

STB FD-33388 (SUB 91) 7-14-00 D 199276



LAW OFFICE

## MCLEOD, WATKINSON & MILLER

MICHAEL R. McLEOD  
WAYNE R. WATKINSON  
MARC E. MILLER  
RICHARD T. ROSSIER  
CHARLES A. SPITULNIK  
RICHARD PASCO

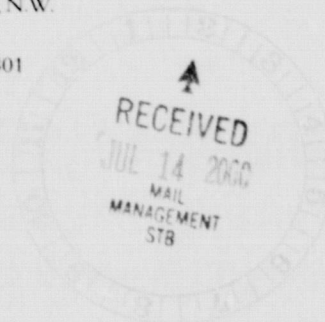
ONE MASSACHUSETTS AVENUE, N.W.  
SUITE 800  
WASHINGTON, DC 20001-1401  
(202) 842-2345  
TELECOPY (202) 408-7763

KATHRYN A. KLEIMAN  
OF COUNSEL  
(\*Admitted in Virginia only)

ROBERT RANDALL GREEN  
LAURA L. PHELPS  
GOVERNMENT RELATIONS

STEPHEN FRERICHS  
ECONOMIST

199276



July 14, 2000

Hon. Vernon A. Williams, Secretary  
Surface Transportation Board  
Office of the Secretary  
Case Control Unit,  
Attn: STB Finance Docket No. 33388 (Sub-No.91)  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Dear Sir:

I am enclosing for filing the original and twenty-five (25) copies of the letter of Hon. John D. Porcari, Secretary of Transportation of the State of Maryland, which presents the State's Comments on the progress reports filed by the applicants in this proceeding. I am also enclosing a 3.5 inch diskette with this document.

In addition, I am enclosing one additional copy which I ask that you date stamp and return to our messenger.

Finally, please note that my address and phone number have changed. I will appreciate your changing this information on the service list for this proceeding.

Sincerely,

Charles A. Spitulnik

ENTERED  
Office of the Secretary

JUL 14 2000

part of  
Public Record

cc:

Julia Farr, Esquire  
Richard A. Allen, Esquire  
Dennis G. Lyons, Esquire



**Maryland Department of Transportation**  
The Secretary's Office

**Parris N. Glendening**  
Governor

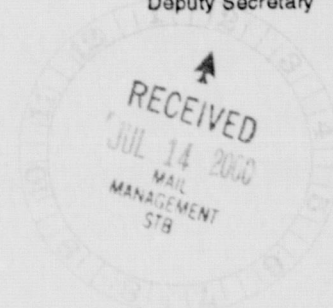
**Kathleen Kennedy Townsend**  
Lt. Governor

**John D. Porcari**  
Secretary

**Beverley K. Swaim-Staley**  
Deputy Secretary

July 14, 2000

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Case Control Unit  
ATTN: STB Finance Docket No. 33388  
1925 K Street NW  
Washington DC 20423-0001



Dear Secretary Williams:

Re: Finance Docket No. 33388 (Sub-No. 91)

I commend the efforts of the Surface Transportation Board (STB) to follow up on the acquisition agreements of CSX Corporation and CSX Transportation (collectively, CSX) and Norfolk Southern Corporation and Norfolk Southern Railway (collectively, NS) to acquire and divide the assets of the Consolidated Rail Corporation known as Conrail. The opportunity presented by Docket No. 33388 (Sub-No. 91) allows the various parties to report progress or status of the commitments included in the operating plans and any separate agreements between the applicants and various interested parties as approved by the STB in July, 1998. The actual implementation date of the transaction was delayed until June 1, 1999 in order for the companies involved to prepare personnel, technology and facilities to assure a smooth transition. Obviously, the implementation and transition did not go as well as was hoped. Our purpose in writing today is to respond to your request with the status of impacts on regional passenger rail service as well as to advise you of the status of commitments made to the State of Maryland during the course of the STB's review of the transaction.

**Impacts on Regional Passenger Rail Service:**

The operating plans filed by CSX and Norfolk Southern both clearly stated that the forecasted changes in business would have no impact on passenger rail service in the Washington DC or Baltimore areas. CSX in particular noted that adequate capacity was available to accommodate expected growth in freight rail traffic as well as the existing passenger rail traffic. We recognize the Board's reluctance, as stated in the Decision approving this transaction (at page 96), to address contractual issues between the various passenger rail systems and Conrail, CSX or NS. However, the Board also stated it would continue to monitor rail passenger service issues for the five year period. We welcome that oversight and appreciate the interest of the Board in assuring that passenger needs and the interests of the commuting public are both given consideration.



The Honorable Vernon A. Williams  
Page Two

Maryland has not asked the Board to impose contractual conditions or to affect existing contractual arrangements. We are now in the process of negotiating a new contract with CSX for use of its tracks for the Maryland commuter rail service known as MARC. The contract in effect at the time the transaction was approved expired in December, 1999, and we have continued to operate under mutual agreement since that time. Our goal is to complete negotiations and execute a new agreement by the end of this summer. These discussions have gone well and we do expect to sign a new multi-year contract at that time.

We believe it is important for the Board to be advised of the impacts of the transaction on MARC service to the commuting public. Attached for your review is a table of on-time performance on Maryland's three commuter lines since the transaction (see Attachment 1). The Brunswick and Camden lines are owned by CSX and the Penn line is owned by Amtrak. As you can see from the attached data, a serious decline in on-time performance (OTP) for the Camden line and, to a somewhat lesser degree, the Brunswick line occurred after the June 1, 1999 date. Passenger trains were often cancelled, or delayed by several hours as freight traffic was deployed ahead of scheduled passenger rail service with little or no regard on public impacts. As you can see from the numbers, there has been some recent improvement but on average, OTP is still only in the low 80 percentiles and not yet near the 90 percent level which is the minimum tolerable level for people who rely on this means of transportation to get to work on time and to return home in time to meet commitments to child care providers and others, or the mid to upper 90 percentiles as it was prior to the transaction. Clearly this impact is not in keeping with the commitments given by the railroad to Maryland in either the operating plan or the commitment letters signed with the Governor and included in Maryland's official filing with the Board (see Attachment 2). After 12 months of tolerating this poor service, some of our long time Camden line customers have given up on public transportation, and have returned to commuting by automobile, thus adding to highway congestion and poor air quality in the nation's second most congested metropolitan region.

We have reviewed the railroads' recent submissions and recognize that even the extra months of advance preparation before the split date did not prepare CSX for the traffic increases along the lines shared with MARC. In those submissions, CSX states that service issues are primarily capacity related. It is important to note that since the operating plan documents were filed, MARC service did not increase, on the contrary, MARC has reduced its passenger train service on the Camden line to accommodate additional freight service. Also, in the operating plans originally filed with the Board, CSX stated there was no need for additional capacity improvements as it made such commitments to the then current passenger rail service levels. Therefore, we are somewhat baffled by the CSX reference to MARC trains as "daily conflicts" in their June 1, 2000 report to the STB. Clearly, passenger service has been adversely impacted by freight rail service increases. Our review of service issues shows that not all delays were capacity related, and could often be tied to poor dispatching decisions, insufficient space in freight yards and terminals outside the MARC service area that cause delays and congestion on the lines MARC uses, or crew availability.

As you can imagine, our experience with CSX on both the Camden and Brunswick lines has been extremely frustrating both to the State officials responsible for operating this service, and for the passengers who want very badly to be able to rely on it. Please let me put our frustration into context. The State signed the last Agreement with CSX in 1997 and agreed to pay a generous per mile fee to CSX for the privilege of being on its lines, and for its operation and dispatching of our trains and maintenance of our equipment. We also at that time agreed, in response to CSX's specific request and despite public opposition, to reduce the frequency of trains on the Camden line. We paid, and continue to pay, a great deal of money in exchange for a level of service that CSX agreed to during those negotiations. While it is true that the State agreed to look at certain other capital projects that would have enhanced the operations considerably, nothing in our agreement with CSX predicated the continued operation of the MARC trains in a timely, reliable manner on the completion of those projects. As the charts in Attachment 1 demonstrate, CSX was able to accommodate our service and provide not just respectable but outstanding reliability until June 1999. All of that changed after the transaction was consummated. The variables in this equation are the MARC service and the CSX train frequencies. Nothing about the MARC service changed – except that we were operating **fewer** trains than we had been doing one year earlier. What changed? CSX's ability to handle the volumes of freight that came its way.

We are sharing our frustration with our Maryland Congressional Delegation through weekly reports of OTP. Clearly, they have been as dissatisfied as their constituents. Over the past year, with help from elected officials from Maryland and West Virginia, we have worked closely with CSX to improve this unacceptable situation. We are now working to make certain concessions and improvements within the framework of our new contract to address many issues. We are hopeful these adjustments will help. However, we believe it is important that the Board continue to monitor these significant impacts to assess if "the basis or a need is presented" (see page 97 of the Board's Decision No. 89, July 20, 1998) for departing from the Board's overall approach of leaving passenger rail and commuter rail issues to negotiation between the parties. In this regard, we hope the Board will recognize the significance and importance of quality and timely service to the taxpaying public commuters as well as to shippers and continue to monitor this situation.

At some point, there may be a time when the protection of the public good requires intervening conditions. While it is true that the State has a contract with CSX and hopes to complete a new one shortly, it is also true that the Board has the power to impose conditions when an adverse effect occurs as a result of a Board-approved transaction. The facts demonstrate that CSX's inability to reliably operate the MARC train service clearly falls within that description, and if necessary, this Board should not hesitate to exercise its statutory powers for the benefit of the public and consistent with the public interest.



The Honorable Vernon A. Williams  
Page Four

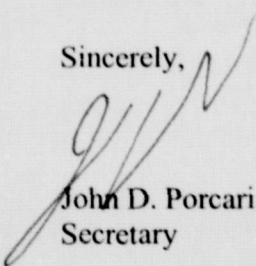
**Status of Other Commitments to the State of Maryland:**

Regarding the other representations made to the Board in the filings and in the Governor's letters of commitment, Attachment Number 3 lists the various commitments (see Attachment 2, October 2, 1997 letter to STB from Governor Parris N. Glendening) and their current status. Our understanding is that the operating plans filed by both railroads were commitments to achieve proposed service and infrastructure improvements within three years after the implementation date. The Board would monitor the implementation and transaction impacts for five years. As you will read in the attachment, many items have not yet been addressed. However, we are hopeful that work will begin soon and commitments to the State of Maryland will be implemented as agreed to.

Finally, it should be noted that both railroads expressed confidence that this transaction would take trucks off the interstate highway by providing superior rail service alternatives. It does not appear that this has been the case to date. In fact, due to severe service problems, it appears that many shippers are using more trucks than before to assure timely delivery of goods. In that same vein, the Port of Baltimore has lost some customers as shippers look for other ports with better rail service.

Thank you again for the opportunity to provide comments to the Board and to assist you in your monitoring function. Please feel free to contact me or my staff with any follow-up questions or to ask for further information. My staff coordinator for this response, Ms. Missy Cassidy, Assistant Director for Policy and Governmental Affairs, can be reached at 410-865-1092. Specific questions on MARC commuter rail service can be directed to Ms. Kathy Waters, Director of MARC Train Service at 410-859-7422 and freight rail issues can be discussed with Mr. David Ganovski, Director of Maryland Freight Rail Services at 410-757-3831.

Sincerely,



John D. Porcari  
Secretary

cc: The Honorable Parris N. Glendening, Governor of Maryland  
Mr. Dave Ganovski, Director, Maryland Freight Rail Services, Mass Transit  
Administration  
Ms. Kathy Waters, Director, MARC Train Service, Mass Transit Administration





# Attachment Number 1

## MARC Train Service Monthly On Time Report January 1998 Through December 1999

<b>MONTH</b>	<b>PENN (Amtrak)</b>	<b>CAMDEN (CSX)</b>	<b>BRUNSWICK (CSX)</b>	<b>SYSTEM</b>
January 98	98%	98%	98%	98%
February 98	96%	98%	99%	97%
March 98	96%	97%	99%	97%
April 98	96%	97%	99%	97%
May 98	94%	93%	98%	95%
June 98	93%	88%	86%	90%
July 98	94%	94%	95%	94%
August 98	93%	97%	99%	95%
September 98	98%	88%	95%	95%
October 98	97%	89%	96%	95%
November 98	96%	93%	96%	95%
December 98	95%	91%	95%	94%
<b>YEAR 98</b>	<b>95%</b>	<b>94%</b>	<b>96%</b>	<b>95%</b>
January 99	94%	90%	83%	91%
February 99	94%	91%	95%	94%
March 99	94%	93%	93%	94%
April 99	96%	87%	96%	94%
May 99	93%	92%	98%	94%
<b>IMPLEMENTATION DATE</b>				
June 99	92%	80%	82%	87%
July 99	89%	73%	87%	85%
August 99	91%	77%	84%	86%
September 99	90%	78%	88%	86%
October 99	93%	89%	93%	92%
November 99	92%	87%	91%	90%
December 99	93%	81%	94%	90%
<b>YEAR 99</b>	<b>93%</b>	<b>85%</b>	<b>90%</b>	<b>90%</b>

MARC Train Service  
Monthly On Time Report  
January 2000 Through December 2001

MONTH	PENN (Amtrak)	CAMDEN (CSX)	BRUNSWICK (CSX)	SYSTEM
January 00	81%	83%	86%	83%
February 00	92%	84%	92%	90%
March 00	97%	58%	87%	85%
April 00	95%	80%	85%	89%
May 00	90%	80%	94%	92%
June 00	92%	85%	85%	89%
July 00				
August 00				
September 00				
October 00				
November 00				
December 00				
<b>YEAR 00</b>				
January 01				
February 01				
March 01				
April 01				
May 01				
June 01				
July 01				
August 01				
September 01				
October 01				
November 01				
December 01				
<b>YEAR 01</b>				



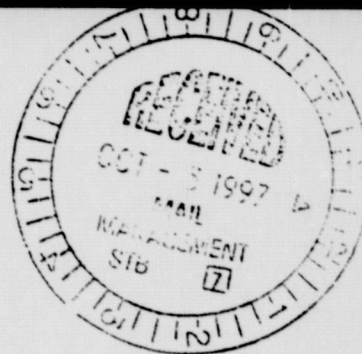


**PRESTON  
GATES ELLIS  
& ROUVELAS  
MEEDS LLP**

ATTORNEYS AT LAW

Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006-4759  
(202) 628-1700  
Fax: (202) 331-1024

**Attachment Number 2**



LAURENCE R. LATOURETTE  
DIRECT DIAL: (202) 662-8469

Via Hand Delivery

October 3, 1997

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 700  
Washington, D.C. 20423-0001

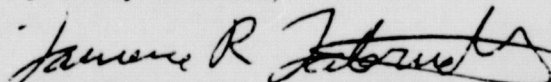
**Re: Finance Docket No. 33388, CSX Corporation and CSX  
Transportation, Inc., Norfolk Southern Corporation and  
Norfolk Southern Railway Company -- Control and Operating  
Leases/Agreements -- Conrail Inc. and Consolidated Rail  
Corporation**

Dear Secretary Williams:

Please find enclosed for filing in the above-referenced proceeding an original and 25 copies of the Comments in Support of the Transaction of the State of Maryland and the Maryland Department of Transportation (MDOT-2). Also enclosed is a 3.5-inch disk containing the text of the Comments in Word 5.1 format.

Please stamp the extra copy of the foregoing and return it to our messenger.

Respectfully submitted,

  
Laurence R. Latourette

Enclosures

A PARTNER IN PRESTON GATES ELLIS

ANCHORAGE, AK  
(907) 276-1969  
FAX (907) 276-1365

COEUR D'ALENE, ID  
(208) 667-1839  
FAX (208) 667-3576

LOS ANGELES, CA  
(213) 892-4700  
FAX (213) 624-5924

PORTLAND, OR  
(503) 228-3200  
FAX (503) 248-9085

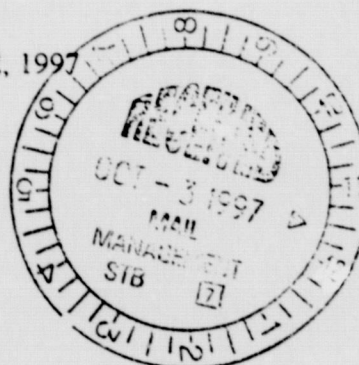
SEATTLE, WA  
(206) 623-7580  
FAX (206) 623-7022

SPOKANE, WA  
(509) 624-2100  
FAX (509) 456-0146

TACOMA, WA  
(206) 272-1500  
FAX (206) 272-2913



October 2, 1997



PARRIS N. GLENDENING  
GOVERNOR

ANNAPOLIS OFFICE  
STATE HOUSE  
100 STATE CIRCLE  
ANNAPOLIS MARYLAND 21401  
(410) 974-3901

WASHINGTON OFFICE  
SUITE 311  
444 NORTH CAPITOL STREET, N.W.  
WASHINGTON, D.C. 20001  
(202) 638-2215

TDD (410) 333-3098

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Mercury Building  
Suite 700  
1925 K Street, NW  
Washington DC 20006

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

Dear Mr. Williams:

Since last fall when the proposed merger of Conrail was first announced, the State of Maryland has been in continuous contact with both CSX and Norfolk Southern to ensure that any transaction that might result from a combination of railroads serving the State would protect the competitiveness of Maryland shippers and the interests of all Maryland citizens. At the outset, we established five major goals:

1. Preserve competition by having at least two Class I carriers serve the State.
2. Ensure the continuation of existing service and rail rates (for example, on the Eastern Shore of Maryland).
3. Maintain or increase rail employment in the State.
4. Secure commitments to specific infrastructure improvements necessary to achieve the purported benefits of the merger.
5. Preserve and enhance commuter rail service.

After months of negotiating with CSX and Norfolk Southern, we are pleased to say that the State has largely achieved these goals and has concluded letter agreements with both carriers that are attached hereto that ensure the following:



**Enhanced Competition.** The State will continue to be served by two Class I railroads that have substantially more market access to the Eastern and Midwestern United States than the two railroads currently serving Maryland. Thus, Maryland shippers and the Port of Baltimore will have access to superior single line service to both existing and new markets and improve their current ability to ship goods efficiently at competitive rates.

**Improved Service.** At the request of the State, both Norfolk Southern and CSX have committed to providing enhanced service after the transaction has been completed and these commitments have been included in the Operating Plans submitted to the STB with the Application. In particular, Norfolk Southern has agreed to provide, among other things: 1) new scheduled bimodal Triple Crown RoadRailer® service between the Baltimore area and Southeastern and Midwestern United States over Amtrak's Northeast Corridor ("NEC"); 2) regular intermodal and conventional freight service between the Baltimore area and the Southeastern and Midwestern United States; 3) regular high cube international and domestic double stack train service (including 20'2" double stacks) between the Baltimore area and Chicago, Illinois and other Midwestern gateways via Perryville, Maryland and Harrisburg, Pennsylvania; 4) regular train service for the automobile distribution terminal in the Baltimore area; and 5) service to the Eastern Shore that is at least as equitable and of high quality as is provided today. CSX, in turn, will streamline interchanges, extend and broaden its routes in order to provide single-line service between the State and several Northeastern and Midwestern markets that it currently serves only on an interline basis as well as use its reasonable efforts to 1) avoid significant congestion and late deliveries with respect to coal shipments originating and terminating in the State; 2) assist in marketing aggressively coal mined in the State to potential customers that will have single-line service provided by CSX after STB approval of the Application as well as other potential customers; and 3) identify and market single-line coal haulage efficiencies to receivers in Southern Maryland.

**Increased Rail Employment:** The railroads have indicated in their Operating Plans that there will, in fact, be an increase in rail jobs in Maryland. In particular, CSX has said that it will: 1) maintain the shops and yards at Cumberland, Maryland; 2) continue to base the Cumberland Coal Business Unit in Cumberland; and 3) keep a Service Lane Headquarters in Baltimore. Norfolk Southern has said that it will open a new Sales/Marketing office in the Baltimore area and that, overall, the transaction will result in a net increase in Maryland rail jobs during the three-year planning horizon of the Operating Plan.

**Improved Infrastructure.** At our request, the railroads have included in their Operating Plans commitments to make substantial investments in their infrastructure that will directly benefit Maryland. In particular, Norfolk Southern's Operating Plan provides for them to, among other things: 1) improve clearances on the NEC to enable Norfolk Southern to provide 20'2" double stack intermodal service to and from the Port of Baltimore via Perryville, Maryland and

Harrisburg, Pennsylvania; 2) construct, reopen or convert an automobile distribution terminal in the Baltimore area; 3) expand or improve a conventional intermodal facility in Maryland; 4) construct a new Triple Crown RoadRailer® intermodal terminal in the Baltimore area; and 5) improve the track connection at Hagerstown, Maryland to facilitate the flow of traffic. CSX's Operating Plan includes investments benefiting the State of Maryland, including among others: 1) improvements on the former B&O line between the Port of Baltimore and Chicago, Illinois that will result in raising the track capacity west of Cumberland, Maryland to 50 trains per day and the operating speeds up to 70 miles per hour on most segments; and 2) improvements in the rail service to the auto distribution terminal in Jessup, Maryland (including, but not limited to increasing the clearance of the Virginia Avenue Tunnel) to permit service by tri-level auto rack cars.

**Commitment to Commuter Rail Service.** Both CSX and Norfolk Southern have assured the State that each will work with the State of Maryland to maintain (and, with respect to CSX, to enhance) commuter rail service for Maryland's citizens and honor all operating agreements that they may now, or in the future, have with the Mass Transit Administration. Norfolk Southern has also agreed to participate in a Northeast Corridor Advisory Team which will include as members, among others, the MASS TRANSIT ADMINISTRATION Freight Manager and the MARC Service Director.

While the State has accomplished most of its goals with respect to rail competition, service, employment, infrastructure and commuter service, there are still some issues of concern. The State will continue to work with CSX and Norfolk Southern to address these issues, which include assurances that: 1) the Port of Baltimore and Maryland shippers and coal producers will not be put at a competitive disadvantage as a direct result of the transaction or related conditions or agreements; and 2) NEC improvements and proposed operations will adequately address congestion, as well as speed and weight concerns.

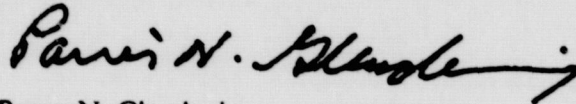
In addition, the State may have concerns with issues that arise in the course of this proceeding; thus, it reserves the right to file additional comments on these and other matters. The State appreciates comments from the representatives of both railroads assuring the smooth integration of Conrail into the two railroads and commitments to assure the rapid delivery of the full benefits of the transaction. It is our expectation and understanding that commitments made by the railroads in their Operating Plans, as approved by the STB, will be subject to future enforcement via the STB.



Honorable Vernon A. Williams  
Page Four

After extensive discussions with the affected interests in the State of Maryland and with the subsequent commitments made by the railroads in the letter agreements, we have concluded that the proposed acquisition and division of Conrail by CSX and Norfolk Southern will clearly benefit the public. Because of these benefits, the State of Maryland supports the transaction and urges the STB to approve the Application in these proceedings. We look forward to working with both CSX and Norfolk Southern in forging long-term and mutually beneficial partnerships.

Sincerely,

A handwritten signature in dark ink, reading "Parris N. Glendening". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Parris N. Glendening  
Governor



September 24, 1997

PARRIS N. GLENDENING  
GOVERNOR

ANNAPOLIS OFFICE  
STATE HOUSE  
100 STATE CIRCLE  
ANNAPOLIS, MARYLAND 21401  
(410) 974-3901

WASHINGTON OFFICE  
SUITE 311  
444 NORTH CAPITOL STREET, N.W.  
WASHINGTON, D.C. 20001  
(202) 638-2215

TDD (410) 333-3098

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

Dear David:

Since last fall when the proposed merger of Conrail was first announced, the State of Maryland has been engaged in an ongoing and productive dialogue with both CSX and Norfolk Southern (NS). During these many meetings, a number of issues have been addressed by the State merger team and representatives of the railroads. I commend the team representing NS and its efforts to work with Maryland. We have covered a lot of ground since our first meetings in November, and I appreciate the obviously strong desire of both railroads to forge a true long-term partnership with Maryland.

Our team has now had an opportunity to review the sections directly relating to the State of Maryland of NS' Operating Plan that was part of its application to acquire a portion of Conrail 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 (the "Control Case") at the Surface Transportation Board (STB). We believe the Operating Plan addresses the State's major concerns about the impact that Conrail's restructuring will have on service in Maryland. NS has also agreed to work with us on other issues of concern to the State.



The purpose of this letter is to confirm that NS' Operating Plan, which will be subject to STB oversight and supplemental orders, reflects the following, in exchange for which the State of Maryland will support the Control Case and will submit filings to the STB reflecting that support.

1. **Maryland-related Infrastructure and Service Improvements**

NS has incorporated in its Operating Plan filed in the Control Case substantial infrastructure investments that will benefit the State of Maryland, including but not limited to:

**Infrastructure Investments**

- improved clearances to enable NS to provide 20'2" double stack intermodal service to or from the Port of Baltimore via Amtrak's Northeast Corridor (NEC) to Perryville, Maryland and Harrisburg, Pennsylvania
- an automobile distribution terminal in the Baltimore area using reopened facilities, existing non-rail owned facilities, or new facilities
- an expanded and/or improved conventional intermodal facility
- construction of a bimodal Triple Crown RoadRailer® terminal in the Baltimore area
- improved track connection at Hagerstown to facilitate the flow of traffic

**Service Improvements**

- new scheduled bimodal Triple Crown RoadRailer® service via the NEC to serve the Baltimore area to or from the western and southeastern United States.
- regular intermodal and conventional freight service between the Baltimore area and the southeastern and midwestern United States
- regular high cube international and domestic double stack train service (including 20'2" double stacks) between the Baltimore area and Chicago and other midwestern gateways via Harrisburg
- regular train service to support the Baltimore-area automobile distribution terminal

Upon the effective date of the STB's approval of the Control Case (STB Approval), NS intends to institute these infrastructure investments and service improvements as soon as practicable within the three-year planning horizon of the Operating Plan. NS implementation of the authority obtained in the Control Case will be subject to STB oversight and supplemental orders.

To help with smooth implementation of the Operating Plan, NS agrees to participate in a Northeast Corridor Advisory Team, or other such body as it may be structured, and believes that it is appropriate to include as members on the Advisory Team, among others, the MTA Freight Manager and the MARC Train Service Director.



It is also NS' plan to provide equitable, quality Class I rail service on the Delmarva Peninsula and to promote economic development on the short line railroads serving the Delmarva Peninsula on an equal basis to NS promotion of such developments on its existing lines.

**2. Work with the State of Maryland to Keep it Competitive**

To foster the Port of Baltimore's strategic plan, which has been shared with NS representatives, NS, upon implementation of its Operating Plan, plans to apply rates to the Port of Baltimore that reflect the operational cost advantages, on a total cost basis, and efficiencies that may exist with respect to the rail movement of freight to and from the Port of Baltimore vis-à-vis the other major East Coast ports. To the extent the Port of Baltimore has competitive advantages in the market place, NS will work with the Port to exploit those advantages as it does with all the ports NS serves today. Moreover, should the Port of Baltimore be negatively affected by conditions imposed, or agreements approved, by the STB with respect to the Control Case, NS will explore with the State of Maryland mutually advantageous options to restore the Port of Baltimore's relative competitive position.

After STB Approval, NS also will enter into discussions with the Canton Railroad Company (CTN) and other Maryland short line railroads concerning proposals that would enhance operations, improve customer service, be beneficial to the railroads involved, and not be inconsistent with NS' labor agreements or employee relations.

**3. Preserving Rail Employment**

NS will work to increase its business in Maryland as the best assurance of providing rail employment in the State of Maryland. NS plans to establish a Sales/Marketing office in the Baltimore area. Overall, the transaction will result in a net increase in Maryland rail jobs during the three-year planning horizon of the Operating Plan.

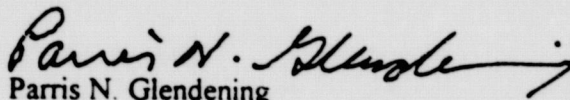
**4. Maryland Commuter Rail Service**

NS recognizes the State's interest in passenger service and will work with Maryland commuter agencies to accommodate current services and honor all operating agreements, including those with MTA, that NS will inherit after STB approval.


Mr. David R. Goode  
Page Four

Again, we are pleased with what we have, working together, been able to accomplish. While we recognize that all plans are subject to change in light of normal business contingencies, new information, or unforeseen developments, if the above accurately reflects our understanding, please sign in the appropriate place below and return an original copy to me.

