opportunity to the Board because NS had suggested the trackage rights solutions originally for their own benefit. It was always assumed by NS and W&LE that yes, sidings and signal upgrades would be required to accommodate NS traffic. The funding of these improvements would have been appropriate for NS to negotiate with W&LE if NS had continued in good faith negotiations regarding their excellent idea.

(page 26 v.s. Friedmann): Regards to Allenport, Pennsylvania, again congestion is mentioned but only 10.8 trains per day. Is the congestion definition and argument used for 58 trains a day the same as for 10.8 trains ? W&LE crews now operate on more than three different territories and with more than three different timetables, rules and special instructions.

CSX: John Orrison; RVS page 66, HC-537, John Friedmann RVS page 2, HC-127

Rights to Chicago

The Wheeling obviously proposes to operate over only one route to Chicago. Two routes were discussed as possible alternative options. The best route is already in place with connections built by CSX and used for the past two years by W&LE crews from Greenwich, Ohio, to Willard, Ohio. The crews could stay directly on the CSX route to Chicago. A connection is also already in existence at Creston, Ohio. These are both direct head on connections - in place, in service, and in use. W&LE crews are currently qualified, and rules tested, on CSX operating and safety rules. W&LE uses the CSXT main each day each way now! Extending beyond Willard to Chicago adds miles but once we are in the flow . . . . we are in the flow. See Exhibit A.

CSX has committed meaningful resources to the installation of an additional main track along large stretches of what is now the Conrail "Indianapolis Line" between Berea and Greenwich, Ohio. Between New London and Greenwich, Ohio, a distance of about eight miles, this project will require the consolidation of the parallel right of ways of the W&LE and CR-CSX. As a result, the W&LE will lose its own track between these points but will be granted trackage rights on CSX. The W&LE is in agreement with the terms as set by CSX and has cooperated fully with the CSX plan. In examining the preferred route to Chicago, it would seem logical that because W&LE trains would be required to be on CSX lines for this distance they are already in the traffic pattern, entering and departing at facing point connections, with ample power and qualified crews. See Exhibit B.

Our original filing mentioned alternatives that clearly are not acceptable to Mr. Orrison. He remained silent though on the agreements and operations already in place which, because of our cooperation and prior negotiation, we assumed would be at least offered by CSXT as a resolution of our need to access Chicago to remain competitive and provide a needed service alternative to our many interested customers.

Rights to Toledo (Orrison RVS pages 62-64)

As in so much of his rebuttal, Mr. Orrison attempts to overwhelm us with how congested and complicated it is to operate in the Toledo, Ohio area. W&LE will add a small amount of train movements per day to the overall picture. A train is a train is a train.

To relieve congestion W&LE is willing to expedite moves by providing locomotives at each end of a train to "push-pull". This will accomplish a quicker shove into either Presque Isle or Lakefront. (see Orrison, RVS page 64 paragraph 2).

Rights in West Virginia (Orrison RVS pages 64-65)

Mr Orrison's focus is solely on Cressup, West Virginia and a coke move to Venture Coke Company. In the past, W&LE saved BP Oil eight car days on the round trip move. CSXT alleges that service deteriorated, but with their circuitous routing they have caused the customer to dedicate more equipment to provide the same level of service that had been provided with the W&LE routing. The fact is W&LE could provide needed competition and increased service to many facilities located between Benwood, WV and Brooklyn Junction, WV. This is a low density branch line for CSXT, for which traffic, because of route closings, must be hauled for hundreds of miles further than necessary. We have a local switcher that can provide daily service between Ohio and West Virginia. With this service direct customers will benefit directly to Chicago, Toledo, Akron, Canton, Cleveland, etc. Chemical traffic handled fewer miles enhances safety and equipment turn times.

Rights over CSXT New Castle Subdivision to Niles, Ohio from Akron, OH (Orrison p's 66-68)

Here are the facts:

When a 40 car coal train is delivered to the CSX interchange at Summit Street it is secured by W&LE crews. Numerous handbrakes are required. When a CSX crew arrives at the interchange an inspection is made, the handbrakes are released, and the train is ready to depart. The entire train could be delivered to the end user in the amount of time taken by the W&LE to secure the train, and the amount of time taken by CSX to inspect the train and release handbrakes.

Incidents of vandalism and damage have occurred to W&LE equipment and did not involve CSX. In their rebuttal, CSXT ignores the aggravation this move causes their operating personnel in Akron. Again W&LE has crews that are qualified on CSXT rules which know how to cooperate with CSXT dispatchers. The move from Akron to Niles by W&LE on trackage rights will enhance safety, expedite delivery, improve equipment utilization and remove the obstacles from CSXT's own burdensome move as described by Mr. Orrison. We can do it and save CSXT expense.

Access to CR-NS trackage at Orrville, Ohio (Friedmann pages 16-18)

Although interchange of cars between CR and W&LE currently takes place at Orrville, Ohio, the W&LE recognizes that a connecting track would be required to facilitate a straight forward movement of trains between main lines at Orrville. This general layout of this proposed connection is evident to anyone who would visit this location. It is an extremely simple project when compared to the many connections postulated by NS and CSX at various locations on the present Conrail system. The amount of actual time taken by a W&LE train to shove out on the Fort Wayne Line and proceed west should not be anywhere near 45 minutes. This time would include the time taken on W&LE tracks and should be of no concern to the NS. A typical train of 40 cars would take time on the CR-NS Fort Wayne Line as follows:

- After receiving a proceed signal at "CP Orr" a train would shove eastward for ½ mile. At an average speed of 5 mph this would consume six minutes.
- After stopping east of the main track signal at "CP Orr" the dispatcher would display a proceed signal westbound. Assume that there is a two minute wait.
- A forty car train moving westward on a nonrestrictive signal indication should be able to clear "CP Orr" in less than two minutes.
- The actual total W&LE time of reversing, stopping, and departing on the Fort Wayne Line would be approximately ten (10) minutes, not 45 minutes.

All of this would take place on trackage that is slated to receive a 56% reduction in MGT as indicated on page 474 of CSX/NS-20, Railroad Control Application, Volume 3B of 8.
See Exhibit C.

Again, this suggested entrance to the Fort Wayne Line should be compared with the reverse movements anticipated and planned by NS during the sale of the W&LE in 1990.

Access To Macedonia, Twinsburg, and Ravenna, OH (Friedmann RVS pages 18 -25)

Mr. Friedmann implies that granting the Wheeling access to this line segment will paralyze all rail operations east and west of Cleveland. His description of the Cleveland Line as double track, but signaled in one direction only, is accurate at this time. However, Mr. Friedmann is obviously not aware of the Conrail project to install TCS (Centralized Traffic System) on the Cleveland Line between Alliance and Cleveland in 1998. This project will allow trains to operate in either direction on either track and has been planned, approved, and we are told will take place soon. This makes all of the descriptions of "running against the current of traffic" unnecessary. The CR-NS "Cleveland Line" is, indeed, a busy route. However, it also has the double track capacity, and numerous crossovers and sidings, to handle the traffic. The upcoming TCS project will greatly enhance the flexibility and capacity of this line.

Crossovers, controlled by the dispatcher, are in service for both main tracks, and in both directions, from the Akron Industrial Track at Hudson. [3] A hand thrown crossover is in service, and used by Conrail daily, at MP 103.2. Again, the W&LE proposes to expedite train movements by placing a locomotive on each end of the train so that the direction of travel can be reversed at will. This is not a new idea. Currently, the Conrail local train that operates out of Motor Yard in Macedonia (WDMO-01, on duty at 6:00 pm) operates with one engine on each end of the train much of the time. The operation of a train from Hudson to Macedonia/Twinsburg is simple and will consume the following amount of time: 1) From the Akron Industrial Track, the loaded train would proceed on signal indication at CP-Hudson to #2 track and proceed westward for a distance of six miles. A forty car train, operating at 10 mph through CP-Hudson would take about three minutes to clear the interlocking. 2) The speed for mineral trains operating in this area is 50 mph. Including acceleration and braking, the westward 6 mile run from Hudson to MP 103 should average 30 mph,

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3] From Akron to Hudson there is certain track owned by the Summit Port Authority. W&LE would be required to negotiate a separate agreement with it to access any future rights granted by the Board on the proposed NS.

and would consume 12 minutes. 3) Clearing at the hand thrown switch to the Chrysler Lead would take an additional 5 minutes. The total running time is therefor something around 20 minutes. A short move such as this would not involve movements "against the current of traffic", would not require the engines to block both main tracks to run around the train to reverse direction, would not require an additional air test, and would not curtail all rail operations east of the Mississippi.

After leaving the main track, the train would climb up the Chrysler Lead. After placing loads and pulling empties at Whitestone, the empty train would depart, pulling down grade with an engine on each end. The speed limit on the Chrysler Lead is 10 mph, at Restricted Speed. A reasonable average speed would be 8 mph, requiring about 22 minutes to traverse this 2.5 mile industrial track. The time on this track would not interfere with operations on the Cleveland Line. After arrival of the empty train at the hand thrown switch at the junction of the Chrysler Lead and the Cleveland Line, the W&LE would wait its turn for permission to occupy #2 main track and proceed eastward to Hudson, or at the discretion of the dispatcher, westward to cross over to #1 track, then east to Hudson. The new TCS installation will give the train dispatcher added flexibility of utilizing various tracks and crossovers.

Access To Macedonia

The Roger's Group has a stone unloading facility located on the Cleveland Line several hundred feet east of the Chrysler Lead switch. This facility has been trucking stone from their quarry in Parkertown, Ohio, (served by W&LE) because of rail rates and service. Tracks and connections into this facility remain in place and unused. The Wheeling plans to provide rail transportation to this customer, via Hudson, in an manner identical to Whitestone.

Access To Ravenna

Operation from Hudson to Hugo Stone, near Ravenna, Ohio, is just as easy and straightforward as Macedonia/Twinsburg. Mr. Friedmann is in error in indicating that the Conrail local train continues moving east after pulling empty cars from Hugo Stone. Conrail train WDMO-01, mentioned earlier, serves this customer from the west, and passes by Hudson to do so. When this train returns with the empty cars it is commonly operated with an engine on each end. It does run against the current of traffic, most of the time, using #1 track (the current eastbound main) for the westbound return. The installation of TCS will again increase the train dispatcher's flexibility to accommodate trains by using the tracks and crossovers that make the most efficient use of the fixed plant.

