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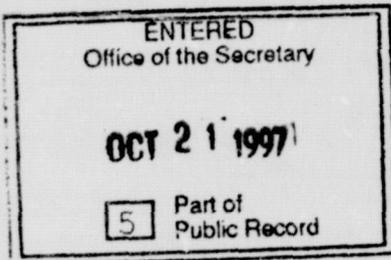
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(Sub 83)

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY -- CONTROL AND OPERATING LEASES/AGREEMENTS -- CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION -- TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN RAILWAY COMPANY TO CSX TRANSPORTATION, INC.

Finance Docket No. 33388 (Sub-No. 81)

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK WESTERN RAILROAD INCORPORATED -- TRACKAGE RIGHTS OVER LINES OF CSX TRANSPORTATION, INC. AND NORFOLK SOUTHERN RAILWAY COMPANY

Finance Docket No. 33388 (Sub-No. 83) -182937

GRAND TRUNK WESTERN RAILROAD INCORPORATED -- CONSTRUCTION AND OPERATION OF CONNECTING TRACKS AT TRENTON, MI

RESPONSIVE APPLICATION AND RELATED APPLICATION OF
CANADIAN NATIONAL RAILWAY COMPANY

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Attorneys for:
CANADIAN NATIONAL RAILWAY COMPANY
GRAND TRUNK CORPORATION
GRAND TRUNK WESTERN RAILROAD INCORPORATED

Dated: October 21, 1997

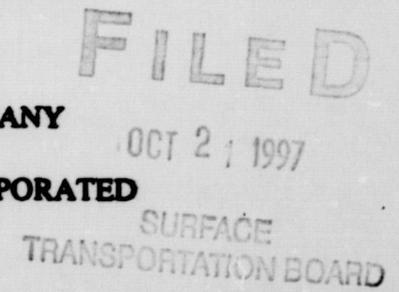


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Exhibit 1 - Map

Exhibit 2 - Agreement

Verified Statement of Gerald K. Davies

Verified Statement of Keith L. Heller

Verified Notice of Exemption, Finance Docket No. 33388 (Sub-No. 83),
Connecting Track at Trenton, MI

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY -- CONTROL AND OPERATING LEASES/AGREEMENTS -- CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION -- TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN RAILWAY COMPANY TO CSX TRANSPORTATION, INC.

Finance Docket No. 33388 (Sub-No. 81)

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK WESTERN RAILROAD INCORPORATED -- TRACKAGE RIGHTS OVER LINES OF CSX TRANSPORTATION, INC. AND NORFOLK SOUTHERN RAILWAY COMPANY

**RESPONSIVE APPLICATION OF
CANADIAN NATIONAL RAILWAY COMPANY**

Pursuant to 49 U.S.C. §§ 11343-45 and the Board's Railroad Consolidation Procedures, 49 C.F.R. Part 1180, Canadian National Railway Company ("CN"), Grand Trunk Corporation ("GTC") and Grand Trunk Western Railroad Incorporated ("GTW")¹ hereby submit the following responsive application seeking trackage rights needed to remedy harm that otherwise will result from the proposed acquisition of Conrail by CSX and NS.²

¹ Except where the context indicates otherwise, CN as used herein will embrace CN's wholly-owned subsidiary GTC and GTC's wholly-owned subsidiary GTW. At times track owned by GTW will be referred to as "CNGT" lines.

² Unless the context indicates otherwise, "CSX" will embrace both CSX Corporation and CSX Transportation, Inc., "NS" will embrace both Norfolk Southern Corporation and Norfolk

CN's requests are supported by the accompanying Verified Statements of Gerald K. Davies, its Executive Vice President of Marketing, and Keith L. Heller, its Senior Vice President - Line Operations.

In support of the relief requested, CN states as follows:³

**SECTION 1180.6(a)(1)(i)
SUMMARY OF TRANSACTION**

In this responsive application, CN requests that the Board impose a narrow condition on its approval of the proposed acquisition of Conrail, whereby the Primary Applicants would be required to grant CN trackage rights to provide balanced competition for Detroit Edison's Trenton Channel Power Plant at Trenton, MI.

The specific condition CN request is as follows:

Conrail shall grant trackage rights to CN over the existing Conrail northbound mainline between approximately MP 16.5 and MP 18.0 at Trenton, MI, a distance of approximately 1.5 miles, for the purpose of serving Detroit Edison's Trenton Channel power plant.⁴

Southern Railway Company, and "Conrail" will embrace both Conrail Inc. and Consolidated Rail Corporation. "Applicants" and "Primary Applicants" will embrace CSX, NS and Conrail.

³ In Decision No. 30 in this proceeding, the Board found that the responsive application proposed to be filed by CN "will be a minor transaction, rather than a significant transaction." CSX and Norfolk Southern -- Control and Lease -- Conrail, Finance Docket No. 33388, Decision No. 30, served September 11, 1997, slip op., at 3.

⁴ To implement the requested trackage rights at Trenton, CN proposes, in Finance Docket No. 33388 (Sub-No. 83), to construct a connection between the Conrail northbound mainline and the CNGT Shoreline Subdivision at Trenton.

**SECTION 1180.6(a)(1)(i)
APPLICANTS**

The names, business addresses and telephone number of responsive applicants are:

Canadian National Railway Company
935 de La Gauchetiere Street West
Montreal, Quebec H3B 2M9
(514) 399-5430

Grand Trunk Corporation
Grand Trunk Western Railroad Incorporated
2800 Livernois Avenue
Troy, Michigan 48083
(248) 726-9200

Questions regarding this application should be addressed to the counsel shown below:

L. John Osborn
Douglas E. Rosenthal
Elizabeth A. Ferrell
Sonnenschein Nath & Rosenthal
1301 K Street, N.W.
Suite 600 East
Washington, D.C. 20005
(202) 408-6351

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

CN proposes to begin operations over the rights requests herein as soon as possible after the effective date of a final order of the Board authorizing those operations. To implement certain of the trackage rights sought in this application, CN will construct certain connecting tracks, as described more fully in the accompanying notices of exemption filed in Finance Docket No. 33388 (Sub-No. 83).

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

CN's request for a condition in this case is narrow and focused. The purpose is to provide balanced competition for Detroit Edison's Trenton Channel Power Plant at Trenton, MI, a point within the Detroit Shared Assets Area.

**SECTION 1180.6(a)(1)(iv)
NEW FINANCIAL ARRANGEMENTS**

CN will not issue any new securities to conduct the operations proposed in this responsive application, or to construct the connecting tracks for which authority is sought in the related notices of exemption.

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

CN's proposed condition provide balanced competition for Detroit Edison's Trenton Channel Power Plant, which otherwise will lack balanced rail competition.

**SECTION 1180.6(a)(2)(i)
EFFECTS ON COMPETITION**

CN's proposed condition will increase competition by providing balanced competition for Detroit Edison's Trenton Channel Power Plant.

**SECTION 1180.5(a)(2)(ii)
FINANCIAL BENEFITS**

CN has not calculated the financial benefits of the proposed trackage rights.

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

No increase in fixed charges is anticipated as a result of the operations proposed in this responsive application.

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

The requested conditions are needed to provide balanced competition for Detroit Edison's Trenton Channel Power Plant.

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

Imposing the conditions requested by CN will not result in the abolition or transfer of any CN employee position. CN does not anticipate that the proposed conditions will result in the creation of any new positions.

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

The requested right to operate over a short segment of Conrail track to reach the coal dumper at Detroit-Edison's Trenton Channel Power Plant is needed to provide balanced rail competition where it otherwise would not exist. CN operates a line in close proximity to the

Trenton Channel dumper, and CN can use its existing line to provide direct service to the dumper, subject only to building a short connection to Conrail and operating over just 1.5 miles of Conrail track. No other carrier is so effectively positioned to provide balanced competition from Toledo with only minimal trackage rights over the Conrail line.

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

The need for the requested conditions is explained more fully in the accompanying Verified Statements of Gerald K. Davies, its Executive Vice President of Marketing, and Keith L. Heller, its Senior Vice President - Line Operations.

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

Opinions of counsel for CN and GTW, stating that the conditions requested in this application satisfy the requirements of law and will be legally authorized and valid if approved by the Board, appear at the end of this application after the Prayer for Relief.

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

CN conducts extensive operations in Canada. In addition, CN and its subsidiaries conduct rail operations in the following States:

Canadian National Railway Company

Michigan
Minnesota
New York
Vermont

Grand Trunk Western Railroad Incorporated

Indiana
Illinois
Michigan
Ohio

Duluth, Winnipeg & Pacific Railway ("DWP")⁵

Minnesota
Wisconsin

**SECTION 1180.6(a)(6)
MAP - EXHIBIT 1**

A map showing the CN System is reproduced as Exhibit 1 to this application. Twenty (20) unbound copies of a folding system map are being filed with the Board; copies of the folding map are being furnished to Primary Applicants, and will be furnished to any party upon request (note that most CN System lines are in Canada). Finally, a map detailing the geographical areas in which CN seeks trackage rights, and showing the proposed trackage rights, is included as an attachment to the Verified Statement of Keith L. Heller.