Sincerely,

  
Parris N. Glendening  
Governor

Agreed to and Accepted by:

By: 

David R. Goode  
Chairman, President and Chief Executive Officer  
Norfolk Southern Corporation





PARRIS N. GLENDENING  
GOVERNOR

ANNAPOLIS OFFICE  
STATE HOUSE  
100 STATE CIRCLE  
ANNAPOLIS, MARYLAND 21401  
(410) 974-3901

WASHINGTON OFFICE  
SUITE 311  
444 NORTH CAPITOL STREET, N.W.  
WASHINGTON, D.C. 20001  
(202) 638-2215

TDD (410) 333-3098

September 24, 1997

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

Dear John:

Since last fall when the proposed merger of Conrail was first announced, the State of Maryland has been engaged in an ongoing and productive dialogue with CSX. During these many meetings, a number of issues have been addressed by the State merger team and representatives of the railroad. I commend the team representing CSX and its efforts to work with Maryland. We have covered a lot of ground since our first meetings in November, and I appreciate the obvious strong desire of CSX to enhance its long-term partnership with Maryland.

Our team has reviewed the sections directly relating to the State of Maryland of CSX's Operating Plan that was part of its application to acquire a portion of Conrail 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 (the "Control Case") at the Surface Transportation Board (STB). We believe the Operating Plan addresses the State's major concerns about the impact that Conrail's restructuring will have on rail service in Maryland.

The issue of continued service by two Class I carriers is addressed primarily by CSX's maintenance of its existing Maryland service and NS' assumption of Conrail's operating authority north of Hagerstown, on the Northeast Corridor, to the Port of Baltimore, and on the Delmarva peninsula. CSX is not immediately addressing the issue of double stack access to the Port, but you will cooperate with the State in the development of a joint feasibility study, which addresses funding double-stack service to the Port of Baltimore. NS, however, has committed to increasing the clearances on the Northeast Corridor between Baltimore and Perryville, and then west to Harrisburg, Pennsylvania to accommodate high-cube double stacked containers on its new east-west intermodal trains serving the Port of Baltimore over previous Conrail routes.

With respect to the other issues, CSX has included significant infrastructure investments and operational improvements in the Operating Plan it filed with the STB and upon which the Board will rely in reaching its decision in the Control Case. CSX has also agreed to continue to work with the State of Maryland and use reasonable efforts to address other issues of concern to the State.

The purpose of this letter is to commemorate the commitments that CSX has made to the State of Maryland in exchange for which the State will support CSX's application in the Control Case and will submit filings to the STB reflecting that support.

The Commitments CSX has made are as follows:

**1. Commitment to Make Certain Infrastructure and Service Improvements**

CSX has included in its Operating Plan filed with the STB in the Control Case substantial infrastructure investments that will benefit the State of Maryland including but not limited to: 1) a \$220 million project to increase track capacity on the former B&O main line between the Port of Baltimore and Chicago, Illinois that will result in raising the track capacity west of Cumberland, Maryland to 50 trains per day and the operating speeds up to 70 miles per hour on most segments; and 2) improvements in the rail service to the Auto distribution facility in Jessup, Maryland (including, but not limited to increasing the clearance of the Virginia Avenue Tunnel) to permit service by tri-level auto rack cars.

CSX has also included substantial service improvements that will benefit the State of Maryland in its Operating Plan, including, most importantly, streamlining interchanges, extending and broadening its routes in order to provide single-line service between Maryland and several major Northeastern and Midwestern markets that it presently serves only on an interline basis.

In addition, CSX will use reasonable efforts to: 1) avoid significant congestion and late deliveries with respect to coal shipments originating or terminating in the State of Maryland; 2) assist in marketing aggressively coal mined in the State of Maryland to potential customers that will have single-line service provided by CSX after STB approval as well as to other potential customers; and 3) identify and market single-line coal haulage efficiencies to receivers in southern Maryland.

CSX additionally confirms that it will use its best efforts to institute its Maryland infrastructure investments and operational improvements as soon as practicable, but in no event later than the date required by the Operating Plan.



**2. Work with the State of Maryland to Keep it Competitive**

To foster the Port of Baltimore's strategic plan, CSX intends to apply rates to and from the Port that reflect, in general, the operational cost advantages, on a total cost basis, and efficiencies that may exist with respect to the rail movement of freight to and from the Port of Baltimore. To the extent the Port of Baltimore has competitive advantages in the market place, CSX will work with the Port to exploit those advantages as it does with all the ports CSX serves today.

CSX will also enter into discussions with the Canton Railroad Company (CTN) and other Maryland short line railroads concerning proposals that would enhance operations, improve customer service, be beneficial to the railroads involved and would not be inconsistent with CSX's existing labor agreements. CSX also will consider minor infrastructure and operating improvements on its lines to improve CTN's operating efficiency.

**3. Efforts to Preserve Rail Employment**

CSX's Operating Plan maintains at current levels its number of rail employees working in the State of Maryland (including former Conrail employees). In particular: 1) the shops and yards at Cumberland, Maryland will remain crucial elements of CSX's coal handling business as well as key links on CSX's B&O mainline service to the west; 2) Baltimore will continue as one of CSX's most important Service Lane Headquarters, which will be responsible for coordinating not only local service, but also east-west and north-south connections for CSX's middle Atlantic traffic; and 3) Cumberland will continue as the headquarters for the Cumberland Coal Business Unit -- a group that manages the marketing and operations of the CSX Coal territories of western Maryland and northern West Virginia. It is CSX's desire over time, through the growth of rail business, to increase rail employment in the State of Maryland even further.

**4. Carriers' Commitment to Commuter Rail Service in Maryland**

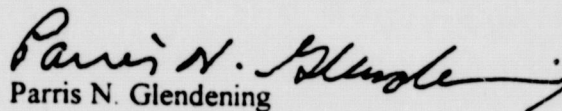
CSX acknowledges that it will continue to work with the State of Maryland to maintain and enhance commuter rail service for the citizens of the State of Maryland and will honor all operating agreements that it may now have, or in the future, has with MTA. CSX will cooperate with the State of Maryland to minimize the level of funding from the State of Maryland required for construction of the MARC Frederick Extension, consistent with maintaining capacity for freight traffic.

Mr. John W. Snow  
Page Four

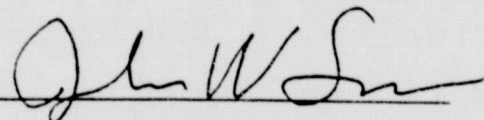
Again, we are pleased with what we, working together, have been able to accomplish. CSX and the State of Maryland acknowledge that unforeseen events may occur during the application process and its aftermath that could affect the positions of the parties, including their competitive positions. Both parties recognize their mutual desire to negotiate appropriate changes based on circumstances which may prevail at that time. It is further recognized that the State may have concerns with other issues not addressed in this letter, such as issues beyond the jurisdiction of the STB or with unforeseen developments in these proceedings. The State therefore reserves the right to file additional comments on these and other matters, with the understanding that such filings will not be inconsistent with the terms of this letter and will reflect the State's continued support for the STB's approval of the overall transaction.

If the above accurately reflects our understanding, please sign in the appropriate place below and return an original copy to me.

Sincerely,

  
Parris N. Glendening  
Governor

Agreed to and Accepted by:

By:   
John W. Snow  
Chairman and Chief Executive Officer  
CSX Corporation



BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

STB Docket No. 33388

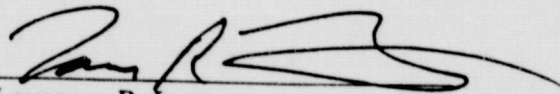
CSX CORPORATION AND CSX TRANSPORTATION, INC.,  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
-- CONTROL AND OPERATING LEASES/AGREEMENTS --  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

---

CERTIFICATE OF SERVICE

I hereby certify that on this 3<sup>rd</sup> day of October 1997 the Honorable Jacob Leventhal, the Applicants and each Party of Record in this proceeding has been served with copies of the attached Comments in Support of the Transaction submitted by the State of Maryland and Maryland Department of Transportation by first-class mail, postage prepaid.

Respectfully submitted,



Laurence R. Latourette  
Preston Gates Ellis & Rouvelas Meeds LLP  
1735 New York Avenue, N.W.  
Suite 500  
Washington, D.C. 20006

October 3, 1997





**Attachment Number 3:**  
**July, 2000 Status of Commitments to the State of Maryland by Norfolk Southern and CSX in Regard to the Acquisition of Conrail as Stated in Condition #51 of the STB Decision # 89, July 20, 1998**

The Surface Transportation Board stated in their July 20, 1998 Decision Document the following Condition # 51:

“Applicants shall comply with the terms of all Negotiated Agreements developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction. The following provides the Negotiated Agreements received by the Board to date:

1. The State of Maryland, dated September 24, 1997.”

The following information is presented as a summary of the components of that agreement followed by a brief explanation of the current status of each commitment.

**Commitments by Norfolk Southern:**

**1. Maryland Related Infrastructure and Service Improvements:**

Improved clearances to enable 20' 2" double stack intermodal service along the NEC between the Port of Baltimore and Perryville, MD and Harrisburg, PA.

*Norfolk Southern (NS) and Amtrak have held several meetings to discuss such improvements. However, to date, planning and engineering work has not yet begun.*

An automobile distribution terminal in the Baltimore area using reopened facilities, existing non-rail owned facilities or new facilities.

*NS has not moved forward on this commitment. They advise customers are being sought.*

An expanded and/or improved conventional intermodal facility.

*NS has not moved forward on this commitment. A large segment of their existing base was lost to CSX in December 1999.*

Construction of a bimodal Triple Crown RoadRailer terminal in the Baltimore area

*NS has not moved forward on this commitment to date.*

Improved track connection at Hagerstown to facilitate the flow of traffic

*NS has not moved forward citing more pressing capital needs in year 1.*

## **2. Maryland Service Improvements:**

New scheduled bimodal Triple Crown RoadRailer service via the Northeast Corridor (NEC) to the serve the Baltimore area.

*NS has not yet advanced this commitment.*

Regular intermodal and conventional freight service between Baltimore area and the Southeastern and Midwestern United States.

*Intermodal service to Detroit was just announced with the opening and massive improvements to the Rutherford Yard. Other intermodal service improvements have not developed.*

Regular high cube intermodal and domestic double stack train service between Baltimore area and Chicago and other midwest areas.

*Such service has not been developed.*

Regular train service to support the Baltimore automobile distribution terminal

*While regular service is in effect, the new Baltimore automobile distribution terminal has not been established.*

NS agreed to participate in a Northeast Corridor Advisory Team including representatives from Maryland commuter rail service and Maryland freight rail service.

*Such a team has not been established. However, informal coordination has occurred between NS, Maryland and Amtrak.*

NS planned to provide equitable and quality Class I rail service on the Delmarva Peninsula to promote economic development on the short line railroads on an equal basis to NS promotion of such developments on its existing lines.

*NS has evaluated and approved some Delmarva Lines for 286,000 pound rail cars. This is favorable to our short line development and long-term competitive posture.*

## **3. Work with the State of Maryland to Keep it Competitive:**

NS committed to applying rates to the Port of Baltimore that reflect the operational cost advantages, on a total cost basis that exist with moving freight the Port of Baltimore. NS committed to working with the Port to exploit those advantages.



*NS meets and plans regularly with Port of Baltimore officials on opportunity traffic. In addition, NS participates in a rail marketing team effort with representatives of MDOT and economic development offices for the state and local governments.*

NS committed to entering into discussion with the Canton Railroad and other Maryland shortline railroads concerning proposals that would enhance operations, improve customer service.

*NS has held several discussions with the Canton Railroad and is continuing an ongoing dialogue with other shortline railroads to enhance operations and improve customer relations. This has been especially true on the eastern shore of Maryland.*

#### **4. Improving Rail Employment:**

NS committed to establishing a sales and marketing office in the Baltimore area;

*The Baltimore sales office has been opened. However, growth in business has been slower than expected so resulting increases in Maryland rail employment have not yet occurred.*

#### **5. Maryland Rail Commuter Service:**

NS committed to accommodating current MARC service agreements.

*There has been no issue with NS and MARC service directly. However, indirectly, NS service problems on Amtrak lines have had some impacts on MARC's on-time performance.*

### **Commitments by CSX:**

#### **1. Infrastructure and Service Improvements:**

CSX committed to substantial improvements along the former B&O line that would benefit Maryland as well as improvements to rail service at the auto distribution facility in Jessup, Maryland. A significant commitment was made to improve clearance in the Virginia Avenue Tunnel.

*These improvements are underway or have been completed.*

CSX promised to extend and broaden routes in order to provide single line service between Maryland and several major Northeastern and Midwestern markets.

*CSX has not implemented commitments for intermodal service between Baltimore and Detroit, Indianapolis, Cleveland, Columbus or St. Louis.*

CSX committed to use reasonable efforts to avoid significant congestion and late deliveries with response to coal shipments originating or terminating in Maryland as well as to assist in marketing coal mined in Maryland and market single-line coal haulage efficiencies to receivers in southern Maryland.

*CSX has, to the extent we are aware, lived up to these commitments.*

## **2. Work with Maryland to Keep it Competitive:**

CSX indicated it would apply rates for and from the port that reflect, the operational cost advantages on a total cost basis, as well as to work with the port to exploit those advantages.

*CSX has worked with the port to market the advantages of the Port of Baltimore.*

CSX committed to enter into discussion with the Canton Railroad Company and other Maryland shortline companies concerning proposals to enhance operations, improve customer service. CSX also committed to consider minor infrastructure and operating improvements on its lines to improve Canton's operations.

*CSX has begun to meet with shortlines in East Baltimore to discuss strategies designed to improve handling, relieve congestion and lower costs.*

## **3. Efforts to Preserve Rail Employment**

The CSX operating plan committed to maintaining current levels of number of rail employees in Maryland. Further, CSX indicated that the activities at shops and yard in Cumberland, the Baltimore Service Lane Headquarters and the Cumberland Coal Business Unit will continue in their functions.

*Since the transaction, CSX has continued employment in all of these areas. The unplanned growth in train volumes and yard congestion, etc., has actually lead to more train and engine jobs than expected.*

## **4. Carriers Commitment to Commuter Rail Service in Maryland**

CSX acknowledged in the Governor's letter it would continue to work with Maryland to maintain and enhance commuter rail service consistent with operating agreement now and in the future. In addition, CSX indicated it would cooperate to minimize the level of funding from Maryland required for construction of the MARC Frederick Extension, consistent with maintain capacity for freight traffic.

*CSX has worked with the state in implementing the existing operating agreement as well as in negotiating a new agreement. Since the implementation, service and on-time performance of commuter rail trains on CSX lines has experienced substantial deterioration. Commuter rail service clearly has not been enhanced or maintained. Even with reductions in service by MARC to help CSX accommodate additional freight traffic, on-time performance*

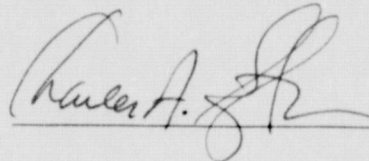


*has not achieved pre-acquisition levels. CSX and Maryland were able to negotiate costs for the Frederick service extension. However, a difference of opinion probably exists between the State and CSX if these costs could be considered "minimized".*

# CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing letter of Hon. John D. Porcari, Secretary of Transportation of the State of Maryland, which presents the State's Comments on the progress reports filed by the applicants in this proceeding, to be served by hand delivery upon: Dennis G. Lyons, Esquire, Arnold & Porter, 555 12<sup>th</sup> Street, N.W., Washington, D.C. 20004-1202; and Richard A. Allen, Esquire, Zuckert, Scoutt & Rasenberger, LLP, 888 17<sup>th</sup> Street, N.W., Washington, D.C. 20006-3939.

Dated this 14<sup>th</sup> day of July, 2000.

A handwritten signature in cursive script, appearing to read "Charles A. Spitulnik", is written over a horizontal line.

Charles A. Spitulnik

STB

FD-33388 (SUB 91)

7-14-00

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**LEBOEUF, LAMB, GREENE & MACRAE**  
L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1875 CONNECTICUT AVENUE, N.W.  
WASHINGTON, DC 20009-5728

(202) 986-8000

TELEX: 440274 FACSIMILE: (202) 986-8102

WRITER'S DIRECT DIAL:  
(202) 986-8050

July 14, 2000

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SAN FRANCISCO

**VIA HAND DELIVERY**

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W., 7th Floor  
Washington, DC 20423

Re: Finance Docket 33388 (Sub-No. 91)(Oversight);  
CSX Corporation and CSX Transportation, Inc., et al.

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are the original and 25 copies of "Response of Indianapolis Power & Light Company to 'First Submission By Applicants CSX Corporation and CSX Transportation, Inc.' and 'First General Oversight Report of Norfolk Southern Corporation and Norfolk Southern Railway Company.'" The Response is submitted in Highly Confidential and Public Versions both of which are being served on the named counsel below, for parties interested in Indianapolis-related matters.

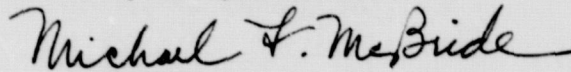
Through an oversight, the undersigned did not ask to be put on the Board's service list in this proceeding even though we participated extensively in Finance Docket No. 33388 and made a filing herein on May 1, 2000 for IPL which led to Decision No. 2. We would appreciate being added to the official service list, **and hereby request that all parties of record serve us with their submissions.**



Mr. Vernon A. Williams, Secretary  
July 14, 2000  
Page 2

Also enclosed are two diskettes containing each version of the Response in WordPerfect format. Please date stamp and return the enclosed three additional copies via our courier.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael F. McBride".

Michael F. McBride  
Bruce W. Neely

Attorneys for Indianapolis Power  
& Light Company

Enclosures

cc (w/encls.): Dennis Lyons, Esq.  
Richard Allen, Esq.  
Karl Morell, Esq.  
Michael Harmonis, Esq.

199 275

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JUL 14 2006

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UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
SURFACE TRANSPORTATION BOARD

ORIGINAL

FD-ANCE DOCKET NO. 30388 (SUB NO. 91)

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

(GENERAL OVERSIGHT)

RESPONSE OF INDIANAPOLIS POWER & LIGHT COMPANY  
TO "FIRST SUBMISSION BY APPLICANTS CSX CORPORATION  
AND CSX TRANSPORTATION, INC." AND  
"FIRST GENERAL OVERSIGHT REPORT OF  
NORFOLK SOUTHERN CORPORATION AND NORFOLK  
SOUTHERN RAILWAY COMPANY"

Michael F. M. M. M.  
Bruce W. Neely  
LeBoeuf, Lamb, Greene & MacRae, L.L.P.  
1875 Connecticut Ave., N.W., Suite 1200  
Washington, D.C. 20009-5728  
(202)986-8050 (Telephone)  
(202)986-8102 (Facsimile)

Attorneys for Indianapolis Power & Light  
Company

Due Date: July 14, 2006

Dated: July 14, 2006



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**RESPONSE OF INDIANAPOLIS POWER & LIGHT COMPANY TO  
"FIRST SUBMISSION BY APPLICANTS CSX CORPORATION  
AND CSX TRANSPORTATION, INC." AND  
"FIRST GENERAL OVERSIGHT REPORT OF NORFOLK SOUTHERN  
CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY"**

Indianapolis Power & Light Company ("IPL") hereby comments on the "First Submission by Applicants CSX Corporation and CSX Transportation, Inc." and "First General Oversight Report of Norfolk Southern Corporation and Norfolk Southern Railway Company," both filed herein on June 1, 2000. IPL will show that Decision No. 89 of the Board in the Conrail proceeding, Finance Docket No. 33388 (hereinafter "Decision No. 89"), at 116-17, 177, has not created the "efficient and competitive remedy" that the Board intended. Decision No. 96 at 14-15 in Conrail (hereinafter "Decision No. 96"). Accordingly, IPL hereby seeks modification of the Board's prior orders in Conrail to produce such a remedy.

Background

The Board found that Indianapolis would be the most heavily impacted of any metropolitan area in the Conrail transaction (Decision No. 89 at 93, citing CSX/NS-18, Vol. 1, V.S. of McClellan at 46), with 67 out of 84 "2 to 1" shippers located there.<sup>1</sup>

The Board also found, correctly, that IPL enjoyed vigorous competition at its Stout Plant, from Conrail (in conjunction with Indiana Southern Railroad) Company ("Indiana Southern")<sup>2</sup>

---

<sup>1</sup> CSX and NS asserted that it was 66 out of 83 (CSX/NS-19, Vol. 2A, V.S. of Hart at 147), but they neglected to include IPL's E. W. Stout Plant, which the Board ultimately found to be a "2 to 1" facility. Id. at 116-17. CSX now concedes the point. See CSX Brief at 38 n.28 in Erie-Niagara Rail Steering Comm. v. STB, No. 98-4285(L)(2nd Cir.) and consolidated cases (pending). CSX and NS treated IPL's Perry K Plant as a "2 to 1" point. CSX/NS-15, Vol. 8C at 525. Ironically, the Board provided IPL with no remedy at Perry K except to the extent that IPL could use its remedy at Stout and truck coal to Perry K. Decision No. 89 at 117.

<sup>2</sup> Indiana Southern bought its Line to Indianapolis, the Petersburg Branch, from Conrail.

vis-a-vis The Indiana Rail Road ("INRD"), a subsidiary of CSX. Decision No. 89 at 116-17; Decision No. 96 at 14. Because CSX acquired Conrail's tracks in Indianapolis, IPL lost rail-to-rail competition. Simply put, CSX obviously would not compete with its 89-percent owned subsidiary, INRD.

Accordingly, the Board ordered that NS be given access to IPL's Stout Plant. Decision No. 89 at 177. The Board modified its Decision somewhat in Decision No. 96 (at 35). In Decision No. 115, after being presented with evidence that NS could not compete, the Board said that NS could make Indiana Southern its agent to serve the Stout Plant directly. However, after CSX sought reconsideration of Decision No. 115, the Board clarified that Indiana Southern would not be allowed **at this time** to serve as NS's agent, dismissing IPL's concerns as "speculation." Decision No. 125. IPL's pending petition for review followed Decision No. 125.

Finally, in Decision No. 2 in this proceeding, the Board ordered CSX and NS to produce their trackage rights agreement(s) for the Stout Plant to IPL.

#### Preliminary Statement and Summary

Now that IPL has had access to the two trackage rights agreements entered into by NS and CSX, on the one hand, and NS and INRD, on the other hand, it is disturbed to learn -- for the first time -- that the trackage rights fee over the tracks of The Indiana Rail Road Company ("INRD") is not 29 cents per car mile, as CSX told the Second Circuit in its Brief in the proceedings to review various Decisions in Conrail in No. 98-4285, et al. (at 38 n.28)<sup>3</sup>; but see

---

<sup>3</sup> Technically, CSX in its Brief only represented what the fee in the NS/CSX agreement (applicable to CSX's tracks) would be, but neither IPL nor the Board knew that these were two agreements or that they contained different fees. Both the Board and IPL concluded the briefing in the Second Circuit on the assumption that CSX's representation on Brief applied to all of the

(continued...)



CSX Report at 86. More important even than what the two railroads previously have said, the trackage rights fee over INRD's tracks is **above** a level the Board found reasonable and low enough to protect competition (in Decision No. 89 at 94, 140-42). This fact alone demonstrates why it was so important to IPL to see the trackage rights agreements prior to the issuance of Decision No. 125 in that proceeding, a matter being pursued in the Second Circuit by IPL as Petitioner.

To be sure, CSX argues blandly that the 35 cents per car-mile charge "appears to CSXT to be a reasonable fee" (CSX Report at 86); what else could it say? But, as CSX's language implies, the Board has made no such finding. The Board found only that the trackage rights fee of 29 cents per car-mile, **challenged only by IPL, was reasonable; it made no such finding as to any higher charge.** The Board specifically found (Decision No. 89 at 140)(emphasis added):

"We have examined the issue of trackage rights compensation as a general matter and as it relates specifically to IP&L, **and find that the agreed upon level of compensation [i.e., 29 cents per car-mile] will allow carriers receiving trackage rights to compete effectively,** replacing competition that would otherwise be lost through this transaction, as contemplated by 49 U.S.C. 11324(c)."

The Board therefore was never asked to approve, and has not approved, the level of the trackage rights fee INRD secretly imposed on NS, presumably with the approval of INRD's parent, CSX. It should have been incumbent on Applicants CSX and NS, in light of the Board's findings in Decision No. 89, to inform the Board of the results of their secret dealings prior to issuance of Decision No. 125 because those results (at least to the extent that they produce a higher trackage

---

<sup>3</sup>(...continued)

tracks involved in the movement to the Stout Plant. IPL will clarify the matter for the Second Circuit.



rights fee) departed from the record that was the basis for the Board's Decision No. 89 but, as the Board knows, they did not do so. Neither the Board nor IPL had the trackage rights agreements before them when Decision No. 125 was issued. Apparently, the Board presumed that CSX and INRD would charge NS 29 cents per car-mile, but that presumption is now contradicted by the facts.

Moreover, there are other aspects of those agreements that bear on the ability of NS to compete for business at IPL's Stout Plant with INRD. If NS uses CSX/INRD to switch IPL's coal trains, the INRD switching charge will be subject to

Moreover, if NS does not elect to be the direct competitor, CSX may seek to impose a second switching charge for its portion of the move. Conrail was interested in promoting business off the Petersburg Branch because it spun it off to Indiana Southern; CSX has no interest in doing so, especially when to do so would take business from INRD, CSX's 89-percent-owned subsidiary. It is apparent that NS has no interest in acting as the competitor if it has elected to let its supposed competitor, CSX/INRD, switch IPL's coal trains rather than serve the Stout Plant itself. And how is IPL to be assured of competition if only CSX/INRD serves the Stout Plant, as NS indicated in response to Decision No. 115 it would do? Obviously, it could not be, because a competitor who chooses to let his supposed competitor have all the business is not a competitor at all.

In any event, the evidence is overwhelming that

IPL is troubled that NS's Report attempts to leave the impression that it cannot compete for business at Stout because INRD has a contractual right to haul most of the coal to the Stout Plant at the present time. NS Report at 38.

<sup>4</sup> Weaver Verified Statement (IPL Ex. No. 7), Att.

D.

In any event, in its Report NS claims only to be able to compete with CSX for transportation of eastern coal, a fact which IPL does not dispute, but nowhere claims that it can provide competitive service with INRD for the transportation of southern Indiana coal. Of course, as IPL has said in this proceeding and in Finance Docket No. 33388,

NS will not otherwise have a presence in

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<sup>4</sup> Ironically, the Plant that the Board concluded did not need a further remedy beyond the benefit IPL would derive from the remedy afforded IPL at the Stout Plant. Decision No. 89 at 116-17; Decision No. 96 at 14-15.



Indianapolis, and its route map does not bring it closer than 60 miles from Indianapolis (at Lafayette, Indiana).<sup>5</sup> NS's claim that it can compete with CSX for transportation of eastern coal, together with its failure to make the same claim about competing with INRD for transportation of southern Indiana coal, should be taken

and is only interested in performing line-haul service from eastern or western origins.<sup>6</sup>

Accordingly, although it does not directly say it, NS's Report confirms what it told IPL -- that it cannot compete for IPL's business.

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<sup>5</sup> Had Indianapolis become a shared asset area (see, e.g., IP&L-3 in Conrail), NS would have had a presence in Indianapolis and the situation would be different, because NS would not have had to bring a locomotive and crew from Lafayette to Indianapolis to haul IPL's coal approximately 8 miles, from Crawford Yard to the Stout Plant.

<sup>6</sup> IPL asked the Board to order NS to address that very point, but in Decision No. 2 the Board refused to specify the exact contents of NS's Report. IPL is not rearguing that point, but does observe that, when NS submitted its Report, it was on notice of IPL's position, and could have responded directly in its Report.

NS's in-house counsel has informed IPL's counsel that it does not wish to be perceived as critical of any of the Board's actions in Conrail. That is consistent with its posture since Decision No. 89 was issued, in which it has accepted every ruling of the Board, unlike CSX. But that simply means that the Board should not expect NS to make a filing stating in so many words that



IPL subsequently confirmed that conversation in a letter. Id., Att.

F. In the same letter, IPL offered NS a means to resolve IPL's pending litigation against the STB, NS, and CSX in the United States Court of Appeals for the Second Circuit over this matter, but NS did not respond to any of the matters set forth in IPL's letter. In May 2000, therefore, IPL informed NS that it would therefore consider the June 30, 1999 offer to be NS's best and final offer. Id., Att. G. NS did not respond to that letter, either.