Hudson Secondary

Conrail exited the Akron, Ohio, market in 1994. Former Conrail customers in the Akron area are now served by the Akron Barberton Cluster Railway (ABCR), a wholly owned subsidiary of Wheeling Corporation (W&LE Parent). When Conrail last served the Akron area, it did so exclusively via the Hudson Secondary (the section of this line that is still owned by Conrail is referred to as the Akron Industrial Track). The trackage rights over CSX that the W&LE is now requesting is a part of the same route that all Conrail trains operating between Conrail in Akron and the rest of the Conrail system had used to access the Hudson Secondary from the CSX New Castle Subdivision. Conrail crews had trackage rights, negotiated by Conrail during the sale of CR trackage through Akron, from Conrail's Akron Yard, and Conrail's Rittman Secondary to the Hudson

Secondary, a distance of some 7 miles. The ABCR operates in this area without difficulty, and with only nominal delays, and is certainly not disruptive to CSX traffic.

There is actually a much more important concern for CSX in this area. The CSX Newcastle Subdivision, a very important component of the CSX "Eastern Service Route"is reduced to single track, for a distance of 9 miles, at a point about 7 miles west of the area over which the W&LE requests this short distance of trackage rights. The W&LE has proposed a plan by which CSX could utilize ABCR trackage to bridge this section of single track, thereby eliminating this bottle neck.

Given all of these facts, it is difficult to imagine that the W&LE will be "clogging the route" for westbound CSX trains through Akron.

Congestion in Bellevue, Ohio (Re: RVS of Friedmann) Item 2, page 4, HC-131.

The moves described in the eight step process are essentially the same as the moves currently required by the W&LE to reach an important stone customer via trackage rights included in the original sale of the W&LE by the NS. This particular customer, The Rogers Group, located at Parkertown, is jointly served by the W&LE and NS. The W&LE has developed increased markets for this stone and is therefore the largest provider of service for Rogers Group. It is my belief that the NS included this customer in the sale package to W&LE in 1990 on the accurate assessment that the low revenue traffic would not bear the compound rate and service considerations that would be reflective of a two-carrier route for the historic destinations of this product.

Another stone customer that was designed to be served by the W&LE was France Stone. This customer is located on the NS, just east of Flatrock Siding near Bellevue, Ohio. To my knowledge, the NS currently moves no revenue stone from this origin point.

To access these stone customers, the W&LE is as flexible as possible. The W&LE is well aware of the congestion in this area and has made the move in every conceivable manner in an effort to perform expeditiously. One concept has involved the positioning of a locomotive, <u>and engineer</u>, on each end of the train to facilitate the reverse moves, i.e., "push-pull operations".

To ease the passage of empty and loaded trains to and from Parkertown, a relocation of <u>one</u> turnout would provide for a linear path and eliminate the need for the eight step process of reversing the direction of the train to access different tracks. This would also directly benefit the NS by the removal of a track crossing and relieving congestion on their lines. Reference Exhibit D.

The NS sale of a portion of the trackage that formed the W&LE essentially split the NS Toledo District at MP 54.7. Soon after the sale, the NS, no longer in need of a straight movement across the Sandusky District, removed the crossing diamonds at this location. An obvious solution to speed NS and W&LE traffic in this area would be to reinstall the track crossings. Reference Exhibit D.

As justification for the above mentioned track changes we attach as Exhibit E a representative one month study of W&LE train delays at Bellevue, Ohio. In attempting to access trackage rights on NS to Flatrock and Parkertown stone quarries and in interchanging freight at Bellevue there is considerable lost time and added costs. It has become crippling with added density expected as stated by NS, changes in the physical "mini" plant at Bellevue and in dispatching philosophy is required. Exhibit E shows also the need for fair and responsive handling being imposed by the Board, with ongoing oversight, as requested in our responsive application.

Again, we do not expect preferential treatment. We will mold ourselves to schedules, time slots and windows. We are flexible but need protection for our customer's benefit and to protect our revenue opportunities. A lost day at the quarries is never regained.

Bucyrus: Item 8(B), page 14 - HC 143.

W&LE trains from Chatfield to Spore, Ohio, would not be required to perform the complicated gymnastics described by Mr. Friedmann. The moves that a W&LE train would make are straight forward as follows: 1) The W&LE train heads south at a facing point connection already in place at Chatfield and proceeds south for a distance of 10.8 miles to Colsan. (It must be remembered that the W&LE was previously granted trackage rights on the NS Sandusky District from Bellevue to Chatfield, a distance of 22.8 miles, in the 1990 sale of NS trackage to the W&LE.) 2) At Colsan, the train would leave the Sandusky District and occupy the siding along the Fort Wayne Line. 3) The train would reverse direction and shove the six miles to the stone quarry at Spore. This would be done with the aid of a shoving platform (caboose) or, if tonnage requires two engines, an engine on each end of the train. These easy steps will eliminate the need for using the Fort Wayne main track to run around the train, and the associated air tests. See Exhibit F.

In response to Mr. Friedmann's rebuttal on joint facilities, we request that the Board see Mr. Orrison's (CSXT- pages 68 - 69) proposed solution to handling the future of the Wellington Diamonds. NS should be required to at least mirror what CSXT proposes.

In conclusion it must be said that we know the risk of appearing to oversimplify. However, just as NS and CSXT operating personnel are professionals, so too are the W&LE personnel. As professionals who today work with each other, we should not assume anything worse after acquisition of CR by CSXT and NS.

W&LE will meet or exceed the operating expectations of our Class I partners and will serve our joint customers with quality transportation.

State of Ohio)
)
County of Stark)

VERIFICATION

Steven W. Wait being duly sworn on 9th January, 1998, states that he has read the foregoing, and that it is true and accurate to the best of his knowledge and belief.

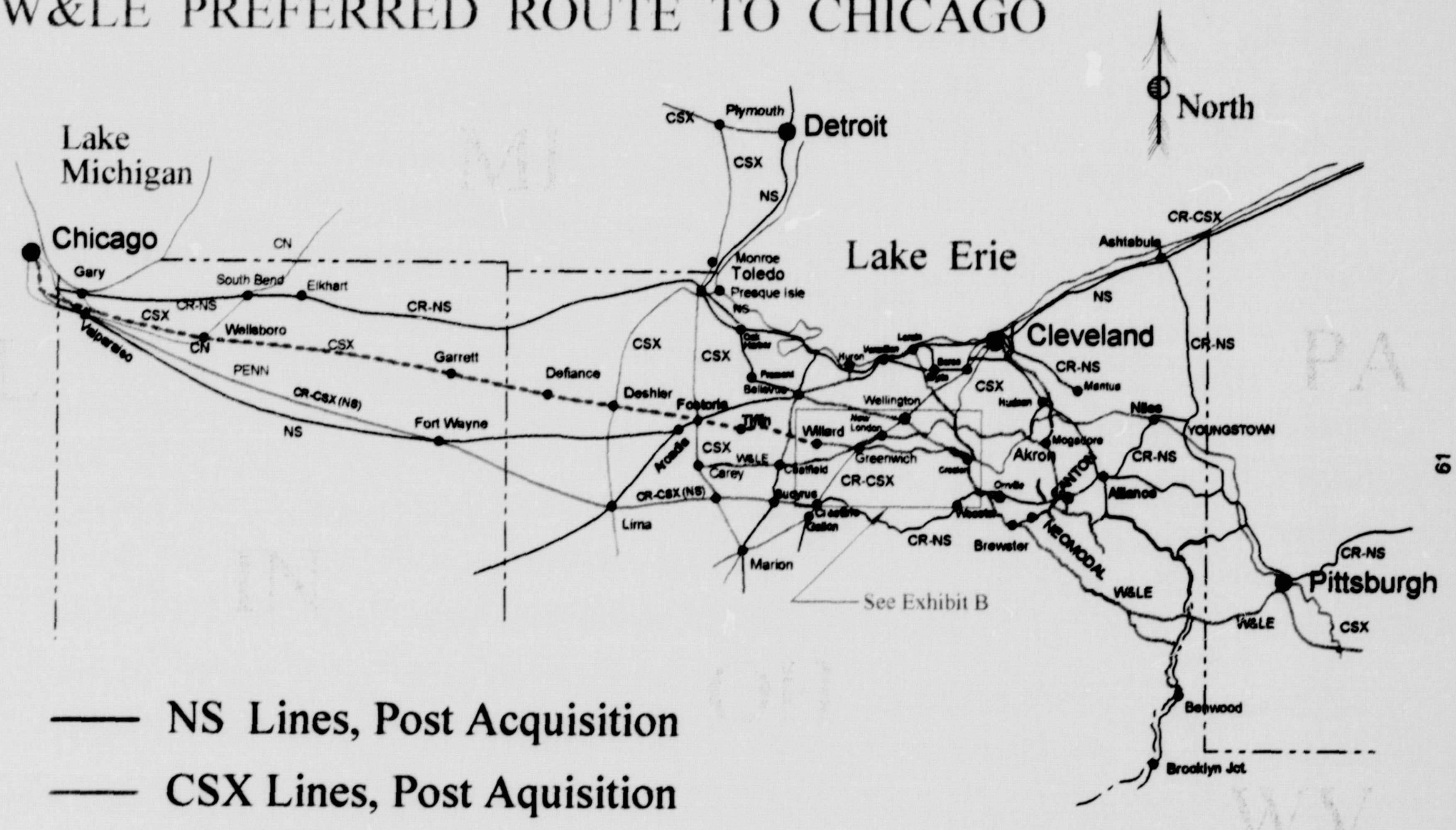
Steve W. Wait
Steven W. Wait

Sheryl L. Durant
Notary Public

My Commission Expires: Aug 29 1999

Sheryl L. Durant
Notary Public, State of Ohio
My Commission Expires August 29, 1999