⁵ DWP is a wholly-owned subsidiary of GTC.

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

The nature and terms of the proposed transaction are set forth in the section above entitled "Summary of Transaction"(complying with Section 1180.6(a)(1)(i)).

**SECTION 1180.6(a)(7)(ii)
AGREEMENTS - EXHIBIT 2**

As provided in Section 1180.6(a)(7)(ii), note 3, a proposed trackage rights agreement, containing the significant terms proposed for each of the CN requests, is provided as Exhibit 2 to this application.

**SECTION 1180.6(a)(7)(iii)
DESCRIPTION OF RESULTING COMPANY**

This responsive application does not propose a consolidation or merger, so Section 1180.6(a)(7)(iii) does not apply.

**SECTION 1180.6(a)(7)(iv)
COURT ORDER - EXHIBIT 3**

The Responsive Applicants are the real parties in interest; therefore, Section 1180.6(a)(7)(iv) does not apply.

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

The conditions requested by CN involve rights over property currently owned and operated by Conrail. The specific line segments over which CN seeks trackage rights are

described in the section above entitled "Summary of Transaction"(complying with Section 1180.6(a)(1)(i)), and are shown on the map included as an attachment to the Verified Statement of Keith L. Heller.

**SECTION 1180.6(a)(7)(vi)
DESCRIPTION OF LINES**

The involve lines are described in the section above entitled "Summary of Transaction"(complying with Section 1180.6(a)(1)(i)).

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

No governmental assistance is contemplated or required.

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

On October 1, 1997, pursuant to Decision No. 6 in this proceeding, served May 30, 1997, and the Surface Transportation Board's Environmental Regulations, 49 C.F.R. 1105.7, CN submitted its Responsive Environmental Report ("RER") and Verified Statement of No Environmental Impact (CN-11), showing that the trackage rights requested by CN, and the related construction and operation of a connecting track, will have no significant environmental impact.

**SECTION 1180.7
MARKET IMPACT ANALYSIS**

Under the Board's Railroad Consolidation Procedures, a Market Impact Analysis is not required for a minor application. However, the accompanying Verified Statements of Gerald K. Davies and Keith L. Heller discuss the importance of the requested relief.

**SECTION 1180.8
OPERATING PLAN - EXHIBIT 15**

The accompanying Verified Statement of Keith L. Heller discusses the operations CN proposes upon a grant of the trackage rights requested in this application.

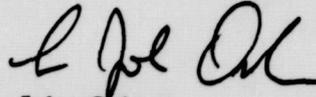
PRAYER FOR RELIEF

Wherefore, CN, GTC and GTW pray that the Board:

- (1) In Finance Docket No. 33388 and Finance Docket No. 33388 (Sub-No. 81), enter an order making the Board's approval of the Primary Application subject to the condition set forth above in the Summary of Transaction provided in compliance with Section 1180.6(a)(1)(i); and
- (2) In Finance Docket No. 33388 (Sub-No. 83), exempt from the requirements of 49 U.S.C. § 10901 the construction and operation of a connecting track by GTW.

Jean Pierre Ouellet
Chief Legal Officer and Corporate
Secretary
Canadian National Railway Company
935 de La Gauchetiere Street West
16th Floor
Montreal, Quebec
H3B 2M9
(514) 399-2100

Respectfully submitted,



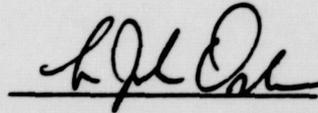
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Elizabeth A. Ferrell
Sonnenschein Nath & Rosenthal
1301 K Street, N.W.
Suite 600 East
Washington, D.C. 20005
(202) 408-6351

Attorneys for:
CANADIAN NATIONAL RAILWAY COMPANY
GRAND TRUNK CORPORATION
GRAND TRUNK WESTERN RAILROAD INCORPORATED

Dated: October 21, 1997

Certificate of Service

The undersigned hereby certifies that on this 21st day of October, 1997, he served a true copy of the foregoing on counsel for all known parties by first-class mail, postage prepaid.



L. John Osborn

SECTION 1180.6(a)(4)
OPINION OF COUNSEL

CANADIAN NATIONAL RAILWAY COMPANY
GRAND TRUNK CORPORATION
GRAND TRUNK WESTERN RAILROAD INCORPORATED

As counsel for Canadian National Railway Company ("CN"), Grand Trunk Corporation ("GTC") and Grand Trunk Western Railroad Incorporated ("GTW"), I am generally familiar with the transaction proposed in Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation -- Transfer of Railroad Line by Norfolk Southern Railway Company to CSX Transportation, Inc. I have read the foregoing Responsive Application of CN, GTC and GTW for conditions to be imposed on the that transaction pursuant to 49 U.S.C. § 11344(c).

Based upon my familiarity and this review, and my knowledge of and experience with the Interstate Commerce Act, it is my opinion that the operations described in the Responsive Application, including the related notices of exemption seeking authority to construct and operate certain connecting tracks, are within the corporate powers of CN, GTC and GTW, and will be legally authorized and valid if approved by the Surface Transportation Board and if implemented as coordinated.

Dated this 21st day of October, 1997, at Washington, D.C.


L. John Osborn
Sonnenschein Nath & Rosenthal
1301 K Street, N.W., Suite 600 East
Washington, D.C. 20005

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

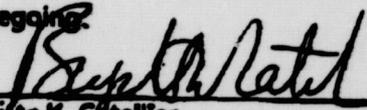
**CANADIAN NATIONAL RAILWAY COMPANY
GRAND TRUNK CORPORATION
GRAND WESTERN RAILROAD INCORPORATED**

I, Keith L. Heller, declare under penalty of perjury that I am Senior Vice-President Line Operations of Canadian National Railway Company and Executive Vice-President of both Grand Trunk Corporation and Grand Trunk Western Railroad Incorporated, applicants herein; that I am one of the executive officers duly authorized to sign, to verify and to file this application on behalf of the foregoing; that I have knowledge of the matters contained in this application to the extent they relate to the foregoing; and that the statements made in this application are true and correct to the best of my knowledge, information and belief.


Name: Keith L. Heller
Senior Vice-President Line Operations and
Executive Vice-President