See, e.g., January 19, 1999 Report of IPL in Finance Docket No. 33388, especially IPL Ex. No. 6; see also Decision No. 115 (acknowledging that NS might not be able to compete with INRD for IPL's business if it were using southern Indiana coal).

Lest there be any remaining doubt in the matter, IPL again submits a Verified Statement of its Manager of Fuels, Michael A. Weaver, along with the communications between IPL and NS over the last year, which corroborate what IPL has told the Board all along.

Accordingly, to provide IPL with the "efficient and competitive remedy" to which the Board said it was entitled, the Board will need to grant trackage rights to Indiana Southern to serve the Stout Plant directly, at a trackage rights fee of no more than 29 cents per car-mile, with ironclad assurances of non-discriminatory dispatching and all other arrangements so that Indiana Southern is not precluded from being an effective competitor.

## Discussion

### I.

#### THE TRACKAGE RIGHTS AGREEMENTS PREVENT NS FROM COMPETING FOR THE TRANSPORTATION OF COAL FROM SOUTHERN INDIANA.

As explained by IPL's Witness Weaver, the trackage rights agreements entered into by NS and CSX, on the one hand, and NS and INRD, on the other hand, create severe additional difficulties, beyond these inherent in the role of providing switching service in Indianapolis when NS is not present in or near Indianapolis. Those inherent difficulties are dealt with in Section II infra.

Those additional difficulties include both the higher trackage rights fee on INRD trackage, 35 cents, as compared to 29 cents, per car-mile,

<sup>7</sup> The Board has already found (Decision No. 96 at 14-15) that Indiana Southern cannot interchange traffic on its Petersburg Branch because it does not have a siding, let alone a Yard, on that line to do so. That is why, in the past, the Indiana Southern/Conrail interchange occurred at the Crawford or Transfer ("GM") Yard in west

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<sup>7</sup> Presumably this explains the choice of words in CSX's Report: "**Upon arrival at Crawford Yard**, NS[], using its trackage rights on CSX[]...."(emphasis added). CSX is apparently suggesting that Yard space is too tight to allow IPL's train to be dropped and await the delivering carrier, even though that was never an issue when Conrail was the delivering carrier.

Indianapolis, and why that is necessary, for a two-carrier movement to be efficient. What is abundantly clear, given CSX's claim that "track space at Crawford Yard is at a premium," Report at 82, is that CSX is not interested in making the Indiana Southern/NS interchange efficient. Why should it, unless the Board compels it to? If the Board were not do so, CSX's 89-percent-owned subsidiary INRD will get all of IPL's business, or CSX itself would. That, of course, was clearly understood by the Board when it ordered that IPL obtain an "efficient and **competitive**" remedy. Competition is not produced by CSX competing with its subsidiary, and it will never occur under the terms that CSX/INRD have imposed on NS.

## II.

EVEN IF THE TRACKAGE RIGHTS AGREEMENTS WERE NOT OBSTACLES,  
NS CANNOT COMPETE AT IPL'S STOUT OR PERRY K PLANTS FOR  
SOUTHERN INDIANA COAL SHIPMENTS.



IPL confirmed the conversation, and offered NS a deal: make a filing at the STB that would allow Indiana Southern to have NS's right to direct access to the Stout Plant, on the grounds that NS cannot compete under the current circumstances, and IPL would withdraw its Petition for Review before the Second Circuit, assuming STB counsel would cooperate in the terms under which the withdrawal would occur. Id., Att. F. NS never responded, which IPL confirmed in writing. Id., Att. G.

So IPL wrote NS in its May 2000 letter, saying that IPL construed NS's failure to respond to IPL's October 1999 and January 2000 letters as an acknowledgment that the June 30, 1999 letter from NS to IPL contained NS's "best and final offer," and that NS would not agree to IPL's offer. NS apparently has adopted a corporate policy that it will not make a filing with the Board that takes issue with anything the Board did in Conrail, as the record shows. In the specific

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<sup>8</sup> IPL Ex. No.7 at 8 ¶ 11. Any argument by NS that its rates are not competitive because of the claim that most of the tonnage is committed to INRD would be incorrect, for at least two reasons.

Id. Second, Conrail provided IPL with competitive rates for **any** tonnage level, even though most of IPL's tons have been committed to INRD since January 1997.

CSX, after all, has adopted and published Conrail's rates, without any tonnage commitment.

<sup>9</sup> IPL and NS agree that, if IPL should use eastern coal from outside Indiana, which could either originate on CSX or NS, NS could compete with CSX on a long-haul basis to provide competitive transportation to the Stout Plant. NS Report at 38. The reason is that the NS would be the originating carrier, and the coal would not have to be interchanged. Any additional cost incurred by NS in the Indianapolis area would likely be a very small portion, at most, of the total cost incurred by either carrier to serve the Stout Plant in such circumstances, in contrast to the circumstances described in text for coal originated on Indiana Southern.

situation involving IPL, that policy costs NS nothing, because it has none of IPL's business now. But it leaves IPL with only NS's oral statements, and its filing in Conrail (NS-77 at 3) that it would be a "substantial challenge" to compete for transportation of coal from southern Indiana to Stout. IPL, of course, cannot force NS to make the sort of filing IPL asked it make, and as a non-customer of NS IPL has no commercial leverage. The situation thus requires Board intervention to resolve.

Witness Weaver explains the additional costs incurred by NS to serve Stout, that Conrail did not need to incur and that INRD or CSX, being present in Indianapolis, do not need to incur. These include: (a) a trackage rights fee to move a locomotive and crew to Indianapolis from Lafayette or beyond, a distance of at least 60 miles<sup>10</sup>; (b) trackage rights fees to use CSX's and INRD's tracks (the latter of which will be at a level **higher** than that approved by the STB; (c) the NS crew leaving the IPL train at Stout, and, having no other business in Indianapolis, then being obliged to return to Lafayette, over the same distance of 60 or more miles; (d) the need for NS to send several crews and locomotives to Indianapolis, from Lafayette or beyond, to pick up the empty cars and return them to the Crawford Yard, because of the several separately dispatched segments involved (four of which are about 60 miles and four of which are 3-4 miles in length) and (e) then to return to Lafayette or beyond, all of which would be subject **both** to the

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<sup>10</sup> NS cannot move its crew by automobile to Indianapolis to use an Indiana Southern locomotive to move IPL's coal cars to the Stout Plant for two reasons. One, Indiana Southern is not a union carrier, while NS of course is, and that alone would create an insuperable obstacle to the arrangement ordered by the Board. Two, that is especially true here, because NS recently agreed to modify its collective bargaining agreement with its crews so that all NS locomotives have lavatories on board. Indiana Southern locomotives do not have lavatories.



dispatching of its competitors, CSX and INRD, **and** to the determination of CSX as to when it believes that there is adequate track capacity in the Crawford Yard to accommodate its competitor, NS.

Moreover, Conrail absorbed most of the switching charge imposed by INRD, as does CSX under its Tariff (which republished the Conrail rates). IPL Ex. No. 7, Att. D.

CSX informed the Board of its unwillingness to use the RCAF(A), and its Tariff is consistent with its position before the Board. For all of these reasons, NS incurs a large number of additional costs to serve IPL, wholly apart from the biggest problem of all: NS is not present in Indianapolis, unlike Conrail, so NS has no traffic with which to share its fixed costs, and no economies of scale, scope or density there. It is as if NS is a taxi driver at Dulles Airport, and it is trying to compete for one trip, every so often, **from** BWI Airport **to** downtown Baltimore, **with** taxi drivers who are based at BWI. The cost of the "deadhead" trip from Dulles to BWI would make it essentially impossible for the Dulles taxi driver to compete profitably with the BWI taxi driver for runs from BWI to Baltimore, and then back to BWI, especially if the Dulles-based taxi driver must return to Dulles after each BWI-Baltimore or Baltimore-BWI leg, then return when he gets a call, as NS would have to do. The situation is simply and inherently unworkable, especially because NS, unlike the Dulles taxi driver, would depend on its competition to allow it to enter the Crawford Yard only after IPL's



coal train is ready to enter the Yard. Clearly, NS cannot provide competition to INRD, which serves the southern Indiana coalfields directly, under such circumstances.

### III.

#### THE ONLY SOLUTION IS TO ALLOW INDIANA SOUTHERN TO SERVE IPL'S STOUT AND PERRY K PLANTS DIRECTLY.

The solution to IPL's problem is simple. Indiana Southern is the only railroad other than INRD with a line of railroad to Indianapolis that is serving the southern Indiana coal fields, and it is IPL's other originating carrier. NS cannot do so, for the reasons stated previously. CSX cannot do so, because the Board correctly found that INRD is an "appendage" of CSX. And Conrail no longer exists in Indianapolis. Indiana Southern, therefore, is the only other railroad that can compete with INRD to serve IPL's Stout Plant for deliveries of coal from southern Indiana. In Finance Docket No. 33388, Indiana Southern sought the right to serve the Stout Plant directly, in its Responsive Application filed on October 21, 1997. It remains ready, willing and able to serve IPL. As IPL understands it, Indiana Southern is making a filing of its own in this proceeding, indicating its continuing willingness to serve, and in any event it has assured IPL it is willing to serve the Stout Plant directly from the southern Indiana coal fields. Indiana Southern serves two of IPL's coal-fired powerplants in southern Indiana, Pritchard and Petersburg, and does so efficiently and competitively. IPL has no doubt that Indiana Southern would provide "efficient and competitive" service at its Stout Plant, as it did previously in conjunction with

Conrail. If Indiana Southern is given the right to serve the Stout Plant directly, IPL will negotiate competitive rates directly with Indiana Southern.<sup>11</sup>

Indiana Southern should also receive the right to serve the Perry K Plant directly,

Conrail offered rates that allowed Indiana Southern to compete at Perry K because Conrail, having sold the Petersburg Branch to Indiana Southern, had an interest in seeing the Line succeed and bring business to Conrail. CSX has no such interest, since its 89-percent-owned subsidiary, INRD, can do so, whereas Conrail was not affiliated with either Indiana Southern or INRD. IPL continues to need effective competition at the Perry K Plant, because it continues to use a substantial amount of coal, contrary to CSX's erroneous claims, and will for the foreseeable future. IPL Ex. No. 7, at 9 ¶14.

#### Conclusion

For the foregoing reasons, and those in the accompanying Verified Statement of Michael A. Weaver, IPL respectfully requests that the Ordering Paragraph 23 of Decision No. 89 in Conrail, as modified in Ordering Paragraph 8 of Decision No. 96, be amended so as to provide

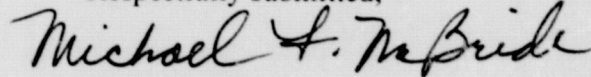
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<sup>11</sup> For the reasons stated previously, Indiana Southern should only be given direct access to the Stout Plant to carry coal from Indiana origins. NS should retain the right to serve the Stout Plant from eastern or western origins, because it can provide "efficient and competitive service" directly from eastern origins, or in interchange with western carriers, so long as CSX/INRD give it non-discriminatory switching and other services. From the east, it can do so in long-haul single-line service, and avoid most of the problems discussed in text. From the west, it has connections with western carriers that will allow it to provide efficient, long-haul service just as CSX would do. In both instances, it could participate as a long-haul carrier with a substantial revenue division from the movement that would not jeopardize its competitiveness, whereas Indiana Southern does not have lines running east or west of Indianapolis.



that Indiana Southern shall have direct access to the Stout and Perry K Plants using trackage rights at a fee of no more than 29 cents per car-mile over the tracks of both CSX and INRD, with ironclad assurances of non-discriminatory dispatching and all other arrangements to ensure that Indiana Southern can effectively compete.

Respectfully submitted,



Michael F. McBride

Bruce W. Neely

LeBoeuf, Lamb, Greene & MacRae, L.L.P.

1875 Connecticut Ave., N.W., Suite 1200

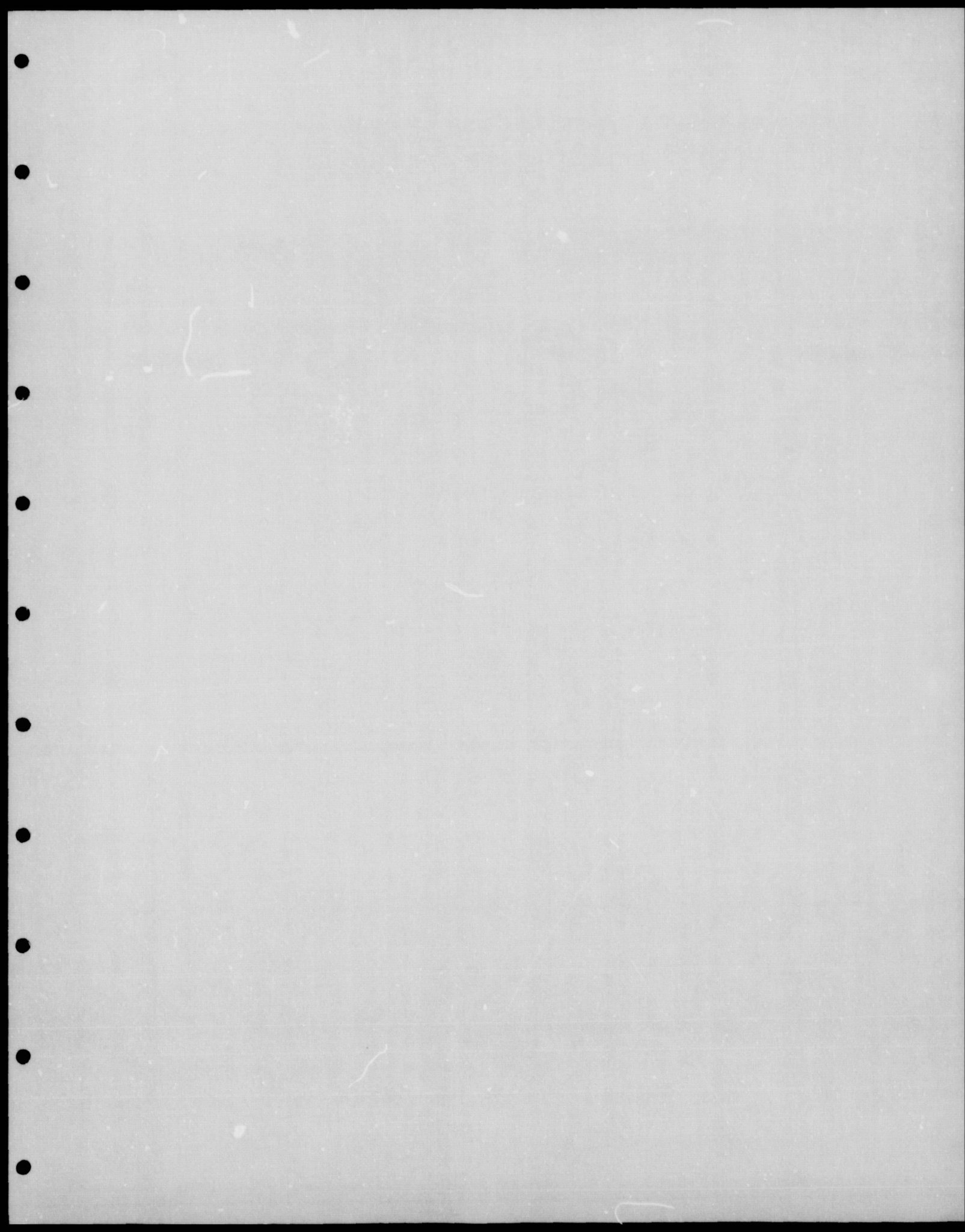
Washington, D.C. 20009-5728

(202)986-8000 (Telephone)

(202)986-8102 (Facsimile)

Attorneys for Indianapolis Power & Light  
Company

July 14, 2000





UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
SURFACE TRANSPORTATION BOARD

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IPL Exhibit No. 7

FINANCE DOCKET NO. 33388 (SUB-NO. 91)

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

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**VERIFIED STATEMENT OF MICHAEL A. WEAVER**

1. My name is Michael A. Weaver. I am Manager of Fuels for Indianapolis Power & Light Company ("IPL"). I am the same Michael A. Weaver whose Verified Statements were submitted to the Surface Transportation Board ("Board" or "STB") in Finance Docket No. 33388 ("Conrail") accompanying IPL's Supplemental Comments in that proceeding submitted on October 21, 1997 (IP&L-3), in support of Indiana Southern Railroad Company's Responsive Application in its January 14, 1998 rebuttal evidence in Conrail (ISSR-9), and in support of IPL's Report dated January 19, 1999 in that proceeding (IP&L Ex. No. 6).

2. IPL appreciates the Board's recognition in Conrail that it was entitled to an "efficient and competitive" remedy at its Stout Plant. Decision No. 96 at 14-15; Decision No. 89 at 116-17. However, as the Board knows, IPL is firmly of the view that the remedy imposed is ineffective for both the Stout Plant and for IPL's Perry K Plant. IPL is aware that the Board thought the competition that IPL enjoyed at the Perry K Plant would be protected by the remedy adopted at the Stout Plant. Respectfully, I will also show in this Verified Statement that the

Board's conclusion about the Perry K Plant is incorrect, and also that the remedy adopted for the Stout Plant is not effective or efficient.

3. While IPL is pursuing a petition for review of Decision No. 125 in Conrail in the United States Court of Appeals for the Second Circuit, IPL would much prefer to have the Board resolve the matter, once and for all, in this proceeding, so that it did not need to pursue its petition for review. Given the Board's finding that IPL is entitled to an "efficient and competitive" remedy, there is not a philosophical dispute between IPL and the Board, at least over the remedy at the Stout Plant, but rather only a past disagreement over whether IPL's prior evidence was sufficient to merit further relief **at the time** of Decision No. 125 in Conrail, where the Board concluded that IPL's concerns amounted to "speculation." Even if the Board were correct in that conclusion, IPL has accumulated additional evidence to corroborate its prior position as to both Stout and Perry K, and is confident that the Board will reach a just determination with sufficient evidence before it. That is why IPL is participating in this "Oversight" proceeding.

4. IPL was also pleased that the Board ordered, in Decision No. 2 in this proceeding, that CSX and NS provide it with copies of the trackage rights agreements entered into for service by NS to IPL's Stout Plant (Attachments A and B). I have reviewed those agreements, except for Section 8 of the NS-Indiana Rail Road ("INRD") agreement, which NS designated "Highly Confidential." NS and CSX were willing to allow IPL to review the agreements except for Section 8 of the NS/INRD agreement.

5. In reviewing those agreements, I was surprised to learn for the first time that INRD, which the Board has correctly found is controlled by CSX and which the Board even



characterized as an "appendage" of CSX, compelled NS to pay 35 cents per car-mile for trackage rights over its lines, but yet none of the involved carriers saw fit to inform the Board of that fact before Decision No. 125 was issued. IPL litigated the issue of the reasonableness of the trackage rights fee in Conrail, and the Board found that 29 cents per car-mile was reasonable and would preserve competition, but the Board did not make any finding that any **higher** fee would preserve competition in Indianapolis. In light of those findings, and the representation by CSX and NS that they would charge each other 29 cents per car-mile for the use of one another's tracks, I would have thought that the carriers would have felt compelled to inform the Board that CSX's appendage INRD was charging NS a higher fee. CSX's stated reason for the higher fee -- that it seems "reasonable" in light of the short distance involved -- makes no sense. It is a **per car-mile charge**; nowhere in the master trackage rights agreement between NS and CSX is there any higher fee than 29 cents per car-mile, regardless of the distance. A distance-related charge should be the same per unit regardless of the distance. The wear and tear or expense to INRD should be no different, per mile, than that incurred by CSX or NS, which are charging the 29 cents per car-mile fee elsewhere to each other regardless of the distance involved. After all, the track is similar and the trains running over the track are the same, via the INRD track as over the CSX track serving IPL's coal trains. Certainly, CSX has not shown that there is any basis for concluding that INRD's costs are higher than CSX's costs on a per-mile basis. The additional cost for the INRD trackage rights fee is, however, only one of the problems with the trackage rights agreements IPL has only now received.

6. The more significant reasons, from a monetary standpoint, that prevent NS from competing under the arrangement adopted by the Board for coal from southern Indiana are set out

in the following paragraphs. But first I wish to note that NS confirmed to me once again in February 2000 that NS cannot compete at Stout with INRD for deliveries of coal originating in southern Indiana. Although the Board's counsel suggested on Brief in the Second Circuit that my sworn statement to the Board with IPL's January 19, 1999 Report was entitled to less weight than NS's subsequent "official position" to the Board (STB Brief at 54 n.46), I respectfully disagree. My statement (about a January 1999 NS statement to me) was sworn, unlike the statement of NS's outside counsel, who would not know the facts first-hand in any event. Also, NS's "official position" statement to the Board **corroborated** my sworn statement, for NS admitted (in NS-77 at 3) that it would be a "substantial challenge" to compete with INRD to serve IPL's Stout Plant. There is no inconsistency in the two statements. NS has now once again, after NS's "formal statement" was filed with the Board, confirmed his statement to me before my earlier sworn statement to the Board. I think it obvious that NS would know better than NS's outside counsel whether NS can compete with INRD at the Stout Plant.

7. IPL agrees with the statement in NS's "First General Oversight Report" that NS could compete with CSX head-to-head for long-haul delivery of eastern coal from outside Indiana, if NS were to receive non-discriminatory switching and all necessary services. NS Report at 38.

**But that is not the issue. IPL uses coal from southern Indiana exclusively at this time, and does not now use eastern or western coal, as I have explained to the Board previously.**

(However, as I have also told the Board, IPL may be compelled to use low-sulfur coal from outside Indiana at its Stout Plant, which is why NS should retain direct access to the Stout Plant for those sources of coal.) The reason NS could compete with CSX for transportation of eastern



or western coal to Stout is that it would be long-haul transportation and the possible margins on that traffic could absorb any extra cost in Indianapolis.

8. Among the reasons that NS cannot compete with INRD for deliveries of coal from southern Indiana include the following: (A) NS has no presence in Indianapolis, nor does it come within 60 miles of it. Railroad economics obviously demand a sufficient minimum traffic base to permit a railroad to charge competitive rates, as I am sure the Board understands. Without other traffic, NS could not compete for IPL's business, even though coal traffic is normally quite lucrative, because it would have no other traffic over which to spread its Indianapolis-area fixed costs. (B) NS does not have crews or equipment stationed in Indianapolis. Instead, it would have to bring a crew and locomotive from Lafayette, which is 60 miles away, to carry IPL's coal traffic off the Indiana Southern from Crawford Yard to the Stout Plant, a distance of approximately 8 miles. Given that it takes several hours to unload the train, NS would have to decouple its locomotive and return to Lafayette under the restrictions over the hours of service the crew can serve at one time. (C) So, at this point, the NS crew will have traveled over 120 miles to carry IPL's coal train about 8 miles. (D) NS would then await a call from IPL to send a new crew back to Indianapolis from Lafayette or beyond, to come to the Stout Plant to pick up IPL's empty cars. The crew would then take the cars the 8 miles to the Crawford Yard, where Indiana Southern will pick them up to take them back to the mine from which the next load of coal would come. The NS crew and locomotive would then return the 60 or so miles to Lafayette. (E) Indiana Southern is not permitted free access to the Crawford Yard, but instead must wait until receiving CSX's permission to enter. This would add cost and congestion to Indiana Southern's line, because Indiana Southern evidently would be required to wait on the

Petersburg Branch until receiving CSX's permission to enter the Crawford Yard. I would not expect CSX to be eager, or even willing, to treat Indiana Southern in a neutral fashion in such circumstances, because every Indiana Southern trainload of coal for the Stout Plant is a trainload of lost revenue for INRD, CSX's 89-percent owned subsidiary. (F) Moreover, Conrail had an interest in seeing Indiana Southern survive and prosper, given that it sold the Petersburg Branch to Indiana Southern while IPL (and perhaps others) had contractual rights to service over it. NS has no similar incentive

NS has demonstrated a lack of interest in serving IPL directly by arranging with its supposed competitor, CSX/INRD, to act as its agent in competing with CSX/INRD, a **preposterous outcome**. (G) CSX offered IPL a settlement of this matter (CSX-152), which IPL rejected, as the Board knows (because it filed it on the public record). See Transcript of June 3, 1998 oral argument in Conrail. That settlement offer included RCAF(U), not RCAF(A), adjustments, which is one of the reasons IPL rejected it. The Conrail absorption of a portion of the INRD switching charge was adjusted by use of the RCAF(A) because of IPL's prior, successful litigation and then negotiation with Illinois Central, INRD's predecessor in interest. Although I have not been allowed to see Section 8 of the NS-INRD package rights agreement, I am quite confident, given CSX's litigation position in this matter, which the Board accepted on this point, that INRD did not agree to use the RCAF(A) to adjust the switching charge imposed on NS. If that assumption is correct, it is another reason why

(H) NS would have to depend on dispatching by its competitors, CSX or INRD. Without priority, the NS crew would at times not be able to move the train because of the hours-of-service law. Because the NS crew will have to be dispatched at Lafayette, into and out of



Crawford Yard, onto INRD, out of Stout, off INRD, into and out of Crawford, and to Lafayette, the crew is highly likely to need relief under that scenario.

9. NS also cannot keep its costs down by sending a crew via automobile from Lafayette to Indianapolis, then having it use an Indiana Southern locomotive to take IPL's coal cars to the Stout Plant, as the Board assumed in Decision No. 125 in Conrail. Under the NS collective bargaining agreement, NS crews do not have to use locomotives that are not equipped with lavatories. Indiana Southern's locomotives are not equipped with lavatories. Also, NS crews are unionized, while Indiana Southern's are not, and that would preclude the use of an Indiana Southern locomotive by an NS crew.

10. NS offered IPL rates on June 30, 1999 that are  
Different rates from  
different coal mines were quoted for Stout.

In Table 1 below, for the Stout Plant, I set forth the rates quoted by NS to IPL, the rates charged by Conrail, and the rates charged by INRD under our current contract, from various mines:

TABLE 1			
Rates Per Net Ton Proposed by NS or Charged by Conrail INRD to Stout Plant			
Origins	NS	CONRAIL*	INRD
Switz City, IN		\$3.17 \$12.00 per car switch (not absorbed)	
Miller Creek, IN		\$3.17 \$12.00 per car switch (not absorbed)	
Hawthorn, IN		\$3.63 \$12.00 per car switch (not absorbed)	
Maysville, IN		—	
*CSX adopted the expired Conrail contract rates in Tariff COBU-4 (Attachment D). Note that CSX is charging IPL a switching charge for switching to its "appendage", INRD.			

(I discuss this possibility despite the fact that NS's Chairman Goode told the Board at the oral argument on June 3, 1998, in my presence, that NS had no intention of raising rates.)

Attachment E. IPL never got a response in writing to its



request.

12.

I did not receive a response from NS to my offer.

13.

Attachment G. I did not receive a response to that letter, either.

14. In its Report, CSX informed the Board that IPL has agreed to sell its Perry K Plant to Citizens Gas & Coke Utility. While that is true, the Board should be aware of some additional facts.

15. While the Board rejected IPL's position that Conrail attempted to assist Indiana Southern in making its coal transportation competitive at the Perry K Plant, and that Conrail was

successful because all of the coal used there came from Indiana Southern origins except when coal was trucked from Stout to Perry K in emergencies,

In addition, suffer all of the inefficiencies I have previously described for the Stout Plant, because that is where NS would have to deliver the coal. I set forth in Table 2 the rates quoted by NS and the rates quoted by CSX for delivery there of coal from Indiana Southern-served origins:



<b>TABLE 2</b> Rates Per Net Ton Proposed by NS or Charged by Conrail to Perry K Plant		
Origins	ISRR/NS/Truck	Conrail*
Switz City, IN		\$3.17
Miller Creek, IN		\$3.26 (The stated rate actually is \$316 per car)
Hawthorn, IN		\$3.63
Maysville, IN		\$4.52
*CSX has republished the old Conrail rates in Tariff COBU-4.		

since CSX's rates are comparable to those charged by Conrail. Of course, CSX has no interest in promoting shipments originating off the Indiana Southern, unlike Conrail, because it naturally favors its 89-percent owned subsidiary, INRD. Moreover, CSX imposes a substantial penalty on cars supplied by Indiana Southern versus those supplied by IPL. Compare Column 1 ("Applies in cars to be supplied by ISRR") with Column 2 ("applies in Private Cars").

So IPL has lost competition at Perry K as well as Stout, because CSX is imposing rates and charges that are higher than those imposed by Conrail at both Plants,

16.