W&LE PREFERRED ROUTE TO CHICAGO



NS Lines, Post Acquisition

CSX Lines, Post Aquisition

W&LE Lines

Proposed W&LE trackage rights

Other Lines

Exhibit A

Drawn by: W&LE, 1-9-98

No Scale; Not All Lines Are Shown

STB FD 33388 (Sub 80) 1-14-98 D 185212 2/2

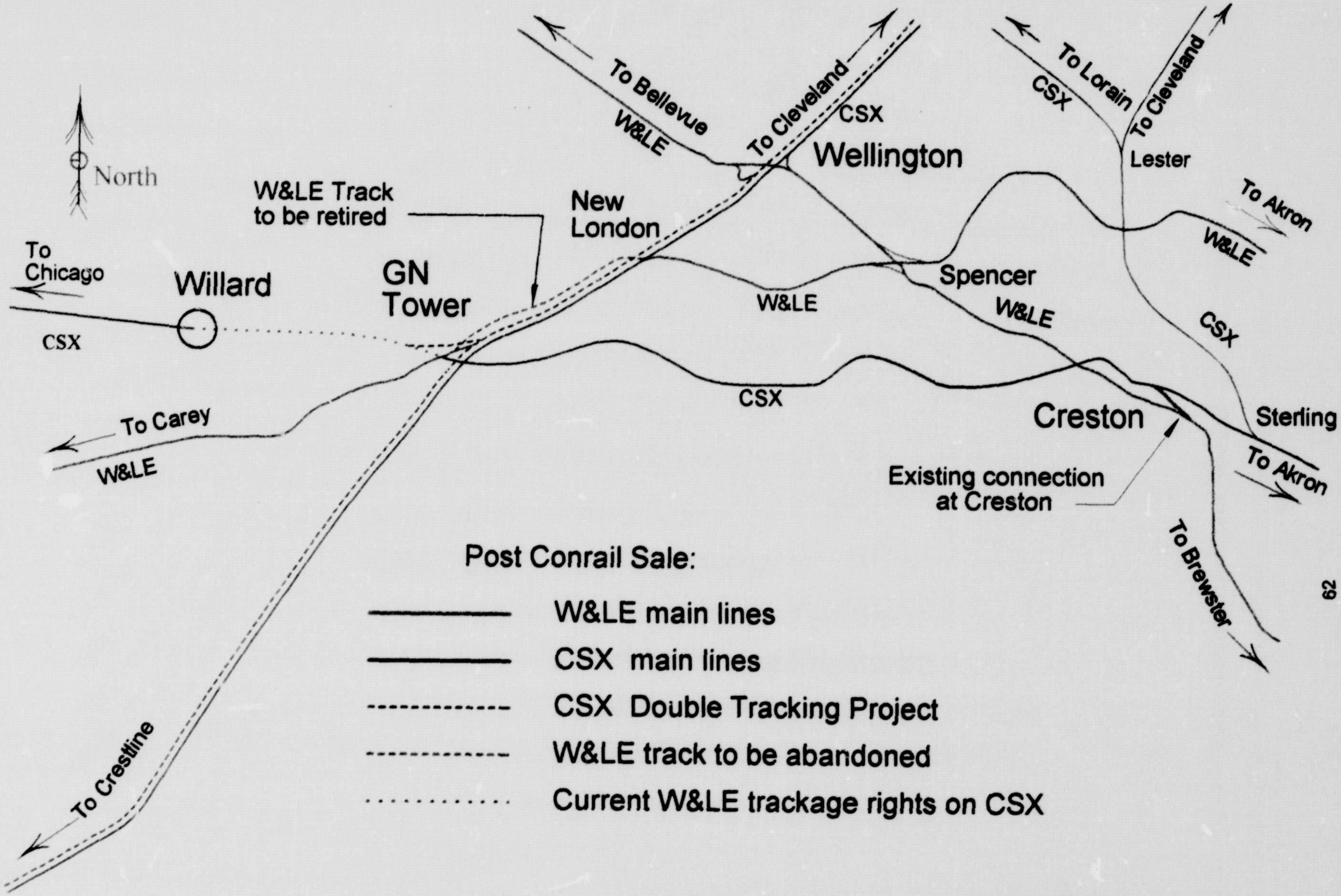
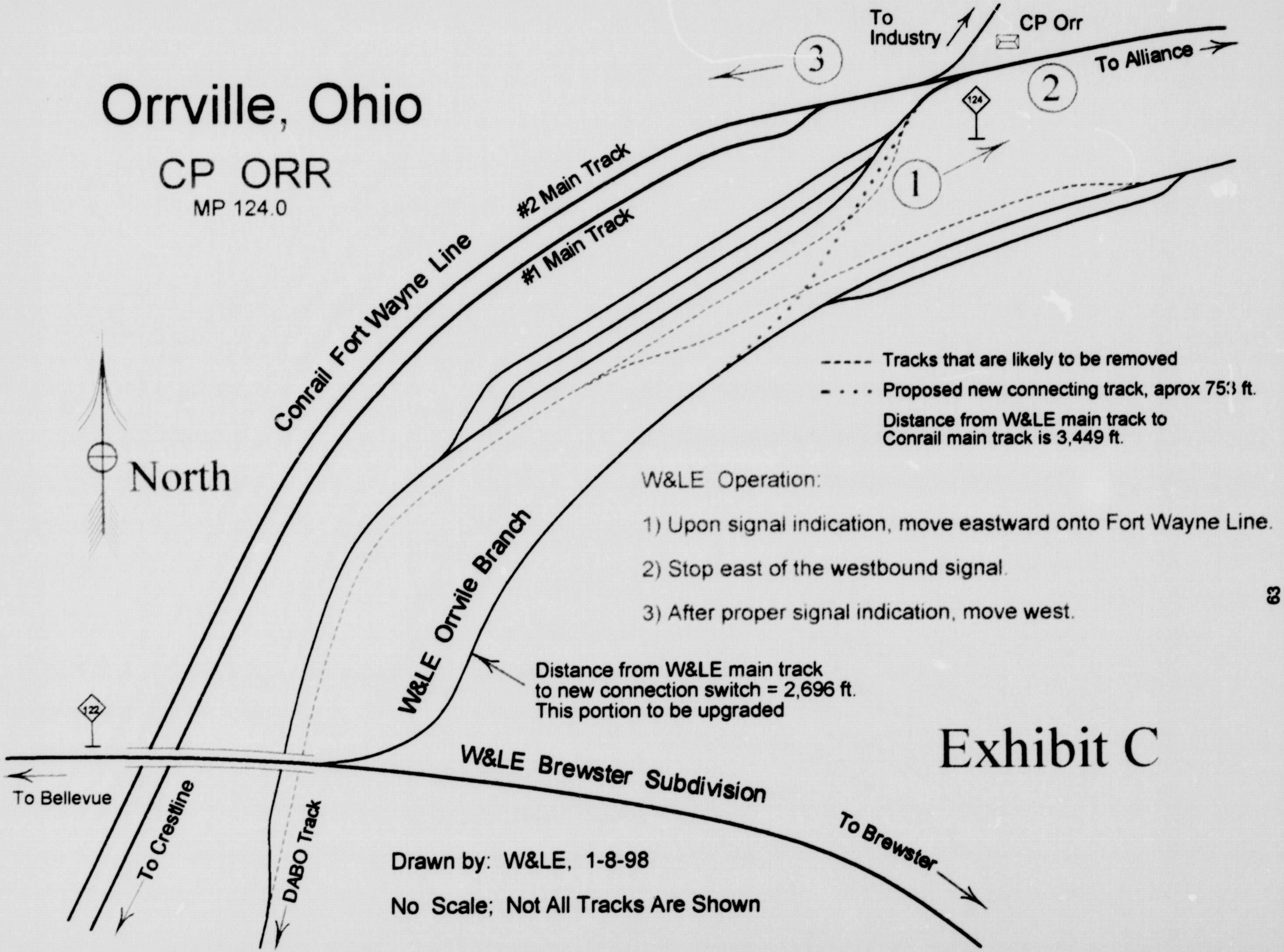
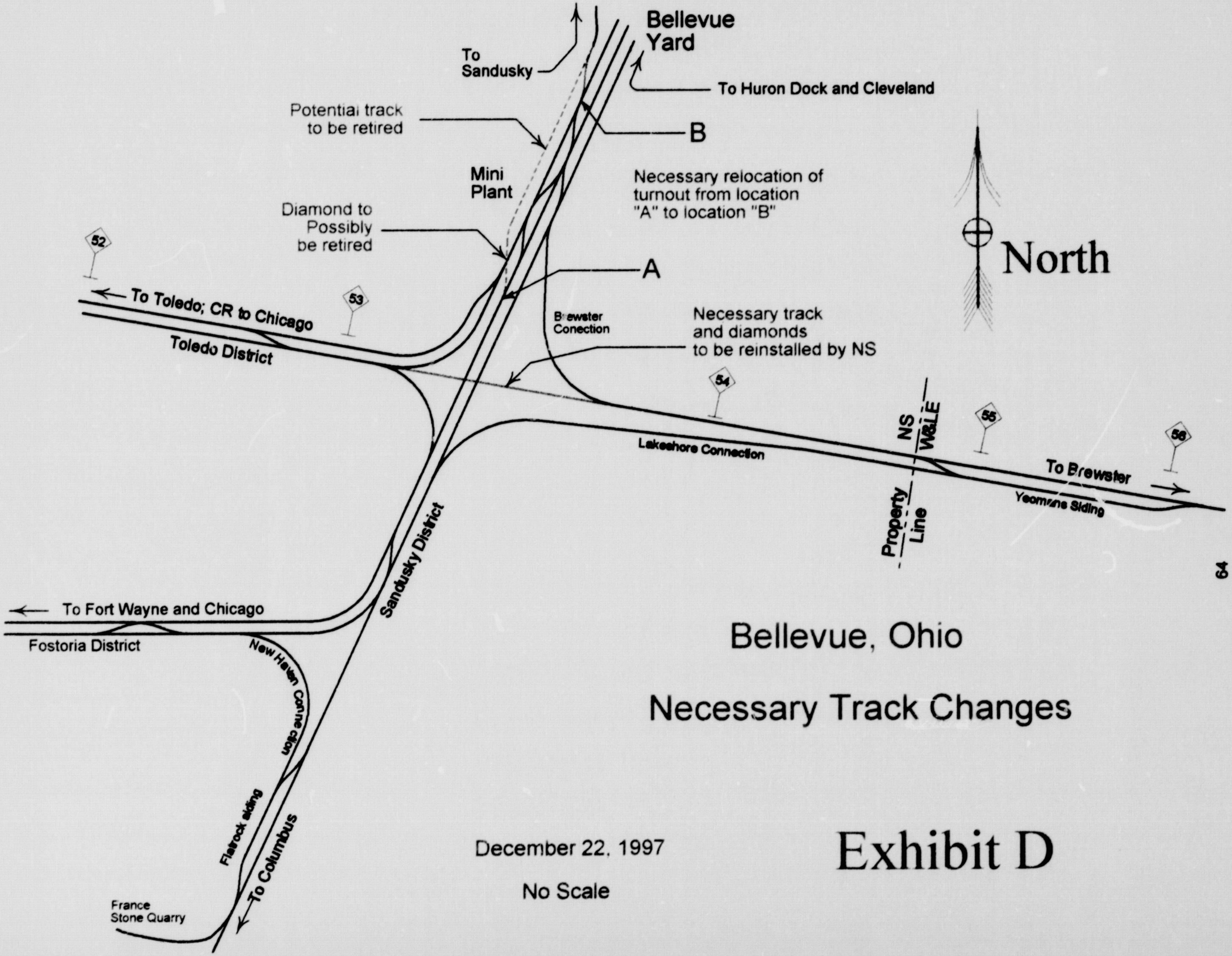