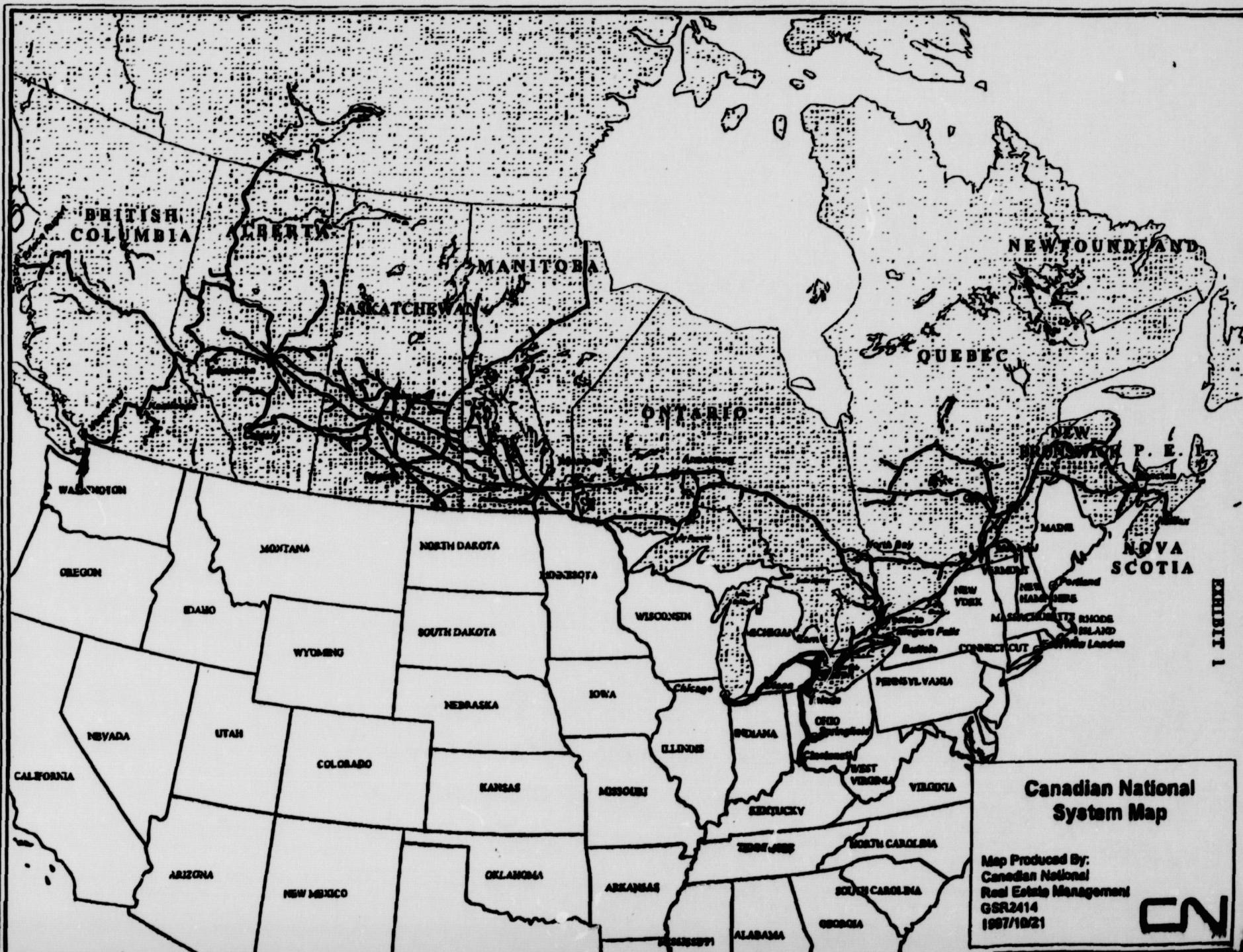
Date: October 21, 1997

I, Brigitte K. Catellier, hereby certify that I am Associate Secretary of Canadian National Railway Company and Assistant Secretary of both Grand Trunk Corporation and Grand Trunk Western Railroad Incorporated, applicants herein; and that Keith L. Heller, Senior Vice-President Line Operations and Executive Vice-President is duly authorized to sign, to verify and to file this application on behalf of the foregoing.


Name: Brigitte K. Catellier
Associate Secretary of the Company

Date: October 21, 1997

Dated this 21st day of October 1997, at Edmonton, Alberta, Canada.



Canadian National System Map

Map Produced By:
 Canadian National
 Real Estate Management
 GSR2414
 1987/10/21



EXHIBIT 1

SECTION 1180.6(a)(7)(D)
PROPOSED AGREEMENT - EXHIBIT 2

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of this ___ day of ___ 199_, by and between _____, a corporation organized under the _____ ("Owner"), and Grand Trunk Western Railroad Incorporated, a Delaware corporation ("User").

WHEREAS, the Surface Transportation Board, in its decision in 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 - Transfer of Railroad Line by Norfolk Southern Railway Company to CSX Transportation, Inc., Finance Docket No. 33388, approved the acquisition of Conrail by CSX and NS, but conditioned such approval on the grant by Owner to User of trackage rights over the segment of railroad a segment of railroad owned and operated by Owner and located between _____ and _____, all in the State of _____; and

WHEREAS, User wishes to acquire the right to use the aforesaid lines of railway and Owner is willing to grant and/or assign such use on the following terms and conditions.

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

SECTION 1. GRANTING OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in overhead freight service only, its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of Owner's railroad described herein as Zone 1 and shown on the plan attached hereto, made a part hereof and marked "Exhibit A" (hereinafter referred to as the "Subject Trackage"):

ZONE 1. Between the _____ connection on _____ Subdivision, MP _____, and the connection with _____ on _____ Subdivision, MP _____, for a total distance of _____ miles, all in the State of _____.

SECTION 2. GENERAL CONDITIONS

Except as otherwise may be provided below, this Agreement is subject to and shall be governed by the "General Conditions", Articles 1 to 16, of even date herewith, attached hereto and made a part hereof and incorporated herein.

SECTION 3. COMPENSATION

(a) The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be _____ (\$____) per car mile (hereinafter referred to as the "Base Charge").

(b) User will pay Owner a sum computed by multiplying: (i) the Base Charge, as may be revised in accordance with Article 2 of the General Conditions, by (ii) the number of cars (loaded or empty), locomotive and caboose units moved by User with its own crews and

power over the Subject Trackage by (iii) the miles of Subject Trackage used. Each locomotive and caboose, for the purpose of this Agreement shall be counted as one car.

(c) User will furnish to Owner, in care of District Superintendent Business Management or his designate, within thirty (30) days following the end of each month, a statement of the number of loaded and empty cars operated over the Subject Trackage during the month. Based on this statement, Owner will render to User a bill, computed in accordance with the provisions of this Section 3, for User's use of the Subject Trackage.

SECTION 4. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

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

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

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

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

SECTION 5. NOTICE

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

(a) If to Owner:

(b) If to User:

(c) Either party may provide changes in the above addresses to the other party by personal service or certified mail.

SECTION 6. RESTRICTION ON USE

Except as specifically provided herein, the Trackage Rights herein granted are granted for the sole purpose of User using same for bridge traffic, or other work in connection with User's trains as may be necessary to facilitate the economical and efficient movement of such trains, between the terminals of the Subject Trackage and User shall not perform any local freight

service whatsoever at any point located on the Subject Trackage. The exception shall be:

SECTION 7. TERM

This Agreement shall be effective the day and year first above written or, in the event Surface Transportation Board approval is required, on the date such approval is secured, and shall be for a term of thirty (30) years; provided, however, that User shall have the right to terminate this agreement on giving sixty (60) days advance written notice of its intent to terminate.

User may renew this Agreement for successive thirty (30) year terms by providing notification of its intent to renew at least twelve (12) months prior to expiration of the initial term or any subsequent term.

Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

Upon termination or non-renewal of this Agreement, or for any other reason, User shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval the Surface Transportation Board (STB) or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within sixty (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all costs incurred.

SECTION 8. MISCELLANEOUS SPECIAL PROVISIONS

Owner shall give trains of User utilizing the Subject Trackage pursuant to this Agreement equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic of Owner or any other user of the Subject Trackage.

When operating over Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on Subject Trackage.

Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. General Superintendent Transportation will be the representative for User, located at 2800 Livernois Avenue, Troy, Michigan 48063. Representative for Owner shall be _____. All control and usage will be subject to the approval of Owner's representative named above or his designee.

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

WITNESS:

[Owner]

By: _____

Its _____

WITNESS:

GRAND TRUNK WESTERN RAILROAD INC.

By: _____

Its _____

GENERAL CONDITIONS

TO TRACKAGE RIGHTS AGREEMENT DATED AS OF _____ BETWEEN
_____ COMPANY (Owner) and GRAND TRUNK WESTERN
RAILROAD INCORPORATED (User) relating to trackage rights between _____
_____ and _____, all in the State of _____.

ARTICLE 1. USE OF SUBJECT TRACKAGE.

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

(b) User shall not use any part of the Subject Trackage for the purpose of switching, storage of cars, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the use by User of such auxiliary tracks as may be designated by Owner for such purposes in connection with User's trains.

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

(d) Unless otherwise stated in the Agreement to which these conditions pertain, User shall have the right to operate in either direction over the Subject Trackage.

ARTICLE 2. REVISION OF BASE CHARGE.

(a) The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

(b) The Base Charge set forth in Section 3 of this Agreement shall be revised effective July 1 of each year, beginning July 1, 199_, to compensate for the prior year increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977-1990), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads. In making such determination, the final "Material prices, wage rates and supplements combined (excl. fuel)" index for the East shall be used. The Base Charge shall be revised by calculating the percentage of increase, or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

(c) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excl. fuel)" final index figure for the calendar year (199_) prior to the most recently completed calendar year; "B" to be the "Material prices, wage rates and supplements combined (excl. fuel)" final index figure for the most recently completed calendar year (199_);

and "C" to be the current Base Charge to be escalated; the revised Base Charge would be determined by the following formula:

$B \times C =$ revised Base Charge, rounded A to nearest whole cent (5 mills or more rounds to next cent) effective July 1, 199_.

(d) If the Association of American Railroads or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Surface Transportation Board for determination. In the event said Commission is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

ARTICLE 3. ADDITIONS, RETIREMENTS AND ALTERATIONS.

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

(b) If the parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate User's operations beyond that required by Owner to accommodate its operations, Owner shall construct the additional or altered facilities and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 4. MAINTENANCE OF SUBJECT TRACKAGE.

(a) Owner shall maintain, repair and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Owner will take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Article 8 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Subject Trackage, have or make any claim or demand against Owner or its officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

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

ARTICLE 5. MANAGEMENT AND OPERATIONS

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

(b) User in its use of the Subject Trackage will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner.

(c) User shall make such arrangements with Owner as may be required to have all of its employees who operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and User shall pay to Owner, promptly upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

(d) In the event Owner conducts an investigation or hearing concerning the violation of any operating rule or practice of Owner by an employee or employees of User, User shall be notified immediately, to permit compliance with any contractual time limits or procedures applicable to the employee(s) involved. Such investigation or hearing will be attended by User, if necessary to comply with any contract requirement of employee(s) involved.

