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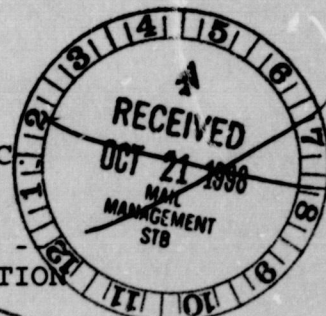
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BEFORE THE
SURFACE TRANSPORTATION BOARD

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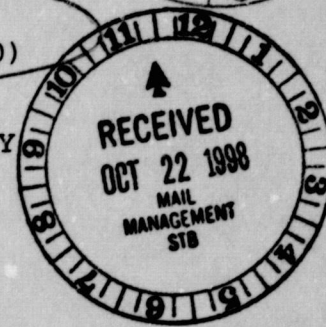
FINANCE DOCKET NO. 33388
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS -
CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION



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

RESPONSIVE APPLICATION OF
WHEELING & LAKE ERIE RAILWAY COMPANY

WLE-10



REQUEST TO CLARIFY AND FOR FURTHER INSTRUCTION
OF RESPONSIVE APPLICANT
WHEELING & LAKE ERIE RAILWAY COMPANY

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October 21, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

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CSX CORPORATION AND CSX TRANSPORTATION, INC.,
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COMES NOW the Wheeling & Lake Erie Railway Company (W&LE) and requests the Board to intervene to clarify, provide further instruction to the parties, and confirm the scope of the protective conditions that the Board first discussed and set forth as a remediation package at page 109 of 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).¹ Further, W&LE requests that the Board

¹ Hereafter, this decision will be referred to as "Decision No. 89."

ensure that these conditions are given their intended effectiveness as that intent is expressed at page 109 of Decision No. 89, and as reaffirmed at page 78 of Decision No. 96 (served October 19, 1998). W&LE tenders the following proposal and request for clarification in accordance with Ordering Paragraph 68 of Decision No. 89.

I. INTRODUCTION AND BACKGROUND

This filing constitutes W&LE's tenth formal submission to the Board in STB Finance Docket No. 33388, and its second since the Board's issuance of Decision No. 89. As the Board is well aware, W&LE filed a responsive application requesting a series of protective conditions designed to ameliorate the adverse impact of the proposed Transaction² upon W&LE, its shippers, and the region it serves. In Decision No. 89, the Board -- (1) expressed serious concern as to the impact of the Transaction on W&LE's long-term financial viability; (2) determined that W&LE would face "heavy losses" as a result of the Transaction; and (3) concluded that it was therefore necessary for the Board to impose protective conditions in favor of W&LE, crafted by the Board not only to preserve the essential services that W&LE provides, but also to protect W&LE's competitive and strategic importance as a regional carrier in highly

² W&LE uses the term "Transaction" to signify the series of railroad transactions encompassed in STB Finance Docket No. 33388 (including various "Sub-No." components), and as approved and conditioned by the Board.

industrialized areas of Ohio, Pennsylvania, and West Virginia. Subsequently, in its Decision No. 96, the Board again recognized that the diversion impact on W&LE would be substantial and would threaten W&LE's future viability. Board reaffirmed its intent to give W&LE access to additional traffic sufficient to ensure that it can continue to provide essential services post-Transaction. See, Decision No. 96 at 18.

The protective conditions extended to W&LE in Decision No. 89 are contained in that decision's Ordering Paragraph 68, which reads as follows:

68. In STB Finance Docket No 33388 (Sub-No. 80), the responsive application filed by W&LE is granted in part and denied in part. As indicated in the decision, applicants³ must (a) grant W&LE overhead haulage or trackage rights access to Toledo, with connections to (the Ann Arbor Railroad ("AA")) and other railroads at Toledo, (b) extend W&LE's lease at, and trackage rights access to, NS' Huron Dock on Lake Erie, and (c) grant W&LE overhead haulage or trackage rights to Lima, OH, with a connection to (the Indiana and Ohio Railway ("IORY")) at Lima. Applicants and W&LE must attempt to negotiate a solution with regard to these matters; and, if negotiations are not fully successful, may submit separate proposals no later than October 21, 1998. Further, applicants and W&LE must attempt 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, WV, and to inform us of any such arrangements reached.

³ "Applicants" as used throughout this pleading, and as used by the Board in the context of this quote, signifies CSX Corporation and CSX Transportation, Inc. (which will be referred to hereafter and collectively as "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (which will be referred to hereafter and collectively as "NS").

Over the past 90 days since Decision No. 89 was served, the parties have engaged in extensive and largely productive negotiations concerning numerous aspects of the Board's order. Among those areas where the parties have persevered and reached an accord are the designation of the trackage rights routes over which W&LE would be able to reach Toledo and Lima (including the charges and related arrangements). W&LE representatives have met with representatives of NS and CSX, and W&LE has inspected via hi-rail vehicle the routes over which it is to reach Toledo and Lima. W&LE and NS have agreed upon trackage rights fees for W&LE's proposed Toledo trackage rights, and W&LE has engaged in extensive discussions with CSX regarding W&LE trackage rights operations to Lima.

Also, W&LE and NS are nearing completion of negotiations concerning the use of certain yard trackage at NS' Homestead Yard (Toledo) to facilitate W&LE's planned trackage rights operations. W&LE has made progress with NS concerning W&LE's continued use of the Huron Docks facilities, although it is now apparent that the parties require some additional guidance from the Board to bring these negotiations to a successful conclusion.

W&LE is pleased to report that it has worked very hard to comply with the Board's orders and has negotiated diligently with the applicants with the goal of reaching the necessary arrangements to implement the Board-imposed conditions. While W&LE is satisfied that it has made considerable progress with the

applicants on many fronts, there do exist some areas of impasse where further Board action is needed. Specifically, and as will be explained more fully below, the parties fundamentally disagree concerning W&LE's local access to Toledo and Lima. The parties also disagree on the appropriate terms for extension of W&LE's lease of the Huron Docks and trackage rights to that facility. Finally, W&LE believes (though the applicants do not) that the Board intended for the parties to conclude arrangements that will afford W&LE the opportunity to obtain additional traffic in aid of its ability to continue to be able to provide essential service -- including service to shippers on CSX's line between Benwood and Brooklyn Junction and to provide expanded service to aggregate shippers in Ohio. This is especially so, since the Board identified these as two areas that should be beneficial to the parties and to affected shippers, including Bayer and PPG Industries (See, Decision No. 89 at 123 and Decision No. 96 at 18 (footnote 42)) and Ohio-based aggregate shippers (See, Decision No. 89 at 111).

Clearly, the parties have endeavored to complete negotiations on those subjects where the Board's mandates are unambiguous. However, where the Board's directions to the parties are unclear, the parties disagree fundamentally on the meaning and intent of the Board's instructions as they are contained at page 109 and Ordering Paragraph No. 68 of Decision No. 89. Specifically, the parties disagree as to the scope of W&LE's access to Toledo and Lima, upon which the viability of the

respective trackage rights access depends. The parties also disagree on the appropriate terms for the extension of W&LE's lease of the Huron Docks (and trackage rights to that facility), on W&LE rights with regard for service to shippers on CSX's line between Benwood and Brooklyn Junction, and arrangements whereby W&LE would provide expanded service for aggregate shippers. Obviously, to conclude agreements consistent with the Board's mandates, the parties at this time require clarification and further instruction from the Board.

The Board stated in Decision No. 89 that if the parties were unable to reach agreements necessary to effectuate the conditions extended in favor of W&LE, it would institute "expedited proceedings" to resolve any matters upon which there remained an impasse. Decision No. 89 at 109. Further, with respect to arrangements concerning aggregate service and service to captive shippers on CSX's Benwood-Brooklyn Junction line, the Board made clear that such arrangements 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). See, Decision No. 89 at 111 and 123, and Decision No. 96 at 18 (footnote 42). We believe that it is appropriate to have the Board address these issues as part of the expedited proceeding.

In Decision No. 89, the Board assessed the potential traffic diversion losses facing W&LE. It drew certain conclusions and issued findings concerning the magnitude of economic losses facing W&LE as a result of the Transaction. In response, W&LE filed W&LE-9, a petition for reconsideration and clarification, wherein W&LE identified where and how the Board committed material error in determining diversion loss estimates that are substantially lower than the evidence and the Board's own findings can support. (This petition was denied just one day prior to the filing of W&LE-10.) Finally, to thoroughly protect its interests in the subject proceeding, W&LE filed with the United States Court of Appeals, D.C. Circuit, a Petition for Review of the Board's decision.

As the following sections will demonstrate, W&LE and the applicants, in some instances, disagree upon the interpretation and intent of the Board's orders. Where such conflicting interpretations have arisen, the applicants have taken the most restrictive interpretation of key matters, and W&LE has been unable to resolve the parties' differences. Notably, the parties differ fundamentally on the following issues:

- * the scope of W&LE's market presence at Toledo;
- * the duration and lease rate for W&LE's continued lease of the Huron Dock facilities;
- * the scope of W&LE's market presence at Lima;
- * W&LE operations from Benwood to Brooklyn Junction; and

* expanded W&LE aggregate service.

There have been no agreements between the parties with respect to expanded W&LE aggregate service or W&LE access to shippers on CSX's Benwood to Brooklyn Junction line. W&LE believes that the Board's Decision No. 89 clearly intended that W&LE's access to additional aggregate traffic and operations over CSX's Benwood to Brooklyn Junction line were integral portions of the remediation designed for W&LE. The applicants, on the other hand, do not appear to be of the opinion that agreements on the aggregate and Benwood to Brooklyn Junction issues are necessary to their negotiations with W&LE, thus interpreting the Board's focus on these specific issues as little more than friendly advice.⁴ Indeed, the applicants believe that there is nothing mutually beneficial in allowing W&LE to serve customers over applicants-owned lines, so there can and should be no negotiations on such subjects.