Indiana Southern warned the Board that it might have to abandon the Petersburg Branch north of Milepost 17 if its Responsive Application were not granted. So far, Indiana Southern has been able to keep IPL's business at Perry K, but it may lose that business due to the rates and charges of CSX at that Plant. Indiana Southern will, under those circumstances, need business at the Stout Plant more than ever, to avoid abandoning Indianapolis. IPL is not certain when Indiana Southern will reach that point, but it is certain that



the inadequacies of the remedy thus far adopted prevent NS from competing with INRD at the Stout Plant for Indiana Southern-origin coal, for the reasons I have stated herein.

17. I therefore implore the Board to recognize that NS cannot compete for transportation of southern Indiana coal to the Stout Plant, and that the only solution to provide IPL with rail-to-rail competition at the Stout Plant -- i.e., the "efficient and competitive" remedy that the Board said IPL was entitled to -- is to let Indiana Southern serve the Plant directly, paying 29 cents per car-mile to CSX/INRD for the use of their tracks, and without discrimination in the operating circumstances applicable thereto. That would have the additional benefit of helping Indiana Southern, which evidently needs additional business. NS seems uninterested in new business, given its many difficulties with this transaction to date, so IPL would go from an uninterested to an interested supplier. IPL cannot have an "efficient and competitive" remedy from a railroad not interested in serving it.

18. In addition, I regret to inform the Board that the two trackage rights agreements, one between NS and CSX, and the other between NS and INRD, provide

IPL

is entitled to efficient service, as it had before the CSX acquisition of Conrail's lines in Indianapolis, and urges the Board to order CSX (and through it, INRD) to enter into agreements with Indiana Southern and NS

19. Lastly, there is the suggestion in NS's Report that this is not an imminent problem, because IPL's contract with INRD will remain in effect for some time.

Given the history of this dispute, which has been going on for three years now, it is clear that the Board needs to address this problem now, rather than let another year go by before its next "Oversight" proceeding.

20. In closing, on behalf of IPL I want to acknowledge the time that the Board has spent on IPL's circumstances. We only wish that IPL's problems could have been resolved by CSX without the Board's intervention, but that has not been possible. Perhaps a description of why IPL even intervened in this proceeding will explain why we have had no choice in the matter. CSX visited IPL within days of filing the Application in Conrail, but the meeting ended shortly after CSX's representative, when asked by IPL's Mr. Knight how it was going to solve IPL's loss of rail-to-rail competition in Indianapolis, said "we'll compete vigorously with Indiana Rail Road" or words to that effect. That seems to be the consistent theme that CSX has taken since, but it is obviously an inadequate response, as the Board found in Decision No. 89 (at 116-17). Even if CSX is attempting to publish rates and terms that are somewhat reminiscent of Conrail's (with differences as I have laid out), there is no assurance that those arrangements would continue. IPL will never be content with "competition" between CSX and its appendage INRD,

but rather it must keep Indiana Southern a viable competitor for Indiana coal, and NS for eastern or western coal, to assure itself of real competition.



**VERIFICATION**

I, Michael A. Weaver, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on July 11, 2000.

A handwritten signature in cursive script, reading "Michael A. Weaver". The signature is written in dark ink and is positioned above the printed name.

Michael A. Weaver

ATTACHMENT A

ATTACHMENT A  
(REDACTED)





**ATTACHMENT B**  
**(REDACTED)**





ATTACHMENT C  
(REDACTED)



**CSX**  
**TRANSPORTATION**  
**TARIFF CSXT COBU-4**  
(FORMERLY FREIGHT PUBLICATION CR 4611 )  
**CONTAINING**  
**LOCAL AND JOINT RATES APPLYING**  
**ON**  
**BITUMINOUS COAL (STCC 11 212)**  
**FROM INDIANA POINTS**  
**TO INDIANAPOLIS, IN**

Always show the Tariff Number as the authority for all shipments made using the prices contained herein.

---

ISSUED AUGUST 10, 1999

EFFECTIVE AS OF JUNE 1, 1999

---

CSX TRANSPORTATION  
Coal Marketing  
500 Water Street  
JACKSONVILLE, FL 32202



**CSX TRANSPORTATION  
TARIFF CSXT-COBU-4  
(formerly CR 4611)**

RATES ARE APPLICABLE ONLY VIA ROUTES SHOWN BELOW  
RATES IN DOLLARS PER NET TON EXCEPT AS NOTED

ITEM 100

<u>ORIGIN</u>	<u>DESTINATION</u>	<u>RATES</u> (See Notes 1, 2, 3 and 4)		<u>ROUTE</u>
		<u>Column 1</u>	<u>Column 2</u>	
<u>INDIANA</u>	<u>INDIANA</u>			
Hawthorne Mine	Indianapolis	4.07	3.63	CSXT
Lynnville Mine	Indianapolis	5.74	4.84	CSXT
Miller Creek Mine	Indianapolis	3.63	3.17	CSXT
Triad Mine	Indianapolis	(a)349.00	(a)316.00	CSXT
Kindill #1 or #2	Indianapolis	5.74	4.84	AWW-Oakland City Jct, IN-CSXT

Column 1 - Applies in Railroad Owned Cars.  
Column 2 - Applies in Private Cars.

Note 1 - Destination of Indianapolis can represent either of IP&L's Perry K Plant or E.W. Stout Plant.  
CSXT will absorb \$42.00/car switching at E.W. Stout (INRD). Additional switching charges are unabsorbed by CSXT.

Note 2 - Minimum train size is 50 cars on all shipments.

Note 3 - IP&L owned Private equipment shall be provided free to carriers.

Note 4 - Shipments shall be made in Open Top Hopper Cars only

(a) Rates in dollars per car

Note: This tariff is, in essence, a republication of Conrail's Freight Publication CR 4611 in effect as of the expiration date of May 31, 1999. In footnote 14 on page 11 of Document CSX-180 in STB Finance Docket No. 33388 (Conrail Acquisition Proceeding) CSXT States: "From CSX's perspective, as of the Split Date, it intends to adopt Conrail's published tariff rate as it pertains to the switching necessary for ISRR to access the Stout Plant (and the related divisional arrangements) and to maintain the same for the foreseeable future, subject to RCAF(U) adjustments." Accordingly, the rates herein will be adjusted quarterly by the amount of the percent change, quarter to quarter in the forecasted RCAF-U determined by the Surface Transportation Board. However, the rates will never be adjusted below the rates in this tariff COBU-4 effective June 1, 1999.

ATTACHMENT E

ATTACHMENT E

(REDACTED)



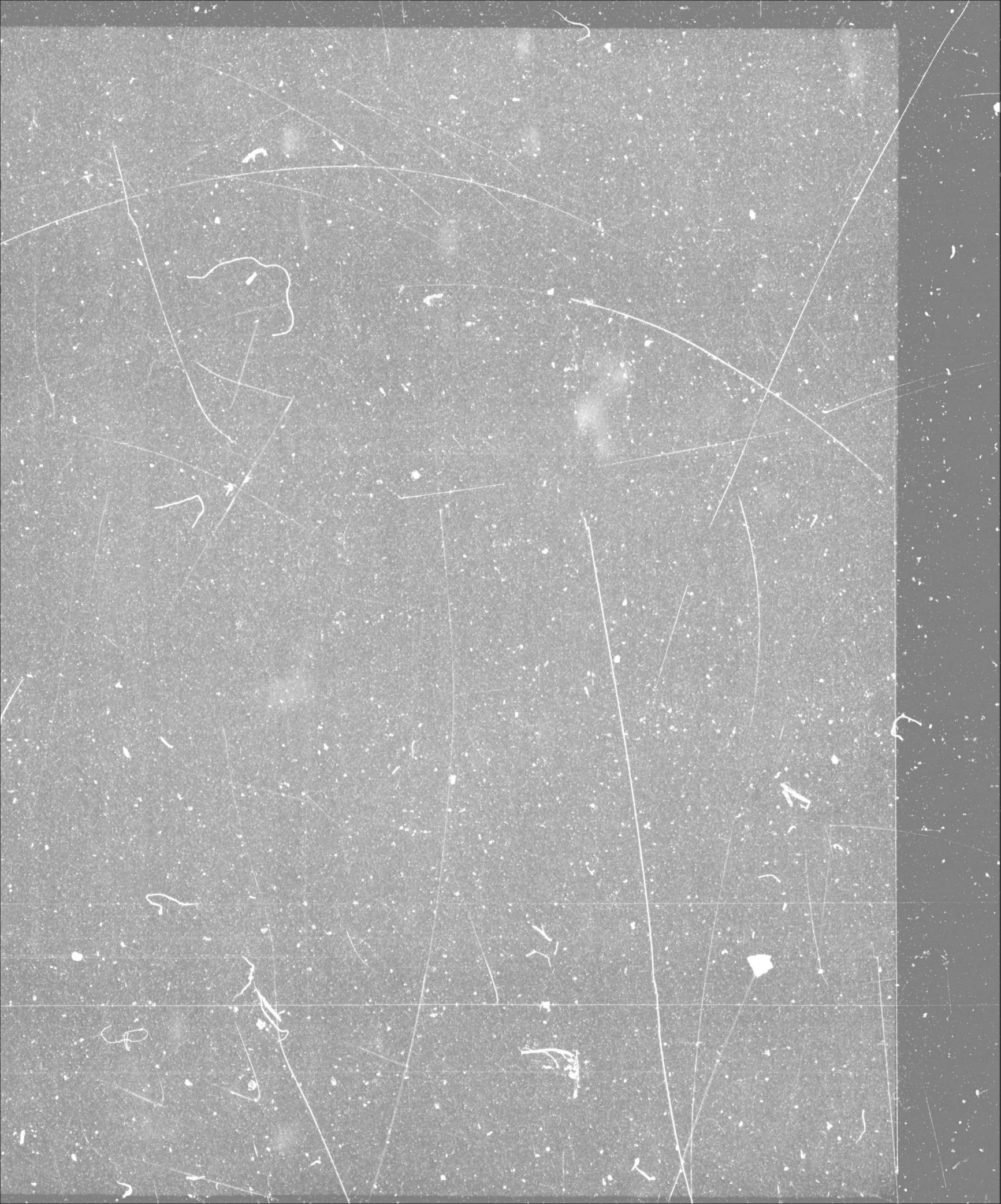
ATTACHMENT F

ATTACHMENT F  
(REDACTED)

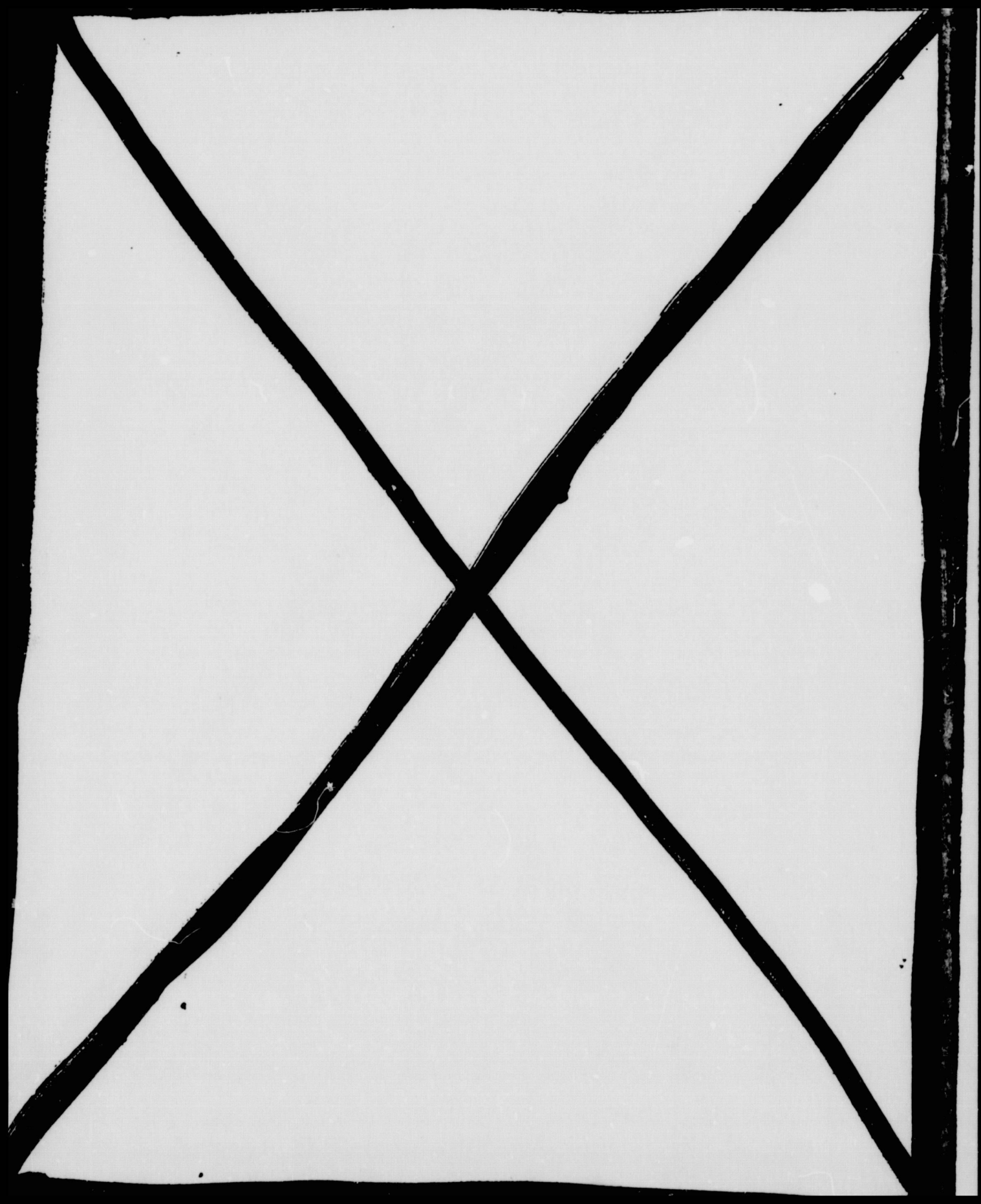




**ATTACHMENT G**  
**(REDACTED)**









STB FD-33388 (SUB 91) 7-14-00 D 199273

# FLETCHER & SIPPEL LLC

Two Prudential Plaza, Suite 3125  
180 North Stetson Avenue  
Chicago, Illinois 60601-6721

Thomas J. Litwiler  
(312) 540-9440  
tlitwiler@fletcher-sippel.com

Phone: (312) 540-0500  
Fax: (312) 540-9098  
www.fletcher-sippel.com

188273  
July 13, 2000



## VIA FEDERAL EXPRESS

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 700  
Washington, DC 20006

ENTERED  
Office of the Secretary

JUL 14 2000

Part of  
Public Record

Re: **Finance Docket No. 33388 (Sub-No. 91)**  
**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 (General Oversight)**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and twenty-five copies of the **Comments of Wheeling & Lake Erie Railway Company**, dated July 13, 2000. A 3.5-inch computer diskette, containing the text of the Comments in WordPerfect 5.1 format, also is enclosed.

One extra copy of this transmittal letter and of the Comments are included as well. I would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

Thomas J. Litwiler  
Attorney for Wheeling & Lake Erie  
Railway Company

TJL:tl

Enclosures

cc: Parties on Certificate of Service

**ORIGINAL**

199273

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**FINANCE DOCKET NO. 33388 (SUB-NO. 91)**

**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  
(GENERAL OVERSIGHT)**

---

ENTERED  
Office of the Secretary

JUL 14 2000  
Part of  
Public Record



**COMMENTS OF  
WHEELING & LAKE ERIE RAILWAY COMPANY**

William A. Callison  
Vice President Law & Government Affairs  
Wheeling & Lake Erie Railway Company  
100 East First Street  
Brewster, Ohio 44613  
(330) 767-3401

William C. Sippel  
Thomas J. Litwiler  
Fletcher & Sippel LLC  
Two Prudential Plaza, Suite 3125  
180 North Stetson Avenue  
Chicago, Illinois 60601-6721  
(312) 340-0500

**ATTORNEYS FOR WHEELING & LAKE ERIE  
RAILWAY COMPANY**

Dated: July 13, 2000



BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 33388 (SUB-NO. 91)

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

(GENERAL OVERSIGHT)

---

**COMMENTS OF  
WHEELING & LAKE ERIE RAILWAY COMPANY**

Pursuant to the Board's decision served February 9, 2000 in the above-captioned oversight proceeding, the Wheeling & Lake Erie Railway Company ("W&LE") hereby submits its comments on the status of implementation of certain conditions imposed by the Board as part of its decision ("Decision No. 89") approving the division of Consolidated Rail Corporation ("Conrail") between Norfolk Southern Railway Company ("NS") and CSX Transportation, Inc. ("CSXT"). Specifically, W&LE's comments pertain to the relief imposed in Ordering Paragraph No. 68 of Decision No. 89. As described below, more than two years after the Board approved the CSXT/NS-Conrail transaction and more than a year after the parties consummated that transaction, the conditions imposed by the Board as necessary to assure W&LE's continued viability as a transportation service provider in the region have yet to be fully or effectively implemented. Several of the conditions have resulted in no appreciable benefit to W&LE, and the applicants -- particularly NS -- have used delay and restrictions to diminish those conditions that have shown potential promise. While negotiations continue, continued careful oversight of this process by the Board is essential.

## INTRODUCTION

In Decision No. 89, the Board evaluated the impact of the proposed CSXT/NS-Conrail transaction on W&LE and determined that the transaction, when fully implemented, would have a serious effect on W&LE's traffic base and financial viability. The Board also found that W&LE provided important and essential transportation services in the region that should be preserved. U.S. Senators from Ohio and Pennsylvania, U.S. Congressmen Ralph Regula and Thomas Sawyer, and other Congressmen from Ohio and West Virginia offered strong support for W&LE's position and for continuation of W&LE's services. Support was also provided by the Stark Development Board, the Ohio Attorney General and the Ohio Rail Development Commission. Noting this extensive public participation in support of W&LE, the Board stated:

... we think that the combination of W&LE's precarious financial situation and these rather heavy losses calls out for a remedy to preserve essential services and an important competitive presence here. W&LE not only provides valuable competitive services to shippers, but it also provides a transportation network that could be important to shippers if the major carriers have difficulty providing service.

Decision No. 89 at 108.<sup>1</sup>

Accordingly, the Board required Applicants to provide "certain remedies to W&LE to prevent further erosion of W&LE's financial viability due to this transaction." Decision No. 89 at 109. Specifically, the Board conditioned its approval of the Conrail transaction to require that Applicants:

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<sup>1</sup> The Board's conclusions regarding W&LE proved prescient. During the serious service crisis that closely followed the division of Conrail, W&LE cooperated with the applicants to help alleviate operational and congestion problems. W&LE offered this prompt assistance despite the many unresolved issues that remained regarding implementation of the Board-imposed conditions.



- (1) grant W&LE overhead haulage or trackage rights access to Toledo, Ohio with connections to the Ann Arbor Railroad and other railroads there;
- (2) grant W&LE an extension of W&LE's lease for the Lake Erie dock facilities at Huron, Ohio (the "Huron Dock") and trackage rights access to the Huron Dock over NS's Huron Branch;
- (3) grant W&LE overhead haulage or trackage rights to Lima, Ohio, including a connection to the Indiana and Ohio Railway;
- (4) negotiate with W&LE concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregate shippers; and
- (5) negotiate with W&LE concerning mutually beneficial arrangements, including service to shippers along CSXT's main line from Benwood-Brooklyn Junction, West Virginia.

The Board stated that if the parties were unable to agree on a solution with respect to items (1), (2) and (3) within 90 days, the Board would institute expedited proceedings to resolve those matters.

In response to a major shipper's concerns regarding the potential demise of the W&LE as a result of the transaction, the Board characterized these conditions as "substantial relief that we have accorded to ensure W&LE's continued viability." Decision No. 89 at 112-113. The Board also found that the W&LE conditions would address concerns raised by the Stark Development Board regarding the viability of its Neomodal intermodal facility in Stark County, Ohio. Decision No. 96 at 19.

In a decision issued six months later clarifying its actions, the Board stated that it would:



continue to assess this situation carefully during the course of our oversight proceeding to ensure that W&LE has the opportunity to achieve operational cost savings and remain a viable carrier in the region where it currently operates.

Decision No. 107 at 8.

**APPLICANTS HAVE YET TO SATISFY THE  
CONDITIONS IMPOSED BY THE BOARD**

In its "First General Oversight Report" filed with the Board on June 1, 2000, NS acknowledges that its negotiations with W&LE concerning the implementation of these conditions have not been completed. NS also acknowledges that, on certain issues, the parties "remain far apart." NS-1 at 44. NS's brief and selective report, however, does not tell the real story. NS doesn't explain why, two years after these conditions were imposed, they have yet to be fully implemented. Nor does NS's report indicate how the continuing uncertainty over W&LE's access to the Toledo gateway and its access to Lake Erie via Huron Dock has hampered W&LE's ability to use these Board-provided opportunities to provide attractive and competitive rail service.

1. **Access to Toledo, Ohio**

With respect to the status of the Board's condition requiring Applicants to grant W&LE access to the Toledo gateway, NS's report to the Board, while expounding NS's position on the issues that have not been resolved, fails to mention:

(1) That NS tendered a first draft of an agreement to implement W&LE's access to Toledo only one week before the Split Date, and a full ten months after the condition was imposed by the Board. The May 24, 1999 NS letter transmitting draft documents for the Bellevue-Toledo trackage rights, use of tracks at NS's Homestead Yard, and the sale of the Maumee River bridge stated that the drafts were being sent "to you now to begin your internal

review," but even then disclaimed that the "drafts are subject to continued internal NSR review." Thus, by the time the Board's conditions were supposed to have been in place -- that is, on the date when NS and CSXT, after extensive planning and a number of self-imposed delays, elected to consummate the Conrail transaction -- NS had not even finalized its own initial offer to W&LE to implement those conditions. This was but the first sign that cooperating with the letter and spirit of the Board's conditions was not an NS priority.

(2) That in the interim, NS has permitted W&LE to operate over NS's line between Bellevue and Toledo only: a) under what NS denominates as "temporary detour rights"; b) on a 60-day term, renewable solely at NS's discretion; and c) subject to a limitation of one train per day each way.<sup>2</sup> At NS's request -- and as would be expected given the timeline discussed above -- W&LE traffic to and from the Toledo gateway was initially handled in NS trains under a haulage arrangement. Service under that arrangement, however, suffered from traffic delays and misroutes. In the fall of 1999, and pursuant to the Board's condition, W&LE elected to begin operating via trackage rights with its own locomotives and crews in order to better control the service. W&LE was able to obtain those rights only through an October 18, 1999 letter agreement with NS, which indicates that NS "has granted temporary detour rights to" W&LE and that "[t]he Detour Rights shall run for 60 days." Since then, NS and W&LE have entered into successive "detour rights" letter agreements of limited duration.

(3) That after offering W&LE the use of two sets of tracks in NS's Homestead Yard in Toledo (albeit with the actual tracks to be determined by NS on a day-to-day basis and without any commitment that the tracks selected would accommodate W&LE's trains), NS abruptly withdrew its offer and now is only willing to allow W&LE access to Homestead Yard

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<sup>2</sup> W&LE currently operates one train per day alternating directions each day (a westbound train one day and eastbound train the next, essentially three round-trips per week).



in "emergency" situations. NS's actions have effectively left W&LE without a permanent base for its train operations in to and out of Toledo.

(4) That NS has refused to allow W&LE to interchange traffic with CSXT in Homestead Yard in Toledo and has refused to provide W&LE with a route to an alternate interchange point with CSXT in Toledo, despite the Board's clear mandate that W&LE be granted access to Toledo "with connections to [Ann Arbor] and other railroads at Toledo," Decision No. 89 at 181, Ordering Paragraph No. 68.

(5) That W&LE's trackage rights over NS's Maumee River Bridge in Toledo (necessary to reach the interchange with Canadian National west of the river) will expire within one year from the date of agreement unless W&LE assumes all responsibility and liability for that aging pivot bridge.

(6) That NS's supposedly long-standing "concerns" that the Bellevue-Toledo line lacks the capacity to accommodate W&LE's train operations are unsupported by, and indeed unheard of, in NS's own extensive prior record in this proceeding. NS can only be talking about the Bellevue-Oak Harbor segment of that route; the Oak Harbor-Toledo segment has seen a decrease in traffic as a result of the CSXT/NS-Conrail transaction. CSX/NS-20 at 469 (reduction from 6.6 to 4.4 trains/day). From Bellevue to Oak Harbor, on the other hand, NS was expecting a significant increase in traffic, from 7.7 to 27.2 trains a day. CSX/NS-20 at 469. Despite this large number of new trains, NS had no plans for -- and apparently saw no need for -- capacity improvements on the Bellevue-Oak Harbor line. NS's application was replete with capital investment projects, line enhancements and siding extensions that would be necessary to accommodate the increased traffic NS would handle post-consummation. CSX/NS-20 at 199-



221. Except for construction of the new connection at Oak Harbor itself,<sup>3</sup> however, none of these projects concerned the Bellevue-Oak Harbor line. Indeed, elsewhere in its current oversight report NS lists the status of all of its transaction-related construction and improvement projects, and even describes "added projects" that resulted from "traffic flows that materialized or changed after NS began operating in the former Conrail territory." NS-1 at 5-12. The Bellevue-Oak Harbor line is never mentioned.

The justification for NS's position with W&LE and now before the Board is thus apparently that, while NS's own 20-train/day increase -- and 27 trains total each day -- would create no congestion problems on the Bellevue-Oak Harbor line, W&LE's one train a day each way has pushed the line to its breaking point. The answer is more likely that NS is concerned about the traffic that W&LE may be able to develop via Toledo and wants to cap the amount of competition W&LE can offer. Yet providing the opportunity to develop traffic and preserve an essential competitive role in the region was precisely the purpose of the Board's Toledo trackage rights condition, and NS should not be allowed to defeat it simply because it may be working. W&LE will continue to work in its negotiations with NS, and before the Board if necessary, against any such restriction on the Board's condition.

(7) That in order for W&LE to have any opportunity to operate more than one train per day, W&LE must agree to pay an unspecified share of an unspecified major NS upgrading of its Bellevue-Oak Harbor line. NS has not provided any such upgrading plan to W&LE, and W&LE's share of the cost -- to be determined by NS -- could very well be prohibitive. W&LE acknowledges the obligation of a tenant railroad at some point to share in the cost of capacity improvements made necessary by the presence of its trains on the line. But

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<sup>3</sup> See CSX/NS-20 at 284, 438; CSX/NS-22 at 317-331.

particularly in the context of Board-imposed conditions, the Board should be wary of the tendency and incentive of a landlord -- especially one which views its unwelcome tenant as a competitor -- to understate a line's maximum capacity and overstate the capacity needed to accommodate a tenant's trains and the tenant's share of the capacity improvements costs. The real effect of such a requirement would be to eliminate any further W&LE operations pursuant to the Board's Toledo condition.

\* \* \* \* \*

Since commencement of W&LE's operations to Toledo, W&LE's through routes with Canadian National via the Toledo gateway, in competition with NS's former Conrail routes, have found early acceptance in the marketplace. W&LE is working on additional opportunities made available by this new route, and W&LE expects that such traffic will continue to grow. That is as it should be: the specific intent of the Toledo condition was to give W&LE the opportunity to "obtain additional traffic in aid of its ability to continue to be able to provide essential services," to "expand its market reach through connections with other regional carriers," and to serve as an effective transportation alternative where NS and CSXT cannot or will not serve the traffic in a competitive and efficient manner. Decision No. 96 at 18; Decision No. 107 at 7; Decision No. 89 at 108. Indeed, one such area of W&LE focus involves traffic to the Neomodal intermodal facility in eastern Ohio, which has been largely ignored by NS and CSXT and which, as mentioned above, was a contemplated beneficiary of the W&LE conditions imposed by the Board.<sup>4</sup> If commercial and competitive considerations are allowed to prevail,

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<sup>4</sup> CSXT had indicated during the merger proceedings herein that Neomodal would not be adversely affected by the Conrail transaction. Immediately after Split Date, and following operational changes at CSXT's Willard, Ohio yard, CSXT ceased intermodal operations to Neomodal and cancelled its contract there. Neomodal has been largely dormant since.



W&LE believes that the volume of its traffic via Toledo could exceed one train per day each way sometime in the next twelve months. Working against those considerations, however, is the uncertainty brought about by NS's delays and its threat that the competition provided by W&LE with CN via Toledo will be "capped" at one train per day.