(e) Owner shall have the right to exclude from the Subject Trackage, any employee of User, except officers, determined by Owner, as the result of such investigation or hearing described above, to be in violation of Owner's rules, regulations, orders, practices or instructions issued by Timetable or otherwise. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

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

(g) If, by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled and unable to proceed

under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies, bad ordered or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

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

(i) In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such retained or additional employees, including without limitation, all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 6. MILEAGE AND CAR HIRE

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

ARTICLE 7. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including, without limitation, loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Article 8 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it.

ARTICLE 8. LIABILITY

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

(a) Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever occurs with the trains, locomotives, cars or equipment of, or in the account of User, and only User is involved, User shall assume all liability therefor and bear all cost and expense in connection therewith, including, without limitation, all cost and expense referred to in Article 7 hereof, and shall forever protect, defend, indemnify and save harmless Owner and its officers, agents and employees from and against any such liability, cost or expense, regardless of whether caused in whole or in part by

the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner or its officers, agents or employees.

(b) Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of, or in the account of Owner, and only Owner is involved, Owner shall assume all liability therefor and bear all cost and expense in connection therewith, including, without limitation, all cost and expense referred to in Article 7 hereof, and shall forever protect, defend, indemnify and save harmless User and its officers, agents and employees from and against any such liability, cost or expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of User or its officers, agents, or employees.

(c) Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of, or in the account of Owner and User, and both Owner and User are involved, Owner and User shall separately assume and bear all liability, cost or expense for loss of and damage to the trains, locomotives, cars (including without limitation lading) and equipment operated by each of them and for injury to and death of their officers, agents and employees, and persons in each of their care and custody, and all liability, cost and expense for injury to and death of any other person whomsoever, and for loss of, damage to and destruction of all other property (including without limitation the Subject Trackage) so occurring, shall be borne equally by Owner and User, including without limitation all cost and expense referred to in Article 7 hereof. Whenever any liability, cost or expense is assumed by or apportioned to a party hereto under this subparagraph (c), that party shall forever protect, defend, indemnify and save harmless the other party to this Agreement and its officers, agents and employees from and against such liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its officers, agents or employees.

(d) Except as provided in paragraph (e) below, and then only in that event, whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of, or in the account of User and any other user of the Subject Trackage regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner, User or any other user of the Subject Trackage or their officers, agents or employees, then any such other user shall be considered as Owner for the purpose of determining between the parties to this Agreement User's assumption and apportionment of liability, cost and expense under paragraph (c) above.

(e) Whenever any such loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of, or in the account of Owner, User and any other user being involved, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner, User or any other user of the Subject Trackage or their officers, agents or employees, then Owner and such other user shall be jointly considered as Owner and a single party to this Agreement for the purpose of determining the assumption and apportionment of liability, cost, and expense between the parties to this Agreement under paragraph (c) above.

(f) Notwithstanding the foregoing provisions, whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of, or in the account of both parties to this Agreement, and Owner and User are involved, and without the trains, locomotives, cars or equipment of, or in the account of any other user being involved, and in the event such loss, damage, destruction, injury or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), car(s), or caboose(s) of only one of the parties to this Agreement, where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost and expense in connection with the loss, damage, destruction, injury or death so occurring, including without limitation, all cost and expense referred to in Article 7 hereof, and such party shall forever protect, defend, indemnify and save harmless the other party to this Agreement and its officers, agents and employees from and against any such liability, cost and expense.

(g) In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(h) For purposes of this Article 8, pilots furnished by Owner to User pursuant to Article 5(c) of this Agreement shall be considered the employees of User while such pilots are on board or getting on or off trains of User.

(i) Notwithstanding the provisions of Article 13(f) of this Agreement, for the purpose of this Article 8 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

ARTICLE 9. INVESTIGATION

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

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

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

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

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

(f) It is understood that nothing in this Article shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 8 hereof.

ARTICLE 10. PAYMENT OF BILLS

(a) All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party.

(b) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 3 hereof, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner for User.

ARTICLE 11. DEFAULT AND TERMINATION

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

ARTICLE 12. REGULATORY APPROVAL

Should this Agreement require the prior approval of the Surface Transportation Board, User, at its own cost and expense, will initiate and thereafter diligently file an appropriate application or petition to secure such approval and this Agreement shall take effect on the date such

approval is secured (herein referred to as the "Commencement Date"). The Commencement Date shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto. In the event Surface Transportation Board approval is not required, the Commencement Date shall be the date and year first above written, as evidenced by an exchange of correspondence referred to above. Owner will assist and support efforts of User to secure Surface Transportation Board approval of this Agreement.

ARTICLE 13. GENERAL PROVISIONS

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

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

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

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

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

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

ARTICLE 14. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, including, without limitation, the successors and assigns of Owner's interest in the Subject Trackage or any portion thereof. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement; provided, however, that such consent shall not be necessary if such transfer or assignment is to a purchaser, successor or assign of all or substantially all of the rail properties of one of the parties or to a purchaser, successor or assign of Owner's interest in the Subject Trackage or any portion thereof.

ARTICLE 15. ARBITRATION CLAUSE

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

ARTICLE 16. ABANDONMENT OF SUBJECT TRACKAGE

Notwithstanding the provisions of Section 7 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than one hundred twenty (120) days written notice of Owner's intent to abandon. In the event regulatory authority is required to affect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904, or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement, upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein Subject Trackage means the entire Subject Trackage or any portions thereof.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388 (Sub-Nos. 81)

**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK WESTERN
RAILROAD INCORPORATED -- TRACKAGE RIGHTS OVER LINES OF CSX
TRANSPORTATION, INC. AND NORFOLK SOUTHERN RAILWAY COMPANY**

VERIFIED STATEMENT OF GERALD K. DAVIES

My name is Gerald K. Davies. I am Executive Vice President of Marketing for Canadian National Railway Company ("CN")¹, a position that I have held since 1993. My business address is 935 de La Gauchetiere Street West, Montreal, Quebec, H3B 2M9.

Before joining CN, I was Vice-President of Marketing for Burlington Northern Railroad Company (BN), where I had also held senior positions in the Operations and Finance Departments. Prior to my service at BN, I was Vice-President, Marketing Services for CSX Transportation. I began my career in the early seventies as a rail industry economist with the U.S. Department of Transportation and as Assistant to the President of the United States Railway Association.

I hold a Bachelor of Science degree in Economics from Utah State University and a Doctorate in Transportation Economics from Washington State University. I am a member of the Western Economic Association, a member of the National Industrial Transportation

¹ Except where the context indicates otherwise, CN as used herein generally will embrace CN's wholly-owned subsidiary Grand Trunk Corporation ("GTC") and its subsidiary Grand Trunk Western Railroad Incorporated ("GTW"). At times I will refer to track owned by GTW as "CNGT" lines.

League, Vice-Chairman of the Marketing Committee of the Railway Association of Canada, and Chairman of the Network Efficiencies Committee of the Association of American Railroads. In my current position as Executive Vice-President of Marketing, my responsibilities include:

- **Revenue** - Responsibility for enhancing CN's revenues through strategies based on customer focus, market development and competitive intelligence.
- **Customer Service** - Development and management of an effective customer service organization.
- **Strategy** - As an officer of the company, responsible for developing effective commercial strategies which enhance share-holder value.
- **Interline relationships** - Responsible for developing strategies for enhancing CN's interface with other railroads and other transportation modes, and for maintaining effective relationships with these partners.

I am submitting this statement in support of CN's request that the Board impose a limited condition in the Detroit/Toledo area as part of the Board's decision approving the proposed acquisition of Conrail by NS and CSX.² CN's proposed condition is designed to provide balanced competition for one shipper. The proposed condition is explained in detail in the accompanying statement of Keith L. Heller on behalf of CN.

² In my statement, unless the context indicates otherwise, "CSX" will embrace both CSX Corporation and CSX Transportation, Inc., "NS" will embrace both Norfolk Southern Corporation and Norfolk Southern Railway Company, and "Conrail" will embrace both Conrail Inc. and Consolidated Rail Corporation. "Applicants" and "Primary Applicants" will embrace CSX, NS and Conrail.

A. CN's Role in the North American Freight Market

Canadian National is Canada's largest railroad and North America's sixth biggest. We operate a transcontinental system, the only railroad in either Canada or the United States to do so. Our business base produced revenues of more than \$4 billion (CDN) in 1996, almost \$2 billion of it from operations in the eastern part of North America.

In the geographical area most directly affected by the proposed breakup of Conrail, CN is the only railroad generating a significant volume of traffic between Canada and the U.S., the world's largest trading partners. Canada-U.S. trade represents one-third of our business, and is our fastest growing segment at ten percent a year.