W&LE has made considerable progress with the applicants, but, as noted above, certain disagreements between

⁴ Obviously, the Board relied on selected portions of the administrative record when it arrived upon the aggregate and Benwood to Brooklyn Junction relief. Decision No. 89 itself makes three things very clear. First, agreements on these two issues are specifically intended as components of a comprehensive package of conditions designed to preserve a viable W&LE. Second, the Board expects, and should expect, a favorable conclusion of negotiations on these two matters. Third, it was motivated to specifically designate these two topics as part of the W&LE remediation largely because such conditions would also address the interests of other parties -- such as, PPG Industries, Senator Rockefeller and Representative Wise of West Virginia, various Ohio-based aggregate shippers, and the State of Ohio.

the parties remain. These disagreements hinge upon key issues, appear intractable, and will not be resolved through any additional, private negotiations absent Board intervention and clarification. Accordingly W&LE is opposed to any delay in clarifying such key issues by any mere extension of time, and it requests that the Board make clear that it intended for aggregate service and Benwood-to-Brooklyn Junction access to be integral parts of the remediation granted to W&LE as more fully explained in Section E, below. W&LE believes that the Board committed a drafting error when it used the word "or" in connection with its ordered negotiations on aggregate service or Benwood - Brooklyn Junction service, because use of the word "or" would require the parties to make a mutually exclusive choice between the two negotiation topics. W&LE believes that the use of "or" was unintended, because, if the Board's language is taken literally, it pits the interests of Ohio (and its shippers) against those of West Virginia. However, if the Board did indeed mean "or," rather than "and," then W&LE would reluctantly elect to pursue local operating rights on CSX's Benwood to Brooklyn Junction line.

II. BASES FOR RELIEF AND GUIDING PRINCIPLES

The specific terms and conditions ultimately attached to the protective relief that the Board has extended to W&LE must be shaped by the objectives and policies that prompted the Board to act in the first place. W&LE is a Class II, regional carrier,

serving highly industrialized areas of Ohio, Pennsylvania, and West Virginia. It is of critical strategic significance to the region it serves.⁵ Indeed, the Board recognized "[b]y assuring that smaller railroads that provide essential services in such areas as the Ohio Region and New England will remain viable and will continue to be able to compete, the conditions promote important competitive options and further regional development". Decision No. 89 at 187.

In approving the Transaction, the Board made clear that W&LE provides essential services and that it would not permit the applicants to undermine or threaten the important functions provided by regional carriers such as W&LE. Addressing the concerns of a number of short line and regional railroads (including W&LE) that would be affected by the Transaction, the Board observed that "[W&LE], and other small carriers provide valuable services to shippers on a regional basis." *Id.* at 53. Further, in electing to impose conditions to preserve essential services, the Board stated that, "W&LE not only provides valuable competitive service to shippers, but it also provides a transportation network that could be important to shippers if the major carriers have difficulty providing service." *Id.* at 108.

In sum, the Board perceived that the Transaction obviously threatened W&LE's strategic position as a regional

⁵ W&LE's critical role in fostering economic and industrial development is very much a centerpiece of the State of Ohio's support for W&LE. See, OAG-4 at 13-15. ("W&LE is an essential component of the rail transportation system in Ohio." *Id.* at 14.)

carrier and as a potential relief valve for traffic in the event that the applicants experience service problems in the future, and it embraced a policy dedicated to promoting and preserving the important functions provided by carriers such as W&LE. As a result, the Board did not impose conditions directly designed to protect competition to any specific shipper or group of shippers, but constructed instead with the specific aim of preserving W&LE by opening access to new revenue opportunities.⁶ The Board employed a virtually identical rationale when it imposed protective conditions sought by the Texas-Mexican Railroad ("Tex Mex") in the Union Pacific - Southern Pacific railroad merger.⁷

⁶ When the Board imposes protective relief by extending to a particular carrier access to markets it did not previously serve, the Board is inescapably involved in an inexact science. For example, when granting conditions to such parties as the New England Central Railroad, Inc., and W&LE in this proceeding; the Texas-Mexican Railroad in the Union Pacific-Southern Pacific merger proceeding (see footnote 7, below); or the Missouri-Kansas-Texas Railroad Company in Union Pacific -- Control -- Missouri Pacific; Western Pacific, 366 I.C.C. 462 (Sept. 24, 1982), the Board (and, in the M-K-T's case, the Interstate Commerce Commission) simply imposes a condition that it believes is best-suited to ameliorate the problem. The Board does not appear to "put on its green eyeshade" and attempt to match the remediation to the complained of harm on a dollar-for-dollar basis.

⁷ In that case, much like the case with W&LE, the Board found persuasive Tex Mex' arguments that the proposed UP-SP transaction would divert away sufficient revenue as to threaten Tex Mex' future viability. (In UP-SP, however, the Board evidently found it unnecessary to rule on the exact amount of potential diversion loss Tex Mex faced.) Where, in the subject Transaction, the Board embraced the functions of Class II and III carriers as a policy basis for imposing relief for W&LE, it similarly invoked NAFTA (and related international trade objectives) as a basis for granting relief for Tex Mex in the UP-SP case. Finally, like the relief extended to W&LE in Decision No. 89, the Board granted Tex Mex' responsive application (access to new markets via overhead trackage rights) without ever

Having addressed here the general principles that appear to undergird the Board's decision to grant W&LE remediation, W&LE makes clear that it is filing the subject submission because it has not been able to agree with the applicants about the proper scope and interpretation of some of the relevant protective conditions. The specifics of this dispute will be set forth below. For now, W&LE will simply set forth the standards by which it believes the Board should be guided in interpreting the protective conditions it has granted.⁸

Having reviewed the body of recent rail merger precedent (including proceedings over which the Interstate Commerce Commission presided), W&LE has found no established Board policy to interpret protective conditions either strictly in favor of the primary applicants or liberally in favor of the party requesting the relief. Instead, where parties reach an impasse because they fail to agree on the meaning or intended

attempting to quantify (in dollar amounts) the economic benefit of the conditions it had granted to Tex Mex. See, STB Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation et al. (Decision No. 44) (served August 12, 1996) slip op. at 148-150 (hereafter, "UP-SP").

⁸ Had W&LE been aware several weeks ago that the parties would come to an impasse on key aspects of protective conditions granted by the Board, W&LE would have filed a petition for clarification at that time. However, W&LE moved forward with the objective of concluding its negotiations with the applicants as expeditiously as possible and with the hope that the applicants might reconsider some of their more restrictive, hard-line positions. Thus the areas of impasse discussed below were not fully apparent until the Board's October 21st deadline drew near.

scope of a Board-imposed condition, the Board's focus appears to be centered exclusively upon the intent behind the condition.

For example, in the aftermath of the Union Pacific - Southern Pacific merger proceeding, various parties returned to the Board to seek clarification of certain conditions that the Board imposed. Invariably, the Board turned to three simple questions to resolve such disputes -- (1) what does the plain language of the provision suggest, (2) what concerns prompted the Board to impose the condition in the first place, and (3) what was the Board's intent in imposing the condition?⁹ These are the questions that the Board should employ here as well.

In prescribing the appropriate relief in favor of W&LE, the Board should also ensure that the conditions are given sufficient breadth to ensure their effectiveness. If W&LE cannot derive enough traffic from the new markets to which it has been given access, it will not be able to serve these markets. In other words, the Board should ensure that the scope of and the terms underlying W&LE's access to Toledo and Lima permit W&LE to obtain sufficient benefit from these protective conditions to be able to recoup revenues adequate to sustain operations¹⁰ and to

⁹ See, UP-SP Decision No. 74 (served August 29, 1997) at 5, and UP-SP Decision No. 57 (served November 20, 1996) at 3 and 5.

¹⁰ As a regional railroad, W&LE is extremely service-conscious, and it intends seriously to cultivate its new presence in Toledo and Lima to the maximum extent possible. W&LE realizes that in order to establish an effective and fully competitive presence in both Lima and Toledo, it must operate with as much autonomy as is possible under the dictates of the Board's protective conditions. Naturally, W&LE desires to initiate

contribute, in incremental part, to W&LE's ability to continue providing essential services. The principle is comparable to that guiding the Board's interpretation of a "contract modification condition" extended to the Burlington Northern and Santa Fe Railway Company ("BNSF") in the UP-SP merger proceeding. In the UP-SP case, shippers on "2-to-1" points protected by new BNSF access were given the right to terminate half of their existing contracts (which had been negotiated with either UP or SP), and permit BNSF to bid on that traffic. The objective for so doing, the Board noted, was that the provision, "will help ensure that BNSF has immediate access to a traffic base sufficient to support effective trackage rights operations." UP-SP, Decision No. 44 at 146.

trackage rights operations to both Toledo and Lima to ensure that its presence at these locations is more than just token or in name only. W&LE will make clear to Toledo and Lima its commitment to service by assuming the capital expense and deployment of resources necessary to initiate trackage rights operations. Indeed, the Board should recognize from such proceedings as the UP-SP oversight that shippers vastly prefer to have a carrier physically present and serving them directly, than depending upon a competitor's haulage service. See, UP-SP (Sub-Nos. 26 and 28) "Houston/Gulf Coast Oversight" (BNSF filings of July 8, 1998 and October 16, 1998), wherein BNSF makes clear the service advantages its customers enjoy when it has instituted trackage rights operations, and when areas such as Brownsville, Texas, have been denied BNSF trackage rights service.

Also, it is important to W&LE that its service to Lima and Toledo not be dependent on other carriers -- particularly those who will inevitably experience "growing pains" as they undertake to implement a transaction of such tremendous magnitude. For all of these reasons, W&LE will rely on its own operating experience and thereby manifest to the public its commitment to serve new territory by electing to exercise the trackage rights option that the Board had extended to it, rather than accepting the more limited (and limiting) option of haulage rights service.