Exhibit B

Drawn by: W&LE, 1-9-98

No Scale; All Tracks Are Not Shown


Orrville, Ohio
CP ORR
MP 124.0
North
To Industry
CP Orr
To Alliance
3
2
1
124
122
#2 Main Track
#1 Main Track
Conrail Fort Wayne Line
W&LE Orrvile Branch
---- Tracks that are likely to be removed
- · · · Proposed new connecting track, aprox 753 ft.
Distance from W&LE main track to Conrail main track is 3,449 ft.
W&LE Operation:
1) Upon signal indication, move eastward onto Fort Wayne Line.
2) Stop east of the westbound signal.
3) After proper signal indication, move west.
Distance from W&LE main track to new connection switch = 2,696 ft. This portion to be upgraded
Exhibit C
To Bellevue
To Crestline
DABO Track
W&LE Brewster Subdivision
To Brewster
Drawn by: W&LE, 1-8-98
No Scale; Not All Tracks Are Shown



Bellevue, Ohio

Necessary Track Changes

December 22, 1997

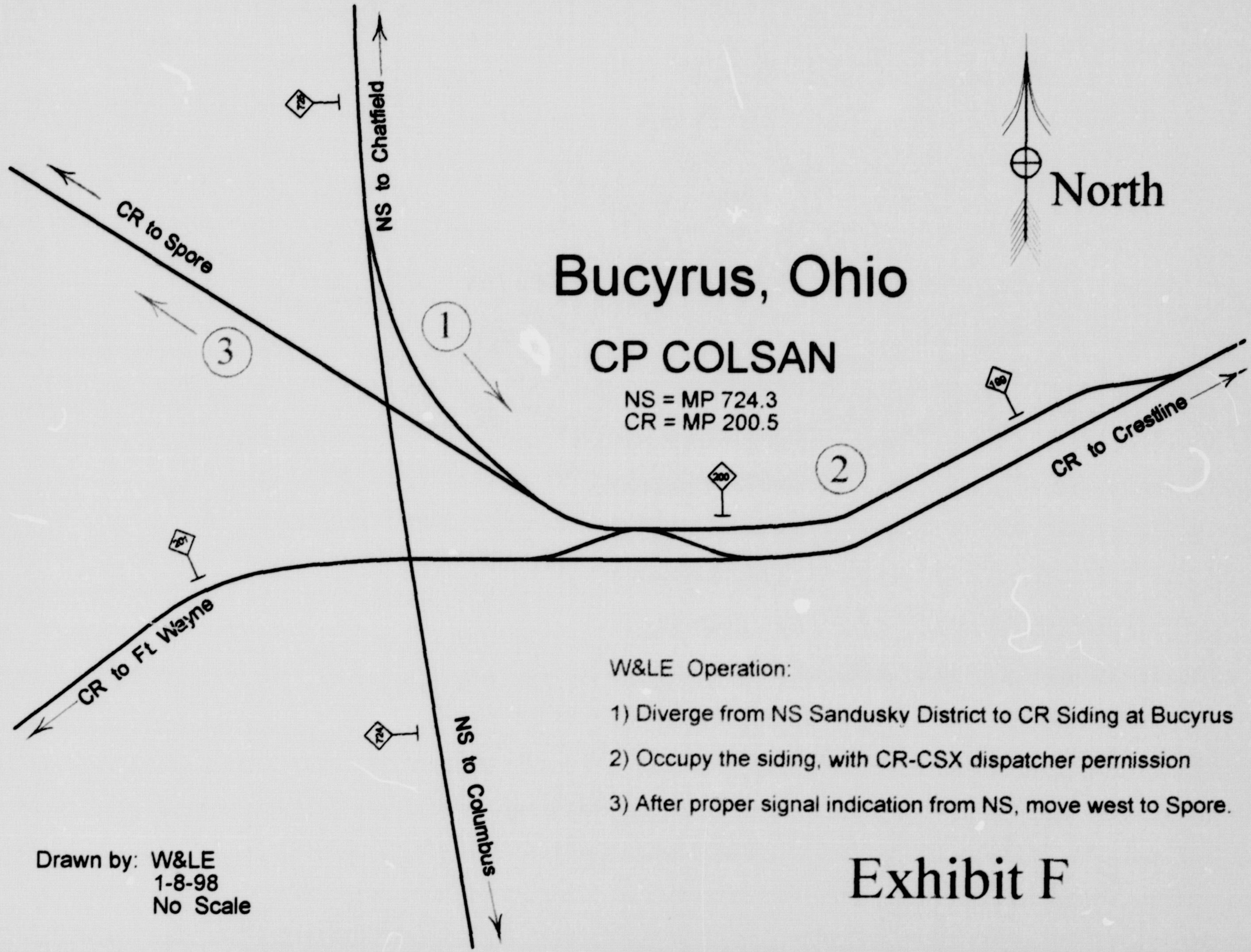
No Scale

Exhibit D

Bucyrus, Ohio

CP COLSAN

NS = MP 724.3
CR = MP 200.5



W&LE Operation:

1) Diverge from NS Sandusky District to CR Siding at Bucyrus

2) Occupy the siding, with CR-CSX dispatcher perrnission

3) After proper signal indication from NS, move west to Spore.

Drawn by: W&LE
1-8-98
No Scale

Exhibit F

65

NS DELAYS NOVEMBER 1997

DATE	Bellevue Freight	Parkertown Rogers Group	Flatrock France Stone	Huron ORE Dock	Denied Access	Total Delays Per Day
11/1	3' 25"	4' 10"	-	-	YES	7' 35"
11/2	-	1' 00"	0' 55"	2' 10"	-	4' 05"
11/3	4' 00"	4' 30"	0' 20"	0' 15"	-	9' 05"
11/4	3' 05"	6' 45"	-	1' 20"	-	11' 10"
11/5	-	0' 20"	4' 00"	0' 25"	-	4' 45"
11/6	-	4' 20"	0' 45"	-	-	5' 05"
11/7	3' 55"	-	-	0' 55"	-	4' 50"
11/8	-	3' 00"	-	0' 55"	-	3' 55"
11/9	-	1' 15"	-	-	-	1' 15"
11/10	-	1' 55"	6' 40"	-	YES	8' 35"
11/11	-	0' 15"	-	-	-	0' 15"
11/12	-	3' 25"	-	1' 55"	YES	5' 20"
11/13	-	3' 00"	-	0' 55"	-	3' 55"
11/14	-	10" 25'	-	2' 50"	YES	13' 15"
11/15	-	-	1' 30"	-	-	1'30"
11/16	0' 20"	-	-	-	-	0' 20"
11/17	-	2' 20"	0' 15"	-	-	2' 35"
11/18	-	3' 45"	4' 10"	-	-	7' 55"
11/19	-	2' 15"	1' 10"	0' 30"	-	3' 55"
11/20	-	2' 40"	-	2' 15"	-	4' 55"
11/21	-	-	1' 30"	-	-	1' 30"
11/22	-	1' 35"	-	-	-	1' 35"
11/23	-	-	-	-	-	-
11/24	-	0' 35"	-	-	-	0' 35"
11/25	5' 30"	6' 40"	6' 10"	2' 55"	-	21' 15"
11/26	3' 55"	3' 05"	-	-	YES	7' 00"
11/27	-	-	-	-	-	-
11/28	0' 20"	-	-	-	-	0' 20"
11/29	-	-	1' 00"	-	-	1' 00"
11/30	-	-	-	-	-	-

DELAYS ON THE NS 11/97

11/1

774 on duty at Hartland at 1030hrs for Parkertown was delayed in the NS Lakeshore from 1345hrs to 1440hrs for NS traffic a 55 minute delay. The train was also delayed at the NS New Haven connection from 1500hrs to 1630hrs for NS traffic headed for Sandusky a 1 hour 30 minute delay. Crews expired the hours of service law.

222 on duty at Bellevue at 1300hrs waited at NS Bellevue for their train to be to be made up from 1340hrs to 1705hrs. A 3-hour 25 minutes delay.

770 on duty at Hartland at 2100hrs was taxied to Parkertown to recrew 774. Crew was delayed Parkertown from 2245hrs to 0030hrs to get permission to use the main track a 1 hour 45 minute delay.

11/2

776 on duty at Hartland at 0200hrs was delayed in the Lakeshore from 0420hrs to 0515hrs enroute to Flatrock a 55 minute delay.

641 on duty at Hartland at 0900hrs was delayed at NS Bellevue from 1115hrs to 1210hrs enroute to Huron by NS traffic a 55 minute delay. Also, delayed at NS Bellevue from 1905hrs to 2020hrs for NS traffic enroute out of Bellevue East a 1 hour 15 minute delay.

684 on duty at Bellevue at 2400hrs was delayed in the NS Lakeshore from 0520hrs to 0550hrs enroute to Parkertown a 30 minute delay. After departing Parkertown they were delayed at NS Potter Road from 0740hrs to 0810hrs for the NS LB-47 a 30 minute delay.

11/3

641 on duty at Huron at 0900hrs was delayed in NS Bellevue from 1645hrs to 1700hrs enroute East out of Bellevue because the Yardmaster was unavailable a 15 minute delay.

222 on duty at Bellevue at 1300hrs was delayed at the Yeomans from 1330hrs to 1510hrs for permission into NS Bellevue a 1 hour 40 minute delay.

770 on duty at Hartland at 2100hrs was delayed in the NS Lakeshore from 0100hrs to 0120hrs enroute to Flatrock a 20 minute delay. Also, delayed in the NS Lakeshore from 0230hrs to 0700hrs enroute to Parkertown a 4-hour 30 minute delay.

684 on duty at Bellevue at 2400hrs was delayed at the NS Lakeshore switch from 0230hrs to 0250hrs a 30 minute delay. Then delayed in the NS Lakeshore from 0250hrs to 0500hrs for NS traffic a 2-hour 20 minute delay. Also, delayed in the NS Brewster connection from 0510hrs to 0540 a 30 minute delay.

11/4 **641** on duty at Hartland at 0730hrs was delayed in NS Bellevue from 0905hrs to 0940 for NS traffic enroute to Huron a 35 minute delay. Also, delayed in NS Bellevue from 1645hrs to 1730hrs for NS traffic enroute east out of NS Bellevue from Huron a 45 minute delay.

222 on duty at Bellevue at 1300hrs was delayed at NS McKim Street from 1330hrs to 1505hrs for permission into NS Bellevue a 1 hour 35 minute delay.

770 on duty at Hartland at 2100hrs was delayed in the NS Lakeshore from 0020hrs to 0605hrs for NS traffic enroute to Parkertown a 5-hour 45 minute delay. Also, delayed in NS Flatrock Siding from 0620hrs to 0720hrs enroute to Parkertown a 1 hour delay.

684 on duty at Bellevue at 2400hrs was delayed at NS McKim Street from 0430hrs to 0605hrs for NS traffic enroute to NS Bellevue a 1 hour 30 minute delay.

11/5 **641** on duty at Hartland at 1000hrs was delayed at NS Kimbel from 1655hrs to 1720hrs for NS traffic enroute to Huron a 20 minute delay.