In the U.S. we own the Detroit-based Grand Trunk Corporation, which is a 1,000 mile network that is a Class I railroad in its own right, but is operated on a fully integrated basis with CN. GTC employs 2,000 people, generating revenues approaching \$400 million (US) annually, and has presence in Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. We also enjoy strategic connections to all major U.S. railroads, operating through important gateways at Chicago, Detroit, Buffalo, and Massena (Montreal).

Beginning in 1993 Canadian National embarked on a three-year transformation, with a view to moving ownership of the company from the government to the private sector. This work led, in 1995, to the most successful public share offering in Canadian history. Today, the company is 100 percent investor-owned.

As a result of a number of factors, including favorable exchange rates and liberalized trade regulations, the past decade has seen a dramatic increase in the flow of trade between Canada and the United States. Since the signing of the 1989 Canada-U.S. Free Trade

Agreement, the value of goods traded between these two countries has increased by \$88 billion (U.S. funds), or 57 percent (1994 over 1988).

This trend has had a positive impact on CN. In 1988, transborder (Canada to U.S. and U.S. to Canada) traffic represented 24 percent of CN's total revenues, but by 1995 cross-border movements had increased to 31 percent of our revenue base.

CN believes that this trend will continue. Many of CN's major customers now view North America as a single economic entity, and select plant location based on proximity to raw materials and lowest cost of production, without regard to national boundaries. This fundamental shift will cause transborder trade flows to increase over time, and CN will continue to play a prominent role in moving such traffic.

B. CN's Position Regarding the Proposed Acquisition of Conrail by CSX and NS

When the proposed merger of CSX and Conrail was announced last October, CN had concerns about the impact of that transaction on its ability to compete in the future for traffic moving between the United States and Canada, particularly via the Montreal and Buffalo gateways. Those concerns continued when CSX and NS agreed in April of this year to undertake a joint purchase of Conrail. On August 22, 1997, CN announced a settlement agreement between CN and CSX with respect to the CSX acquisition of its share of Conrail assets. As a result of this settlement, CN supports the proposed acquisition of Conrail assets by CSX. CN is confident that the settlement with CSX will preserve CN's ability to participate in the continued expansion of Canada-U.S. trade.

The CN-CSX settlement remains subject to the finalization of a more definitive agreement. In essence, however, the settlement embodies a joint-marketing, access and

trackage rights agreement that directly responds to the need for balanced rail competition for Canada-U.S. traffic. The settlement also includes provisions that will improve transit times for CSX intermodal traffic in Chicago. The key elements of the settlement are:

- A mechanism permitting CN and CSX to quote through rates for the entire movement of new business between certain points on each carrier's system, which will provide customers more responsive pricing.
- New arrangements at Buffalo, NY, which will enable CN and CSX to better compete for new business in the region.
- Operating arrangements in Chicago that will cut transit times for CSX intermodal trains by allowing them to operate over segments of CN track.

The settlement did not resolve all issues between CN and CSX with respect to the breakup of Conrail, and instead left CN free to seek certain types of limited relief in this proceeding that would address CN's remaining concerns. In recent weeks, CN has engaged in active, good-faith negotiations, not only with CSX but also with NS, in an effort to resolve all remaining issues.

Although those negotiations have been largely successful, they have not resolved the matter of balanced competition for Detroit Edison's Trenton Channel power plant.

Accordingly, CN is seeking limited trackage rights.

C. CN Should Be Granted Trackage Rights to Serve Trenton Channel, Michigan

Due to the inherent difficulty in allocating Conrail's Detroit area assets between the Applicants, CSX and NS have agreed to operate the Detroit properties as a Shared Assets Area. While the two carriers will ostensibly provide balanced competitive service to all shippers in the Shared Assets Area, this clearly will not be the case for Detroit Edison's Trenton Channel power plant. As described in the Keith Heller's verified statement, CSX's

route between Toledo and Trenton Channel is circuitous, must pass through the busy Detroit Central Corridor, and approaches the dumper facility from the wrong direction. NS, on the other hand, will have a direct run from Toledo to Trenton Channel, as Conrail's Detroit Subdivision, south of Mile 20, will be assigned exclusively to NS. The additional mileage and time incurred by CSX will seriously undermine its ability to provide, and Detroit Edison's ability to obtain, competitive service.

CN currently serves Detroit Edison's Monroe and River Rouge plants in competition with Conrail. CN receives eastern coals from CSX and NS in Toledo. The coal is staged for delivery to Detroit Edison from Lang Yard, located in Toledo, then moved via CN's Shoreline Subdivision which virtually parallels Conrail's line. The combination of a direct route and Lang Yard enable CN and CSX/NS to provide Detroit Edison with a cost and service efficient alternative to Conrail, despite being a two-carrier haul.

Detroit Edison's and CSX's service dilemma can be remedied by granting CN trackage rights over approximately 1.5 miles of Conrail's Detroit Subdivision. CN and CSX could then jointly offer Detroit Edison the competitive alternative that the Applicants intended when they agreed upon the concept of a shared asset area.

CONCLUSION

For these reasons, the Board should grant CN's narrow request for a condition granting trackage rights to serve Detroit Edison's Trenton Channel power plant.

VERIFICATION

I, Gerald K. Davies, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on October 21, 1997.


Gerald K. Davies

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388 (Sub-No. 81)

**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK WESTERN
RAILROAD INCORPORATED -- TRACKAGE RIGHTS OVER LINES OF CSX
TRANSPORTATION, INC. AND NORFOLK SOUTHERN RAILWAY COMPANY**

VERIFIED STATEMENT OF KEITH L. HELLER

My name is Keith L. Heller. Since March of 1997 I have been Senior Vice President - Line Operations for Canadian National Railway Company ("CN").¹ My business address is 935 de La Gauchetiere Street West, Montreal, Quebec, H3B 2M9. I report directly to the Executive Vice President - Operations of CN, who provides direction for overall operating services (including rail transportation, customer service, maintenance of equipment, and engineering functions) for CN. I am responsible for, among other matters, the design and direction of strategies, plans and policies to best promote transportation services for CN.

I began my career with CN as a Car Checker in 1966. I was promoted to the position of Yard Office Supervisor in Sarnia in 1970. Since then, I have held a variety of positions within the CN system, including Trainmaster; Assistant Superintendent (Toronto); Coordinator Cabooseless Trains (Montreal); Superintendent (Winnipeg); Director Train Services (Winnipeg); Assistant General Superintendent (Winnipeg); District Manager British Columbia

¹ Except where the context indicates otherwise, CN as used herein generally will embrace CN's wholly-owned subsidiary Grand Trunk Corporation ("GTC") and its subsidiary Grand Trunk Western Railroad Incorporated ("GTW"). At times I will refer to track owned by GTW as "CNGT" lines.

North; Assistant Vice-President Ores, Minerals and Metals (Toronto); and Chief of Transportation (Montreal).

In the course of my career I have been responsible for managing operations at various levels and locations. In addition, I have been directly responsible for the design, development and implementation of a variety of system-wide projects. These include the design of the CN waybill system; the design of CN's two-way telemetry system specifications; and the development of CN's beltpack system. In recent years I also participated actively in the planning and implementation of an internal management restructuring which more closely coordinated the operation of GTW's lines in the United States with CN's lines in Canada, thereby enhancing the quality of cross-border services.

My thirty-one years of experience with CN have given me a unique and broad understanding of the CN system. In particular, I am familiar with CN's operations in the United States, and with the importance of efficient cross-border operations to CN and its customers.

I am submitting this statement to seek limited relief in response to the proposed acquisition of Conrail by NS and CSX.² Specifically, I will show that trackage rights are needed to ensure that a Detroit customer will have balanced rail competition following implementation of the proposed transaction.

² In my statement, unless the context indicates otherwise, "CSX" will embrace both CSX Corporation and CSX Transportation, Inc., "NS" will embrace both Norfolk Southern Corporation and Norfolk Southern Railway Company, and "Conrail" will embrace both Conrail Inc. and Consolidated Rail Corporation. "Applicants" and "Primary Applicants" will embrace CSX, NS and Conrail.