Like BNSF in the UP-SP merger proceeding, W&LE must be assured access to adequate traffic to justify its newly acquired trackage rights. In fact, in this case, the circumstances warrant Board attention even more than they did with BNSF, inasmuch as access to Toledo and Lima are directly linked to W&LE's future survival (rather than the preservation of competition to "2-to-1" markets, as was the case in the UP-SP proceeding). Thus, a broad interpretation of W&LE's access to Toledo and Lima is both a means (i.e., assuring that W&LE trackage rights generate sufficient traffic density to be practical) and an end (providing W&LE with access to additional traffic, thereby preserving its existence and the essential services it provides). The Board has declared that its intention was not to base relief accorded to W&LE in terms of dollar-for-dollar indemnification for diversion losses. Rather the Board intended to preserve W&LE's ability to remain viable and to continue to provide essential service. See, Decision No. 96 at 18. For these reasons, it appears that the Board has elected not to project the exact level of revenue W&LE will derive from its new access to both Toledo and Lima, but the Board should at least ensure that W&LE has access to sufficient traffic at these points to sustain the trackage rights operations it has permitted W&LE to undertake.

III. STATUS REPORT AND REQUESTS FOR FURTHER INSTRUCTION

W&LE will address each of the Board's protective conditions in the order in which they are presented in Ordering Paragraph 68 of Decision No. 89. For the purposes of this section, W&LE will offer a brief status report concerning negotiations on each condition listed in Ordering Paragraph 68, and will list those terms on which the parties have come to an agreement. Then, W&LE will identify those issues over which the parties disagree (and over which an impasse exists and will continue to exist without further Board intervention), and W&LE will offer its recommended resolution of each impasse, including the general terms and conditions for implementing the protective relief.

A. Trackage rights access to Toledo

W&LE has elected to serve Toledo by way of trackage rights operations from Bellevue, OH, to Toledo, OH, via the existing NS route between these two points. (For a complete explanation of its trackage rights election, see footnote 10, above.) As a portion of this arrangement, NS has agreed to convey to W&LE the Maumee River pivot bridge over which NS obtained authority to discontinue service in Docket No. AB-290 (Sub-No. 197X), Norfolk and Western Railway Company -- Abandonment -- Toledo Pivot Bridge in Lucas County, Ohio (modified by way of NS' filing of March 4, 1998, informing the Board of its decision to seek only discontinuance authority over

the pivot bridge). The parties have agreed that NS and W&LE will need to submit to the Board those regulatory filings necessary to enable W&LE to initiate trackage rights operations to Toledo and to permit the sale of the pivot bridge (and NS' retention of operating rights over this bridge). NS and W&LE are moving forward on discussions concerning W&LE's use of two tracks at NS' Homestead Yard which would be suitable for the pick up and delivery of traffic, and which are essential to give effect to W&LE's operations. Finally, W&LE and NS have agreed to explore the reconstruction of certain track facilities -- a so-called "Bellevue mini-plant" -- that will smooth operations around Bellevue. (On this last point, discussions have not progressed very far, but the parties have not yet reached an impasse. In any event, the construction of this physical plant is directly linked to the Board's conditions, and should, in the event of impasse, presented to the Board for resolution.)

As stated previously, the parties do not agree as to what access W&LE may have to industries located in the Toledo area. W&LE believes that the Board's language in Ordering Paragraph 68 is clear. Access to Toledo, means access to local industries, and not merely connections with all other railroads in the Toledo area (including CSX and NS). W&LE believes that this is what the Board intended when it provided for W&LE "overhead trackage rights... access to Toledo, with connections to AA and other railroads..." Decision No. 89 at 181. The Board did not intend to limit W&LE's access to Toledo only

for the purpose of interchanging traffic there with the Ann Arbor and other railroads in the vicinity, as the applicants have insisted throughout the negotiations. W&LE submits that if the Board adopts the applicants' overly restrictive interpretation of the Toledo conditions, W&LE would lack sufficient traffic and revenue opportunities to support viable service to Toledo.

Because it recognizes that such an arrangement will least interfere with existing and proposed rail operations in the Toledo area, W&LE proposes to limit its local presence by depending upon other carriers in Toledo (including NS and CSX) to provide reciprocal switching services to W&LE at all points and stations in the Toledo area currently open for such service. W&LE has proposed to pay \$184.00 per car for such reciprocal switch service. W&LE submits that the applicants have no basis to reject W&LE's "reciprocal switch proposal," and urges the Board to grant the requested arrangement (including the proffered reciprocal switch charge) as necessary for W&LE to establish a foothold to compete successfully in the Toledo market.

Obviously there remain fundamental disputes concerning the proper interpretation of the Board's protective conditions providing for W&LE's access to Toledo. In fact, the parties have clearly reached an impasse that will not be resolved without appropriate Board guidance and intervention. Thus, W&LE submits the following proposal, encompassing its position on Toledo access:

1. W&LE will obtain, and will exercise, overhead trackage rights access to Toledo from Bellevue,

OH, via the existing NS Toledo-Bellevue route, and W&LE will acquire NS' interest in the Maumee River pivot bridge. (The precise level of trackage rights compensation and bridge purchase terms are already agreed upon by the parties.)

2. W&LE will extend to NS trackage rights over the Maumee River Pivot Bridge on terms to be agreed upon by the parties.
3. W&LE will prepare and file with the Board any and all regulatory filings necessary to permit its trackage rights operations to Toledo and to permit its acquisition of the Maumee River pivot bridge; and NS will prepare and file with the Board any and all regulatory filings necessary for it to withdraw its discontinuance of service authority over the Maumee River pivot Bridge and to retain trackage rights over the same, once title has transferred to W&LE.
4. W&LE will obtain access to local industry in Toledo, including access to all area industries and stations currently open to reciprocal switching.
5. W&LE will obtain access to two tracks in NS' Homestead Yard for the purposes of staging its traffic.
6. NS and W&LE will agree to reconstruct a Bellevue "mini plant" (the Toledo connection) subject to terms and conditions to be agreed upon by the parties.

B. Huron Docks

The parties have endeavored to complete a mutually acceptable arrangement concerning W&LE's continued access to and use of the Huron Docks. While the parties (NS and W&LE, in this case) have made some progress on this issue, they disagree concerning the appropriate terms and duration of such an agreement. As it has offered in its most recent discussions

with NS, W&LE proposes to the Board that its access to and use of the Huron Docks be governed by the following essential terms and conditions:

1. NS must grant W&LE permanent trackage rights access to the Huron Docks at compensation levels currently included in W&LE's existing agreement(s) with NS;
2. The commodity restrictions found in the existing lease agreement will be lifted;
3. The lease payment terms of the existing Huron Docks agreement will be applied to the new, extended agreement for its entire term (which will have an initial 15-year term, with continuous 15-year extensions, so long as W&LE remains in compliance with the terms of the lease) until such time as the accrued payments match the appraised value of the Huron Docks facilities, at which point title in the Huron Docks would convey to W&LE.

As the Board can see, W&LE's proposal for the Huron Docks provides for long-term operations that are consistent with the Board's intent to accomplish two objectives -- (1) preserve a meaningful competitive transportation alternative for Wheeling-Pittsburgh Steel at Ming Junction, OH; and (2) protect for the long term W&LE's access to the substantial revenue opportunity W&LE already enjoys by having access to the Huron Docks.¹¹

¹¹ The terms of W&LE's access to the Huron Docks is closely linked to other, less obvious but critical aspects of W&LE's financial health. Specifically, long-term access to the Huron Docks (and to the revenue available from operations to this port facility) is critical to the successful re-financing of its long-term debt, and consequently to W&LE's future viability.

C. Trackage rights access to Lima, Ohio

As is the case with its access to Toledo, W&LE has elected to exercise trackage rights service to Lima, Ohio, with the view to provide service and rates competitive with the applicants. See, footnote 10. The parties have agreed to a specified route (CSX from Carey, OH, to Lima via Upper Sandusky) and trackage rights rates. However, as is the case with Toledo, the parties differ fundamentally on the interpretation of the intended reach of Board's protective condition, and therefore cannot reach terms governing the extent of W&LE's competitive presence in the Lima market.

W&LE understands the Board's protective conditions to permit W&LE to obtain access to local industries in Lima, in addition to a connection with the Indiana and Ohio Railway Co. ("IORY"). 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 Lima¹² and interchange with the R. J. Corman Railroad Co. - Western Ohio Line (hereafter, "RJC"), a short line rail carrier also serving the Lima area. The applicants, on the other hand, would (as with

¹² W&LE has identified a route to the Clark Oil Refinery and adjacent BP facilities that appears to be a short rail segment between the IORY and the Clark/BP properties (a line that apparently will be conveyed to CSX). It appears that CSX can serve the above-mentioned facilities without the need for the Conrail branch trackage. In the event that CSX seeks to dispose of the trackage in question through abandonment or sale, W&LE requests that it be given the right to purchase this line to ensure its continued access to the industry immediately surrounding the Clark Oil Refinery.

Toledo) limit W&LE's Lima access to nothing more than an opportunity for W&LE to interchange traffic with IORY. (The applicants incorrectly assume that W&LE would derive significant economic benefit by merely forging a connection with IORY. In fact, after a number of meetings it does not appear that the two carriers possess much ability between themselves to generate any appreciable interchange business.) Obviously, the dispute between W&LE and the applicants on the Lima access issue is precisely the same as it is with Toledo -- a fundamental dispute bearing on the Board's intent and focusing squarely on the plain language of the protective conditions the Board has prescribed.