2. **Extension of W&LE's Lease of Huron Dock**

With respect to the status of implementation of the Board's condition requiring NS to grant an extension of W&LE's lease of Huron Dock, NS provides a reasonably accurate description of the status of the negotiations and the positions of the parties. But, again, NS's report doesn't tell the whole story. NS fails to mention:

(1) The inconsistency in NS's insistence that the term of any lease extension run from the Split Date, in the face of NS's continuing unwillingness to resolve issues regarding the length of that term. If NS wants to count the extension as being in effect as of the Split Date, it bears the burden of working out the terms of that extension in as timely of a manner as possible. Here, in a worse case NS can deny W&LE the practical benefits of the Board's Huron Dock condition by pushing off any agreement with W&LE until the required extension period has itself assertedly ended.

(2) That NS, which as a result of the Conrail transaction, now has access to multiple docks on Lake Erie, claims that it needs to reclaim use of most or all of Huron Dock's capacity beginning as early as 2003. This, of course, is inconsistent with the Applicants' contentions earlier in this proceeding, when they responded to the arguments of several other parties by insisting that existing dock space was adequate.

(3) That Huron Dock is the only dock on Lake Erie to which W&LE has access and once W&LE's access to the Huron Dock is terminated, the service W&LE provides in



competition with NS via NS's former Conrail lines to W&LE's service territory would necessarily also terminate. Unless NS otherwise approves, W&LE's Huron Dock rights (and its trackage rights to reach Huron) are limited to a single commodity -- taconite iron ore -- but that commodity has been extremely important to W&LE traffic base.

(4) That the delay in finalizing the extension of W&LE's lease of the Dock and the continuing uncertainty over the term of W&LE's lease has made it difficult for W&LE to be able to market its services over the Dock.

Huron Dock is W&LE's only access to the iron ore traffic moving via Lake Erie. As W&LE has consistently advised the Board, without secure and long-term access to this Dock, W&LE would cease to function as a competitive alternative to NS and CSXT between Lake Erie and W&LE's service territory. Loss of the traffic now handled via the Huron Dock would be a serious blow to W&LE and could effectively undo much of the other relief granted W&LE.

### 3. Access to Lima, Ohio

In its "First Submission by Applicants CSXT Corporation and CSXT Transportation, Inc.," filed with the Board on June 1, 2000, CSXT accurately reports to the Board that CSXT has granted overhead trackage rights to W&LE from Carey, Ohio to Lima, Ohio with a connection to the Indiana and Ohio Railway at Lima.<sup>5</sup> These rights, however, have yet to handle any traffic. Although W&LE has aggressively investigated the prospect for traffic movements via the interchange with I&O at Lima, no traffic opportunities have been identified and the rights granted to W&LE are currently inactive.

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<sup>5</sup> W&LE notes that, in contrast to NS, W&LE and CSXT negotiated these trackage rights promptly, and all necessary agreements were fully executed and in place as of the Split Date. W&LE's success with CSXT in this regard demonstrates that progress can be made quickly and effectively where the parties are not afraid of the competition that the other offers.

4. **Service to Aggregate Shippers**

CSXT also has states that it is willing to discuss "any mutually beneficial arrangements" with respect to aggregate shippers proposed by W&LE, but that no such mutual arrangements have to date been reached. CSXT fails to mention, however, that when W&LE met with CSXT to discuss implementation of this provision of Ordering Paragraph No. 68, CSXT informed W&LE that it had identified no such "mutually beneficial arrangements" that would warrant W&LE access to additional aggregate traffic. No further discussions have been held.

5. **Service to Shippers Along CSXT's Benwood-Brooklyn Jct. Line**

CSXT also states, as it did regarding service to aggregate shippers, that CSXT is willing to discuss any such mutually beneficial arrangements proposed by W&LE with respect to the Benwood-Brooklyn Junction Line, but that no such mutual arrangements have to date been reached. Again, CSXT fails to mention that when W&LE met with CSXT to discuss implementation of this part of Ordering Paragraph No. 68, CSXT informed W&LE that it had identified no "mutually beneficial arrangements" that would warrant granting W&LE access to shippers on the line. No further discussions have been held.

**W&LE WILL CONTINUE TO SEEK A NEGOTIATED RESOLUTION**

In its several decisions to date regarding W&LE, the Board made it clear that it was not providing W&LE a "floor" -- that is, that its conditions were not each intended to provide some guaranteed minimum level of traffic and revenue to W&LE. That has proven to be the case: W&LE is handling no traffic via the Lima trackage rights, has been offered no serious arrangements under the Board's aggregates and Benwood-Brooklyn Junction conditions, and was denied the right to serve local customers in Toledo and Lima as an adjunct to its trackage rights



to those locations. Opportunities, not guarantees, are the essence of the Board's W&LE conditions. By the same token, then, there should not be "ceilings" placed on W&LE's rights -- outside restrictions that limit W&LE's ability to pursue the opportunities provided by the Board. Unfortunately, the on-going uncertainty associated with the nature, permanence and extent of W&LE's operating rights with respect to Toledo and the Huron Dock is having just that effect. Removal of that uncertainty, and of those ceilings, is an essential component of W&LE negotiations with the Applicants.

In its Decision No. 107, clarifying "the W&LE condition," the Board asked the parties to continue good faith negotiations consistent with its findings in Decision No. 89. Although W&LE believes that the Board's conditions regarding W&LE's access to Toledo and its access to Huron Dock could have and should have been implemented long before now, W&LE has not yet given up on trying to achieve a negotiated resolution of these issues with NS. After two years, it is unclear to W&LE whether that can be accomplished. Nevertheless, for the



time being, W&LE will continue to try. If it is unable to reach an agreement, W&LE will seek a Board resolution of these issues.

Respectfully submitted

By: 

William A. Callison

Vice President Law & Government Affairs  
Wheeling & Lake Erie Railway Company  
100 East First Street  
Brewster, Ohio 44613  
(330) 767-3401

William C. Sippel  
Thomas J. Litwiler  
Fletcher & Sippel LLC  
Two Prudential Plaza, Suite 3125  
180 North Stetson Avenue  
Chicago, Illinois 60601-6721  
(312) 540-0500

**ATTORNEYS FOR WHEELING & LAKE ERIE  
RAILWAY COMPANY**

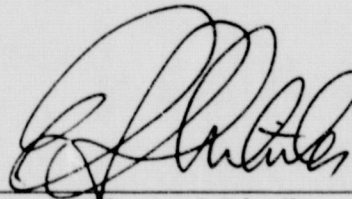
Dated: July 13, 2000

**CERTIFICATE OF SERVICE**

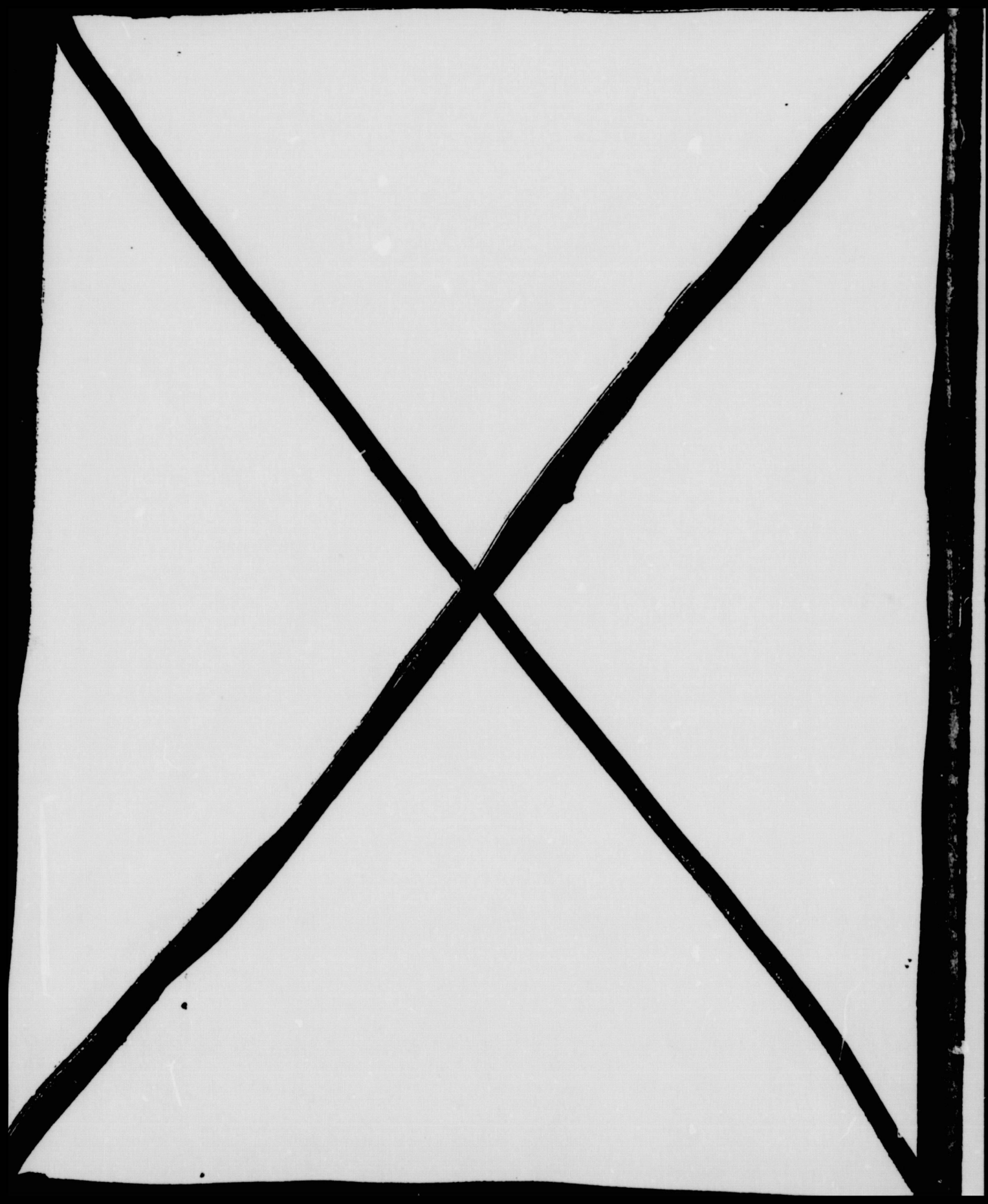
I hereby certify that on this 13<sup>th</sup> day of July, 2000, a copy of the foregoing  
**Comments of Wheeling & Lake Erie Railway Company** was served by overnight delivery  
upon:

Dennis G. Lyons  
Arnold & Porter  
555 12<sup>th</sup> Street, N.W.  
Washington, DC 20004-1202

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

A handwritten signature in black ink, appearing to read 'Thomas J. Litwiler', is written over a horizontal line.

Thomas J. Litwiler





STB

FD-33388 (SUB 91)

7-14-00

D

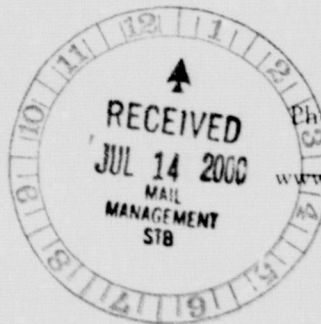
199272

199272  
**FLETCHER & SIPPEL LLC**

Two Prudential Plaza, Suite 3125  
180 North Stetson Avenue  
Chicago, Illinois 60601 6721

Thomas J. Litwiler  
(312) 540-9440  
tlitwiler@fletcher-sippel.com

July 13, 2000



Phone: (312) 540-0500  
Fax: (312) 540-9098  
www.fletcher-sippel.com

**VIA FEDERAL EXPRESS**

ENTERED  
Office of the Secretary

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 700  
Washington, DC 20006

JUL 14 2000  
Part of  
Public Record

Re: **Finance Docket No. 33388 (Sub-No. 91)**  
**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 (General Oversight)**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and twenty-five copies of the **Comments of Wisconsin Central System**, dated July 13, 2000. A 3.5-inch computer diskette, containing the text of the Comments in WordPerfect 5.1 format, also is enclosed.

One extra copy of this transmittal letter and of the Comments are included as well. I would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

Thomas J. Litwiler  
Attorney for Wisconsin Central System

TJL:tl

Enclosures

cc: Parties on Certificate of Service

**ORIGINAL**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 33388 (SUB-NO. 91)**

**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**

**(GENERAL OVERSIGHT)**

---

**COMMENTS OF  
WISCONSIN CENTRAL SYSTEM**

Janet H. Gilbert  
Vice President & General Counsel  
Wisconsin Central System  
P.O. Box 5062  
Rosemont, Illinois 60017-5062  
(847) 318-4691

Thomas J. Litwiler  
Fletcher & Sippel LLC  
Two Prudential Plaza, Suite 3125  
180 North Stetson Avenue  
Chicago, Illinois 60601-6721  
(312) 540-0500

**ATTORNEYS FOR WISCONSIN CENTRAL  
LTD., FOX VALLEY & WESTERN LTD.,  
SAULT STE. MARIE BRIDGE COMPANY  
AND WISCONSIN CHICAGO LINK LTD.**

Dated: July 13, 2000





BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 33388 (SUB-NO. 91)

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

(GENERAL OVERSIGHT)

---

**COMMENTS OF  
WISCONSIN CENTRAL SYSTEM**

Pursuant to the Decision No. 1 in the above-captioned oversight proceeding, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company and Wisconsin Chicago Link Ltd. (collectively, the Wisconsin Central System, or "WC") file these comments with respect to the division of Consolidated Rail Corporation ("Conrail") between Norfolk Southern Railway Company ("NS") and CSX Transportation, Inc. ("CSXT") and the first year implementation of that transaction. WC's comments focus on rail operations in the Chicago Switching District, a subject addressed briefly by NS and in somewhat more depth by CSXT. NS-1 at 24; CSX-1 at 63-71. WC does not disagree with the Applicants' general conclusions regarding the current state of operations in Chicago. However, Applicants overstate their position in some areas and minimize what lies ahead in others.

WC operates approximately 2850 miles of light and medium-density rail lines in the states of Wisconsin, Michigan, Illinois and Minnesota. Those lines are shaped like a funnel ending in Chicago, which is by far the most important interchange point for WC and its customers. Unlike most rail carriers, however, WC does not have a major yard facility in the

Chicago area, and unlike many of them it does not have an ownership interest in any of the major Chicago switching carriers. WC also does not have alternative gateways to which its traffic can be diverted. WC thus relies heavily on the provision of truly neutral, efficient switching and interchange service by other carriers in the Chicago terminal.

WC largely agrees with NS that "Chicago is currently working well from an operating standpoint." NS-1 at 24. It is far from true, however, that "[t]he Conrail Transaction has had no material adverse effect on Chicago operations." Id. Nor is it particularly comforting to be assured by CSXT that "no gridlock remotely approaching that which gripped Houston following the UP/SP transaction ever materialized" in Chicago. CSX-1 at 66. Houston should not be the target benchmark for merger applicants. The reality is that, from shortly after Split Date on June 1, 1999 to February, 2000, the Conrail transaction did have serious and continuing adverse effects on operations in the Chicago switching district.<sup>1</sup> Congestion in Applicants' yards and, in turn, on various mainlines resulted in significant delays to WC traffic moving through the city. WC trains, particularly those destined to CSXT's Barr Yard for interchange, were held out for extended periods of time, often with multiple trains stacking up one behind the other and WC having to re-crew the trains -- on several occasions more than once.

Combined with the other service problems experienced by CSXT and NS further east, WC estimated (and publicly reported) that merger implementation problems in Chicago in 1999 cost WC \$2.5 million, or reduced earnings per share of \$.03, as a result of lower revenues and higher operating costs. WC's customers similarly incurred significant expense and

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<sup>1</sup> CSXT acknowledges that in November and December, 1999, congestion "presented a significant problem" in Chicago, and that "[s]ome of the causes of these difficulties were Transaction-related." CSX-1 at 67.



inconvenience as a result of Applicants' problems. These were major problems that Applicants have largely glossed over in their oversight reports.

That said, matters have improved since the early part of this year. As CSXT explains, much of that improvement is the result of new cooperative ventures among the Chicago terminal's various rail carriers. WC commends the Applicants for their participation in those coordination initiatives, and for what WC to date believes are the Applicants' good faith efforts to keep the Chicago switching district fluid. WC also believes that the Board's close monitoring of Chicago-area issues has provided at least some needed incentive for CSXT and NS to be responsive and conscientious in their actions. It is important that the Board continue its careful oversight in this area.

One year into the Conrail transaction, WC also is unaware of any particular change in the orientation of the Indiana Harbor Belt Railroad Company ("IHB") as a neutral intermediate switching carrier. Given the strong focus on IHB-related issues during the merger proceeding and the numerous distractions Applicants have faced over the past year, this retention of the status quo is perhaps not surprising. As the integration of Conrail's assets by CSXT and NS becomes more refined, however, and as transactions involving other rail carriers arise, the incentive and opportunity for CSXT to utilize the IHB for its own purposes become more pronounced. Actions hailed as operational and efficiency improvements -- such as the co-location of CSXT and IHB dispatchers at Calumet City "to better coordinate traffic over CSXT and IHB lines," CSX-1 at 69 -- can lay the groundwork for co-opting IHB's independence and neutrality at a later point. It remains vitally important that the Board continue its close monitoring of this situation, and assure that the reports in year five can be as non-controversial as they are in year one.



WHEREFORE, WC respectfully requests that the Board accept these comments on the first-year implementation of the CSXT/NS-Conrail transaction.

Respectfully submitted,

By 

Janet H. Gilbert  
Vice President & General Counsel  
Wisconsin Central System  
P.O. Box 5062  
Rosemont, Illinois 60017-5062  
(847) 318-4691

Thomas J. Litwiler  
Fletcher & Sippel LLC  
Two Prudential Plaza, Suite 3125  
180 North Stetson Avenue  
Chicago, Illinois 60601-6721  
(312) 540-0500

**ATTORNEYS FOR WISCONSIN CENTRAL  
LTD., FOX VALLEY & WESTERN LTD.,  
SAULT STE. MARIE BRIDGE COMPANY  
AND WISCONSIN CHICAGO LINK LTD.**

Dated: July 13, 2000

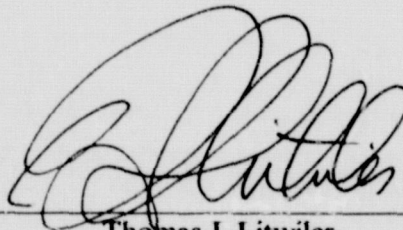
**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of July, 2000, a copy of the foregoing

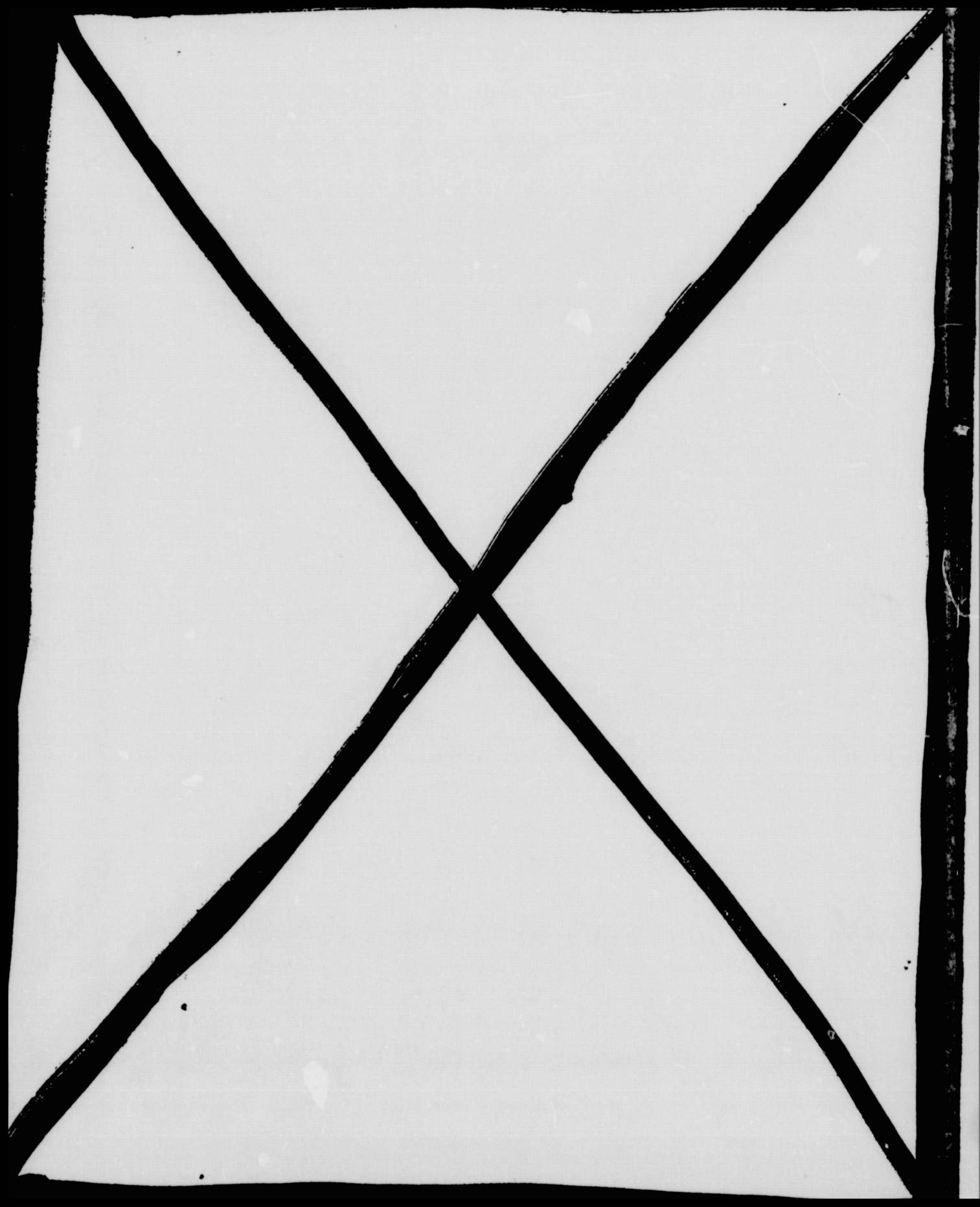
**Comments of Wisconsin Central System** was served by overnight delivery upon:

Dennis G. Lyons  
Arnold & Porter  
555 12<sup>th</sup> Street, N.W.  
Washington, DC 20004-1202

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

A handwritten signature in dark ink, appearing to read 'T. Litwiler', is written over a horizontal line.

Thomas J. Litwiler





STB FD-33388 (SUB 91) 7-14-00 D 199270

199270  
**DENNIS J. KUCINICH**  
10TH DISTRICT, OHIO

1730 LONGWORTH OFFICE BUILDING  
WASHINGTON, D.C. 20515  
(202) 225-5871

14400 DETROIT AVENUE  
LAKEWOOD, OHIO 44107  
(216) 228-8850



**Congress of the United States**  
**House of Representatives**

**Committees:**  
Government Oversight  
Education  
and the  
Workforce

[www.house.gov/kucinich](http://www.house.gov/kucinich)

ENTERED  
Office of the Secretary

July 14, 2000

JUL 14 2000

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K St NW Ste 711  
Washington, D.C. 20006-1105

PUBLIC RECORD

D



Re: STB Finance Docket No. 33388, Sub No. 91

Dear Mr. Williams:

As a Party of Record to the STB Finance Docket 33388, Subnumber 91, and in response to the Federal Register notice of Monday February 14, 2000, I am writing to comment on the progress reports filed by Norfolk Southern and CSX on June 1, 2000. In general, I am pleased with the progress we are making in the communities of Ohio's 10th Congressional District.

The following comments summarize the status of the merger with respect to communities in my district. Enclosed is this original and 25 copies of this letter. Please also be advised that this letter is being sent by regular mail to the service list for Subnumber 91.

**Bay Village, Rocky River, Lakewood**

Norfolk Southern and the State of Ohio acted quickly to ensure that every grade crossing on the Nickel Plate Line in Lakewood and Cleveland would be equipped with gates and lights per the agreement signed by Norfolk Southern and the mayors of Lakewood, Rocky River, and Bay Village, Ohio. I further understand that work on the Cloggsville Connection is well underway and ahead of schedule. The Cloggsville Connection will ensure that additional freight traffic will be directed along the appropriate tracks in the industrial parts of Cleveland rather than the densely populated residential communities of Lakewood, Rocky River, and Bay Village.

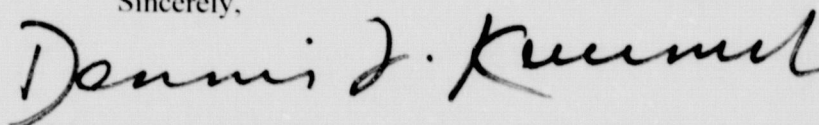
**Olmsted Falls, Olmsted Township**

Similarly, I am pleased with the efforts made by both Norfolk Southern and CSX to ensure that safety is not compromised with the increases in freight traffic through Olmsted Falls and Olmsted Township. Norfolk Southern, in particular, was quick to respond to inquiries from this office and from the Olmsted Falls School District when trains were parked too close to the grade crossings, causing problems with visibility to school bus drivers.

The rail segment (C-069) that runs parallel to Brookpark Road behind the homes on Idlewood Drive in Brooklyn, Ohio, was not predicted to meet these criteria, according to the FEIS, because the change in dBA was 4.3, .7 dBA short of the 5 dBA requirement. Appendix J-2 of the FEIS shows this rail segments freight traffic to increase from 16.4 trains per day based on 1995 data to 43.8 trains per day post acquisition.

Notwithstanding the predictions published in the FEIS, this office has received complaints from the residents and elected officials in Brooklyn alerting us to the possibility that more than 43.8 trains per day may be traversing this track. If this is true, then the change in dBA may be in excess of 5. If the actual change in dBA is higher than the predicted change, then we need to find out if Brooklyn is eligible for noise mitigation along this segment of CSX track. Therefore, I ask that the STB and CSX work with my office and the City of Brooklyn to attain an accurate train count and to determine the noise levels along the C-069 rail segment near the homes on Idlewood Drive so that we can work toward attaining any mitigation for which Brooklyn may be eligible.

Sincerely,

A handwritten signature in black ink, reading "Dennis J. Kucinich". The signature is written in a cursive, flowing style with a large initial "D".

Dennis J. Kucinich  
Member of Congress

DJK:mg



Norfolk Southern and the Federal Railroad Administration were also quick to identify and resolve a problem with the crossing gates at Fitch and Stearns Roads in Olmsted Township that were closing when no trains were on the track. Norfolk Southern made a commitment of \$80,000 to upgrade the outmoded island circuitry with the more up-to-date predictor circuits.

The one outstanding issue in Olmsted Falls and Olmsted Township is the location of a proposed grade separation. Currently, a \$3.75 million federal earmark designates Fitch Road to be the site of the grade separation. However, there were some differences between the two municipalities about the best location. Therefore, we have asked the Cuyahoga County Engineer and the County Board of Commissioners to help the local governments sort out the issues to determine the best site for the grade separation. We are hopeful that this issue will soon be resolved and work can begin on the project. As soon as this is resolved, we are confident of the railroads' cooperation in contributing their share of the funding.