CN's specific request, in Finance Docket No. 33388 (Sub-No. 81), is for the following condition:

Conrail shall grant trackage rights to CN over the existing Conrail northbound mainline between approximately MP 16.5 and MP 18.0 at Trenton, MI, a distance of approximately 1.5 miles, for the purpose of serving Detroit Edison's Trenton Channel power plant.³

**CN's Proposed Trackage Rights at Trenton Are Needed to
Provide Balanced Competition For Traffic Moving to
Detroit Edison's Trenton Channel Power Plant**

CN seeks trackage rights over approximately 1.5 miles of Conrail's northbound mainline at Trenton, MI, for the purpose of providing competitive service to Detroit Edison's Trenton Channel power plant. The Trenton Channel access is needed so that this plant, located *within* the Detroit Shared Assets Area, will have balanced competition from two rail carriers, consistent with the representations CSX and NS have made in seeking approval of the proposed transaction. Trackage rights are necessary because, even though the Trenton Channel plant technically will be reached by both NS and CSX following implementation of the proposed transaction, the CSX single-line route will be markedly inferior to the NS single-line route, and will not provide effective competition for coal moving to this plant. As I will show, a joint-line CSX-Toledo-CN route would provide the balanced competition to which the Trenton Channel plant is entitled as a Shared Assets point.

Attachment 1 to my statement is a map showing the location of the Trenton dumper and the pertinent rail lines. Attachment 2 provides a closer view of the Trenton Channel plant

³ To implement the requested trackage rights at Trenton, CN proposes, in Finance Docket No. 33388 (Sub-No. 83), to construct a connection between the Conrail northbound mainline and the CNGT Shoreline Subdivision at Trenton.

and dumper, the adjacent rail lines, the proposed CN connection, and the requested CN trackage rights. It can be seen that the power plant itself is located on the east side of CNGT's Shoreline Subdivision, but the plant's dumper, to which the coal must be delivered, is situated to the west, between the Conrail northbound and southbound mainlines. A conveyor extends over the CNGT tracks to the plant. The situation is quite unusual in that service today cannot be provided by the railroad closer to the plant, and instead is provided exclusively by the railroad further from the plant but next to the dumper. (From a historical perspective, it is interesting to note GTW formerly served the power plant directly from the east side of its tracks. The plant became exclusively served by Conrail during the 1980's when the coal dumper was constructed.)

The Trenton Channel plant currently receives approximately three unit coal trains per week from Conrail, which brings the traffic via Toledo over its Detroit Line. NS, of course, will be acquiring that portion of the Detroit Line extending from Toledo to the southern terminus of the Detroit Shared Assets Area, just south of Trenton. Thus, the post-transaction NS route to the Trenton Channel plant will replicate the existing Conrail route from Toledo.

CSX, on the other hand, would have a less direct and less efficient route. CSX first would need to move the traffic north from Toledo on its existing line to Carleton, MI, as shown on Attachment 1. At Carleton, CSX plans to reconstruct a connection at Carleton to Conrail's Lincoln Secondary branch line, which will become part of the Detroit Shared Assets Area. From Carleton, CSX would need to bring the Detroit Edison coal trains over the Lincoln Secondary into Detroit, and then turn south on the Conrail Detroit Line to operate to the Trenton Channel plant.

The serious competitive disadvantage of this CSX route, as compared with the direct NS route, will result both from CSX's failure to approach the dumper in the proper direction and from CSX's need to traverse a busy section of the Detroit Central Corridor. I will discuss these factors in turn below.

An explanation of the operations needed to access the Trenton dumper will show why the post-transaction CSX route would approach in the wrong direction. To deliver the coal, Conrail proceeds north on its northbound mainline to the Detroit Edison yard lead facing switch, which is located approximately 150 feet north of Conrail Milepost 18, as shown on Attachment 2. The loaded train pulls into the first of the storage tracks adjacent to the mainline and moves around the dumper by-pass track, so that it then can shove loaded cars back into the remaining two storage tracks. The Conrail motive power then is dispatched for servicing, and Detroit Edison's switcher takes over to pull the cars forward and push them back through the dumper, one cut at a time. Empty cars are returned to the storage tracks after they are dumped by continuing to push them through the dumper. To remove the empties, Conrail motive power pulls into the northernmost run around/yard lead track and onto the dumper by-pass track, from which Conrail reassembles the empty train. Once assembled, the train continues around the loop track to face in the southbound direction, and rejoins the southbound Conrail main. The loop track serves to return the train to the southbound main because Conrail's Detroit Line mains are controlled to keep the northbound flow on one track and the southbound flow on the other.

Thus, the orientation of the entire Trenton dumper operation is to approach from the south and depart to the south (see Photo, Attachment 3). The post-transaction CSX route

would have it backwards. Since the dumper storage tracks are directly accessible only from the Conrail northbound main, CSX trains via Detroit would need to run against the flow of traffic on Conrail's northbound main for approximately 11 miles from River Rouge Yard to Trenton. Upon arrival, CSX motive power would be on the wrong end of the train to work the train in the same way Conrail does today. As train length would exceed any available side tracks, the power could not be repositioned in the immediate area. Backing an entire train of more than 100 cars repeatedly through several turnouts and into the storage tracks (which would need to be modified) could be objectionable on safety grounds. Safety concerns also would make it undesirable to approach the dumper by operating down the southbound Conrail main and backing the entire train in from the opposite, west side of the dumper lot and through the dumper by-pass track.

In addition to these problems at the dumper, CSX trains operating through the Detroit Central Corridor would be likely to be delayed on the way to the dumper, given the complex and congested nature of operations in the Corridor. A CSX coal train coming off the Lincoln Secondary branch would not need to cross River Rouge Drawbridge, but it would need to cross CN's mainline very near the bridge, and then proceed northeasterly to River Rouge before returning south on the Conrail line to Trenton, so there is a good chance that the train would encounter congestion. Even apart from congestion, this CSX route would be 35% longer from Toledo than the NS single-line route, and over 40% longer than the CSX-CN route for which we seek trackage rights. Table 1 shows the differential in mileage to the Trenton dumper from CP Vickers, a point in Toledo that post-transaction will be common routings via CN, NS or CSX, and through which I believe most of the coal would pass.

Table 1: Comparison of Mileage From Toledo to Trenton Dumper Via Alternate Routes

Origin	Destination	CSX-CN	NS	CSX
Vickers	Manhattan Jct.	7.1		7.1
Manhattan Jct.	Trenton Plant	34.7		
Vickers	Airline Jct.		4.2	
Airline Jct.	Trenton Plant		39.7	
Manhattan Jct.	Carleton			28.5
Carleton	Penford			13.0
Penford	Rouge Yard			0.5
Rouge Yard	Trenton Plant			11.0
	Total Miles	41.8	43.9	60.1

On the basis of mileage, the indicated difference between the CSX route and potential CN-CSX route is 18.3 miles. The current annual consumption of rail-delivered coal at the plant corresponds to approximately 14,000-15,000 carloads. If each car were to travel the additional 18.3 miles both ways (36.6 miles), an additional 530,000 car miles would be incurred, with the associated maintenance expenses, and, with respect to added time in transit, depreciation and interest expense as well. Since, for unit coal trains, both time and mileage are determinants of competitiveness, CSX clearly will not be able to provide balanced competition to NS for coal traffic moving to the Trenton Channel plant -- particularly from eastern mines.

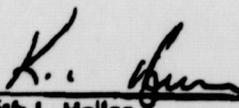
CN's Shoreline Subdivision offers a direct and efficient connection for CSX from Toledo to the Trenton Channel plant, subject only to approval of CN's request for trackage rights over 1.5 miles of the Conrail line and the construction of a short connection.

Conclusion

I urge the Board to grant CN's narrow request for trackage rights so that the promise of balanced rail competition in the Detroit Shared Assets Area will be fulfilled for Detroit Edison's Trenton Channel power plant.