W&LE notes again that the Lima access condition was clearly designed to offer to W&LE an opportunity to develop additional traffic and revenue in aid of its ability to continue providing essential services.¹³ (See, Decision No. 96 at 18.) W&LE stresses that access to Lima will mean nothing -- and will be rendered meaningless -- unless the Board's condition is reasonably interpreted to include local access. Without access to local industry, W&LE has determined that the prospective volume of interchange between W&LE and IORY (and RJC) at Lima is

¹³ W&LE notes with appreciation that Lima access was not a part of its responsive application, but rather is a novel component of the Board's package of remediation extended to W&LE. W&LE has had extensive conversations with IORY, but has thus far been unable to identify any traffic (either existing or which might be developed in the future) that would benefit from a joint W&LE-IORY routing. Thus, W&LE looks to the Board to ensure that Lima access is interpreted more broadly than interchange access to IORY -- a spare linkage which, despite W&LE's search for traffic opportunities, is unlikely to result in more than an occasional carload.

so small that W&LE service to and from this point would result in an operating deficit.

As it has done with Toledo, W&LE has offered to the applicants the path of least resistance, and a proposal that promises to best avoid interfering with NS and CSX operations in the Lima area. Namely, W&LE has offered to limit its service to local industry at Lima to access via reciprocal switch to all industries and stations in Lima currently open to reciprocal switching, at a switching charge of \$184.00 per car. W&LE submits that its proposal is not merely reasonable, but it offers the least disruptive arrangement to the applicants' planned operations in Lima. Beyond that, W&LE believes that its reciprocal switch access to Lima (along with access to Clark Oil Refinery and the BP refining complex, IORY, and RJC) will generate sufficient traffic and revenue opportunities to permit W&LE to sustain its trackage rights operations, and maintain a constructive presence in this market.

As directed by the Board, W&LE offers the following proposal for Lima access, carefully based on the Board's protective conditions:

1. W&LE will obtain trackage rights over CSX from Carey, OH, to Lima, OH (via Upper Sandusky), subject to trackage rights payments at the transaction related level of 32 cents/car mile (and W&LE will obtain all necessary regulatory approvals to commence trackage rights service);
2. In addition to interchange with IORY and RJC, W&LE will obtain direct physical access to the Clark Oil Refinery and the BP refining complex at Lima (including the right to purchase Conrail's trackage leading to these facilities if this

trackage is abandoned), as well access to other local industries at Lima via reciprocal switch at \$184.00 per car; and

3. The parties must negotiate concerning the designation of yard track and related facilities which are adequate for the assembly and staging of W&LE traffic at Lima.

D. Aggregate and Benwood to Brooklyn Junction Service

In addition to requiring applicants to grant W&LE rights to Toledo and Lima and to extend W&LE's lease and access to Huron Dock, the Board required that the applicants and W&LE negotiate an agreement concerning other beneficial arrangements, including allowing W&LE to serve shippers along CSX's line between Benwood and Brooklyn Junction, WV, and to provide expanded service to aggregate shippers.

In its responsive application, W&LE specifically requested haulage rights, with underlying trackage rights, between Benwood (W&LE's current interchange point with CSX) and Brooklyn Junction. These rights would, among other things, allow W&LE to provide single-carrier service in moving British Petroleum coke traffic from Toledo to Cressup, WV, via a more direct route with consequent savings of eight car-days off each round trip shipment. (W&LE-4 at 75). Further, as the Board has recognized, PPG and Bayer and other captive shippers would benefit from arrangements that would permit W&LE to serve shippers such as PPG with facilities located along CSX's line from Benwood to Brooklyn Junction. (Decision No. 89 at 123).

W&LE has endeavored to engage CSX in discussions concerning arrangements for access to the line between Benwood and Brooklyn Junction. W&LE has made clear that satisfactory arrangements permitting it to operate to Brooklyn Junction (and to serve customers along this line) is an absolutely essential component of its settlement negotiations. However, CSX has adamantly refused to discuss W&LE operations over this line.

The Board specifically included access to the Benwood to Brooklyn Junction line as an issue to be negotiated by the parties as an aspect of the remedial measures which were adopted to prevent Transaction-related erosion of W&LE's financial viability and to benefit shippers such as PPG and Bayer with facilities located along the line. See, Decision No. 89 at 123. The Board has further stated that it expects that CSX will pursue negotiations in good faith regarding service to Bayer, PPG, and any other shippers along this line. See, Decision No. 96 at 18 (footnote 42).

Since CSX refuses to negotiate arrangements for W&LE access to the Benwood - Brooklyn Junction line, W&LE must now seek specific confirmation that the conclusion of a mutually acceptable arrangement providing for W&LE's access to the line is an integral part of the remedial conditions granted to W&LE. Further, in view of CSX's refusal to enter into such negotiations, W&LE urges the Board to direct that W&LE is to be granted local trackage rights over CSX's line between Benwood and Brooklyn Junction in order to serve industries on that line.

W&LE is agreeable to trackage rights fees at NS/CSX merger-related charges of 29 cents per car mile.

In response to W&LE's efforts to negotiate an aggregate traffic agreement, NS has asserted that many of the aggregate-related locations where W&LE could previously have been a part of a mutually beneficial solution have essentially retained (even if only for a transitory five-year period) single-line CSX or NS service by virtue of other protective conditions included in Decision No. 89. In view of that response, W&LE believes that the parties have reached an impasse. Furthermore, W&LE notes that the applicants seem committed to negotiating on aggregate-related matters only at the exclusion of discussions on Benwood to Brooklyn Junction. While W&LE has identified in its responsive application several instances where it could well serve affected aggregate producers and terminals in Ohio, and continues to pursue the opportunity to serve such locations, the applicants have expressed a willingness to discuss very limited aggregate service opportunities only if W&LE will walk away from the Benwood to Brooklyn Junction service issue.

In providing measures to alleviate specific concerns raised by aggregate shippers, the Board reaffirmed that it had directed applicants to negotiate with W&LE regarding service to these rail-dependent entities. Since additional efforts to negotiate on a subject that appears essentially closed (as far as the applicants are concerned) would be futile, the Board's

intervention and resolution of this matter is now clearly essential.

W&LE originally presented its specific interest in stone traffic conditions in its responsive application. W&LE believes that the Board intended that the full scope of relief to be afforded W&LE should include agreements for access to CSX line between Benwood and Brooklyn Junction and to provide additional service to aggregate shippers. For that reason, and in view of the apparent impasse, W&LE respectfully urges the Board to direct applicants to enter into arrangements which will allow W&LE to provide expanded service for aggregate shippers. W&LE is agreeable to pay relevant trackage rights compensation equivalent to CSX/NS merger related charges of 29 cents per car mile -- both for Benwood - Brooklyn Junction operations and for trackage rights to institute new aggregate service.

Rather than negotiate with W&LE on the Benwood to Brooklyn Junction service mandated by the Board, CSX has offered "mutually beneficial" arrangements which it is likely to claim satisfy the Board's directive, even though they do not abide with the specifics of the Board's order. While W&LE is pleased that CSX has identified certain mutually beneficial traffic routings (and is more than likely to point to these in its own report to the Board), such arrangements (as is naturally the case for any truly "mutually beneficial" arrangement) would have been offered to, and accepted by, W&LE without the need for any Board involvement. W&LE must make plain that, while it welcomes CSX's

proposal, this proposal does not satisfy the Board's directions with respect to Benwood-Brooklyn Junction service (despite what CSX may claim), and does not address PPG's or Bayer's concerns (which have recently been acknowledged by the Board).

W&LE earnestly believes, as it has explained earlier in this filing, that the Board intended that the parties would negotiate and execute mutually beneficial arrangements including direct service for shippers on the Benwood-Brooklyn Junction line and expanded service for aggregate shippers. If instead the Board expected the parties to agree on arrangements to encompass W&LE service over the Benwood-Brooklyn Junction line or expanded service to aggregate shippers and other mutually beneficial arrangements, then W&LE would reluctantly have to elect to serve shippers on the Benwood-Brooklyn Junction line in view of the revenue and service opportunities that would be available.

As it has with all of the other protective conditions the Board has extended to it, W&LE has endeavored to give full effect to the Board's instructions as they are listed in Decision No. 89 (and as recently modified and clarified by Decision No. 96). In the case of this section, W&LE has striven to conclude appropriate arrangements enabling it to undertake service to customers on CSX's line from Benwood to Brooklyn Junction and to provide expanded aggregate service to stone producers and terminals in Ohio.

Sadly, W&LE's efforts on this front have not progressed very far, and they are likely to go nowhere in the future, unless

the Board puts the weight of its authority behind Decision Nos. 89 and 96, and directs the parties to conclude arrangements on these issues. W&LE urges the Board to help it move forward with negotiations by making clear that the parties should be exploring arrangements on both the Benwood-Brooklyn Junction and aggregate service issues, rather than permit the applicants to force W&LE into the politically awkward position of choosing one traffic opportunity over another. Finally, with respect to Benwood-Brooklyn Junction service, W&LE requests that the Board make clear that it expects the parties to arrive at operating arrangements addressing fully the issues presented by PPG and Bayer, and that it direct the parties specifically to negotiate W&LE's access to customers on this line.

E. Bellevue to Orrville trackage rights to NS

Throughout these proceedings, and during the course of the Board-ordered negotiations, W&LE has offered to NS trackage rights between Bellevue and Orrville, OH. W&LE believes that NS trackage rights operations between these two points will be mutually beneficial. For NS, the trackage rights would offer an alternate route or bypass to potentially congested lines in and around Cleveland, which was an issue recognized by the Board. See, Decision No. 89 at 108. For W&LE, the trackage rights arrangement would mean trackage rights fees, which, as the Ann Arbor Railroad has shown in this very proceeding, can result in substantial revenue for the "landlord" railroad. Further

discussions on this proposal are anticipated, and no Board action is needed on this matter.