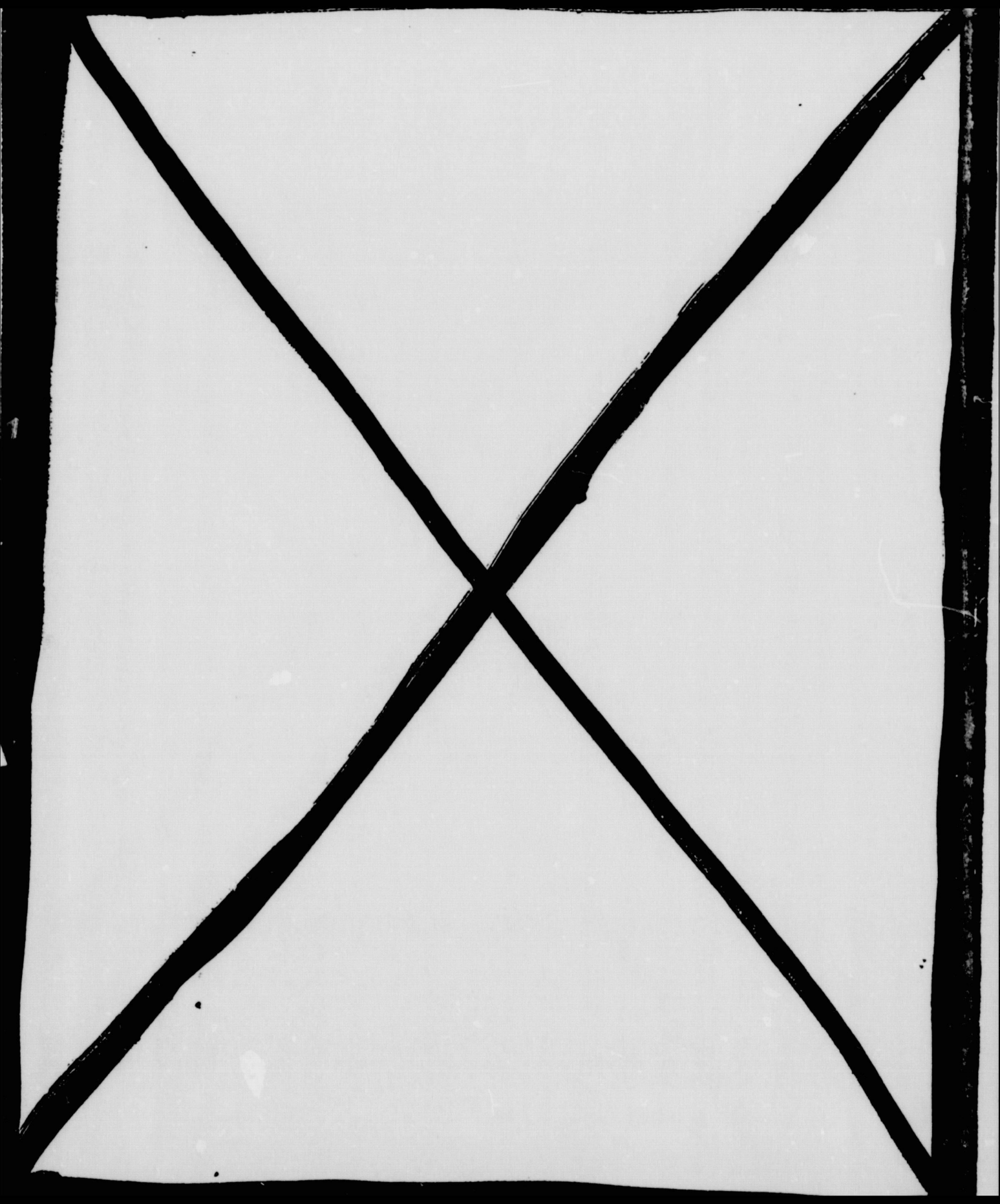
### **Berea**

The City of Berea continues to work cooperatively with this office as well as the Ohio Rail Development Commission (ORDC), the Ohio Department of Transportation (ODOT), Norfolk Southern and CSX to proceed with two major underpass projects. Berea has begun design work related to these two projects with funds initially received from the ORDC and the railroads. Berea's oversight firm, Gannett-Fleming, is working cooperatively with CSX and Norfolk Southern engineers and others in an effort to expedite the design work so it may be started as soon as possible to provide needed mitigation consistent with the letter agreement among the railroads, the City of Berea, and this office.

Additional provisions contained in the letter agreement call for the railroads to work cooperatively with Berea to provide noise mitigation at areas identified in the Final Environmental Impact Statement (FEIS). While we have not yet reached closure on the form of noise mitigation, we are continuing discussions with CSX personnel on how the objectives of noise mitigation will be accomplished. The lines of communication remain open among this office and that of the Mayor of Berea, ORDC, ODOT, and the railroads. I am optimistic that the objective sought for noise mitigation will be achieved.

### **Brooklyn**

To address noise considerations, the STB's Section on Environmental Analysis (SEA) conducted site-specific noise and mitigation analyses on rail line segments it predicted would exceed analysis criteria. SEA considered mitigation for noise sensitive receptors meeting the mitigation criteria of 70 dBA  $L_{dn}$  and a 5 dBA increase after the proposed Conrail Acquisition. Sites that do not meet these criteria are not eligible for noise mitigation under the conditions recommended in the FEIS and as agreed to under the terms of the STB's approval of the acquisition.



STB FD-33388 (SUB 91) 7-14-00 D 199268



199268

**SLOVER & LOFTUS**

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

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

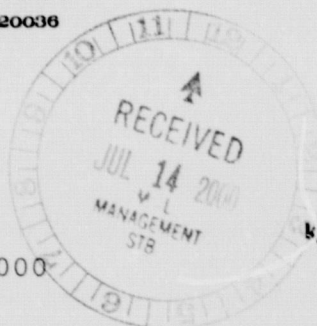
TELEPHONE:  
(202) 347-7170

FAX:  
(202) 347-3619

WRITER'S E-MAIL:

kjd@sloverandloftus.com

July 14, 2000



BY HAND DELIVERY

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

ENTERED  
Office of the Secretary

JUL 14 2000

Part of  
Public Record

Re: Finance Docket No. 33388 (Sub-No. 91), CSX Corporation, et al. -- Control and Operating Leases/Agreements -- Conrail Inc., et al.  
(General Oversight)

Dear Mr. Williams:

Enclosed for filing in the referenced proceeding please find an original and twenty-five (25) copies of the Comments of the State of New York, along with a diskette (in WordPerfect format) containing an electronic version the filing.

Also enclosed is an extra copy of the Notice, which we request be time-stamped as evidence of filing and returned to our messenger.

Thank you for your attention to this matter.

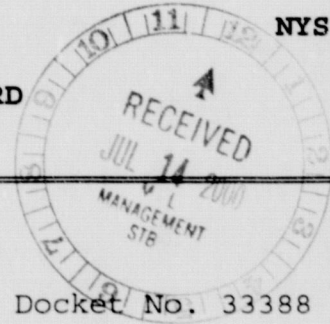
Sincerely,

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

KJD/cbh  
Enclosures

BEFORE THE  
SURFACE TRANSPORTATION BOARD

NYS-2



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CSX CORPORATION AND CSX	)	
TRANSPORTATION, INC., NORFOLK	)	
SOUTHERN CORPORATION AND	)	Finance Docket No. 33388
NORFOLK SOUTHERN RAILWAY	)	(Sub-No. 91)
COMPANY -- CONTROL AND OPERATING	)	
LEASES/AGREEMENTS -- CONRAIL, INC.	)	
CONSOLIDATED RAIL CORPORATION	)	
(GENERAL OVERSIGHT)	)	

---

COMMENTS OF THE  
STATE OF NEW YORK

OF COUNSEL:

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

Dated: July 14, 2000

William L. Slover  
Kelvin J. Dowd  
Peter A. Pfohl  
Slover & Loftus  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

Attorneys & Practitioners

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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CSX CORPORATION AND CSX	)	
TRANSPORTATION, INC., NORFOLK	)	
SOUTHERN CORPORATION AND	)	Finance Docket No. 33388
NORFOLK SOUTHERN RAILWAY	)	(Sub-No. 91)
COMPANY -- CONTROL AND OPERATING	)	
LEASES/AGREEMENTS -- CONRAIL, INC.	)	
CONSOLIDATED RAIL CORPORATION	)	
(GENERAL OVERSIGHT)	)	

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**COMMENTS OF THE  
STATE OF NEW YORK**

The State of New York, acting by and through the New York State Department of Transportation ("New York"), submits its Comments on the First General Oversight Report of Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS Report") and the First Submission by Applicants CSXT Corporation and CSX Transportation, Inc. ("CSX Report"), both of which were filed on June 1, 2000 in response to the Board's February 9, 2000 Decision in this sub-docket.

**INTRODUCTION**

New York is a sovereign state, having entered the Union through ratification of the Constitution of the United States on July 26, 1788. The New York State Department of Transportation ("NYSDOT") is the executive department charged with responsibility for the supervision and administration of state



policies and interests with respect to transportation within or affecting New York, including rail transportation.

New York was an early and active participant in the proceedings leading to the Board's July 23, 1998 Decision in Finance Docket No. 33388 ("Decision"), wherein the Board approved, with conditions, the acquisition of control of Conrail, Inc. and Consolidated Rail Corporation ("Conrail") by NS and CSX, and the division of the operation of most of Conrail's assets between them. A number of significant conditions imposed by the Board in its Decision responded directly to issues raised and interests promoted by New York, including the promotion and protection of inter-carrier competition (e.g., Decision at 177-78 (Conditions 22, 28-34, 37-38)); agreements on future rail service entered by CSX and/or NS with public entities such as the Southern Tier West Regional Board ("STW") (Decision at 176); the removal of barriers to competitive shortline railroad interchange arrangements (Decision at 180 (Condition 56)); and the promotion of conditions for safe and effective co-existence between CSX and NS and passenger railroads and adjacent communities (see, e.g., Environmental Condition 24 (Dunkirk, NY)).

Both the NS Report and the CSX Report address the carriers' efforts since service of the Board's Decision to comply with conditions imposed for the benefit of New York constituencies. See NS Report at 4, 33-34, 60-61; CSXT Report at 80, 92-94, 100-105. Some of these -- such as the mandated elimination of an interchange barrier limiting the operational and marketing options of the Livonia, Avon & Lakeville Railroad ("LAL") -- required only a single act of compliance and have been satisfied. See CSX Report at 110. In other areas, however, the Reports ~~con~~firm the need for further steps by the carriers themselves to fully achieve the goals to which conditions were directed, and continued vigilance by the Board to aggressively enforce its mandates. New York's Comments are directed to these examples of unfinished business, organized under the following, general headings:

- A. Capacity Constraints and Infrastructure Improvements
- B. Cooperation With Public Agencies
- C. Monitoring and Maintenance of Remedial Measures

## COMMENTS

### A. Capacity Constraints and Infrastructure Improvements

The Board's Condition No. 28 (Decision at 177) directed CSX to negotiate an agreement with Canadian Pacific Railway ("CP") that would provide CP with competitive access to rail markets east of the Hudson River in New York City and, via connections with the New York & Atlantic Railroad, Brooklyn and Long Island. This condition was imposed in direct response to the Responsive Application jointly submitted by New York and the New York City Economic Development Corporation in Finance Docket No. 33388 (Sub-No. 69). As summarized by the Board in the Decision:

We have balanced the needs of the competing parties here, and strongly believe that we must forcefully use this opportunity to restore a modicum of the competition that was lost in the financial crisis that led to the formation of Conrail. It appears that there will soon be sufficient capacity on the Hudson Line for safe service from a second freight operator.

Decision at 83.

In its Report, CSX recounts the process by which the terms of CP access to the Hudson Line and related downstate markets finally were resolved. See CSX Report at 88-92. Though somewhat editorialized, CSX's rendition of the relevant facts is



basically accurate, and New York is encouraged by CSX's assurance that the carrier "is committed to fair treatment of its tenant, CP." Id. at 94. More troubling, however, is the recurrent theme throughout this portion of CSX's Report that for the Board's pro-competitive East-of-Hudson conditions to work effectively, "additional public support" in the form of state funds for infrastructure expansion must be provided. Id. at 99-101. A similar position is reflected in CSX's discussion of the status of rail service and competition in the Buffalo area. Id. at 104-05.

New York's record of public support for rail infrastructure and service efficiency improvements is well-established, and was reviewed at length in Finance Docket No. 33388. Since the Board's Decision, New York's transportation budgeting priorities have continued to favor rail and rail-related projects, including the following:

FY 1999-2000 Budget

- \* \$13 million in matching funds for New York Cross Harbor freight and strategic Class I and regional railroad projects.
- \* \$25 million in Industrial Access Program funds for transportation infrastructure connected with industrial expansion in or relocation to New York.
- \* \$800,000 for a rail clearance study related to proposed rail intermodal facilities in Central Long Island.

FY 2000-2001 Budget

- \* \$80 million over 5 years for general rail facilities improvements, including CP Draw in Buffalo, NS' Southern Tier Mainline, and improved clearances on New York City routes.
- \* \$350 million over 3 years for New York's Multi-Modal Program, which includes highway, rail and port capital projects.
- \* \$3.8 billion Transportation Bond Issue (subject to voter approval), with up to \$100 million allocated to rail and port projects.
- \* \$125 million over 5 years in Industrial Access Program funds.

As the foregoing shows, "public support" for rail infrastructure improvements remains a mainstay of New York State transportation policy. However, complete public funding of specific facilities or facilities expansion should not be a precondition to compliance with mandates legally imposed by the Board on private rail consolidations or acquisition transactions. The record strongly suggests that there are actions that the carriers themselves could and should take to improve the efficiency of current operations and resolve capacity-related conflicts, but have been deferred due to their unwillingness to commit resources to the associated facilities expansions and/or infrastructure upgrades.

For example, Metro-North has agreed to reduce the vertical safety clearance on its portion of the Hudson Line from

6" to 4", which would allow CSX to move intermodal "trailers-on-flat cars" once proper detection equipment is in place. Metro-North has offered to install the equipment but a dispute between CSX and CP over which carrier should pay the cost has stalled all progress. Similarly, CSX and CP apparently agree on the need for a second inter-modal track at the Harlem River Yard to allow them to better coordinate their joint use, but have proceeded no further on the grounds that some party other than the carriers that would use this track should pay for it.

New York remains committed to an active partnership with CSX and CP to promote the growth of competitive rail freight service throughout the East-of-Hudson region. The primary and fundamental responsibility for fulfilling the Board's conditions in Finance Docket No. 33388, however, rests with the parties to the transaction that gave rise to these conditions. Where that requires investment or other action to remedy capacity constraints or other infrastructure limitations, delay through default to the public sector is not an acceptable resolution. Through its actions in this sub-docket, the Board should reaffirm that principle.



B. Cooperation With Public Agencies

Prominent among the New York public agencies and subdivisions directly affected by the acquisition and division of Conrail by CSX and NS were the Metro-North Commuter Railroad and STW. Each participated in Finance Docket No. 33388 in its own right, as well as having its interests promoted by New York, and each is directly and seriously affected by the carriers' implementation of their acquisition authority and related conditions.

1. Metro-North

As owner of the segment of the Hudson Line between Poughkeepsie and New York City, Metro-North must accommodate CSX's freight operations east of the Hudson River as it fulfills its own mandate to manage the provision of daily inter-city passenger and commuter service between points in the Hudson Valley and Manhattan. Reliability of service is critical to Metro-North's ability to meet customers' expectations for on-time performance, and is directly affected by the times and manner in which freight trains traverse the Hudson Line.

In its Report, CSX acknowledges constraints on the capacity of the Hudson Line (CSX Report at 94), and that "there have been some operating problems caused by CSX locomotives and freight cars that were not in compliance with Metro-North

requirements." Id. at 61. However, CSX goes on to disclaim that because the Hudson Line is owned and controlled by Metro-North, on-time performance of Metro-North trains "generally [is] not an issue." Id. New York disagrees.

While Metro-North may own a portion of the Hudson Line, CSX has succeeded to Conrail's long-standing agreement with the passenger railroad granting freight service access on attractive (for CSX) financial and other terms. As a co-operator on the line, CSX must shoulder its share of responsibility for overall service performance -- including passenger train performance. According to data collected by Metro-North, that performance has been adversely affected by various occurrences involving CSX trains that are of a pattern and frequency sufficient to arouse great concern on the part of Metro-North. Between January and May 2000, for example, Metro-North reported seventy-eight (78) separate incidents -- including derailments and braking problems -- that had an impact on passenger operations and on-time performance. As detailed in Exhibit A hereto, over 90% of these incidents involved CSX's line-haul general freight trains moving between Selkirk and Oak Point.

One outcome of the instant proceeding may be some sifting of issues by the Board to identify those which merit continued agency attention through the remainder of the oversight

period. Metro-North has and will continue to work with CSX to address questions and problems related to the matter of passenger-freight co-existence on the Hudson Line. However, New York submits that the impact of CSX operations over the Hudson Line on passenger train performance, and the carrier's willingness to work meaningfully with Metro-North to address issues arising from that impact, should remain a matter actively supervised by the Board, with agency intervention available as appropriate within the scope of the Board's oversight jurisdiction.

## 2. Southern Tier West Regional Board

Under the June, 1998 settlement agreement among NS, STW and New York, the public authorities committed to property tax abatements and the discharge of a \$2.1 million obligation owed to New York by NS's predecessor in interest, in consideration of NS's covenants to preserve, improve and maintain the 145-mile Southern Tier Extension between Hornell, NY and Corry, PA. NS adherence to the terms of this settlement was one of the conditions imposed by the Board on its approval of the acquisition and division of Conrail. See Decision at 176.

At present, only the fifty mile stretch of the Southern Tier Extension between Jamestown and Olean, NY remains active and operable. In its Report, NS suggests that further development of



the line and associated traffic opportunities have been delayed by "inadequate infrastructure." See NS Report at 4.

In June, 2000, the New York State Legislature passed, and Governor George Patiki signed, a bill creating the Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority ("Authority"). Inter alia, the State-chartered Authority is empowered to complete implementation of the property tax abatement provisions of the 1998 STW-New York-NS settlement agreement. With this legislation in place, the course is clear for all parties -- including NS -- to move expeditiously to secure the goals of the settlement; i.e., preservation of the Southern Tier Extension; maintenance and enhancement of local service; and the expansion of service as necessary to meet new customer demand over the entire route.<sup>1</sup>

The Board should maintain close oversight of the full implementation of the STW-New York-NS settlement agreement, and as necessary require clarification and supplementing of the record as to the progress toward that goal.

---

<sup>1</sup> In addition to servicing local traffic, a restored Southern Tier Extension offers a viable routing option to alleviate congestion and service delays in the Buffalo area, particularly for traffic moving between New York City and points West.

C.    Monitoring and Maintenance  
      of Remedial Measures

In some cases, such as the removal of the LAL interchange barrier referenced supra or CSX's transfer of trackage rights over the former Buffalo Creek Railroad line (see Decision at 178; CSX Report at 106), a single act or agreement has been sufficient to comply with both the letter and spirit of conditions imposed by the Board. However, there are examples of conditions that implicitly require continued, after-the-fact maintenance or fine-tuning by the affected carrier, in order to ensure that the goals intended to be served by the Board's orders in fact are accomplished. In these instances, notwithstanding claims in the carriers' Reports that compliance has been achieved, further action by NS and/or CSX -- and, if necessary, the Board -- is needed.

An example of particular importance to New York concerns the City of Dunkirk. Environmental Condition 24 directed NS to take steps to secure the freight right-of-way through the City, for the protection of pedestrians and vehicles otherwise at risk from an expected increase in the number of freight trains moving each week over a line characterized by numerous at-grade crossings. In its Report, NS claimed compliance through application of its "Trespasser Abatement



Program," under which signs have been posted along the right-of-way and "[n]umerous Operation Lifesaver presentations have been made in Dunkirk public schools." NS Report at 61. No further details regarding the effects of these steps or any follow-up actions are provided by NS.

According to the City of Dunkirk, however, the steps taken by NS have been inadequate to accomplish the purpose intended by Environmental Condition 24. As summarized by Dunkirk Mayor Robert D. Kesicki in a recent letter to NYSDOT (a copy of which is attached hereto as Exhibit B), NS has paid little or no attention to the grade crossing problem since its initial implementation of the Trespasser Abatement Program nearly two (2) years ago:

After the divestiture, NS enhanced its safety electronic control devices at the "at grade" crossings. However, since their installation, these electronic controls have been extremely erratic in their operation, signaling train movement when there was none, etc. Often, the crossing gates flailed their arms without reason. These conditions provided motorists with time delays and very serious decisions to the ambiguity of a response to the malfunctions.

\* \* \*

Perhaps the most dangerous result is that such inaccurate operation could lead to a pattern of "disregard" and "disbelief" for the signals' operation, which could ultimately cause an unnecessary tragedy.



See Exhibit B at 1. Difficulties also are reported in connection with CSX's operation, which though largely confined to elevated tracks nonetheless has created "an environmental nuisance" in the form of blowing dust from stored utility coal trains. Equally problematic is the inability of responsible Dunkirk City staff to gain the attention of CSX management to address the matter. Id. at 2.

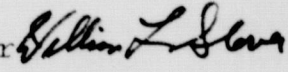
Where, as in the case of the City of Dunkirk and Environmental Condition 24, continued commitment and attention by the carrier to the public purposes sought to be served is necessary, the Board through its oversight and enforcement measures should act to ensure the carriers' compliance. It is possible that New York's focus on Dunkirk in these Comments will lead to remedial responses by NS and CSX without further impetus from the Board. Should that not be the case, however, New York submits that the Board should issue such orders as are necessary and appropriate to direct the carriers to more actively monitor their compliance with Environmental Condition 24 and others like it, and modify or supplement their initial implementing actions as circumstances warrant.

### CONCLUSION

The Board's February 9, 2000 Decision does not presage any specific actions by the agency following the receipt of comments on the CSX and NS Reports and replies thereto. As shown, however, certain specific actions can and should be taken to further perfect compliance with various conditions imposed in the Decision for the benefit of New York shippers, communities, and other affected public interests. New York commends its Comments to the Board's careful consideration, and urges adoption of the remedial measures described herein.

Respectfully submitted,

THE STATE OF NEW YORK, ACTING  
BY AND THROUGH THE NEW YORK  
STATE DEPARTMENT OF  
TRANSPORTATION

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

OF COUNSEL:


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

Dated: July 14, 2000

Attorneys & Practitioners

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of July, 2000, I caused copies of the foregoing Comments of the State of New York to be served upon all parties of record in this proceeding by first-class United States mail, postage prepaid.

  
Kelvin J. Dowd



# Memorandum



**Metro-North Railroad**

MAY 3

Date May 1, 2000

To M.J. Kinary

From F.J. Ferrara *F.J. Ferrara*

Re CSX INCIDENTS JANUARY 1 THROUGH APRIL 30

<u>JANUARY</u>	<u>LOG#</u>	<u>TRAIN</u>	<u>DEFECT</u>
1/3/00	01024	Q431	Activated detector
1/4/00	01039	Q431	Eng. 8849 LSL fault light
1/5/00	01056	Q431	derailed in Croton west yard
1/11/00	01135	Q431	sticking brake & low bleed rod
1/12/00	01154	Q430	train in emergency
1/12/00	01155	Q431	burnt bleed rod
1/17/00	01270	Q431	fouling bleed rod & sticking brake
1/17/00	01275	Q431	derailed in Croton west yard
1/18/00	01345	Q431	broken train line car UWUX20224
1/25/00	01523	Q430	Low bleed rod & broken bleed rod

<u>FEBRUARY</u>	<u>LOG#</u>	<u>TRAIN</u>	<u>DEFECT</u>
2/3/00	02068	Q431	hand brake on
2/4/00	02078	Q431	train parted
2/9/00	02196	Q431	low bleed rod
2/9/00	02197	Q430	brake rigging hung up
2/9/00	02208	Q431	partially applied hand brake
2/14/00	02285	Q431	defective cut lever
2/14/00	02286	Q430	release hand brake
2/16/00	02327	Q431	low bleed rod
2/18/00	02359	Q430	debris fouling 3 <sup>rd</sup> rail
2/18/00	02360	Q431	train parted
2/18/00	02361	Q430	hand brakes applied
2/24/00	02465	Q431	low bleed rod
2/26/00	02496	Q431	low bleed rod

<u>MARCH</u>	<u>LOG#</u>	<u>TRAIN</u>	<u>DEFECT</u>
3/3/00	03034	Q431	fouling bleed rod
3/5/00	03058	Q431	parted air hose/low bleed rod
3/9/00	03126	Q431	bleed rods out of adjustment
3/10/00	03146	Q431	fouling bleed rods on 4 cars
3/11/00	03161	Q431	low bleed rods
3/11/00	03168	K276	fouling bleed rod/low hand brake chain
3/14/00	03204	Q431	fouling bleed rod
3/16/00	03245	Q431	metal fouling snow plow blade
3/17/00	03263	Q431	bleed rods out of adjustment
3/18/00	03291	Q431	low cut lever
3/21/00	03327	Q430	stuck hand brake
3/22/00	03346	Q431	activated detector (MP 46), no exceptions
3/22/00	03348	CSX750	grounded overhead
3/24/00	03379	Q431	bleed rods & cut lever (3 cars)
3/26/00	03407	Q431	loose strap, low bleed rod
3/30/00	03459	K276	low bleed rods (8 cars)
3/30/00	03460	K277	train parted, dead engine

<u>APRIL</u>	<u>LOG#</u>	<u>TRAIN</u>	<u>DEFECT</u>
4/3/00	040301	Q431	train parted
4/4/00	040402	Q430	cut out LSL/release hand brake
4/4/00	040404	Q431	low bleed rod
4/6/00	040601	Q431	activated detector, no exceptions
4/7/00	040702	Q430	Eng. 8838 LSL failure
4/7/00	040703	K277	parted air hose
4/7/00	040704	Q430	CSXT486581 cracked train line
4/7/00	040705	Q431	stuck hand brake
4/8/00	040801	Q431	low bleed rod, low step
4/11/00	041104	Q430	3 low bleed rods
4/14/00	041401	Q430	in emergency, no exceptions taken
4/17/00	041702	Q431	4 low bleed rods
4/19/00	041903	Q431	low bleed rod
4/20/00	042001	Q431	applied hand brake/defective cut lever
4/22/00	042203	Q431	low bleed rods
4/23/00	042301	Q431	low bleed rod
4/26/00	042601	Q431	activated detector, no exceptions
4/27/00	042702	Q431	partially applied hand brakes
4/27/00	042703	Q430	partially applied hand brake
4/28/00	042801	Q431	various defects to 4 cars



Q431 - Southbound through freight Selkirk to Oak Point  
Q430 - Northbound through freight Oak Point to Selkirk  
K276 - Southbound empty trash train  
K277 - Northbound loaded trash train  
CXS750 - Local Oak Pt. Switcher

Cc: G. Walker ✓  
Mr. Ryan (CSX)



## Memorandum



Metro-North Railroad

JUN - 5 2000

Date June 2, 2000

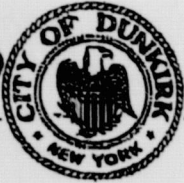
To M. Kiniry

From F. Ferrara *F. Ferrara*Re CSX Incidents for May 2000

<u>MAY</u>	<u>LOG#</u>	<u>TRAIN</u>	<u>DEFECT</u>
5/5/00	050502	Q431	low cut lever
5/10/00	051003	CSX750	derailed 2 cars @ Marvel
5/13/00	051302	Q431	low cut lever
5/15/00	051502	Q431	low bleed rods
5/18/00	051801	Q431	defective retainer valve housing
5/19/00	051901	CSX 750	grounded overhead
5/20/00	052001	Q431	low bleed rods
5/23/00	052301	Q431	low bleed rod
5/23/00	052302	Q430	stuck hand brake
5/25/00	052501	Q431	hit detector
5/27/00	052702	Q431	low bleed rods
5/27/00	052703	Q430	dragging cut lever
5/30/00	053010	Q431	stuck hand brake; high car

Q431 - Southbound through freight Selkirk to Oak Point  
 Q430 - Northbound through freight Oak Point to Selkirk  
 K276 - Southbound empty trash train  
 K277 - Northbound loaded trash train  
 CXS750 - Local Oak Pt. Switcher

Cc: ✓ G. Walker  
 Mr. Ryan (CSX)



# CITY OF DUNKIRK

## A Chadwick Bay Community

Office of the Mayor  
City Hall, Dunkirk, New York 14048  
July 6, 2000

ROBERT D. KESICKI  
MAYOR  
(716) 366-8881  
FAX (716) 366-2049

Via Fax (518) 485-5688 and U. S. Mail

Mr. Steven Slavick  
NYS Department of Transportation  
1200 Washington  
Bldg. A - Room 302  
Albany, New York 12232

Dear Mr. Slavick:

Since the divestiture of Conrail into the independent rail companies -- CSX and Norfolk Southern (NS) -- many serious complaints have arisen as concerns operation in the City of Dunkirk.

Specifically related to the situation with the NS operation in the City, a substantial number of problems have arisen at numerous "at grade" crossings. The NS tracks run through a heavily residential area of the City. These "at grade" crossings facilitate the public safety of emergency vehicles in this area. After the divestiture, NS enhanced its safety electronic control devices at the "at grade" crossings. However, since their installation, these electronic controls have been extremely erratic in their operation, signaling train movement when there was none, etc. Often, the crossing gates failed their arms without reason. These conditions provided motorists with time delays and very serious decisions to the ambiguity of a response to the malfunctions.

Apart from these nuisance concerns, it has caused an extremely large amount of time by the Dunkirk Police Department to physically man these at-grade crossings to direct vehicular and pedestrian traffic while the gates appear operational when no trains, in fact, are approaching.

Perhaps the most dangerous result is that such inaccurate operation could lead to a pattern of "disregard" and "disbelief" for the signals' operation, which could ultimately cause an unnecessary tragedy.

Additionally, the physical condition of certain "at grade" crossings is in need of serious attention. For example, the crossing at the City's Main Street is habitually hazardous due to the terrible road-grade crossing, causing motorists to come to a complete stop and advance slowly to prevent damage to vehicle. The crossing at N.Y. Route 60, which is a main arterial to the New York State Thruway for several tractor-trailers per day for a number of local industries, is similarly in bad physical condition.