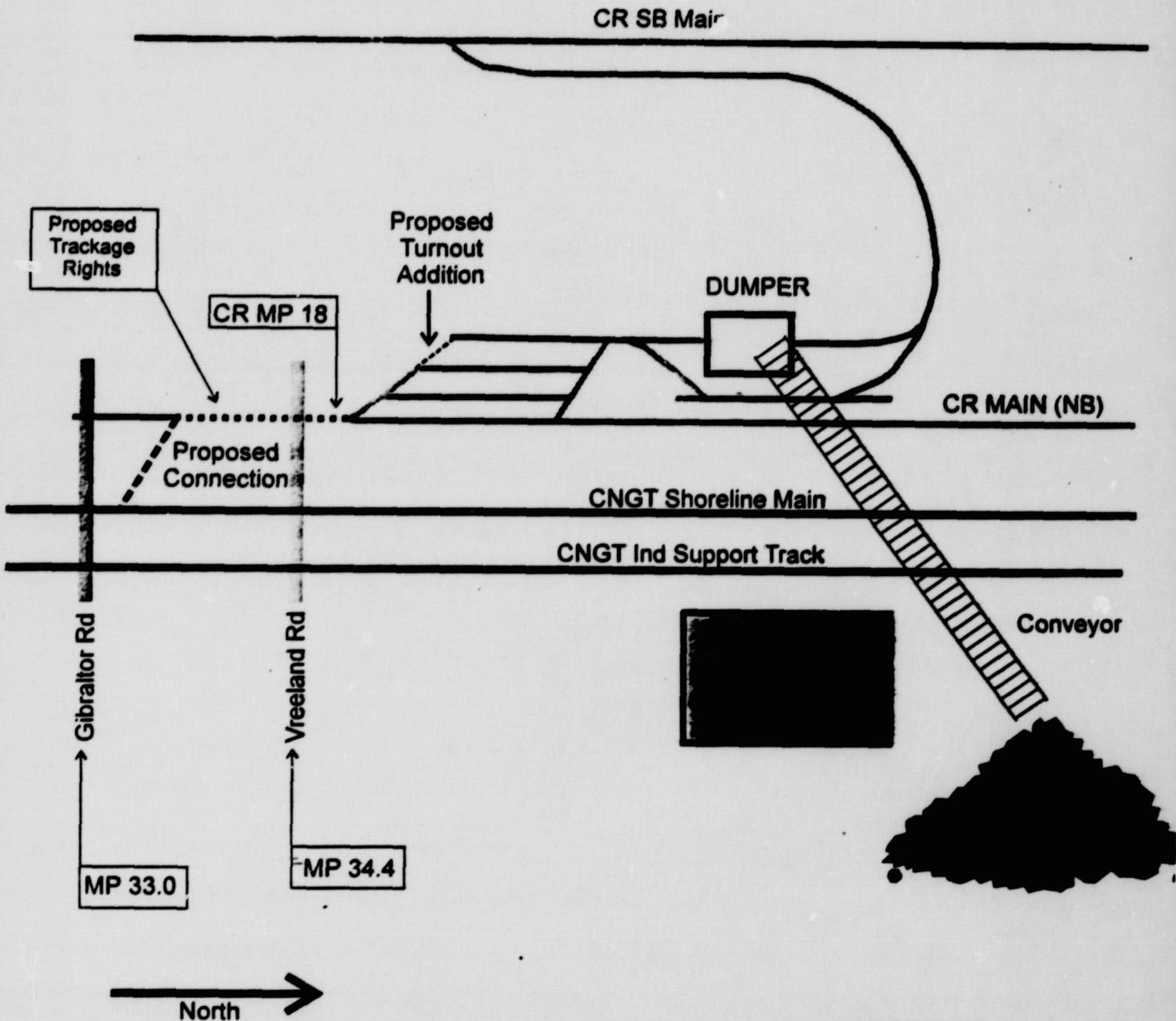
VERIFICATION

I, Keith L. Heller, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on October 21, 1997.

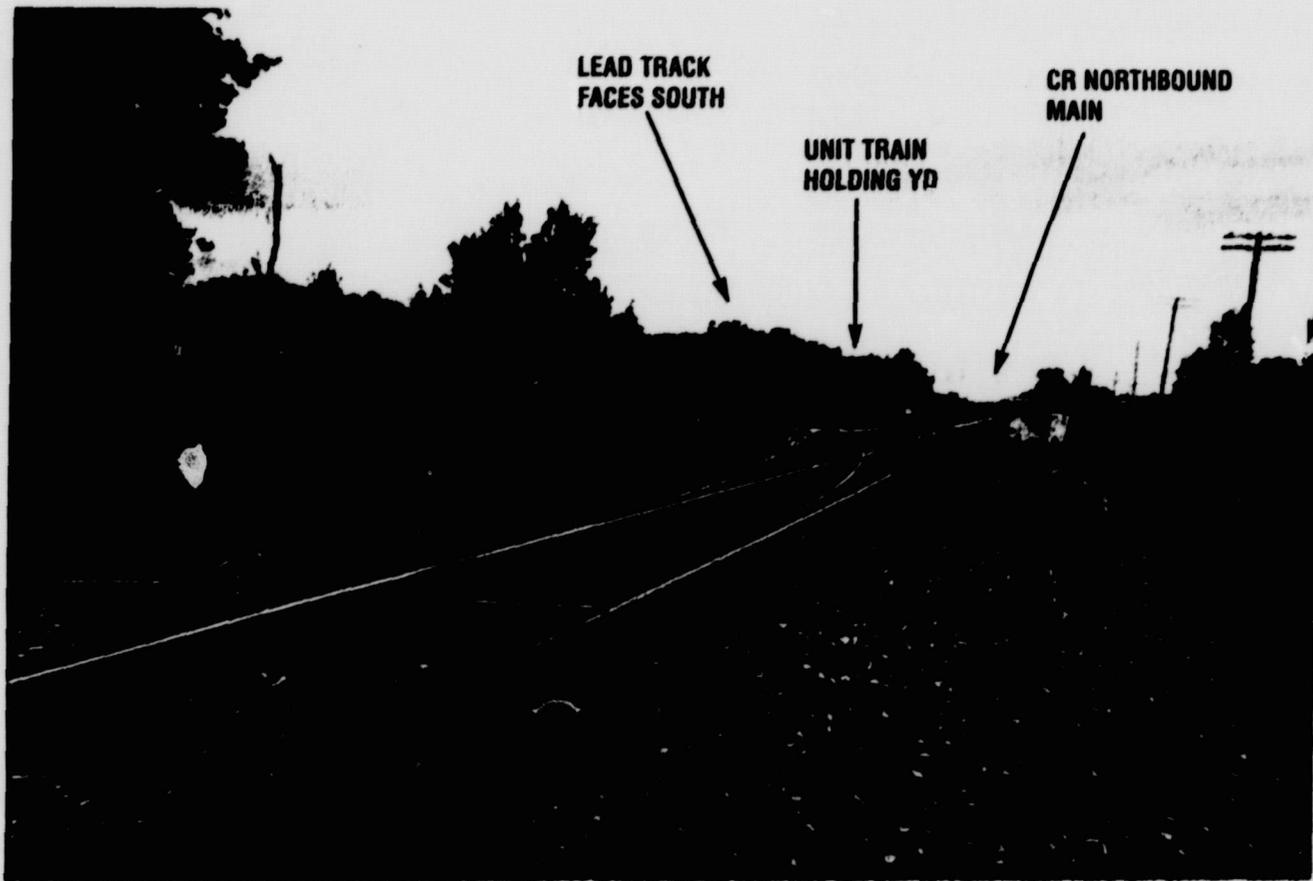


Keith L. Heller

Proposed CN Trackage Rights and Connection at Detroit Edison Trenton Channel Power Plant



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DATE: 14 Oct 97
DRAWN BY: RLY



**DETROIT EDISON YARD - TRENTON, MI -
LOOKING NORTH ON CR NORTHBOUND MAIN**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY -- CONTROL AND OPERATING LEASES/AGREEMENTS -- CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION -- TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN RAILWAY COMPANY TO CSX TRANSPORTATION, INC.

Finance Docket No. 33388 (Sub-No. 83)

GRAND TRUNK WESTERN RAILROAD INCORPORATED -- CONSTRUCTION AND OPERATION OF CONNECTING TRACK AT TRENTON, MI

VERIFIED NOTICE OF EXEMPTION

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**Attorneys for:
CANADIAN NATIONAL RAILWAY COMPANY
GRAND TRUNK WESTERN RAILROAD INCORPORATED**

Dated: October 21, 1997

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388

**CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN
CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY -- CONTROL
AND OPERATING LEASES/AGREEMENTS -- CONRAIL INC. AND CONSOLIDATED
RAIL CORPORATION -- TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN
RAILWAY COMPANY TO CSX TRANSPORTATION, INC.**

Finance Docket No. 33388 (Sub-No. 83)

**GRAND TRUNK WESTERN RAILROAD INCORPORATED -- CONSTRUCTION AND
OPERATION OF CONNECTING TRACK AT TRENTON, MI**

VERIFIED NOTICE OF EXEMPTION

Grand Trunk Western Railroad Incorporated ("GTW") files this Notice of Exemption pursuant to the Board's regulations at 49 C.F.R. § 1150.36(c). In accordance with the those regulations, GTW makes the following responses.

1. **Name and Address of the Railroad Proposing to
Construct and Operate the Connection Track**

The name and address of the railroad proposing the construct and operated the connecting track is:

**Grand Trunk Western Railroad Incorporated
2800 Livernois Avenue
Troy, Michigan 48083
(248) 726-9200**

2. Name of the Proposed Operator

GTW will both construct and operate the proposed connecting track.

3. Description of the Proposed Construction and Operation

In Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation -- Transfer of Railroad Line by Norfolk Southern Railway Company to CSX Transportation, Inc., CSX and NS seek authority to acquire Conrail.¹

In Finance Docket No. 33388 (Sub-No. 81), Canadian National Railway Company and Grand Trunk Western Railroad Incorporated -- Trackage Rights Over Lines of CSX Transportation, Inc. and Norfolk Southern Railway Company, GTW and its parent Canadian National Railway Company ("CN")² seek certain trackage rights over existing Conrail lines as conditions to the proposed acquisition. The rights sought by GTW include trackage rights on the existing Conrail northbound mainline between approximately MP 16.5 and MP 18.0 at Trenton, MI, a distance of approximately 1.5 miles, for the purpose of serving Detroit Edison's Trenton Channel Power Plant.