IV. CONCLUSION

From the date of the issuance of the Board's Decision No. 89, W&LE has undertaken to secure negotiated settlements with the applicants where the Board had imposed protective conditions in favor of W&LE. As this filing has shown, not only has W&LE negotiated diligently with the applicants, its efforts have borne fruit in many areas. This is especially so where the Board's language was clear and unambiguous, and the parties were able to move forward with a common understanding. Where the Board's instructions and the intended scope of the conditions it has extended to W&LE permit differing interpretations, however, the parties have frequently failed to come to a consensus sufficient for talks on such issues to proceed. It is W&LE's belief that, where the Board's ordering language yields differing interpretations, the applicants have tended to embrace the interpretation that would effectively eviscerate the condition at issue (and thereby all but eliminate that element of W&LE's remediation).

The Board previously determined that the combination of W&LE's threatened financial situation and the forthcoming impact of heavy diversion losses calls for a remedy to preserve essential services and W&LE's important competitive presence in the region it is to serve. See, Decision No. 89 at 106. That

remedy is comprised of several segments, which together, are intended to give W&LE an opportunity to obtain additional traffic which should enable W&LE to continue providing essential services. See, Decision No. 96 at 18. The Board should be careful, as it continues in its duties to administer this proceeding, to ensure that its original intent in extending remedies to W&LE is not subverted by the overly restrictive interpretations of its relief as the applicants have in some cases advocated. It is enough to note here that the remediation extended to W&LE, if it should fall short of the Board's objectives to preserve W&LE, could be catastrophic for the region W&LE serves. Thus, the Board should proceed with caution, and with the understanding that its orders are to be given their full weight and effect.

W&LE has shown in the sections above that the parties have reached an impasse on certain key issues, and that negotiations on these issues will remain unproductive without additional Board intervention. W&LE had initially contemplated issuing with its filing a comprehensive list of the conditions it would have the Board impose where impasse exists, but it now recognizes that further Board clarification could be adequate to move forward stalled negotiations, and it has offered the requests for clarification and for further instruction contained herein from that point of view. In this submission, W&LE has offered its proposals for how it believes the Board's protective

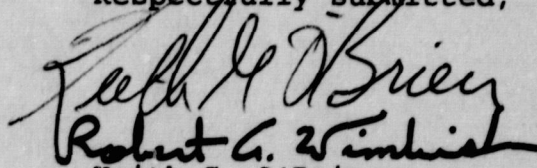
conditions should be implemented in each case -- Toledo, Huron Docks, Lima, Benwood - Brooklyn Junction, and Ohio aggregates.

At this point, W&LE asks the Board to intercede only to the extent that W&LE has identified areas of fundamental disagreement, and to make clear to the parties what the Board intended in its conditions, and what results it expects of the parties where they are currently unable to agree. Mere extensions of the negotiating period without more would do little, if anything, to further the negotiating process, and would be inconsistent with the Board's commitment to resolve the parties' differences expeditiously. Of course, the Board should not lose sight of the objectives that prompted it to act to protect W&LE in the first place, and it must ensure that the applicants are not permitted to so restrict the W&LE's remediation as to eliminate the substance of the Board's conditions or to render specific terms of the Board's orders a virtual nullity.

W&LE urges the Board to consider where the parties have reached an impasse on all of the remedial issues addressed in the sections above -- access to Toledo, continued use of the Huron Docks, access to Lima, service to shippers on CSX's Benwood - Brooklyn Junction line, and service to Ohio-based aggregate producers and terminals -- and consider, in light of the arguments extended in the foregoing sections, what further action is warranted to make the Board's objectives clearer and to progress negotiations in those instances where they have stalled.

W&LE urges expeditious action on these issues because, as the applicants draw nearer to "Day One" (the so-called "Split Date"), W&LE must have in place its own comprehensive operating and marketing plans, which, of course, depend in large part upon full implementation of the ameliorative conditions it has received.

Respectfully submitted,



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Counsel for the Wheeling & Lake Erie
Railway Company

DATED: October 21, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 1998, I have served the foregoing W&LE-10, "Request to Clarify and for Further Instruction" by hand delivery on the following counsel for Norfolk Southern Corporation and Norfolk Southern Railway Company and CSX Corporation and CSX Transportation, Inc.:

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AUG 13 1998

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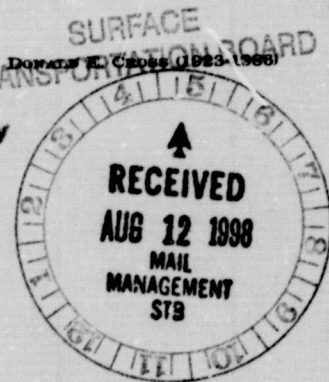
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SURFACE
TRANSPORTATION BOARD
August 12, 1998 Part of
Public Record



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

RE: Finance Docket No. 33388 (SUB-NO. 80), CSX CORPORATION
AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN
CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY --
CONTROL AND OPERATING LEASES/AGREEMENTS -- CONRAIL,
INC. AND CONSOLIDATED RAIL CORPORATION

Dear Secretary Williams:

On behalf of the Wheeling & Lake Erie Railway Company
("W&LE"), I am enclosing in connection with the above-captioned
proceeding a document identified as WLE-9, "Petition for
Reconsideration/Clarification of Responsive Applicant Wheeling &
Lake Erie Railway Company." Also enclosed is the applicable
\$150.00 filing fee and a WordPerfect formatted disk containing
the text of the enclosed petition as "WLE-REC.1."

Please note that WLE-9 has both a "public" and a
"highly confidential" version. Both are submitted herewith.
Attached as a supplement to the enclosed petition is a the
Verified Statement of Wilbert A. Pinkerton, Jr. The verification
page of Mr. Pinkerton's verified statement is not the original,
but W&LE will supply the original verification page under
separate cover as soon as possible.

If you have any questions, please contact the
undersigned.

Sincerely,

Keith G. O'Brien
Counsel for Wheeling & Lake Erie Railway
Company

Enclosures

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AUG 12 1998
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TRANSPORTATION BOARD

BEFORE THE

SURFACE TRANSPORTATION BOARD

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Public Record

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

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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Office of the Secretary

AUG 13 1998

Part of
Public Record

WLE-9

PUBLIC VERSION

FILED

AUG 12 1998

SURFACE
TRANSPORTATION BOARD

PETITION FOR RECONSIDERATION/CLARIFICATION
OF RESPONSIVE APPLICANT
WHEELING & LAKE ERIE RAILWAY COMPANY

I. PREFACE AND SUMMARY OF ARGUMENT

Pursuant to 49 C.F.R. § 1115.3 Wheeling & Lake Erie Railway Company (W&LE or Petitioner) brings this petition for reconsideration and related clarification as to certain of the Board's findings in Decision No. 89. In order to prevail on a petition for reconsideration, the Board's regulations provide that a petitioner must show that the prior action will be affected materially because of new evidence or changed circumstances or that the prior action involves material error. Here petitioner will demonstrate that the Board's findings concerning the magnitude of transaction related losses facing W&LE are materially erroneous and understated contrary to evidence before the Board. Indeed, Applicants' own rebuttal witness, John H. Williams, offers largely unsubstantiated and overly

conservative estimates that W&LE traffic losses will amount to more than \$2.0 million (which, it turns out, is still \$600,000 more than the Board's low estimate of \$1.4 million).

Attached to, and offered in support of, this petition is the verified statement of Wilbert A. Pinkerton, Jr. ("Pinkerton VS"). Mr. Pinkerton's verified statement is offered to more thoroughly reveal the scope of the Board's error. Mr. Pinkerton shows that \$9.1 million of W&LE's lost revenue projections were not addressed by Board criticism in Decision No. 89. Applying for the sake of argument the very same methodology utilized by the Applicants' witnesses, Mr. Pinkerton also makes clear that -- when one includes both the Huron Dock-related losses (which the Board seems implicitly to accept) and other diversion losses firmly supported by the evidence of record to an assessment of Transaction-related harm -- one must, of necessity, find that W&LE stands to lose at least between \$4.2 and \$6.6 million annually.

The Board implicitly recognizes the critical importance of Huron Dock related traffic to W&LE by requiring an extension of Wheeling's lease of the Huron Dock and related trackage rights. However, the Board does not explicitly recognize the \$1.8 million in traffic W&LE would immediately lose and NS could gain for itself merely by terminating Wheeling's presence on the Huron Dock. Further, careful analysis of diversion projections, even if based solely on correct use of the Applicants' conservative methodology clearly demonstrates that W&LE faces additional loss of at least \$2.4

million of interline traffic¹ as a direct result of W&LE's loss of friendly interchange with NS.²

Heavy transaction related losses faced by W&LE clearly were the pivotal factor in the Board's findings that remedial measures are necessary to preserve essential services and Wheeling's competitive presence. At the same time the Board's conclusion as to the magnitude of loss faced by W&LE could have a serious effect not only on forthcoming negotiations between the parties but also on imposition of specific remedial measures by the Board should the parties be unable to resolve the issues through private negotiation.

In light of the critical importance of anticipated diversion losses to the relief outlined by the Board and to the related negotiations between the parties, W&LE respectfully urges the Board to recognize that it materially understated the magnitude of loss facing W&LE. However, W&LE maintains that it is unnecessary for the Board to rule on this petition at this time. It is sufficient for the Board to hold the matter in abeyance, noting W&LE's objections to the Board's loss findings, and that a basis exists for a finding of material error. Specifically, Board re-assessment as to W&LE's exact financial losses may be unnecessary in the event that

¹ W&LE is not suggesting that the Applicants' methodology is correct. Clearly it is heavily biased against W&LE. However, the attached Pinkerton VS will show that, even when one applies the Applicants' methodology properly (correctly), W&LE's losses are shown to be at least \$2.4 million.