Mr. Steven Slavick  
Page 2  
July 6, 2000

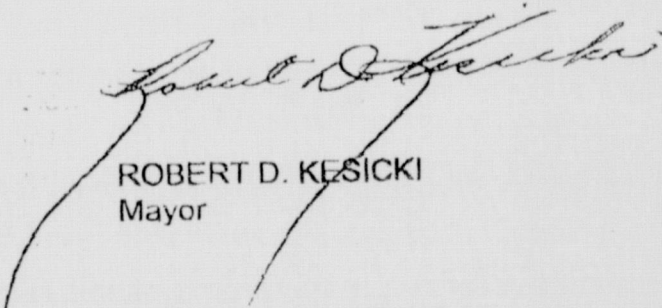
These problems often cause the City to provide safety personnel (e.g., police officers) to direct traffic during peak travel conditions. This demand of additional time impacts budget appropriations without reimbursement for their repeated occurrences.

While CSX operates through the City for the most part on elevated, many complaints are received in the use of the spur track availability in the City. CSX has used these spur tracks to store temporary trainloads of coal destined for locations outside of Dunkirk. This logistical maneuver may have assisted CSX in the movement of trains, but it presents an environmental nuisance to the City as coal dust is distributed over neighborhoods by the gentle breezes that blow in from the lake. Coal cars are not covered and usually sit for a three-day period on the spur. There is great difficulty in trying to contact the responsible people at CSX to remedy the problem.

The City has been very cooperative with CSX and NS during the transition. The City strives to be a community bulder and to be business-friendly. However, failure of the railroads to assist the City in these basic safety efforts has placed additional, severe financial burdens upon the City.

Thank you for your attention. If further information is required, please do not hesitate to contact my office at your convenience.

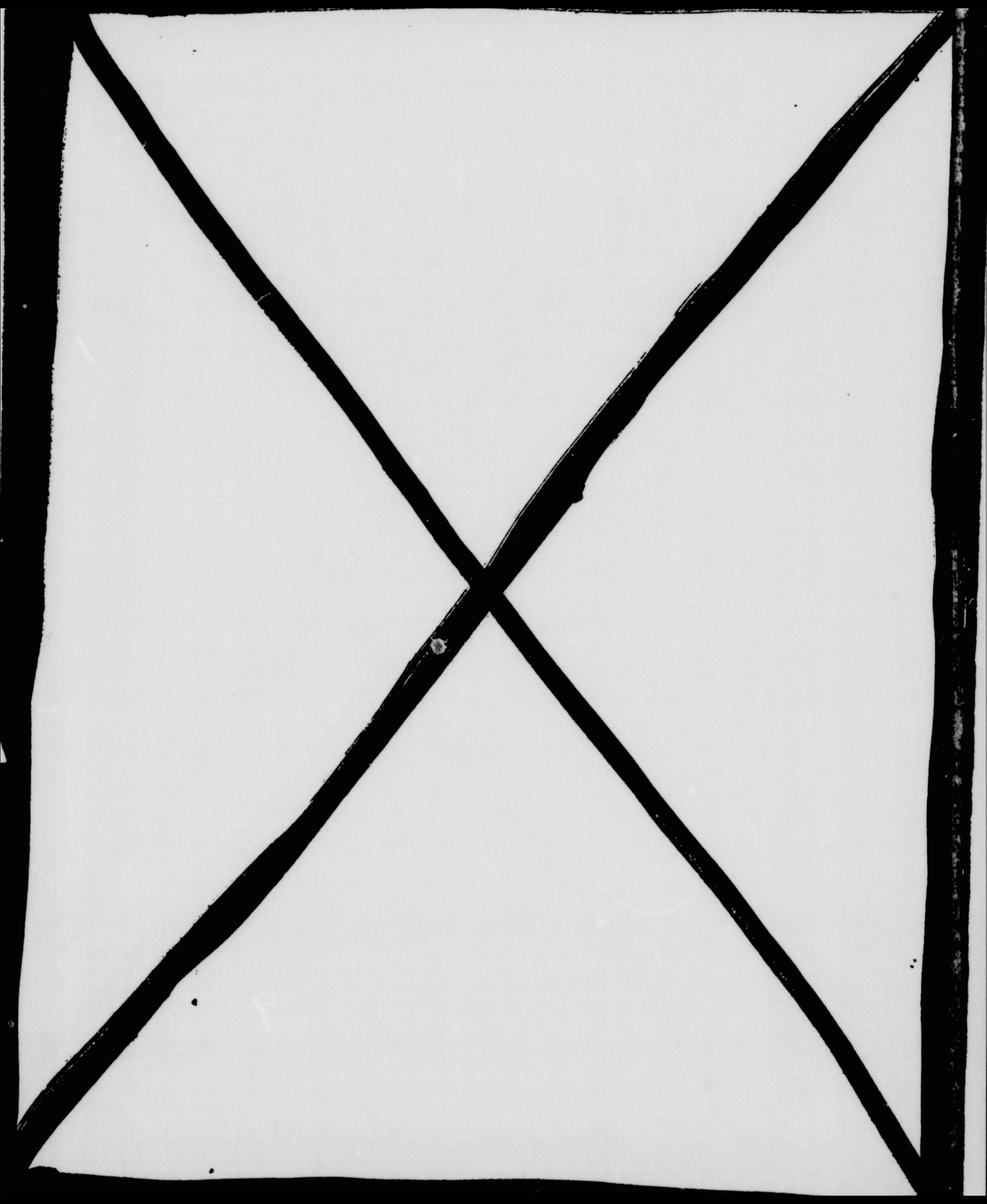
Very truly yours



ROBERT D. KESICKI  
Mayor

RDK:cao





STB FD-33388 (SUB 91) 7-14-00 D 199267

# OPPENHEIMER

OPPENHEIMER WOLFF & DONNELLY LLP

1350 Eye Street N.W., Suite 200  
Washington, D.C. 20005-3324

202.312.8000  
Fax 202.312.8100

Direct Dial: 202.312.8206  
E-Mail: KSheys@oppenheimer.com

Amsterdam New York  
Brussels Orange County  
Chicago Paris  
Geneva Saint Paul  
Los Angeles Silicon Valley  
Minneapolis Washington, D.C.

www.oppenheimer.com

July 14, 2000

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

**Re: STB Finance Docket No. 33388 (Sub-No. 91), 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 (General Oversight)**

Dear Secretary Williams:

In Decision No. 89 (served July 23, 1998), the Surface Transportation Board granted the responsive application of Livonia, Avon & Lakeville Railroad Corporation ("LAL") to permit LAL to operate across Conrail's Genesee Junction Yard to reach a connection with the Rochester & Southern Railroad (Condition 56). On September 21, 1998, CSXT and LAL entered into a Trackage Rights Agreement.

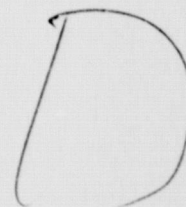
Article 8 of the Trackage Rights Agreement requires CSXT to rehabilitate and thereafter maintain the trackage, subject to the Trackage Rights Agreement, to FRA Class 1 standards. CSXT also made a commitment to rehabilitate the Genesee Junction Yard in the course of the Conrail proceeding.

Although CSXT has made a good faith beginning on its obligations to rehabilitate the Genesee Junction Yard, the rehabilitation project has not been completed as of this date. CSXT has completed a tie replacement program on all the yard tracks and on connecting switches at both ends of the yard, but has not yet tamped and surfaced the track. Consequently, presently there are numerous unsupported joints and down ties. Until CSXT completes the rehabilitation there is a threat of broken rails and other safety hazards.

ENTERED  
Office of the Secretary

JUL 14 2000

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Public Record

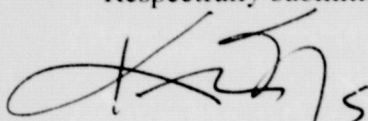




Honorable Vernon A. Williams  
July 14, 2000  
Page 2

LAL is hopeful that CSXT will promptly complete the rehabilitation project, but wishes to reserve the right to advise the Board if the project is not completed promptly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Sheys', with a stylized flourish at the end.

Kevin M. Sheys  
Counsel for Livonia, Avon & Lakeville Railroad Corporation

cc: All parties of record

KMS:skm

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of July, 2000, a copy of the foregoing was served by  
by hand-delivery upon:

Richard A. Allen  
Zuckert Scoutt & Rasenberger LLP  
888 17<sup>th</sup> Street N.W., Suite 600  
Washington, DC 20006-3309

Dennis G. Lyons  
Arnold & Porter  
555 Twelfth Street NW, Suite 940  
Washington, DC 20004

and by first-class mail, postage prepaid upon:

Martin W. Bercovici  
Keller & Heckman LLP  
1001 G Street N.W., Suite 500 West  
Washington, DC 20001

Paul M. Donovan  
Laroe Winn Moerman & Donovan  
3900 Highwood Court, N.W.  
Washington, DC 20007

Kelvin J. Dowd  
Slover & Loftus  
1224 17<sup>th</sup> Street N.W.  
Washington, DC 20036

Kenneth B. Driver  
Jones Day Reavis & Pogue  
51 Louisiana Avenue N.W.  
Washington, DC 20001

Richard F. Friedman, Esq.  
Earl L. Neal & Associates  
111 West Washington Street, Suite 1700  
Chicago, IL 60602-2766

Martin D. Gelfand  
14400 Detroit Avenue  
Lakewood, OH 44107

Janet H. Gilbert  
Wisconsin Central System  
6250 North River Road, Suite 9000  
Rosemont, IL 60018

Michael P. Harmonis  
Department of Justice  
325 Seventh Street N.W.  
Washington, DC 20530

Eric M. Hocky  
Gollatz Griffin & Ewing  
P.O. Box 796  
213 West Miner Street  
West Chester, PA 19381-0796

Richard Horvath  
City of Cleveland Law Dept., Room106  
601 Lakeside Avenue  
Cleveland, OH 44114

Larry Jenkins  
Lyondell Chemical Company  
1221 McKinney street, Suite 14-215  
Houston, TX 77010

Erika Z. Jones  
Mayer Brown & Platt  
1909 K Street N.W.  
Washington, DC 20006-1101

Steven J. Kalish  
McCarthy Sweeney & Harkaway PC  
2175 K Street N.W., Suite 600  
Washington, DC 20037

Timothy C. Lapp  
16231 Wausau Avenue  
South Holland, IL 60473



C. Michael Loftus  
Slover & Loftus  
1224 Seventeenth Street N.W.  
Washington, DC 20036

Gordon P. Macdougall  
1025 Connecticut Avenue N.W., Suite 410  
Washington, DC 20036

John K. Maser, III  
Thompson Hine & Flory LLP  
1920 N Street N.W., Suite 800  
Washington, DC 20036-1601

Thomas F. McFarland, Jr.  
McFarland & Herman  
20 North Wacker Drive, Suite 1330  
Chicago, IL 60606-2902

Christopher A. Mills  
Slover & Loftus  
1224 Seventeenth Street N.W.  
Washington, DC 20036

Timothy G. Mulcahy  
Canadian Pacific Railway  
105 South Fifth Street, 1000 Soo Line Bldg.  
Minneapolis, MN 55402

Kathleen M. Mulligan  
Corn Products International Inc.  
6500 South Archer Avenue  
Bedford Park, IL 60501-1933

Keith G. O'Brien  
Rea Cross and Auchincloss  
1707 L Street N.W., Suite 570  
Washington, DC 20036

Thomas M. Pastore  
Guardian Industries Corp.  
2300 Harmon Road  
Auburn Hills, MI 48326

David C. Reeves  
Troutman Sanders LLP  
1300 I Street N.W., Suite 500 East  
Washington, DC 20005-3314

Robert Roach, Jr.  
International Association of Machinists  
and Aerospace Workers  
900 Machinists Place  
Upper Marlboro, MD 20772-2687

Harold A. Ross  
Brotherhood of Locomotive Engineers  
1370 Ontario Street  
1548 Standard Building  
Cleveland, OH 44113-1740

Alice C. Saylor  
American Short Line & Regional  
Railroad Association  
1120 G Street N.W., Suite 520  
Washington, DC 20005

Thomas E. Schick  
American Chemistry Council  
1300 Wilson Boulevard  
Arlington, VA 22209

Mark H. Sidman  
Weiner Brodsky Sidman & Kider PC  
1300 19<sup>th</sup> Street N.W., 5<sup>th</sup> Floor  
Washington, DC 20036-1609

Richard G. Slattery  
Amtrak  
60 Massachusetts Avenue N.E.  
Washington, DC 20002

Paul Samuel Smith  
U.S. Department of Transportation  
400 Seventh Street S.W., Room 4102 C-30  
Washington, DC 20590

Charles A. Spitulnik  
Hopkins & Sutter  
888 Sixteenth Street N.W.  
Washington, DC 20006-4103

Vincent P. Szeligo  
Wick Streiff Meyer O'Boyle & Szeligo PC  
1450 Two Chatham Center  
Pittsburgh, PA 15219-3427

Myles L. Tobin  
Illinois Central Railroad  
455 North Cityfront Plaza Drive  
Chicago, IL 60611-5504

Christopher Tully  
Transportation Communications International Union  
3 Research Place  
Rockville, MD 20850

Rose-Michele Weinryb  
Weiner Brodsky Sidman & Kider  
1300 19<sup>th</sup> Street N.W., 5<sup>th</sup> Floor  
Washington, DC 20036-1609

N. Chet Whitehouse  
Tate & Lyle  
North American Sugars Inc.  
3900 East Mexico Avenue, Suite GL 10  
Denver, CO 80210

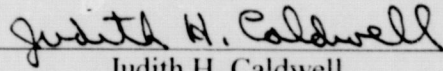
William W. Whitehurst, Jr.  
W.W. Whitehurst & Associates, Inc.  
12421 Happy Hollow Road  
Cockeysville, MD 21030-1711

Richard R. Wilson  
1126 Eight Avenue, Suite 403  
Altoona, PA 16602

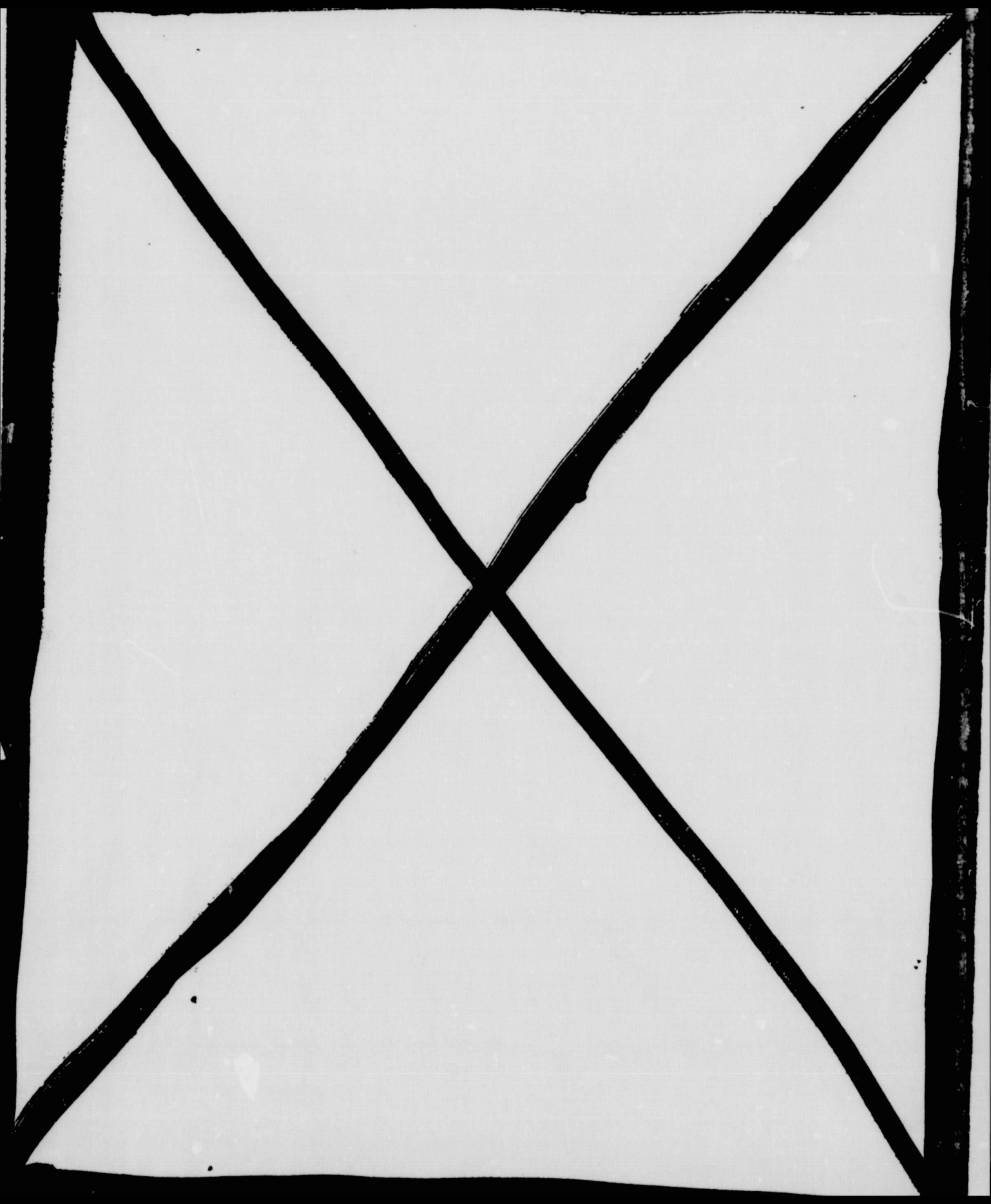
Edward Wytkind, Executive Director  
Transportation Trades Department, AFL-CIO  
1025 Connecticut Avenue N.W., Suite 1005  
Washington, DC 20036



Walter E. Zullig, Jr.  
Metro-North Commuter Railroad Company  
347 Madison Avenue  
New York, NY 10017-3706



Judith H. Caldwell  
STB Practitioner



STB

FD-33388 (SUB 91)

7-14-00

D

199266



199266

NY/NJ-2

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub-No. 91)



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

GENERAL OVERSIGHT

INITIAL COMMENTS OF THE PORT AUTHORITY  
OF NEW YORK AND NEW JERSEY

Hugh H. Welsh, Deputy General  
Counsel  
The Port Authority of New York  
and New Jersey  
One World Trade Center, 67E  
New York, NY 10048  
(212) 435-6915

Paul M. Donovan  
LaRoe, Winn, Moerman & Donovan  
3900 Highwood Court, N.W.  
Washington, DC 20007  
(202) 298-8100

Attorneys for  
The Port Authority of New York  
and New Jersey

July 14, 2000

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 33388 (Sub-No. 91)

---

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

GENERAL OVERSIGHT

---

INITIAL COMMENTS OF THE PORT AUTHORITY  
OF NEW YORK AND NEW JERSEY

---

**I. INTRODUCTION**

The Port Authority of New York and New Jersey ("the Port Authority") is an agency of the States of New York and New Jersey whose bi-state compact was approved by the Congress. Foremost among the statutory responsibilities of the Port Authority is the protection of the commerce of the New York/New Jersey Port District. The Port District, a statutorily defined area, is a district that is roughly a 25 mile radius around the Statue of Liberty, and includes virtually all of the North Jersey Shared Asset Area ("NJSAA") as that area was defined in the Application in this proceeding.

In its Comments (NY/NJ-14) and its Brief (NY/NJ-19) in these



proceedings prior to approval of the Application of Norfolk Southern Corporation ("NS") and CSX Corporation ("CSX") to acquire and control Conrail, the Port Authority expressed several concerns. Primarily among those concerns was the recognition that over the years Conrail had rationalized its rail facilities, particularly within the New York/New Jersey Port District, to accommodate the needs of a single rail system. This rationalization left the Port District with insufficient rail infrastructure to allow for efficient operations of NS, CSX and the new Conrail Shared Assets Operations ("CSAO"). The Port Authority was also concerned that the excessive price paid for Conrail by NS and CSX would leave those carriers with insufficient capital to improve and expand that rail infrastructure.

Unfortunately, the fears of the Port Authority have been realized in substantial part. Notwithstanding the combined, cooperative efforts of the Port Authority and the carriers, and even while NS and CSX, as well as the CSAO, have labored mightily to improve service, systematic problems, particularly capital problems, are preventing those carriers from providing the quality and quantity of rail service that was promised in the acquisition proceeding. More importantly, there is considerable doubt that their level of service will improve substantially in the foreseeable future. Accordingly, these proceedings are necessary and helpful in providing the oversight that must continue until such time as those problems can be resolved.



## II. NS AND CSX FINANCIAL SITUATIONS

Even a cursory reading of the Annual Reports of CSX and NS quite convincingly demonstrates that they are in serious financial difficulty. It serves no useful purpose to review the miscalculations that resulted in this situation. However, it must be recognized that serious public consequences have, and will continue to, flow from these fiscal judgments.

The \$13 billion in long term debt that CSX and NS collectively face is staggering enough. Of even more concern is the fact that there appears to be very few sources from which the carriers can seek to secure the revenues necessary to maintain their rail systems and expand capacity sufficiently to meet the demands of the future. As the Port Authority stated in its comments in Ex Parte No. 582 (Sub-No. 1), Major Rail Consolidation Procedures, (NY/NJ-2, dated May 16, 2000):

The several consolidations that have occurred since passage of the Staggers Rail Act have dramatically reduced the number of rail carriers and the available rail infrastructure. These consolidations, coupled with the other Staggers Act reforms, have improved the rail industry's health. It cannot be ignored, however, that the improved financial health of the industry has come concomitantly with a drastic downsizing in its relative economic importance. Operating revenues have declined 37.1 percent in real terms from 1980 to 1998. In the same period, the real U.S. GDP increased 63.6 percent. The share of GDP represented by rail revenues had, in 18 years, declined to 38 percent\* of the 1980 level. Every ton-mile moved by the railroads is worth less and less. This is why railroads are unloved by Wall Street. Where is the revenue growth potential? Without growth, it is difficult to attract capital. With capital scarce, infrastructure and capacity problems should not be unexpected.

The quoted assessment of the Nation's railroads as a whole

are even more on point with respect to the eastern railroads. In the East, particularly the Northeast, shorter hauls and intense motor carrier competition severely restrict the ability of the rail carriers to secure the additional revenues that will be required to pay off their substantial debt, and make the investments necessary to maintain and expand their railroad assets.

### **III. PORT AUTHORITY CAPITAL EXPANSION**

There is no doubt but that as the world economy, and the economy of the United States, continue to expand the export and import traffic moving through the Port of New York and New Jersey will expand as well. That is unless port, highway and rail facilities are insufficient to handle the increased volumes. In recognition of this continuing expansion, the Port Authority has projected that it will need to invest \$1.16 billion between now and 2005 to meet its obligations to move just the increased waterborne traffic volumes. This investment is comprised of \$460 million for port redevelopment, \$200 million for port expansion and \$500 million for port dredging.

These investments will be required to handle all export and import traffic increases. A significant portion of the projected increases are from expanded activities at the Port Authority's on-dock rail facility, ExpressRail, as well as other planned on-dock rail facilities.

Since ExpressRail began operations in 1991, it has seen a steady and substantial increase in volumes of containers moving over the facility. Attached hereto as Appendix A is a chart



showing the total annual container lifts at ExpressRail from 1991 through 1999. The chart also shows a projected volume for 2000 based upon annualizing the first five months of 2000 with no seasonal adjustments.

As can be seen from Appendix A, 1999 did not show the same level of traffic increase that had occurred from 1991 through 1998. This fall off in traffic volume was due primarily, and probably entirely, to the service problems of CSX and NS following the June 1, 1999, split date. It is not difficult to see how Port Authority investments in rail facilities such as ExpressRail are imperiled by inadequate rail service.

#### **IV. RAILROAD CAPITAL INVESTMENT SHORTFALLS**

In their application to acquire Conrail, both CSX and NS noted that they also projected substantial increases in traffic volumes to and from the New York/New Jersey area. In fact, those increased volumes, and the resulting diversions from highway, were submitted as a substantial public benefit of the acquisition. The inability of CSX and NS to fund the rail improvements and expansions required to handle the projected increased volumes has, however, materially affected the carriers and the region as well.

The Port Authority, NS, CSX and CSAO have worked together to solve immediate operating difficulties within the Port District, and to the extent that problems outside the Port district have affected operations within the District, they have sought to address problems outside the Port District as well. Similarly,



the parties have sought to prioritize those capital projects that would have the greatest mutual benefits.

Attached hereto as Appendix B is a document entitled "Rail Freight Capital Improvements in the North Jersey Shared Assets Area." This document reflects the combined efforts of the Port Authority, CSX, NS and CSAO. As can readily be seen, the projects listed in the document are substantial, and represent a significant level of investment by the various parties.

The total cost of the projects shown in Appendix B is \$400 million. There is real doubt, however, that the projects will be funded, and even greater doubt that they will be funded in the short term. Accordingly, the North Jersey Shared Assets Area is presently suffering from a lack of rail infrastructure, and as traffic increases that lack of infrastructure will certainly increase.

The service problems that CSX and NS suffered during the second half of 1999 were serious. Those problems may have merely been a portent of the problems that will most likely occur if significant rail facility investment is not made in the near future. Quite frankly, there is very little good news with respect to the financial condition of CSX and NS and those dependent upon their services, including the Port Authority.

#### **V. NJSAA CAPACITY STUDY**

Pursuant to the Board's Decision 44, Applicants supplemented their applications with operating plans for the North Jersey Shared Assets Area. The Port Authority criticized those plans,

largely because they did not anticipate the capacity restraints imposed upon the carriers as a result of Conrail's rationalization program which had severely reduced rail facilities and capacity within the NJSAA.

As noted above, the capital expansion plans of the carriers are in doubt. Further, notwithstanding the nearly heroic efforts of the CSAO, service problems exist and promise to get worse. In view of these circumstances, the Port Authority suggests that the Board initiate a study to determine the capacity of the NJSAA to handle existing, and projected traffic volumes within that area. Such a study is warranted for several reasons.

First, the Shared Assets arrangement is a temporary one. The agreement has a five year life, and there is no guarantee that it will be extended. As CSX noted in its First Submission in this proceeding:

This arrangement, involving operations by three carriers in areas which had been rationalized by Conrail over two decades as part of a unitary rail system, posed a difficult operational situation, and one which, given the task involved, worked out as well as might be expected. Over time, further development of operations, to create greater efficiencies without sacrificing the basic principle of access by the two carriers to all shippers within the Shared Assets Areas, may be explored, whether in connection with the corporate restructuring contemplated by Section 8.9 of the Transaction Agreement or otherwise, subject to any necessary regulatory approvals. (Emphasis supplied)

Apparently, the carriers anticipate a rearrangement of the Shared Assets, and alteration of the operating plan within the NJSAA.

Any further regulatory approval must be based upon the ability of the carriers effectively, efficiently and competitive-



ly to serve the Shared Assets Areas, particularly, the highly congested North Jersey Shared Assets Area.

Second, as discussed at length herein, both CSX and NS have severe capital shortages. Their investment dollars will be limited for the foreseeable future, and their investment decisions will impact most heavily upon those regions where rail facilities are most in need. If CSX and NS are to achieve the public benefits that were promised to secure approval of their Conrail acquisition plan, and if the North Jersey Shared Assets Area is to see the efficient and competitive rail service that led the Port Authority ultimately to support their application, investment decisions must be made on a public benefit, as well as a private benefit, basis. Putting investment dollars into those areas where they are most needed should be a fundamental obligation imposed by the Board in these oversight proceedings.

#### **VI. ONGOING OVERSIGHT**

As the Board is well aware, the make-up of the North American rail system is in a state of flux. Further consolidation applications may be anticipated, and which carriers ultimately serve New York/New Jersey is of considerable uncertainty, and of considerable concern to the Port Authority. If, for example, one of the carriers now serving New York/New Jersey were to be acquired by or merge with a carrier also serving Halifax on the north and Norfolk on the south, the competitive position of the Port of New York and New Jersey would be in jeopardy.

In Ex Parte No. 582 (Sub-No. 1) the Port Authority supported



a proposal of Kansas City Southern Railway to the effect that in approving any rail consolidation, the board should ensure that the new consolidation does not reduce public benefits that were promised in a prior consolidation. This oversight proceeding provides a vehicle for the Board to accomplish just such a result. Continuing oversight allows the Board, not only to monitor the activities of the carriers involved in the Conrail acquisition, but also to prevent any further consolidation, or marketing alliance, to reduce those competitive benefits to the Port of New York and New Jersey upon which the Conrail acquisition was, in substantial part, based.