774 on duty at Hartland at 1030hrs was delayed at the Yeomans from 2030hrs to 2050hrs for permission into to the NS Lakeshore a 25 minute delay.

770 on duty at Hartland at 2100hrs was delayed in the NS Lakeshore from 2230hrs to 0230hrs for NS traffic enroute to Flatrock a 4-hour delay.

11/6 **774** on duty at Hartland at 1030hrs was delayed in the NS Lakeshore from 1130hrs to 1530hrs for NS traffic enroute to Parkertown a 4-hour delay. Also, delayed at Parkertown from 1810hrs to 1830hrs for NS traffic to Sandusky a 20 minute delay.

770 on duty at Hartland at 2100hrs was delayed in the NS Lakeshore from 0045hrs to 0130hrs enroute to Flatrock a 45 minute delay.

11/7 **641** on duty at Huron at 0700hrs was delayed in NS Bellevue from 1700hrs to 1755hrs for NS traffic enroute East out of NS Bellevue a 55 minute delay.

684 on duty at Bellevue at 2400hrs was delayed in the NS Lakeshore from 0705hrs to 1100hrs enroute to NS Bellevue. At 1100hrs the crew shoved the train back onto Wheeling & Lake Erie property and expired the hours of service law never making it into NS Bellevue, this was a 3 hour and 55 minute delay and another crew.

11/8 **641** on duty at Huron at 0900hrs was delayed in NS Bellevue from 1845hrs to 1935hrs for NS traffic enroute East out of NS Bellevue from Huron a 55 minute delay.

770 on duty at Hartland at 2100hrs was delayed in the NS Lakeshore from 0230hrs to 0245hrs for NS traffic enroute to Parkertown a 15 minute delay. Also delayed at NS Flatrock Siding from 0300hrs to 0530hrs enroute to Parkertown a 2-hour 30 minute delay, and delayed in the NS Lakeshore from 0700hrs to 0715hrs enroute to Flatrock a 15 minute delay.

11/9 **774** on duty at Hartland at 1030hrs was delayed in NS Bellevue Yard from 1810hrs to 1925hrs for NS traffic enroute out of NS Bellevue from Parkertown a 1-hour 15 minute delay.

11/10 **774** on duty at Hartland at 1030hrs was delayed in NS Bellevue Yard from 1215hrs to 1410hrs for permission out of the yard onto the Wheeling & Lake Erie a 1 hour 55 minute delay. Also, delayed in the NS Lakeshore from 1855hrs to 1935hrs for permission into Flatrock a 40 minute delay.

770 on duty at Hartland at 2100hrs was delayed in the NS Lakeshore from 0345hrs to 0945hrs then was told to tie the train down by the NS Dispatcher a 6-hour delay and another crew.

11/11 **774** on duty at Hartland at 1030hrs was delayed in the NS Lakeshore from 1405hrs to 1420hrs for permission to depart to Parkertown a 15 minute delay.

11/12 **641** on duty at Huron at 0800hrs was delayed in NS Bellevue Yard for NS traffic from 0905hrs to 1040hrs a 1 hour 35 minute delay. Also delayed at NS Avery from 1120hrs to 1140hrs a 20 minute delay.

774 on duty at Hartland at 1030hrs was delayed in the NS Lakeshore from 1705hrs to 1725hrs for permission into Bellevue a 20 minute delay. Also, delayed in NS Bellevue from 1730hrs to 1805hrs a 35 minute delay for permission to depart to Parkertown. Crew expired hours of service at Parkertown.

770 on duty at 2100hrs recrewed 774 at Parkertown Crew was delayed at Parkertown from 2245hrs to 0015hrs for permission to depart out of Parkertown a 2-hour 30 minute delays.

11/13	**641** on duty at Hartland at 0900hrs was delayed at NS Kimbel from 1220hrs to 1240hrs for NS traffic enroute to Huron a 20 minute delay. Also delayed at NS Avery from 1910hrs to 2000hrs by NS Dispatcher enroute out of Huron a 50 minute delay.
	684 on duty at Bellevue at 2400hrs was delayed in the NS Brewster Connection from 0445hrs to 0745hrs for permission into Bellevue a 3-hour delay.
11/14	**641** on duty at Huron at 0900hrs was delayed in NS Bellevue from 1210hrs to 1500hrs for NS traffic a 2 hours 50 minute delay.
	774 on duty at Hartland at 1400hrs was delayed in the NS Lakeshore from 1720hrs to 0115hrs for NS traffic enroute Parkertown a 7-hour 55 minute delay expired hours of service law and recrewed by 770.
	770 on duty at Hartland at 2100hrs was taxied to recrew 774 was delayed in the NS Lakeshore from 0115hrs to 0345hrs for NS traffic enroute to Parkertown a 2-hour 30 minutes delay.
11/15	**770** on duty at Hartland at 2100hrs was delayed in the NS Lakeshore from 2350hrs to 0105hrs enroute to Flatrock a 1 hour 15 minute delay. Also, delayed from 0200hrs to 0215hrs at Flatrock waiting on permission to depart a 15 minute delay.
11/16	**684** on duty at Bellevue 2400hrs was delayed at the Yeomans from 1000hrs to 1020hrs for permission into NS Bellevue a 20 minute delay.
11/17	**774** on duty at Hartland at 1030hrs was delayed in the NS Lakeshore from 1215hrs to 1230hrs for permission to depart to Flatrock a 15 minute delay.
	684 on duty at Bellevue at 2400hrs was delayed in the NS Lakeshore from 0430hrs to 0620 for the Y-17 enroute to Parkertown a 1 hour 50 minute delay. Also, delayed at Parkertown from 0850hrs to 0920hrs for permission to depart Parkertown a 30 minute delay.
11/18	**776** on duty at Hartland at 0200hrs was delayed in the NS Lakeshore from 0530hrs to 0805hrs for NS traffic enroute to Flatrock a 2-hour 35 minute delay. Also, delayed in Flatrock from 1000hrs to 1125hrs for permission to depart a 1 hour 35 minute delay.

	774 on duty at Hartland at 1030 was delayed in the NS Lakeshore from 1600hrs to 1740hrs to get permission into NS Bellevue a 1 hour 40 minute delay.
11/18	**684** on duty at Bellevue at 2400hrs was delayed at Parkertown from 0400hrs to 0545hrs for permission to depart Parkertown a 1 hour 45 minute delay. Also delayed at NS Potter Road from 0600hrs to 0620hrs a 20 minute delay.
11/19	**641** on duty at Huron at 1100hrs was delayed at Kimbel from 1835hrs to 1905hrs for NS traffic enroute to Huron a 30 minute delay.
	770 on duty at Hartland at 2100hrs was delayed in the NS Lakeshore from 2350hrs to 0035hrs for NS traffic enroute to Flatrock a 45 minute delay. Also, delayed in NS Flatrock Siding from 0100hrs to 0125hrs enroute to Flatrock a 25 minute delay.
	684 on duty at Bellevue at 2400hrs was delayed in the NS Lakeshore from 0610hrs to 0735hrs enroute to Parkertown. A 2-hour 15 minutes delays.
11/20	**774** on duty at Hartland at 1030hrs was delayed in NS Bellevue from 1830hrs to 1930hrs for permission out enroute from Parkertown a 1 hour delay.
	641 on duty at Huron at 1100hrs was delayed in NS Bellevue from 1600hrs to 1815hrs for NS traffic enroute to Huron a 2-hour 15 minute delay. Also, delayed at NS Avery from 1910hrs to 2115hrs for NS traffic a 2-hour 5 minute delays.
	684 on duty at Bellevue at 2400hrs was delayed in the NS Brewster Connection from 0130hrs to 0230hrs enroute to Parkertown a 1 hour delay. Also, delayed in NS Bellevue from 0530hrs to 0610hrs for NS traffic a 40 minute delay.
11/21	**770** on duty at Hartland at 2100hrs was delayed in the NS Lakeshore from 2400hrs to 0015hrs for NS traffic enroute to Flatrock a 15 minute delay. Also, delayed at Flatrock from 0145hrs to 0300hrs for permission to depart a 1 hour 15 minute delay.
11/22	**774** on duty at Hartland at 1030hrs was delayed in the NS Lakeshore from 1405hrs to 1420hrs for NS traffic enroute to Parkertown a 15 minute delay. Also, delayed in Parkertown 1450hrs to 1610hrs waiting for permission to depart a 1 hour 20 minute delay.
11/23	**NO DELAYS**

11/24	774 on duty at Hartland at 1030hrs was delayed in Parkertown from 1140hrs to 1215hrs waiting on permission to depart a 35 minute delay.
11/25	770 on duty at Hartland at 0100hrs was delayed in the NS Lakeshore from 0945hrs to 1045hrs for permission to depart for Flatrock a 1 hour delay. Also delayed in Flatrock 1045hrs to 1300hrs waiting for permission to depart, the crew expired the hours of service and was recrewed by the 774 a 2-hour 15 minute delay.
	776 on duty at Hartland at 0200hrs was held in NS Bellevue from 0840hrs to 1050hrs waiting on permission to leave the yard a 2-hour 10 minute delay.
	774 on duty at Hartland at 1030hrs was delayed in Flatrock from 1425hrs to 1820hrs for NS traffic after recrewing the 770 a 3-hour 55 minute delay.
	641 on duty at Huron at 1300hrs delayed in Bellevue from 1810hrs to 1850hrs for NS traffic enroute to Huron a 40 minute delay. Also, delayed at NS Kimbel from 1930hrs to 2145hrs for NS traffic a 2-hour 15 minute delay enroute to Huron.
	770 on duty at Hartland at 2230hrs delayed at the Yeomans from 0225hrs to 0905hrs for NS traffic waiting for permission to go to Parkertown a 6-hour 40 minutes delays.
	684 on duty at Bellevue at 2400hrs was delayed on the NS Brewster Connection from 0610hrs to 0730hrs waiting to get permission into NS Bellevue a 1 hour 20 minute delay. Also, delayed in NS Bellevue Yard from 0900hrs to 1100hrs waiting to get out of Bellevue a 2-hour delays.
11/26	774 on duty at Hartland at 1030hrs was delayed at Parkertown from 1215hrs to 1240hrs for permission to depart a 25 minute delay.
	770 on duty at Hartland at 2000hrs went engines lite to Parkertown to recrew 774. Crew was delayed at the Yeomans from 0145hrs to 0225hrs waiting for permission to go to Parkertown a 40 minute delay. Also, delayed at Parkertown from 0230hrs to 0430hrs waiting on permission to depart a 2-hour delay.
	684 on duty at Hartland at 2400hrs was delayed in NS Bellevue Yard from 0200hrs to 0555hrs a 3-hour 55 minute delay.
11/27	**NO DELAYS**

11/28	**<u>222</u> on duty at Bellevue at 1300hrs was delayed at the NS Brewster Connection from 1625hrs to 1645hrs waiting for permission into NS Bellevue Yard a 20 minute delay.**
11/29	**<u>774</u> on duty at Hartland at 1030hrs was delayed in the NS Lakeshore from 1515hrs to 1615hrs for permission to go to Flatrock a 1 hour delay.**
11/30	**NO DELAY**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub. - No. 80)

REPLY VERIFIED STATEMENT

OF

EDWARD A. BURKHARDT

My name is Ed Burkhardt. I am Chairman, President and Chief Executive Officer of Wisconsin Central Transportation Corporation and am President of each of its operating subsidiaries. I further serve as Chairman and CEO of English Welsh & Scottish Railway Ltd. (UK) and as Chairman of Tranz Rail Ltd. (New Zealand) and Australian Transport Network (Australia). I am also a member of the Board of Directors of the Wheeling & Lake Erie Railway Company, a position I have held since the financial restructuring which took place in 1994.