² Even if one were to discount the disputed intermodal train losses (\$3.6 million) and the traffic increase projections included in W&LE witness Pinkerton's verified statement, W&LE's evidence still supports losses of at least \$9.1 million. See, Verified Statement of Wilbert A. Pinkerton, Jr. (attached hereto) -- hereafter, the "Pinkerton VS" -- at p.1. The Board cannot justify a finding of a minimum loss to W&LE of \$1.4 million, when Mr. Williams, having assessed both W&LE's and CSX's traffic diversion evidence, calculates W&LE's losses at at least \$2.0 million.

the parties are able to reach a settlement during forthcoming negotiations. W&LE respectfully submits that this Petition be ruled upon only in the event that the parties inform the Board that they are unable to reach a suitable settlement within the dictates of the Board's Decision No. 89. Re-assessment of the magnitude of loss would then be relevant and critically important should the Board be called upon to set the terms for the protective conditions it has already outlined.

The Board has properly discerned that W&LE would be placed in dire jeopardy as a result of heavy losses directly attributable to the forthcoming division of Conrail lines and that such losses require remedial measures adequate to preserve W&LE and its essential services and its important role as a competitive regional carrier. Petitioner appreciates the Board's commitment to preserve the W&LE and its creation of a mechanism which should enable the parties to develop the scope of the general conditions imposed in favor of W&LE. Petitioner also appreciates the foresight of the Board in retaining jurisdiction to oversee the directed negotiations, to further shape or clarify any or all aspects of relief due W&LE in the event of impasse, and to provide a basis for further relief if necessary to assure W&LE's survival.

W&LE has communicated to Applicants its preparedness to go forward with negotiations and has arranged with Applicants an initial meeting. W&LE is committed to negotiate diligently with a view to concluding as expeditiously as possible commercially-based agreements in accordance with the solutions envisioned by the Board.

II. ARGUMENT

A. The evidence on record cannot and does not support the conclusion that W&LE will "probably [only] lose between \$1.4 and \$3.0 million"

The Board correctly recognized that the Transaction -- absent appropriate relief -- would result in catastrophic financial losses to W&LE. Indeed, the Board was consistently reminded of the W&LE's critical role, and was urged from many corners to grant W&LE's responsive application in order to assure the continued existence of this regional carrier and the services it provides.³ Upon review, the scope of relief imposed by the Board in favor of W&LE seems linked to the degree of financial harm that the Board concluded W&LE would actually suffer. During the course of this proceeding, both W&LE and the Applicants provided evidence concerning the revenue losses W&LE was projected to incur. Thus, the Board was called upon to -- (1) undertake a full and complete assessment of the loss evidence provided by all parties, (2) on the basis of that evidence determine which revenue sources were likely to be lost to W&LE as a result of the Transaction, and (3) prescribe appropriate relief in

³ Among those parties and individuals that have on various occasions expressed to the Board their concern for and support of W&LE are Senator Mike DeWine, Senator John Glenn, Senator John D. Rockefeller, Senator Robert Byrd, Senator Arlen Specter, and Senator Rick Santorum; Congressman Ralph Regula, Congresswoman Marcy Kaptur, Congressman David Hobson, Congressman Paul Gillmor, Congressman Steven LaTourette, Congressman Robert Ney, Congressman Thomas Sawyer, Congressman Bob Wise, Congressman Sherrod Brown; the Stark Development Board, the Ohio Attorney General, the Ohio Public Utilities Commission, and Ohio Rail Development Commission.

favor of the W&LE to address what would otherwise be debilitating loss.

Ultimately, the Board noted that W&LE's and the Applicants' loss projections were far apart, and it chided each party for tendering W&LE loss figures that were either "overstated" (in the case of W&LE) or "understated" (in the case of the Applicants). The Board found that W&LE would lose a "substantial amount of traffic," and speculated that the potential losses were "probably between \$1.4 and \$3.0 million" annually. The Board offered no explanation as to why it apparently accepted the Applicants' (understated) loss estimates, and why it failed properly to incorporate its obvious concerns regarding the Huron Docks into its own findings of W&LE loss. We urge the Board thoroughly to assess the Applicants' diversion figures, which upon thorough review will be shown to be speculative, unsubstantiated, and arbitrary.

During the course of this proceeding, the Board received evidence from expert witnesses who opined as to the financial impact of the Transaction on the W&LE. Reginald Thompson (W&LE's Vice President of Marketing and Sales) and Wilbert A. Pinkerton (W&LE's outside expert witness) estimate W&LE's losses at between \$12.7 and \$15 million, while John H. Williams (the Applicants' primary witness on this subject) first concluded that W&LE's losses would be about \$1.9 million, and later restated his figures to reflect W&LE losses of slightly over \$2.0 million. The Board correctly noted in its decision the loss projection figures offered by W&LE, but it appears to have overlooked the Applicants' own latest and best evidence on

the subject -- evidence that clearly demonstrates losses well over \$1.4 million. For the Board to adopt W&LE revenue loss projections that are actually lower than those ultimately conceded by the Applicants themselves, and to do so without any explanation, constitutes material error. Such error could serve unduly and severely to limit the full scope of relief far below the Board's intentions when it committed to preserve a viable W&LE.

The Applicants' latest and best evidence concerning W&LE revenue losses can be found in the "Rebuttal Verified Statement of John H. Williams" (Applicants' Rebuttal, Vol. 2B of 3, pp. P/HC 759 - 792).⁴ Mr. Williams first states that his original traffic diversion study uncovered about \$1.9 million in divertable revenue (Williams RVS at 770). Later, having assessed W&LE's evidence on the matter, Mr. Williams restates his loss estimates -- allowing for a modest upward adjustment in his figures to \$2,039,907.00.⁵ (Attachment JHW-WLE-2-HC to Williams RVS.) Although Mr. Williams figures surely represent the Applicants' final evidence on this subject, the Board inexplicably has embraced W&LE loss estimates that are lower than

⁴ Hereafter, the "Williams RVS."

⁵ In their primary application, the Applicants tendered the testimony of two separate witnesses -- John H. Williams for NS and Howard A. Rosen for CSX -- on the subject of traffic diversion. Evidently, only one of the two (Mr. Williams) was called upon to rebut W&LE's loss estimates. Clearly, Mr. Williams was aware of Mr. Rosen's traffic study and his conclusions at the time the former prepared his rebuttal testimony. Mr. Williams' calculations on this score already take into account any losses offset by an alleged W&LE-CSX "alliance." See, Williams RVS at 778-779. The Board would err to attempt to discount from Williams' loss estimates any figures offered by CSX's Rosen -- otherwise the Board would engage in double counting.

what the administrative record can support. At the very minimum, the Board must recognize that the Applicants' final evidence projects W&LE revenue losses of at least \$2.0 million, and it must reject its original conclusion of losses "probably between \$1.4 and \$3.0 million."

W&LE has no idea precisely where the Board has found the Applicants' diversion evidence to be overly conservative, but, throughout the Pinkerton VS attached hereto, W&LE offers specific instances where the Applicants clearly "understated" the diversion impact of the Transaction on W&LE by mis-characterizing W&LE's diversion data. It is sufficient here to note that the totality of the evidence supports the conclusion that the Applicants' loss estimates were much more than "somewhat understated." As shown in the Pinkerton VS, "[e]ven if the flawed logic presented by the applicants' expert (Williams) is applied... then W&LE will lose at least \$2.4 million" in interline traffic. See Pinkerton VS at 3, 4.

B. Board failure explicitly to include potential Huron Docks losses in Decision No. 89 constitutes material error

Having carefully reviewed the Board's July 23rd decision, W&LE has discovered another important Board error. In particular, while it recognizes the central importance to the W&LE of its access to the Huron Docks, the Board fails specifically to include that potential revenue loss in its findings. NS has every incentive to deprive W&LE of its access to the Huron Docks, and, in the process,

deprive W&LE of \$1.8 million in annual revenue.⁶ This \$1.8 million threat to W&LE, by itself, exceeds the minimum \$1.4 million Board-estimated loss already shown to be in error. Additionally, when the Huron Docks losses are combined with the Applicants' own loss estimates,⁷ the annual losses W&LE will suffer far exceed the \$3.0 million "upper limit" of the Board's decision.

In extending protective relief to W&LE, the Board ordered the parties to negotiate an extension of W&LE's lease of, and trackage rights access to, the Huron Dock facilities. This would appear to constitute implicit Board acknowledgement and acceptance of W&LE's evidence and argument that W&LE will lose at least \$1.8 million if it is subsequently denied access to the Huron Docks. For W&LE, access to the Huron Docks is an absolutely critical element necessary to ensure its future survival, and W&LE applauds the Board for recognizing this. However, the \$1.8 million loss should have been included in the Board's determination as to the extent of W&LE's

⁶ Today, NS does not compete for the iron ore traffic that W&LE carries from the Huron Docks to Wheeling Pittsburgh Steel at Mingo Junction, OH. For that reason, NS actually benefits from its current arrangement with W&LE, because -- (1) it enables NS to expand the revenue opportunities of what is for the moment a close partner (and strengthen that partner's economic position) and (2) it permits NS to derive revenue from both one of its otherwise unused lakefront facilities and related trackage rights. After the Transaction, NS will compete directly with W&LE for this traffic (via lakeports previously served by Conrail), and NS will have virtually every incentive to reserve for itself the substantial revenue W&LE has worked hard to secure. For NS to do otherwise (especially where it otherwise has the incentive, motivation, and wherewithal to drive W&LE out of the relevant market) would defy economic and business logic.