To implement the requested trackage rights at Trenton, GTW plans to construct a connection between the Conrail northbound mainline and the CNGT Shoreline Subdivision at Trenton. The power plant itself lies adjacent to and just east of the CNGT line, which is

¹ Unless the context indicates otherwise, "CSX" will embrace both CSX Corporation and CSX Transportation, Inc., "NS" will embrace both Norfolk Southern Corporation and Norfolk Southern Railway Company, and "Conrail" will embrace both Conrail Inc. and Consolidated Rail Corporation.

² At times track owned by GTW will be referred to as "CNGT" lines.

parallel to the Conrail northbound mainline. The dumper for the power plant, to which CN seeks access, is located on the west side of Conrail's northbound mainline, and a conveyor takes coal from the dumper across the CNGT line to the power plant. A map showing the location of the proposed connecting track was filed at part of GTW's Responsive Environmental Report (CN-11) on October 1, 1997, and a copy of that map is attached as Exhibit 1 hereto.

The proposed connecting track, in conjunction with the requested trackage rights, will enable GTW, after the proposed breakup of Conrail, to deliver coal to the Trenton Channel dumper in competition with NS, and thereby provide balanced rail competition that otherwise would not exist.

4. Use of Class Exemption

The class exemption authorized by the Board in Ex Parte No. 392 (Sub-No. 2) Class Exemption for the Construction of Connecting Track Under 48. U.S.C. 10901, 1 S.T.B. 75 (1996), and published at 49 C.F.R. 1150.36, is being used in this instance because the connecting track at Trenton will be constructed within existing rail rights-of-way or on land owned by the connecting railroads.

5. Date the Construction is Proposed to Begin

GTW proposes to begin construction of the connecting track at Trenton only after the effective date of a Board decision approving the primary application in Finance Docket No. 33388 and granting, as a condition to the acquisition, the responsive application in Finance Docket No. 33388 (Sub-No. 81), at least as to the request for trackage rights on the existing Conrail northbound mainline between approximately MP 16.5 and MP 18.0 at Trenton.

6. **Environmental Report**

GTW hereby certifies that it has complied with the Board's environmental rules at 49 C.F.R. Part 1105. In that regard, pursuant to Decision No. 6 in Finance Docket No. 33388, served May 30, 1997, and Board's Environmental Regulations, 49 C.F.R. 1105.7, CN and GTW filed their Responsive Environmental Report (CN-11) on October 1, 1997.

7. **Prefiling Notice Requirements of 49 C.F.R. 1150.36(c)(1)**

GTW hereby certifies that it has complied with the prefiling notice requirements of 49 C.F.R. 1150.36(c)(1) by notifying the following parties in writing on October 1, 1997 of its intent to file this Notice of Exemption. The notification included a statement addressing the requirements imposed on the Board by the environmental regulations at 49 C.F.R. Part 1105.

Mr. Rich Pfaff
Manager, Federal Project Review
Southeast Michigan Council of Governments
660 Plaza Drive, Suite 1900
Detroit, MI 48226

Chairman
Michigan Public Service Commission
P.O. Box 30221
Lansing, MI 48909

Michigan Department of Transportation
Freight Services & Safety Division
P.O. Box 30050
425 West Ottawa
Lansing, MI 48909

Respectfully submitted,

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Attorneys for:
CANADIAN NATIONAL RAILWAY COMPANY
GRAND TRUNK CORPORATION
GRAND TRUNK WESTERN RAILROAD INCORPORATED

Dated: October 21, 1997

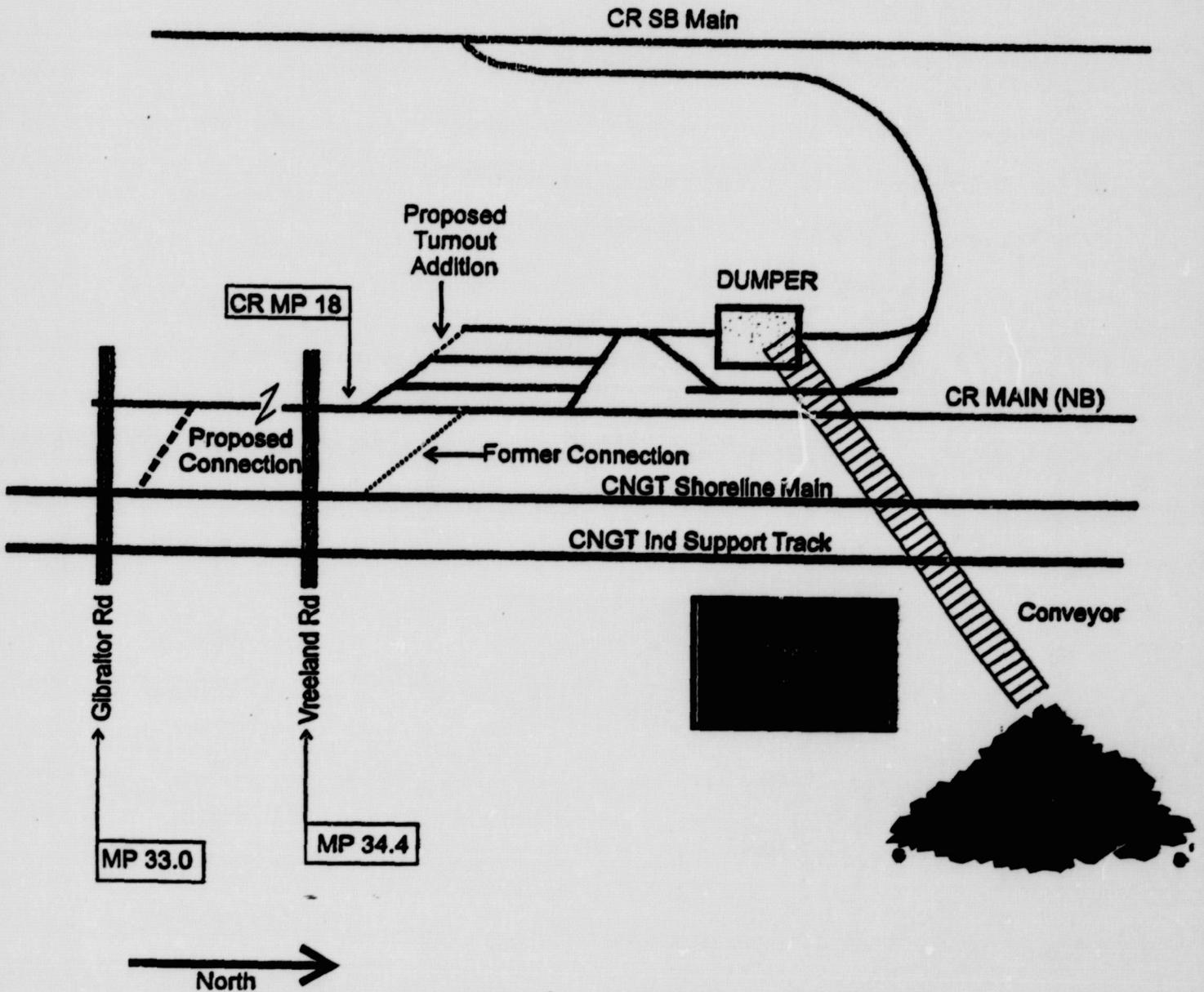
Certificate of Service

The undersigned hereby certifies that on this 21st day of October, 1997, he served a true copy of the foregoing on counsel for all known parties in Finance Docket No. 33388, and on the parties required to be notified under 49 C.F.R. 1150.36(c)(1), by first-class mail, postage prepaid.

L. John Osborn

02/22/05 (

Proposed Connection to Implement Access to Detroit Edison Trenton Channel Pla

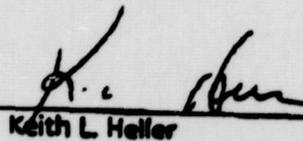


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VERIFICATION

PROVINCE OF ALBERTA)
)
CANADA)

Keith L. Heller, being duly sworn, states that he is Executive Vice-President of Grand Trunk Western Railroad Incorporated ("GTW"); that he is authorized to verify and file with the Surface Transportation Board the foregoing Notice of Exemption in Finance Docket No. 33388 (Sub-No.83) on behalf of GTW; that he has carefully examined all the statements in the Notice of Exemption; that he has knowledge of the facts and matters relied upon in the Notice of Exemption; and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.


Name: Keith L. Heller
Executive Vice-President

Date: October 21, 1997

Subscribed and sworn to before me, a Notary Public in and for the Province of Alberta, this 21st day of October 1997.


Notary Public