I am aware that NS witness John Williams commented adversely on the W&LE Management Team and stated that "a good Management Team can correct a faulty business plan, but ... a poor management team can ruin a good business plan." CSX/NS-177,HC-769. I am flattered that Mr. Williams identifies me as one of the "capable railroad managers ... who would have been able to solve the W&LE's business problems." But as a Member of the W&LE Board of Directors I must disagree with Mr. Williams' characterization of the W&LE Management Team.

In my judgment, Larry Parsons and his management have done an admirable job of operating the W&LE, progressively making it a stronger railroad. They have dealt well with the challenges of providing good customer service and controlling costs on a low density rail network. W&LE continues to gain operational, marketing and financial strength, and, if it were not for the serious uncertainties posed by the proposed merger, should enjoy financial success in the future.

State of Illinois)
)
County of Cook)

VERIFICATION

Edward A. Burkhardt being duly sworn on 9th January, 1998, states that he has read the foregoing, and that it is true and accurate to the best of his knowledge and belief.

Edward A. Burkhardt

Edward A. Burkhardt

Genise Martinez
Notary Public

My Commission expires:

"OFFICIAL SEAL"
GENISE MARTINEZ
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 07/21/01

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33388 (Sub. - No. 80)

REPLY VERIFIED STATEMENT

OF

MORT LOWENTHAL

My name is Mort Lowenthal. At the time of the purchase of Wheeling & Lake Erie's ("W&LE") system from NS, I was a principal at (then) Wertheim Schroeder, a partner in the equity of W&LE. I also served on the Board of Directors from the W&LE's inception until the equity was sold to management during the financial restructuring which took place in 1994. The purpose of this testimony is to reply to certain statements made by representatives of the Primary Applicants in their rebuttal.

I am familiar with the events leading to the creation of the new Wheeling & Lake Erie ("W&LE") when it was spun off by NS and I have read the Verified Statement submitted by John Williams on behalf of NS in these proceedings.

From my knowledge, based on my direct participation in the process, the equity investors and especially the senior lenders relied greatly on the conclusions of the Woodside Study in their decision to purchase the property. That Study, which was the basis for the revenue stream upon which we relied for the repayment of debt, proved to be substantially in error, especially with respect to the W&LE's early prospects based on projected coal revenues. I believe that the badly flawed Woodside Study played an important role in the near failure of the new carrier.

State of ~~Ohio~~ California)
County of ~~Stark~~ San Francisco)

VERIFICATION

Mort Lowenthal being duly sworn on 8 January, 1998, states that he has read the foregoing, and that it is true and accurate to the best of his knowledge and belief.

Mort Lowenthal

Perla Mijares Jimenez
Notary Public

My Commission expires: Sept. 29, 1998

Perla Mijares Jimenez
Comm. #1040070
NOTARY PUBLIC - CALIFORNIA
City & County of San Francisco
Comm. Expires Sept. 29, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub.80)

REPLY VERIFIED STATEMENT
OF
RICHARD SOUCIE

My name is Richard Soucie. I was the Manger of Fuel Purchasing for Centerior Energy Corporation until my retirement in 1993. Centerior Energy was the parent company of The Cleveland Electric Illuminating at the time.

In my capacity as fuel manager, I was responsible for negotiating all coal and rail contracts for CEI's coal fired plants.

I have been asked to comment on matters I recall at the time of the proposed sale by the Norfolk Southern Railway of the railroad properties now known as the Wheeling & Lake Erie Railway ("W&LE").

In my position at CEI, I was necessarily aware of coal sources and their movement. I also knew of pending new Clean Air Regulations which would impact CEI in 1995. I knew CEI had coal sales agreements for Ohio high sulfur coal which would likely be impacted by the new environmental regulations. What I didn't know was how CEI would meet the regulations.

I do not recall to whom I spoke or met on the W&LE acquisition but the entire matter of coal movement to CEI's Avon Lake plant was unsettled because of the pending air regulations and these regulations put Ohio high sulfur coal contracts in jeopardy. I knew it could mean all coal to the Avon Lake Plant might originate out of state. This would put current and future rail transportation agreements at risk.

To the best of my recollection and belief, the above states my position at the time.

State of Ohio)
)
County of Stark)

VERIFICATION

Richard Soucie being duly sworn on 9th January, 1998, states that he has read the foregoing, and that it is true and accurate to the best of his knowledge and belief.

Richard Soucie

Richard Soucie

Sheryl L. Durant

Notary Public

Sheryl L. Durant
Notary Public, State of Ohio
My Commission Expires August 29, 1999

My Commission Expires:

THE
WOODSIDE
CONSULTING
GROUP

BUSINESS PLAN
FOR THE
WHEELING & LAKE ERIE RAILROAD

Prepared For

Wertheim Schroder & Co. Inc.

March 1990

65

P.O. Box 620622 2925 Woodside Road Woodside, California 94062 (415) 851-8131

In total, then, as shown by Table II-5, the trends in these selected WLE principal movements for local, forwarded, and received traffic combined show a favorable increase from 40,851 carloads in 1984 to 64,045 carloads in 1988. Although first half 1989 volume has declined because of certain local movements, the trends in WLE's volume shown in Table II-5 demonstrate, we believe, that the remaining principal movements of its traffic base have grown healthily in recent years.

Coal Traffic

As shown by Table II-1, STCC 11, Coal Traffic is projected to be WLE's single most important Commodity Group, with 19,577 carloads generating 1990 revenues of $9.7 million. WAC's original Business Plan recognized the importance of coal to the WLE as follows:

> "Norfolk Southern has been hauling approximately 1.7 million tons of coal per year from mines at Georgetown and St. Clairsville, Ohio, on the W&LE to a Cleveland Electric Illuminating (CEICO) plant at Avon Lake, OH, near Cleveland on another NS line that is not part of the transaction package.
>
> "As part of an overall marketing alliance negotiated as part of the proposed transaction, NS and the Wheeling group have agreed to a defined split of the revenue once the coal begins to move on an interline basis. The agreement in effect protects the rate and a favorable division as long as the coal continues to be mined at the present locations and moved to Avon Lake.
>
> "The coal mined on the Wheeling lines is moving under contracts with the Consolidation Coal Co. and, to a lesser extent both by contract and tariff, with the Oglebay-Norton company. The contracts expire at the end of 1992 and 1994 respectively. The coal produced at the mines is in the high sulphur category, and, consequently, its future is clouded by the complexities surrounding the ultimate outcome of acid rain legislation. For instance, the future of the movements could be in jeopardy if the burning of low sulphur coal is flatly mandated. With the installation of scrubbers, on the other hand, the coal from these mines could continue and could indeed increase due to its price and

proximity. Some blending of coal to reduce the delivered sulphur content occurs today, and additional blending could be carried out.

"A complication is that NS is not willing to protect the rate to Avon Lake if the blending of coal from outside sources amounts to more than a stipulated percentage of the present mix. A new agreement between the two railroads would be required to accommodate substantial blending and users would presumably have the option to seek out other coal sources.

"The Wheeling group has discussed the coal supply matter with most of the key parties involved, and has been informed that the coal producers have plans to continue mining coal, although at somewhat reduced levels after 1992, and that the utility is favorably disposed to continuing the present arrangement but unsure of what the precise outcome will be. The mines are economically well located for the customer, compared to alternate sources for low sulphur coal, and the utility is under some political pressure to continue to burn Ohio coal." (WAC Business Plan, page 18)

The Marketing Alliance between WLE and NS recognized the importance of coal traffic to the WLE. Subject to certain constraints, that Agreement established divisions of revenue between the carriers for existing coal traffic and structured the future relationship between the carriers for the continuation of the existing and the addition of certain new coal movements for a ten year period.

The most significant limitation placed by NS on its coal marketing arrangements with WLE was as follows:

"NS agrees to work with New Railroad on a reasonable basis to market High Sulfur Coal from New Railroad into the facilities of CEICO at Avon Lake. High Sulfur Coal is defined as coal loaded at locations served by New Railroad and with an average sulfur content no less than 95 percent of the average sulfur content of the coal shipped from Georgetown, Ohio during 1989. The 1989 average sulfur content shall be established utilizing the Federal Energy Regulatory Commission (FERC) data as summarized by Resource Data International, Inc. (RDI), or another mutually agreed index if the RDI summary is not available. Compliance with this sulfur content requirement shall be calculated for each origin on a 12-month moving average basis commencing with the initial month of shipment under the provisions hereof." (Marketing Alliance, Section 4, page 5)

The overall effect of this provision of the Marketing Alliance is to preclude NS from being required to work with WLE to move coal from any origin point having an average sulfur content of "less than 95% of the average sulfur content of the coal" shipped during 1989 to CEICO's Avon Lake Generating Plant.

In order to assess the likelihood that projected volume of WLE's Coal Traffic would continue to move in the future, we interviewed two coal producers as well as the coal user, Cleveland Electric Illuminating Company:

- Consolidation Coal Company (Georgetown Mine)
    - Mr. R.B. Atwater, Executive Vice President-Marketing
    - Mr. Jack Daley, Vice President-Sales
- Oglebay Norton Company (Saginaw Mine)
    - Mr. August F. Bradfish, Vice President-Coal and Nonferrous Mining Operations
- Cleveland Electric Illuminating Company (Avon Lake)
    - Mr. R.A. Soucie, Coal Purchasing and Transportation

These individuals verified the coal volumes and revenues shown in Table II-4 as correct. Based on our interviews, we also found the following:

- Avon Lake is a large generating plant and will be subject to tightened emission standards of not more than 2.5 pounds of sulfur per million BTU's, in accordance with the Clean Air Act.

- The effective date of the Clean Air Act has not yet been legislated, but it appears likely to be either January 1, 1995 or January 1, 1996.