⁷ Inexplicably, the Applicants never regarded the Huron Docks traffic as divertable, and excluded such potential revenue losses from their estimates.

financial harm. Once again, the Board's error seriously weakens W&LE's position in upcoming negotiations with the Applicants, and most likely the scope of these negotiations. It would also be critical if the Board must conduct hearings in order to determine the scope of its intended remediation.

C. Applicants' own testimony contradicts the Board's finding that "it is inaccurate to assume... that NS single-line service will always replace a joint NS/W&LE service"

At one point in Mr. Williams' rebuttal testimony, he accepts that, where NS will be able post-Transaction to replace joint W&LE-NS service with an all-NS routing, NS will be able to secure 100% of such traffic. See, Williams RVS at 779 (Williams acknowledges shipper preference for single-carrier service). In other places, Williams testifies that W&LE-NS routings may survive the transaction (at least in part) despite the availability of newly created "all-NS" routes. The administrative record -- and in particular the Applicants' own argument and testimony -- simply does not support the proposition that shippers will continue to select NS-W&LE service where NS single-line service will become available.

One of the principal justifications for the NS/CSX/CR Transaction is the substantial benefit of single-line service (as opposed to two-carrier service). Nonetheless, the Board concludes -- without reference to any portion of any party's testimony -- that "it is inaccurate to assume... that NS single-line service will always replace a joint NS/W&LE service." There is no basis in the record to support the Board's assumption, especially in light of Mr. Williams'

comments to the contrary and the forthright admission by NS counsel, Richard Allen, that W&LE will lose its friendly interline connection with NS.⁸ Such error is material and significant when one recognizes that the Board's comments are directly related to its assessment of W&LE's projected financial harm.⁹

It would appear from Decision No. 89 that the Board has largely embraced Mr. William's traffic diversion estimates. Yet, at key places, Mr. Williams' calculations are premised on the arbitrary notion that, where an NS-W&LE routing can, post-Transaction, be replaced with an "all-NS" route, shippers will still elect 50% of the time to retain a joint carrier routing that includes W&LE. It is noteworthy that in Williams' RVS at p. 781, he first states that NS and CSX will split the Pittsburgh market, but in the next paragraph Williams arbitrarily assumes that W&LE will somehow retain half of the traffic that NS and CSX can control.¹⁰ There is not an iota of

⁸ Transcript of STB oral argument, June 4, 1998, pages 368 and 369.

⁹ Even if one assumes that some amount of traffic might move in joint NS/W&LE service rather than an all-NS routing, the Board has failed anywhere to identify how much traffic they conclude would be subject to such "cooperative arrangements." To W&LE's knowledge, the Applicants did not tender any evidence on this subject, and it is therefore virtually impossible for the Board to quantify the beneficial effects of such continuing "cooperation" to W&LE's bottom line.

¹⁰ Contradicting Williams' retention theory on this score is another of Applicants' own witnesses -- Howard A. Rosen -- who, in his original verified statement in support of the primary application (CSX/NS-19, Vol. 2A at 160) states "combinations that are unlikely to attract traffic, such as a carrier with local service participating in an interline service, are discarded [as viable competitive routes]." See, Pinkerton VS at p. 4 (footnote 4).

evidence to support such an arbitrary proposition, and Mr. Williams has offered not a shred of substantiation -- not even one particular group of traffic out of the many he claims to have studied -- to support the notion that joint W&LE-NS arrangements are likely half of the time to be more attractive to shippers than competing NS single-carrier service or competing CSX single carrier service.¹¹ Mr. Williams fails to answer the obvious question: why would NS elect 50% of the time to effectively short-haul themselves on large bundles of traffic -- at least as much as \$1.75 million worth by his own factoring?¹² For the Board to find that W&LE losses could be as low as \$1.4 million, it is necessary for the Board to embrace Mr. William's baseless guesswork.

W&LE maintains that it stands to lose 100% of the traffic that can be diverted away from currently existing W&LE-NS routes to

¹¹ Consider, for example, Mr. Williams testimony on what he calls "NSCR Competition." Williams RVS at 774 and 780-81. Mr. Williams merely guesses that W&LE will preserve for itself 50% of this category of traffic that even Mr. Williams would have to concede is capable of avoiding (and likely to avoid) W&LE rails altogether. How Mr. Williams came up with his 50% theory is subject to all kinds of speculation, as there is no traffic data offered to support it. The Board, however, seems not to raise much of an eyebrow at such arbitrary generalizations.

To the extent that Mr. Williams "NSCR Competition" findings are premised on the findings of another witness -- Howard A. Rosen -- the attached Pinkerton VS shows how fundamentally flawed and mistaken Mr. Williams' calculations are. See Pinkerton VS at 5 (fn. 4). Had the Board fully tested Mr. Williams' testimony, it too would undoubtedly come to the same conclusion as does Mr. Pinkerton.

¹² As the attached Pinkerton VS shows (using existing evidence), W&LE today derives at least \$4.8 million in revenue from joint W&LE-NS routings that -- (1) can be diverted post-Transaction to newly created "all NS" routes, and (2) W&LE cannot protect (and retain) by forming a so-called "alliance" with CSX. See, Pinkerton VS at p. 4.

all-NS routes that will be created by the Transaction. If the Board, in disagreement with W&LE, concludes that "all-NS" routings will not always replace W&LE-NS cooperation, then it ought at least to quantify the effect of this finding on its determination of W&LE's projected losses.

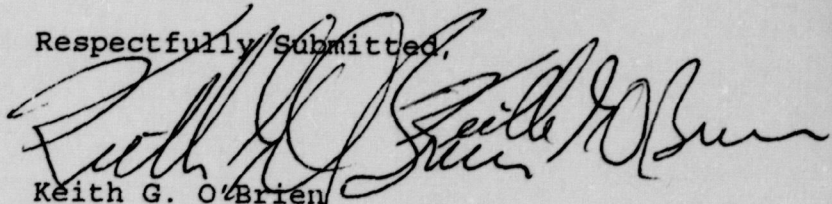
III. CONCLUSION

On all the facts before the Board it is clear that the Boards' finding concerning W&LE losses is severely understated and the error is material to the scope and terms of relief which is to be negotiated by the parties. W&LE does not believe it necessary at this point for the Board to attempt to re-calculate its loss findings. Such an effort would prove time-consuming, and could prove counter-productive to the private negotiations that are soon to commence. W&LE urges that it should suffice for the Board to recognize that it understated the magnitude of loss facing W&LE. Additionally, the Board should hold in abeyance further determinations as to the scope of loss, unless and until such time that the parties are unable to reach an accord, and the scope of remediation becomes critical to preserve W&LE's competitive presence and essential services to shippers and Neomodal.

Wherefor, petitioner W&LE asks the Board to receive and hold under pending consideration W&LE's filing. W&LE intends to negotiate diligently with Applicants in an effort to reach an appropriate resolution without the need to return to the Board. Further action on this petition should be taken only in the event

that the parties are unsuccessful in reaching an accord, and they inform the Board that they are at an impasse as to implementation of the Board's conditions. At such a point, Board determination of damage to W&LE and appropriate remediation would be critical to W&LE's survival.

Respectfully Submitted,



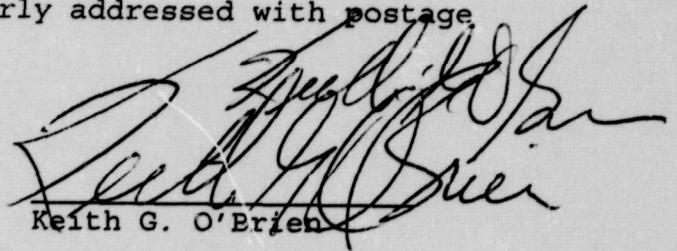
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Counsel for the Wheeling & Lake Erie
Railway Company

DATED: August 12, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of August, 1998 served the foregoing Petition for Reconsideration of Responsive Applicant Wheeling & Lake Erie Railway Company by messenger delivery upon Applicants' counsel and to all other parties of record by first class mail, properly addressed with postage prepaid.


Keith G. O'Brien

**PETITION VERIFIED STATEMENT OF
WILBERT A. PINKERTON, JR.**

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. Subsequently, I submitted a Reply Verified Statement in January 1998 responding to errors in the Applicant's Rebuttal, and clarifying the methodology that I used.

The purpose of this statement is to focus on the range of revenue losses faced by W&LE as estimated in the Board's order regarding the division of Conrail by NS and CSX (July 23). The analysis and findings in this Statement rely solely upon evidence already presented to the Board by the Applicants and Respondents.

As shown in Table I below, even accepting the specific exclusions contained in the Board's findings and using the methodology suggested by the Applicants, the W&LE is virtually certain to lose at least \$4.2 million in revenue, and the actual loss is much more likely to be \$6.6 million or greater.

**Table 1
Summary of Revenue Loss Estimates for W&LE
(\$ millions)**

	W&LE FY2001	W&LE FY1996	STB Exclusions (FY1996)	STB Exclusions/ Applicant Methodology (FY1996)	STB Estimates July 23 Report
	(1)	(2)	(3)	(4)	(5)
NS-W&LE Intermodal Train	4.4	3.6	-0-	-0-	0
Huron Dock	4.0	1.8	1.8	1.8 - 1.8	N/A
Single line - Joint Line Competition	3.6	4.8	4.8	2.4 - 4.8	N/A
Increased Market Power/Scope Impact	3.0	2.5	2.5	-0-	N/A
Total Loss	15.0	12.7	9.1	4.2 - 6.6	1.4 - 3.0

N/A = Not available in July 23 report.

Further all of the loss figures in Table 1 are significantly higher than the \$1.4-\$3.0 million range referenced in the Board report. The losses in Column 4 are based upon very careful move-specific analysis of W&LE's traffic, applying solely for the purposes of this analysis the methodology suggested by the Applicants (statements by John Williams and others), and with the exclusions made by the Board in its July 23 report. Thus, those estimates provide a range which properly reflects the Applicants' approach and the exclusions made by the Board, although I feel the original W&LE loss estimates, including projections to \$15.0 million of losses in FY2001 (Column 1), remain valid.

W&LE Revenue Losses

In my earlier statements and in those of Mr. Reginald Thompson, W&LE's revenue losses were projected in a range of \$12.7 million based upon FY1996 traffic levels (Thompson) to \$15.0 million by FY2001 (Pinkerton). The Board decided that \$3.6 million of those losses (intermodal) were not related to the Conrail transaction. The Board further determined that the projections for FY1999, 2000, and 2001 were overly optimistic, even though the W&LE's actual performance to date has exceeded the plan upon which the projections were based. In order to focus on clear error, rather than the two issues related to the intermodal revenue and the growth in losses in future years which may be subject to dispute, I recomputed the losses being faced by W&LE, focusing only on the 1996 base and excluding the \$3.6 million for intermodal.¹

With these losses excluded to remove disputed traffic, W&LE's remaining revenue losses presented in my earlier statements (and in Thompson's statements) can be viewed in three categories where the losses are very clear. First is the traffic that will be lost if NS refuses to renew the lease and related trackage rights for Huron Dock on reasonable commercial terms—revenue of \$1.8 million in FY1996. Second, W&LE will lose \$4.8 million (FY1996 base) due to NS utilizing its capability to provide efficient single line service over the Conrail lines it is acquiring in place of the current NS-W&LE joint service offered in competition with Conrail. Third, W&LE will lose \$2.5 million (FY1996 base) due to the increased scope and market power that NS and CSX will have with the addition of Conrail lines to both systems.

Adjusted Revenue Losses

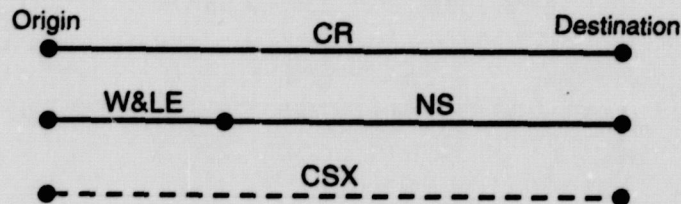
As noted above, the Board report disregarded the \$3.6 million of intermodal revenue from consideration in estimating W&LE's losses. Further, the Board viewed the projections for future years as being too aggressive and chose to focus only on the FY1996 figures. The calculation of adjusted losses presented below reflect these Board positions, and also incorporates the methodology suggested by the Applicants to develop their estimates for revenue losses.

The potential revenue loss to W&LE if NS refuses to renew the Huron Dock lease on fair and equitable terms will be the \$1.8 million generated in FY1996, at a minimum. The threat of this loss is very serious since NS will have no incentive to allow W&LE to serve Huron Dock in direct competition with Pinney Dock and other docks which NS will serve over former Conrail lines after the transaction is completed.

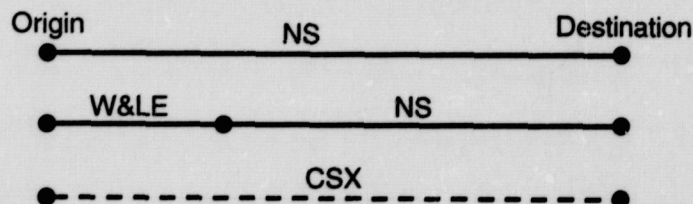
¹ While these adjustments have been made, I continue to feel that the methodology and resulting losses presented in my initial Verified Statement were valid and truly depict the impact of the transaction upon the W&LE.

The second category of revenue losses is due to NS having no need to cooperate with the W&LE in the future when it can provide single line service over newly acquired Conrail rail lines in place of the former W&LE-NS joint service in competition with Conrail.² The impact of this important change in the competitive structure can be seen in the schematic diagrams below:

Pre Conrail Transaction



Post Conrail Transaction



Note that in the pre-Conrail market NS appears only in conjunction with W&LE. In the post-transaction situation, NS appears both in conjunction with W&LE and by itself. Previously, NS had strong incentives to provide joint line service in cooperation with W&LE to serve many customers it could not reach on its own lines. However, in the future, they will be able to serve those customers directly, and although they could continue to cooperate with W&LE, they would be competing with their single line service which is very unlikely.

I reexamined the Thompson traffic statistics from the perspective of the above change in the competitive structure and selected all moves where NS will no longer need W&LE to serve the origin or destination. I then excluded losses where CSX could become a willing partner with W&LE as asserted by NS expert Williams, although my earlier analysis showed this to be very unlikely. In Williams' Rebuttal Verified Statement for NS (pp. HC778-779), he cited several moves where CSX would align with W&LE in place of NS because CSX had no direct connection for service. His analysis of those types of moves contained errors, such as traffic originating in Clairton, PA which the CSX can serve via its connection with the Union Railroad in the same way that W&LE serves that traffic. Thus, CSX has no incentive to cooperate with W&LE on this move. This represents an error of more than \$500,000 on that single origin.³ My analysis of all moves shows the potential for W&LE to offset approximately \$1.2 million of losses through joint service with CSX in contrast to the \$2.1 million offset estimated by Williams. (The difference of \$900,000 is due to errors regarding CSX access and routing.) As shown on the attached Table 2, the total

² An example of this effect can be seen in move number 37 in Table 2 from Pittsburgh to Chicago.

³ The same error and others are contained in a memorandum written by CSX expert, Howard Rosen, on August 15, 1997; pp. HC-825, 826 of Williams' Rebuttal. This memorandum describes the methodology used by Rosen to develop his estimated revenue gain of \$451,000 for the W&LE as a result of the CSX portion of the Conrail transaction.

traffic that will be lost because NS no longer needs W&LE is approximately \$4.8 million, after reducing the actual losses of \$6.0 million by the \$1.2 million potential offset with CSX. Even if the flawed logic presented by the applicants expert (Williams) is applied, i.e., that NS will cooperate with W&LE to allow it to retain half of this \$4.8 million of revenue, then W&LE will lose at least \$2.4 million. I note that this fifty percent retention by W&LE in joint line service is in conflict with the Applicants' position in their initial statements in which they repeatedly stressed the importance of single line service as a benefit to customers and as a source of increased revenues for them.⁴

The third category of revenue loss is shown on Table 3 which lists movements where the increased scope and resulting market power for the Applicants, especially with large shippers, will result in a significant erosion of W&LE's ability to compete. While this is a serious threat to W&LE revenue, representing a total of \$2.5 million, these movements are not included in the summary presented in Table 1 above in order to reflect the position taken by the Applicants' experts.

For direct comparison in terms of Williams' revenue loss estimates, Table 4 presents the adjusted losses along with Thompson's original estimates for FY1996 (as categorized by Williams) and Williams' restated figures. As the comparison shows, uniform application of Williams' fifty percent rule on single line/joint line moves and correction for his errors regarding the potential for preservation of revenues through alliance with CSX produce losses in excess of his \$2.0 million figure without consideration of the future competitive situation of Huron Dock which adds \$1.8 million to the losses faced by W&LE..

Conclusion

Even with the exclusions contained in the Board's July 23 report, the combined impact of the loss of the iron ore revenue from Huron Dock--\$1.8 million--and the losses due to NS' more efficient single line service of \$4.8 million shows that the revenue loss faced by W&LE using its 1996 traffic base is \$6.6 million at a minimum. This loss is net of retention of \$1.2 million in revenue through potential new alliances with CSX. Applying the Applicants' questionable fifty percent retention of revenue in face of single line competitors gives a minimum total loss of \$4.2 million.

These losses, though considerably less than those projected in my earlier statements, are substantially in excess of those presented in the Board's July 23, 1998 report (\$1.4-\$3.0 million) as summarized in Table 1 in the Introduction.

⁴ CSX expert Rosen's methodology as described in his Verified Statement includes the following statement which agrees with my view regarding local (single line) service versus interline (joint) service: "Combinations that are unlikely to attract traffic, such as a carrier with local service participating in an inter-line service, are discarded." Rosen Verified Statement p. 160.

State of Massachusetts)
County of Middlesex)

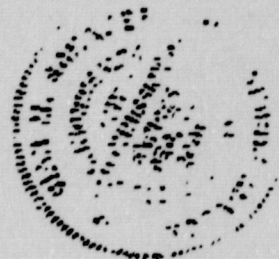
VERIFICATION

Wilbert A. Pinkerton, Jr. being duly sworn on ____ August, 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.

[Signature]
Notary Public

My Commission expires: 12-07-01



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Table 4
Comparison of Revenue Loss
Estimates for W&LE

(\$000,000's)

Williams Revenue Loss Category	Thompson's W&LE Loss Study (FY96)	Williams' Restatement of Loss Study	Restated Range - July 23 Report ¹
A - Only W&LE serves origin or destination station	1.20	0.00	0.00 - 0.00
B - NSCR same as CR: no transaction effect	1.90	0.00	1.80 - 1.80
C - NSCR Competition	3.50	1.70	1.75 - 3.50
D - NSCR Single System Service	0.20	0.20	0.10 - 0.20
E - W&LE/CSXCR Alliance ²	2.10	0.00	0.45 - 0.90
F - NSCR vs. W&LE Single System Service	0.20	0.10	0.10 - 0.20
G - W&LE/NS intermodal train	<u>3.60</u>	<u>0.00</u>	<u>0.00</u> - <u>0.00</u>
	12.70	2.00	4.20 - 6.60

Source: Table JHW-WLE-1, HC-774

¹ Reflects decision by the Board regarding exclusion of W&LE/NS intermodal train and projected future losses; also reflects Applicants methodology regarding single line/joint line service and corrected W&LE/CSXCR alliance routings

² Difference due to Williams errors regarding access and routing.