- The Avon Lake plant is approximately 30 years old, and only one unit (Avon #9) would be suitable for a scrubber investment; no other "clean coal" technology would be appropriate for this plant.

- CEICO now has underway a comprehensive corporate Acid Rain Study which is evaluating all possible alternatives and the economic effects of each on all of its generating plants, including Avon Lake. That study will not be completed for some time, and, accordingly, CEICO has no firm plans at this time for Avon Lake.

- Political pressure will be brought to bear on CEICO by the State of Ohio to cause it to continue to burn the maximum amount of Ohio coal possible.

- Georgetown Mine's coal (1.3 million tons) moves under a contract which will expire at the end of 1992; and Saginaw Mine's coal (0.6 million tons) moves under a contract which will expire in September, 1994.

- Since 1980, both Georgetown's and Saginaw's coal shipments to Avon Lake have consisted of blends of high sulfur coal mined in Ohio and low sulfur coal purchased elsewhere, moved by barge and truck to those mines, and blended with Ohio coal in order to reduce the delivered coal's sulfur content.

Accordingly, based on our interviews, it is our judgment that the following is the most likely scenario for the Georgetown and Saginaw Mines' coal destined to the Avon Lake generating Plant:

- First, in conjunction with other utilities, a clear objective of CEICO would be to delay to the maximum extent the effective date of the Clean Air Act;

- Second, in order to meet the requirements of the Clean Air Act on its effective date, an increase (of perhaps 10% at the most) in the amount of low sulfur coal blended with Ohio coal could be accomplished, thereby permitting a continuation of existing volumes from both mines to the Avon Lake Plant without violating the provisions of the Marketing Alliance;

- Third, although CEICO may find it economic to install scrubbers at Avon Lake, this would affect only a portion of its existing capacity; and

- Finally, because of the demand for its generating capacity, the Avon Lake plant will likely not be closed for another 20 years, nor is new "clean coal" technology likely to be installed.

Thus, based on our review and on our interviews, it is our conclusion that the pro forma financial projections for WLE's continuing coal movements to Avon Lake are reasonably stated.

Limestone Traffic

As shown by Table II-1, STCC 14, Nonmetallic Minerals are projected to be an important Commodity Group for the WLE, with 20,201 carloads generating 1990 revenue of $5.9 million. This traffic consists almost entirely of limestone which is quarried

THE WOODSIDE CONSULTING GROUP

CHICAGO ACCESS

STATEMENTS

VERIFIED STATEMENT OF THOMAS M. O'LEARY OHIO RAIL DEVELOPMENT COMMISSION

January 12, 1998

My name is Thomas M. O'Leary. I am the Executive Director of the Ohio Rail Development Commission (ORDC). ORDC is the lead agency in coordinating the filings of the State of Ohio in Finance Docket 33388, the CSX/Norfolk Southern (NS) Control of Conrail.

My comments support the Wheeling & Lake Erie Railway (W&LE) filings in this proceeding. Specifically, it is the position of ORDC that:

1) W&LE will be severely harmed by the proposed transaction.
2) W&LE would not face impending bankruptcy if there were no Conrail sale.
3) A W&LE bankruptcy would have severe adverse impacts in Ohio.
4) Ohio has demonstrated the importance of W&LE to Ohio through its investments in W&LE projects.
5) STB should take whatever steps necessary to keep W&LE viable.

1) W&LE WILL BE SEVERELY HARMED

ORDC urges the Surface Transportation Board (STB) to carefully assess the adverse impacts on the W&LE as a result of the proposed sale. As Ohio's expert witness George Stern posited in his verified statement of October 21, 1997, "there is substantial reason" to believe that the proposed transaction will put W&LE into bankruptcy "from diversions due to acquisition of Conrail lines by NS and CSX." [Verified Statement of George Stern, pgs. 17 & 18/OAG 4.]

In making this evaluation, STB should focus its analysis only on the diversion of W&LE/NS interchange traffic and the economic stress on the W&LE's viability that such a loss of business will cause. According to Reginald Thompson of the W&LE, this W&LE/NS interchange accounts for

25% of W&LE's revenue. [Verified Statement of Reginald Thompson, pg. 2/W&LE-4.] Based on the proposed division of Conrail, the W&LE/NS combination which provides rail to rail competition to Conrail throughout Ohio will be transformed into a situation where NS goes from being W&LE's partner to its direct competitor. For W&LE customers such as Timken, US Steel, Republic Engineered Steel, Wheeling-Pittsburgh Steel, Ashland Petroleum, Aristech Chemical and others, the result will be the loss of competition in accessing the nation's rail network.

The NS and CSX response to this situation is to ignore these obvious adverse impacts, thereby subordinating the interests of the shippers; and instead, to focus their comments on the historical financial problems of the W&LE. Ironically, the source of these difficulties can be traced to the exorbitant price charged by NS in the spin-off of the W&LE to the previous ownership and management team.

ORDC has reviewed the unsealed portion of the January 14, 1998 Verified Statement of Mr. Thompson. ORDC finds the depth of Mr. Thompson's approach, i.e. analyzing 100% of actual traffic, much more compelling than the approach used by NS/CSX and their experts in their December 15, 1997 filing. NS/CSX and their experts went at great lengths into the history of the W&LE since 1990. They did not, however, provide an explanation of how W&LE would keep traffic when the playing field changed from W&LE/NS moves competing against Conrail moves to W&LE/NS moves competing against all NS moves. STB's role should be to focus on merger-related harms, not second-guess past W&LE business decisions, or prognosticate about W&LE's fate in the absence of the NS/CSX takeover proposal.

2) W&LE WOULD NOT FACE BANKRUPTCY IF NOT FOR CONRAIL SALE

In the Spring of 1997, ORDC conducted a competitive selection process to select a contract operator for the State of Ohio owned Panhandle line which runs from Columbus to Mingo Junction, Ohio. ORDC selected W&LE as one of the two finalists for the operating contract. (The Columbus & Ohio River Railroad, the incumbent operator, was eventually selected as the operator for the upcoming years.) Part of the ORDC analysis was a review of confidential financial reports of the W&LE. ORDC found that W&LE, though not without issues concerning long term debt, was basically a sound operation given its current customer base.

In addition, ORDC has had direct experience with the economic growth potential of the W&LE through new business development. ORDC has a very active Business Development Program through which we provide incentives, usually in the form of monetary assistance for new sidings, to rail-dependent companies locating or expanding in Ohio. In the last three years, ORDC has worked with W&LE to induce the following companies to expand or locate on W&LE rail lines:

* Best Plastics
* Georgia Pacific
* Inland Container
* Primary Packaging

* Republic Engineered Steel
* Sterilite

Contrary to NS/CSX assertions that the W&LE is a failing railroad plagued by poor management, ORDC is convinced that a review of recent W&LE financial statements demonstrates that it is a railroad which has weathered a number of financial storms (many beyond their control), i.e., the 10 month Wheeling-Pitt strike) in large part due to skilled management and aggressive marketing.

3) A W&LE BANKRUPTCY WOULD HAVE SEVERE ADVERSE IMPACTS ON OHIO

Every rail bankruptcy has a number of negative impacts on rail users, including uncertainties of the rail situation, changes in service patterns, and adjustments to new personnel and business strategies. The result of any W&LE bankruptcy, however, would be especially devastating for Ohio rail users due to the likely piecemeal breakup of the W&LE's 864 mile rail system. [See OAG-8, pg. 10.]

A piecemeal breakup means lost synergies, including the loss of single line hauls for Ohio rail users. For example, it is very possible that piecemealing of the W&LE would mean that there would be different rail carriers operating the W&LE lines in western Ohio and down by the Ohio River in eastern Ohio. Recently, new aggregate business between these regions has been developed by W&LE, largely because of W&LE's ability to provide a single line haul. This business would likely disappear with a W&LE bankruptcy.

Another example of a likely loss of a single line service resulting from a bankruptcy would be ore traffic which now moves from the Lake Erie port of Huron to Wheeling-Pittsburgh Steel along the Ohio River. It is likely that there would be two different post-W&LE railroads serving the lake area and the river area, thus negating the single line ore movement from Huron. The result would be the loss of effective rail to rail competition for this major integrated steel producer.

W&LE currently fills a rail market niche which Ohio needs for continued economic development. W&LE is right sized for many development opportunities. It is large enough to offer such "big railroad" services as access to Lake Erie and Ohio River docks, direct access to major classification yards (Willard and Bellevue), a pool of freight cars, extensive locomotive and car repair facilities, track maintenance and engineering capabilities, and an intermodal ramp (NEOMODAL). But W&LE is small enough that many customers deal with the President, Chief Operating Officer, Chief Marketing Officer, and other top company officials when it comes time to make a decision on new plant location or expansion.

The failure of the W&LE would also isolate the NEOMODAL facility, thereby foreclosing any opportunity for this nationally recognized project to reach its potential as a key component in Ohio's transportation system. Conversely, favorable consideration by the STB of W&LE's requested conditions could afford both the W&LE and NEOMODAL an opportunity to succeed.

Further, W&LE provides another valuable economic development tool, neutral access to all of

Ohio's Class I railroads at key yard facilities. Locating a new industry along the tracks of the W&LE is tantamount to locating it on a jointly served NS/CSX/Conrail site.

4) INVESTMENTS IN W&LE DEMONSTRATE W&LE'S IMPORTANCE TO OHIO

Throughout the Conrail sale process, ORDC has expended much time and effort to ensure that Ohio's position regarding the W&LE is well presented to the STB. ORDC has done so because the continued viability of the W&LE is one of the most important rail issues in Ohio. After all, the STB must not lose sight of the fact that approval of the NS/CSX joint application will result in the division of Ohio's largest railroad and potentially the destruction of our fourth largest system. Together, Conrail and W&LE represent 37% of all Ohio railroad miles.

However, the importance of the W&LE to Ohio is perhaps best demonstrated by Ohio's continuing commitment to expend scarce state rail funds to assist the W&LE in rebuilding their system from a deteriorated condition left by NS at the time of its sale of the original W&LE sale.

Since the W&LE was formed in 1990, the State of Ohio has invested nearly $6 million in 15 rehabilitation, acquisition, and spur construction projects involving the W&LE. Currently, ORDC is considering a $600,000 track improvement project on one of the W&LE's lines serving the aggregates industry.

The $6 million in investments is more than Ohio invested in any other railroad during this time period. In terms of evidence for ORDC's contention that preserving W&LE is vital, Ohio has come to the table to revitalize rail infrastructure neglected by its previous owner.

5) STB SHOULD KEEP W&LE VIABLE

In its pleadings, W&LE has presented a wide array of options to redress the harms the proposed sale of Conrail will cause it. ORDC urges the STB to evaluate the remediation proposals and to mandate concessions to W&LE sufficient to keep W&LE a viable railroad.

VERIFICATION

COUNTY OF FRANKLIN)
) SS:
STATE OF OHIO)

Thomas M. O'Leary, being duly sworn, deposes and states that he has read the foregoing statement, knows the facts asserted therein, and that the same are true as stated.

Thomas M. O'Leary

Thomas M. O'Leary
Executive Director
Ohio Rail Development Commission

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

Beth Anne Wilson

Beth Anne Wilson, Notary Public

My Commission Expires: August 30, 2000

GENCORP

Specialty Polymers Division

Mogadore Plant
165 South Cleveland Avenue
Mogadore, Ohio 44260-1505

Tel: 330-628-9925

January 6, 1998

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
STB Finance Docket No. 33388
1925 K Street, NW
Washington, DC 20423-0001

RE: CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Lease/Agreements; Conrail, Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388.

Dear Secretary Williams:

GenCorp Inc., Specialty Polymers Division produces styrene/butadiene latices at Mogadore, Ohio. My name is Stanford D. Hagler and I am Director of Purchases and Traffic for the Specialty Polymers Division, which includes distribution responsibility for both inbound and outbound rail shipments at the Mogadore facility. I have had this responsibility for the last ten years.

The Wheeling and Lake Erie Railway Company (W&LE) which has direct access to the Norfolk Southern Railway Company, the CSX Corporation, and the Conrail, Inc. serves the Mogadore facility. During 1996, our facility received approximately 550 inbound shipments of raw materials and made approximately 1400 outbound shipments of product by rail, which represented approximately 60% and 80% of the volumes shipped, respectively.

The W&LE has provided excellent rail service to satisfy the needs of our facility as we strive to meet the service expectations of our customers in other regions. This level of service is essential and has been provided in spite of its heavy debt load. They have been able to grow their business to remain a viable and cost effective provider of services. Essential to GenCorp is the continued presence of a financially viable W&LE who could be damaged by the Conrail control proceeding if their needs to compete in the markets are not given proper consideration.

GenCorp had previously voiced support of the acquisition and division of the Conrail by the NS and CSX and felt that overall service to our key customers that will be impacted by the acquisition should be enhanced. GenCorp still supports the acquisition provided that the W&LE maintains their ability to compete in their markets.

GenCorp supports the efforts of the W&LE to gain access to Chicago. This would provide alternative and competitive routing that would assist GenCorp in being competitive in markets served outside of our region and preserve the viability of the W&LE by access to such market.

I, Stanford D. Hagler, declare that the foregoing is true and correct. I certify that I am qualified and authorized to file the verified statement executed on January 6, 1998.

Sincerely,

Stanford D. Hagler

Stanford D. Hagler
Director of Purchases & Traffic

SDH:JC

STATE OF OHIO)
)
County of Stark)

On January 6, 1998 Stanford D. Hagler, Director of Purchases & Traffic signed the above.

Sheryl L. Durant — 1/6/98

Notary Public — Date

My Commission Expires: August 29, 1999

Sheryl L. Durant
Notary Public, State of Ohio
My Commission Expires August 29, 1999

"Distinctively the Best"
HVC Inc.
909 West Smith Road
Medina, Ohio 44256
(330) 723-2020
1-800-825-3939
FAX (330) 725-2473

January 8, 1997

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Attention: STB Finance Docket No. 33388
1925 K Street N.W.
Washington, DC 20423-001

Dear Mr. Williams:
My name is Tim Maegly, Vice-President and General Manager of HVC Inc. I have been with HVC for 20 years and have direct responsibility in determining material transportation.

I would like to reference: CSX Corporation and CSX Transportation Incorporated; Norfolk Southern Corporation and Norfolk Southern Railway Company-Control and Operating Leases/Agreements: Conrail Incorporated and Consolidated Rail Corporation,
STB Finance Docket No. 33388.

HVC is a distributor of chemical products. Our primary business is processing raw material chemicals from areas all across the USA. A large volume of our products come from the western area of the country.

The Wheeling & Lake Erie Railroad provides HVC with a vital service. Most of our western source chemicals are channeled through Chicago. The W & LE could provide a competitive and efficient route from Chicago to our Medina, Ohio facility.

The long term viability of our business depends on a sound and competitive rail carrier. **We need to have the ability of W & LE to secure a Chicago access. I also believe this will make the W & LE a stronger and more viable business** which in the long run, will be healthy for our community.

Sincerely,

Tim Maegly

Tim Maegly,
Vice President/General Manager

TFM:ab

I verify that Tim Maegly, Vice President/General Manager came forward and signed this document on January 8, 1998.

Sheryl L. Durant
NOTARY PUBLIC
Sheryl L. Durant
Notary Public, State of Ohio
My Commission Expires August 29, 1999
County of Stark

January 6, 1998

RONALD W. KRUSE
VICE PRESIDENT - MARKETING

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Attention: STB Finance Docket No. 33388
1925 K Street NW
Washington, DC 20423-001

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

Dear Mr. Williams:

I am Ronald W. Kruse, Vice President/Marketing for National Lime & Stone Company. I have been in my present position for over 20 years and am responsible for overseeing the Sales and Marketing efforts, including some direct selling.

Our Company is in both the construction aggregates and industrial minerals, particularly for the Glass Industry, businesses. We are served by the Wheeling & Lake Erie Railway Company from our Carey, Ohio location.

I support W&LE gaining access to Chicago for primarily two reasons. First, it would provide for us alternative routing to Chicago markets and it would also help preserve the viability of the W&LE which we desperately need to serve our other construction aggregates markets.

Thank you for your attention to this request.

Very truly,

R.W. Kruse

R.W. Kruse

RWK/jg

Sworn to and subscribed in my presence this 7th day of January, 1998 by Ronald W. Kruse.

Judith Benanzer-Greive
Notary Public

JUDITH BENANZER
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires June 2, 1998

THE NATIONAL LIME AND STONE COMPANY, P.O. BOX 120, FINDLAY, OHIO 45839-0120 419/422-4341 FAX 419/422-3952

Thomas G. Murdough, Jr.
President

January 7, 1998

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Attention: STB Finance Docket No. 33388
1925 K Street, NW
Washington, DC 20423

REFERENCE: STB Finance Docket No. 33388

Dear Mr. Williams,

As the president of an Ohio manufacturing company which employs approximately 1,000 people, I am writing to you to express my concerns with regard to the CSX Corporation and CSX Transportation Incorporated, the Norfolk Southern Corporation and Norfolk Southern Railway Company Control and Operating Leases and Agreements, and Conrail Incorporated and Consolidated Rail Corporation, STB Finance Docket No. 33388.

In the 28 combined years as the president of The Step2 Company and former president of The Little Tikes Co.--both manufacturers of plastic consumer products--rail service has been a vital means in transporting not only the plastic resin used in the manufacturing process, but also in moving the finished product from our plants to our various customers' retail distribution centers.

Because the Wheeling & Lake Erie Railway Co. provides essential rail service to our company, I support their gaining access to Chicago because it will provide us alternative and competitive routing, and assure fair rate competition among the railway companies who offer service to Chicago. Most importantly, granting them access to Chicago will preserve the viability of the Wheeling & Lake Erie Railway Co.

Thank you for considering my comments.

Sincerely,

Thomas G. Murdough, Jr.
President

Sworn to before me and signed in my presence this 7th day of January 1998.

Notary Public, State of Ohio
(Resident County - Summit)

The **Step2** Company, 10010 Aurora-Hudson Road, PO Box 2412, Streetsboro, OH 44241, U.S.A.
☎ (216) 656-0440 Fax (216) 6[illegible]

[illegible] J [illegible], Notary Public
[illegible]
[illegible]
My Commission Expires May [illegible]

United States Ceramic Tile Company

A LAUFEN COMPANY

January 9, 1998

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Attn: STB Finance Docket No. 33388
1925 K Street, NW
Washington, DC 20423-001

Reference: CSX Corporation and CSX Transportation Incorporated: Norfolk Southern Corporation and Norfolk Railway Company - Control and Operating Leases/Agreements; Conrail Incorporated and Consolidated Rail Corporation, STB Finance Docket No. 33388

Dear Mr. Williams:

I am Daniel R. Spadafora, Purchasing Manager for United States Ceramic Tile Company. I have held this position for eleven (11) years and am responsible for all purchasing and inbound freight within my company.

United States Ceramic Tile is the third largest ceramic tile producer in the United States. The Wheeling and Lake Erie Railroad is our short line hauler at our plant in East Sparta, Ohio.

My company supports Wheeling and Lake Erie in gaining access directly into Chicago for the following reasons:

1) Provide alternative routing which will enhance competition and rates as well as transit time.
2) My customer's west of Chicago would then entertain intermodal shipments because of the reduced transit time..
3) Help preserve the viability of Wheeling and Lake Erie as an integral short line hauler which emphasizes customer service.

Thank you for this opportunity to express my concern.

Sincerely,

Daniel R Spadafora

Daniel R. Spadafora
Purchasing Manager

Sharelle J Miller

SHARELLE J. MILLER
Notary Public, State of Ohio
My Commission Expires Jan. 24, 2001

P.O. Box 338 • 10233 Sandyville Rd SE • East Sparta, OH 44626 • 330/866-5531 • FAX 330/866-5374

OWENS CORNING WORLD HEADQUARTERS
ONE OWENS CORNING PARKWAY
TOLEDO, OHIO 43659
419 248.8000

January 9, 1998

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Attention: STB Finance Docket No. 33388
1925 K Street, NW
Washington, DC 20423-001

Dear Mr. Williams:

My name is Anthony R. Federici, and I am Traffic Manager for Owens Corning in Toledo, Ohio. I have 20 years experience at Owens Corning where my duties have included rate negotiation and equipment leasing for 21 of our 52 production facilities located in the United States.

Owens Corning is a manufacturer of high quality fiberglass insulation material and roofing shingles. Owens Corning has a large manufacturing plant in Medina, Ohio served by the Wheeling and Lake Erie Railway. The Wheeling and Lake Erie Railway provides essential rail service to this important plant.

I understand from the above-mentioned Finance Docket filing, the Wheeling and Lake Erie Railway is requesting haulage rights with underlying trackage rights into Chicago. Allowing the Wheeling and Lake Erie Railway access to Chicago would be beneficial to Owens Corning. This would allow for an alternative route as well as a competitive route into and out of the Chicago area. Because the Wheeling and Lake Erie provides an essential service for our raw materials via the Chicago gateway, the Wheeling and Lake Erie Railway would be a competitive alternative.

We ask the Board to grant this request to the Wheeling and Lake Erie Railway. Thank you for your consideration.

Sincerely,

Anthony R. Federici

Anthony R. Federici
Traffic Manager,
Production Materials