Accordingly, the board should continue its oversight in this matter, and should require additional interim reports from the carriers as to the status of their service and financial problems.

#### **VII. CONCLUSIONS**

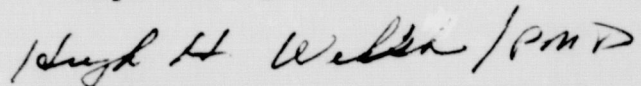
In view of the foregoing, the Port Authority submits that the Board should continue these oversight proceedings, and should institute a capacity study of the NJSAA as discussed herein. In addition, the Board should require that CSX and NS supply the following information to the Board and to the participants herein to facilitate such a capacity study:

1. A comparison of the rail operational capacity within the North Jersey Shared Assets Area, and the current and projected traffic volumes that will move through that area during the next five years, together with any plans currently in place to

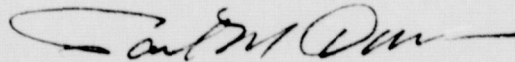
meet any increase in volume; and

2. The annual capital investment plans of the carriers within the North Jersey Shared Assets Area for the next five years, and how the required funds will be obtained.

Respectfully submitted,



Hugh H. Welsh, Deputy General  
Counsel  
The Port Authority of New York  
and New Jersey  
One World Trade Center, 67E  
New York, NY 10048  
(212) 435-6915



Paul M. Donovan  
LaRoe, Winn, Moerman & Donovan  
3900 Highwood Court, N.W.  
Washington, DC 20007  
(202) 298-8100

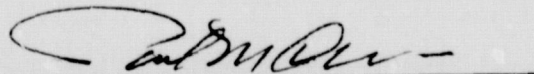
Attorneys for  
The Port Authority of New York  
and New Jersey

CERTIFICATE OF SERVICE

I hereby certify that this 14th day of July 2000, a copy of the foregoing document was served by hand delivery upon:

Dennis G. Lyons, Esq.  
ARNOLD & PORTER  
555 12th Street, N.W.  
Washington, DC 20004

Richard A. Allen, Esq.  
ZUCKERT, SCOUTT & RASENBERGER  
888 17th Street, N.W.  
Washington, DC 20006



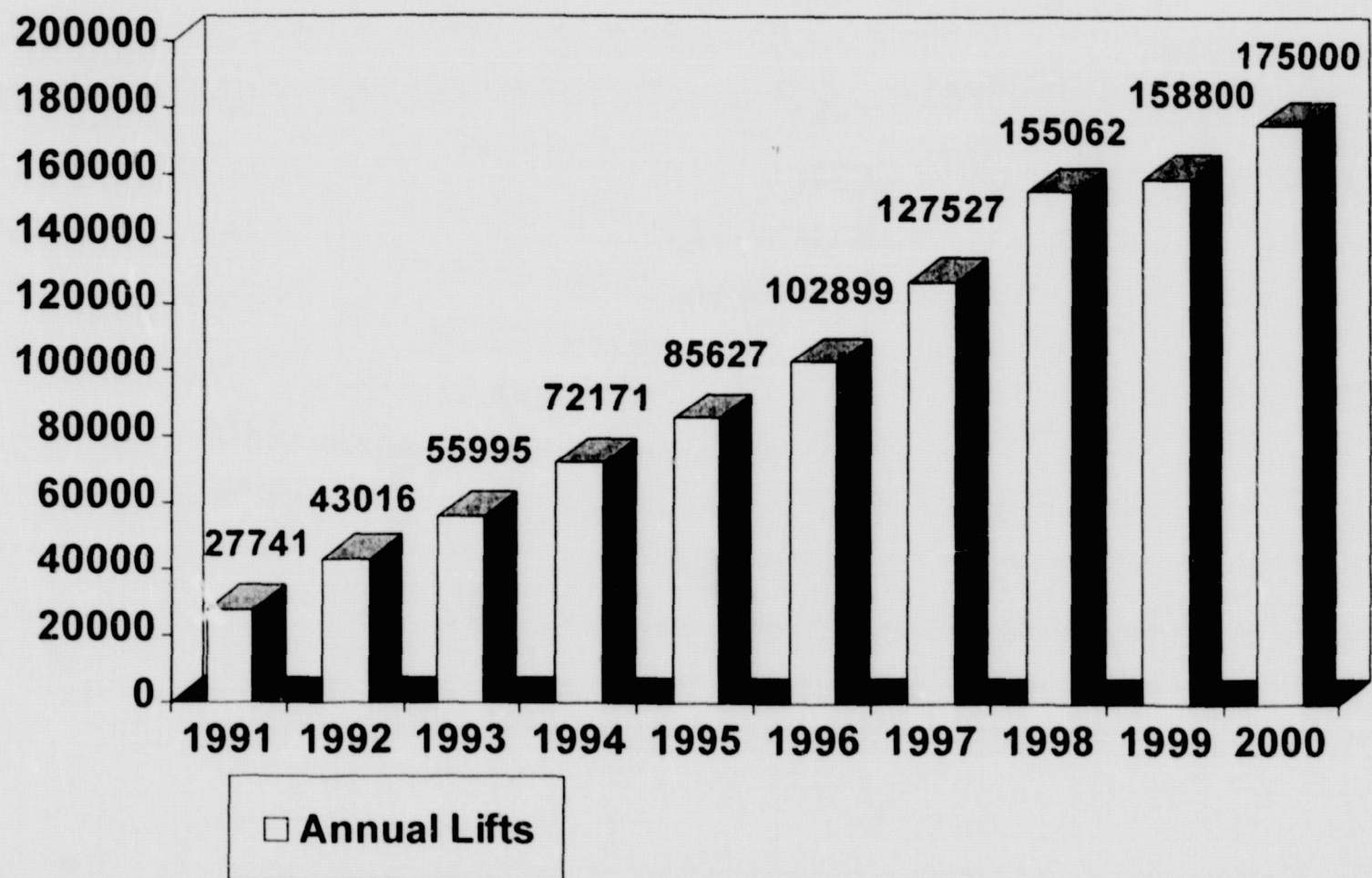
Paul M. Donovan





# ExpressRail Growth

## Total Annual Lifts - 1999 Final Results





**RAIL FREIGHT CAPITAL IMPROVEMENTS**

**In the**

**NORTH JERSEY SHARED ASSETS AREA**

**May, 2000**



## **INTRODUCTION**

In order to provide for growth in New Jersey and the Port District, and to address capacity constraints that have adversely affected the quality of rail transportation, a number of facility improvement projects were identified for implementation over the next three to four years. This effort represents the participation of many individuals representing:

The Port Authority of New York & New Jersey

CSX Transportation (CSX)

Norfolk Southern Corporation (NS)

Conrail Shared Assets Operations (CSAO)

Since this report is designed to focus on projects within New Jersey and specifically within the CSAO, it does not address projects outside of that geographic area nor projects which principally impact New York.

In order to provide a common understanding of these projects and their potential benefits, a brief description of each project is provided on the following pages. Schematic maps are also provided to highlight the proposed facility improvements within the context of the northern New Jersey rail network.

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### **II Facility Improvements - Short Term (3 - 4 Years)**

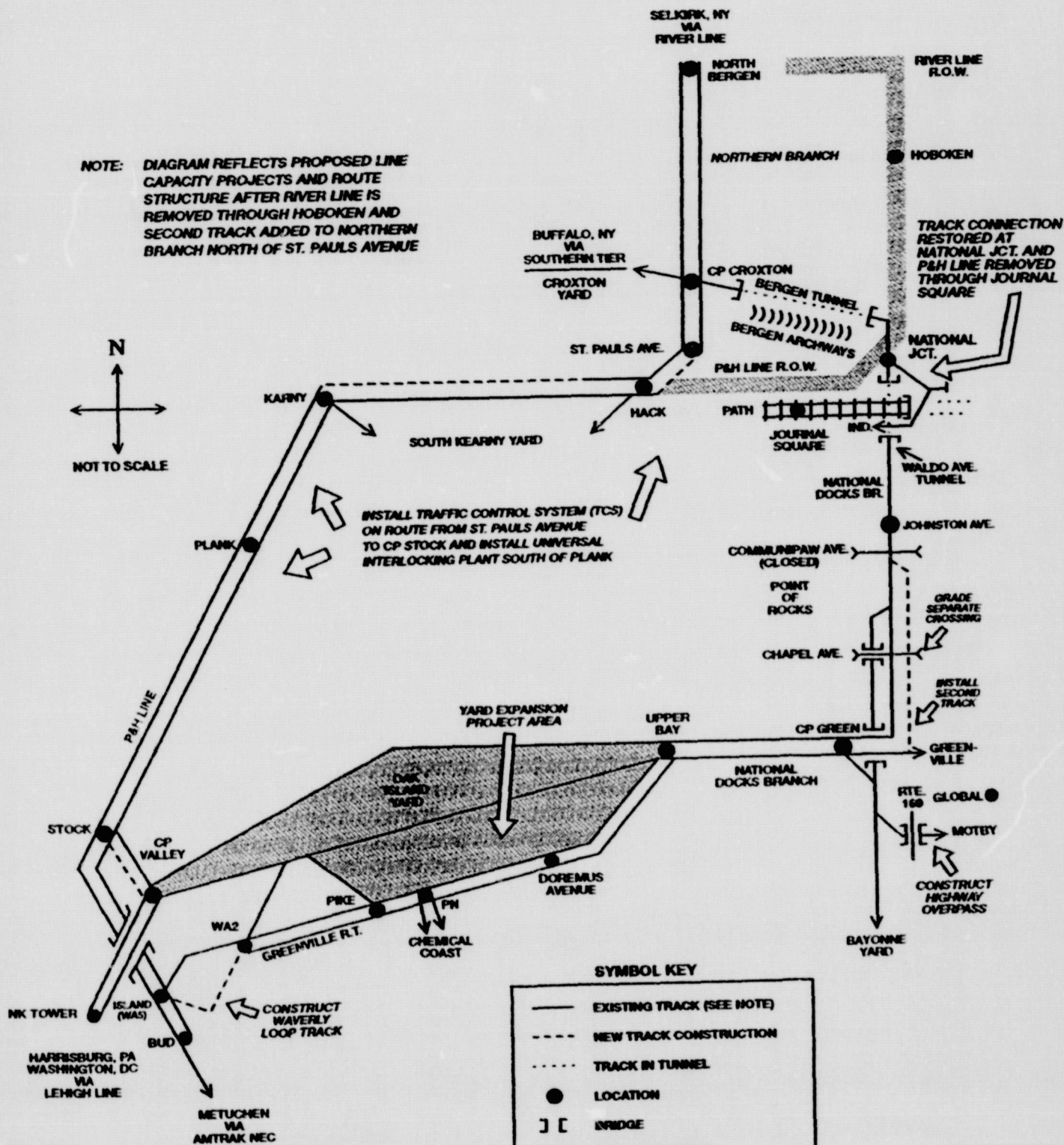
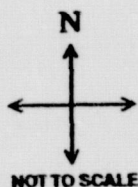
<u>Project Description</u>	<u>Page</u>
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# North Jersey Rail Capacity Enhancements

Global & Military Ocean Terminals; P & H Line; Waverly Loop;  
Oak Island Yard; National Docks Branch; Bergen & Waldo Tunnels

NOTE: DIAGRAM REFLECTS PROPOSED LINE CAPACITY PROJECTS AND ROUTE STRUCTURE AFTER RIVER LINE IS REMOVED THROUGH HOBOKEN AND SECOND TRACK ADDED TO NORTHERN BRANCH NORTH OF ST. PAULS AVENUE



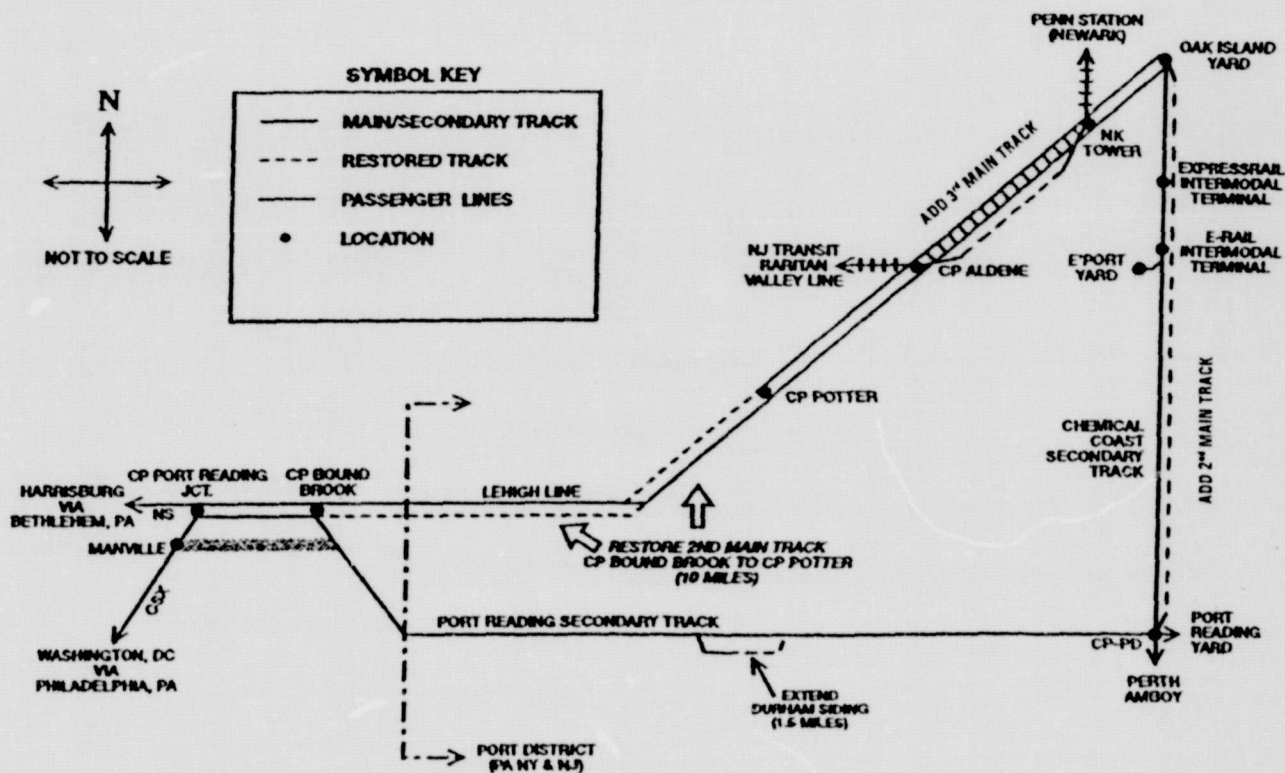
## SYMBOL KEY

- EXISTING TRACK (SEE NOTE)
- - - NEW TRACK CONSTRUCTION
- ... TRACK IN TUNNEL
- LOCATION
- ] [ BRIDGE
- X — GRADE CROSSING
- ▨ RIGHT OF WAY



# North Jersey Rail Capacity Enhancements

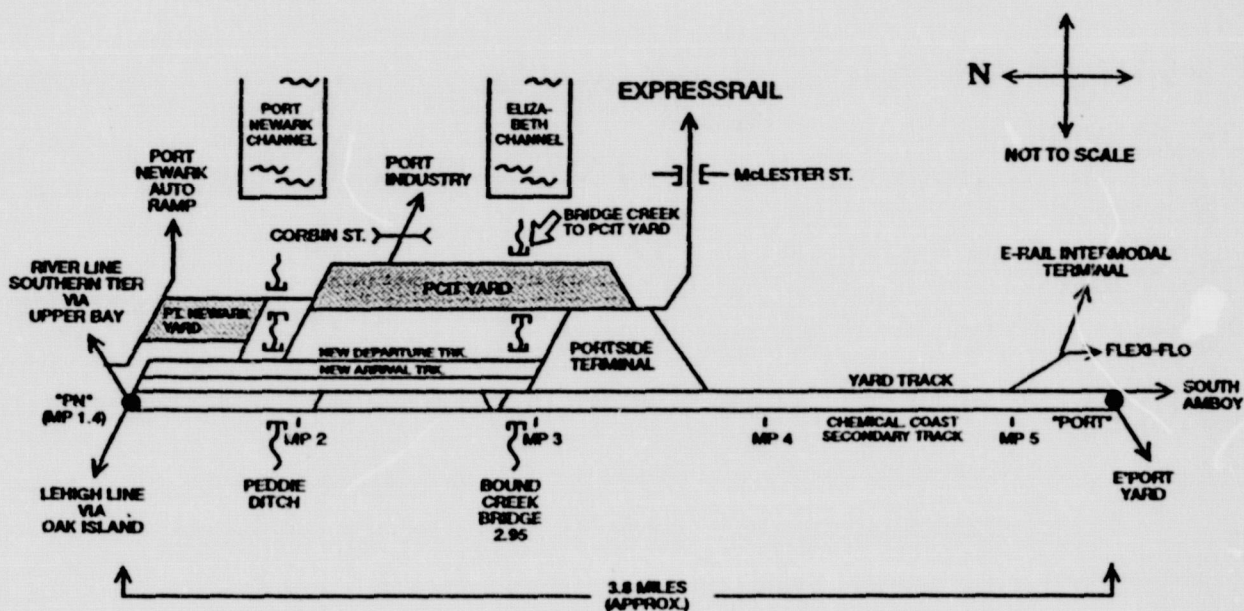
## Chemical Coast, Port Reading & Lehigh Lines



# ExpressRail Support Facilities

## Conceptual Plan

NOTE: DRAWING DEPICTS NEW EXPRESSRAIL ACCESS AND YARD SUPPORT TRACKS NEXT TO PORTSIDE.





**ExpressRail Support Facilities** - The scope of this project extends approximately two miles parallel to the Chemical Coast Secondary Track and Corbin Street in the Port Newark/Elizabeth Marine Terminal. To accommodate present and proposed volumes of intermodal traffic for ExpressRail and to relieve congestion caused by handling this traffic on the Chemical Coast Secondary Track, a rail support yard will be built by extending tracks across Bound Creek, combining the former Penn Central Intermodal Terminal (PCIT) and the Portside Yard. The new facility will be designed to simultaneously receive and dispatch road trains with ExpressRail traffic in either direction and to store empty intermodal equipment for ExpressRail. In addition, blocks of traffic loaded at ExpressRail will be switched into proper order and inspected at this facility prior to train departure. Perimeter fencing will be installed around this facility from about Bay Avenue to Peddie Ditch opposite the Newark Channel. The rail support facility will be built with enough surge capacity to absorb the impact of late train arrivals and the backup of loaded and empty rail traffic on weekends and over holidays. Since new traffic patterns and realignment of track near Peddie Ditch are expected to conflict with switching and storage of rail equipment at Port Newark Yard, some PCIT trackage should be set aside to support general freight traffic for other customers located in the Port Newark & Elizabeth Marine Terminal, including the storage of empty equipment for prospective loading.

These improvements are designed to complement existing plans to expand ExpressRail operations, including a grade crossing separation over McLester Street and the relocation of support tracks to an area adjoining Portside Yard. Proposed plans to bridge Bound Creek for access to PCIT property are contingent upon successfully addressing any environmental concerns about bridging Bound Creek and possibly Peddie Ditch (The Port Authority of New York and New Jersey has already agreed to initiate an environmental assessment of bridging Bound Creek with railroad tracks).

As a result of making these improvements, there will be reduced demand upon line capacity along the Chemical Coast Secondary Track and parallel yard track. Currently, these two tracks are used to support ExpressRail operations and are often blocked with intermodal traffic at different times of the day. This situation impacts service to other customers in the Port District and must be relieved either by building additional ExpressRail support tracks on PCIT property across Bound Creek or by constructing approximately four miles of track parallel to the Chemical Coast Secondary Track between Port Newark and Elizabethport. This latter option is expected to trigger significant environmental concerns based upon previous experience with developing property in the area. A short list of project stakeholders include CSX, NS, CSAO, NJDOT, Maher Terminals, and the Port Authority of New York and New Jersey. Anticipated benefits include, but are not limited to, the following items:

- ◆ Reduced congestion and delay to ExpressRail and other traffic served via the Chemical Coast Secondary Track
- ◆ More competitive service for ExpressRail traffic
- ◆ Improved availability for placement and for service recovery
- ◆ Reduced time from release of traffic to train departure
- ◆ Compressed CSX and NS train arrival and departure times
- ◆ Improved service by design (better blocking of traffic, etc.)
- ◆ Productivity improvements at ExpressRail due to reduced rail constraints
- ◆ Improved hitch (and equipment) utilization
- ◆ Reduced double-handling of ExpressRail traffic in North Jersey terminal area
- ◆ Increased capacity to handle projected growth of ExpressRail traffic



**Global and Motby Service Expansion** - The scope of this project generally extends on either side of the municipal boundary between the City of Bayonne and Jersey City in the vicinity where Global Marine Terminal (Global) and Military Ocean Terminal (Motby) are located. In order to provide these marine facilities with competitive rail intermodal service, this project includes the construction of additional rail support facilities and clearance improvements required for all types of double stack shipments to access the National Docks Branch in either direction. Depending on how CSX and NS will access these marine facilities, the Route 169 grade crossing in Bayonne should be grade-separated from the rail line that serves Motby (and possibly Global in the future). Due to the proximity of wetlands to possible rail support facilities near Point of Rocks in Jersey City and elsewhere, an environmental assessment of these options should be initiated early in the site selection process.

These improvements complement other plans to improve line capacity and clearances on the National Docks Branch for double stack and multi-level traffic routed via the River Line and the Southern Tier of New York State. Other plans to construct the Waverly Loop and yard tracks on Raff property in Newark could have a bearing on this project, depending on the availability of property for rail support facilities and the final alignment of track serving Global and Motby. A short list of project stakeholders should include CSX, NS, CSAO, the City of Bayonne, Jersey City, NJDOT, the Port Authority of New York and New Jersey and the Port Jersey Railroad. Anticipated benefits include, but are not limited to, the following items:

- ◆ Marine terminals with competitive rail access via all routes (business growth)
- ◆ Efficient rail operations with reduced exposure of shipments to theft
- ◆ Minimal rail interference with area road network

**Passaic and Harsimus Line Capacity Improvements** - The scope of this project extends approximately 7 miles from St. Pauls Avenue in Jersey City to CP VALLEY in Newark, New Jersey. In order to efficiently handle new traffic patterns and competitive service provided by CSX and Norfolk Southern (NS) in the Port District, the capacity of this route will be increased by adding a second main track at three locations: St. Pauls Avenue to HACK; HACK to KARNY; CP STOCK to CP VALLEY.

For operating flexibility, a Traffic Control System (TCS) and reverse signaling will be installed for CSAO to control train movements through this territory. Existing interlocking plants at CP VALLEY, CP STOCK, KARNY, KACK and St. Pauls Avenue will be revised to permit parallel train movements along the new double-track route. A new universal interlocking plant will be constructed on the Passaic and Harsimus (P&H) Line near "PLANK" to keep operations fluid when trains are held out of nearby terminals.

Construction of an additional track between KARNY and HACK is expected to involve the acquisition of some property previously transferred to New Jersey Transit in Kearny for construction of their Meadows Maintenance Center (MMC). This increase in P&H Line capacity is expected to reduce reliance on CSX South Kearny Yard track to support Conrail Shared Asset Operations, including overhead movement of NS trains to and from Croxton Yard. The installation of signals will eliminate so-called "dark territory" on The P&H Line between KARNY and HACK and should permit maximum train speeds to be safely increased between these points and elsewhere. These increased speeds and reduced train delays at various single-track "pinch-points" on this route will further improve line capacity and will make shipments less susceptible to theft. When completed, these changes will also serve to complement future construction of the Waverly Loop and other line capacity improvements in progress along the Northern Branch between St. Pauls Avenue in Jersey City and North Bergen, inclusive.

These improvements are needed now to remove line capacity constraints on goods movement and to provide for anticipated business growth in the Port District and elsewhere. Failure to accommodate this demand is likely to make the Port District less competitive and may jeopardize existing investments by making rail service less attractive. For this reason a short list of stakeholders in this project includes CSX, NS, CSAO, Jersey City, NJDOT, New Jersey Transit and the Port Authority of New York and New Jersey. Anticipated benefits include, but are not limited to, the following items:

- ◆ Increased track capacity at South Kearny Yard to handle intermodal traffic
- ◆ Improved access to NS Croxton Yard from Lehigh Line reduces train delays and avoids capital costs to develop access via other routes (Boonton Line)
- ◆ Increased line capacity for new traffic patterns and business growth
- ◆ Enhanced ability to dispatch current mix of through trains and yard movements
- ◆ Provides improved route for through trains to bypass Oak Island Yard
- ◆ Reduced shipment exposure to vandalism and theft



## **Lehigh Line Capacity Improvements**

Second Main Track Between Bound Brook and Potter - The scope of this project extends approximately 10 miles in Middlesex County between Bound Brook and Edison Township (Inman Road). In order to handle new traffic patterns and competitive service provided by CSX and NS, Lehigh Line capacity would be upgraded by restoring about 10 miles of second main track between existing remote-controlled interlocking plants at CP BOUND BROOK and CP POTTER. In addition, the configuration of these interlocking plants would be changed through the installation of another crossover to provide for increased operating flexibility. Installation of a Traffic Control System (TCS) under the control of CSAO train dispatchers will provide for reverse signaling on both main tracks, thereby facilitating service to local industries and eliminating further reliance on the parallel New Jersey Transit Raritan Valley Line for freight trains to use during trackwork.

These improvements complement other changes planned on the route between Newark and North Bergen to augment existing line capacity. Failure to address existing line capacity constraints between Bound Brook and North Bergen will perpetuate train delays and will make the Port District less competitive.

Third Main Track between Aldene and Newark - This project would add another main track for a distance of approximately 7 miles between CP-ALDENE and CP-NK, a particularly busy line where the New Jersey Transit Raritan Valley Line shares track with CSX, NS and CSAO freight trains. Congestion will be exacerbated by the new Townley passenger station which will require commuter trains to stop for passengers in the middle of an already-congested rail segment. A third main track will complement the second track between Bound Brook and Potter described above and provide a dedicated freight route between the Oak Island Yard, northern NJ and generally points in the Midwest and South.

A short list of project stakeholders includes CSX, NS, CSAO, NJDOT, NJ Transit and the Port Authority of New York and New Jersey. Anticipated benefits include, but are not limited to, the following items:

- ◆ Increased line capacity to efficiently handle new NS and CSX traffic patterns and projected growth of traffic
- ◆ Enhanced ability to dispatch current mix of through and local trains
- ◆ Improved service to local customers
- ◆ Elimination of reliance on parallel New Jersey Transit Raritan Valley Line to "detour" freight trains during trackwork



**Waverly Loop Construction** - This loop track is designed to connect the Greenville Running Track and the Passaic and Harsimus Line in the City of Newark around and underneath the west end of Oak Island Yard. Once installed, the Waverly Loop will provide a fully-cleared route for all double stack and multi-level traffic routed via the River Line or the Southern Tier to and from the following terminal facilities in the Port District:

<u>Intermodal</u>	<u>Automotive</u>
ExpressRail	Doremus Avenue
E-Rail	Port Jersey
Howland Hook (proposed)	Port Newark
Global/Motby (proposed)	Linden (via Chemical Coast)

In addition, the Waverly Loop is expected to facilitate the repositioning of locomotives, empty intermodal and multilevel equipment among terminals in North Jersey without adversely affecting yard operations at Oak Island. Construction of the loop track complements planned P~H Line capacity improvements and the development of Raff property alongside Oak Island Yard. A short list of stakeholders includes CSX, NS, CSAO, NJDOT and the Port Authority of New York and New Jersey. Anticipated benefits include, but are not limited to, the following items:

- ◆ Full access to intermodal and automotive terminals listed above for doublestack and multi-level equipment via River Line and Southern Tier routes
- ◆ Improved repositioning and utilization of locomotives and empty equipment among terminals listed above
- ◆ Reduced interference with operations at Oak Island Yard
- ◆ Alternate access route to serve Global Marine Terminal and Motby
- ◆ Alternate route to National Docks Branch across Upper Bay Bridge
- ◆ Potential economies of scale by linking Croxton and South Kearny train service with ExpressRail, E-Rail, and Howland Hook intermodal terminals

**Oak Island Yard Expansion** - The acquisition of non-rail (Raff) property adjoining Oak Island Yard in the City of Newark would provide an opportunity to redeploy these assets in a way that would improve rail service for customers located in the Port District. For example, this property could be used to expand the number of classification tracks at Oak Island Yard, thereby eliminating the need to rehandle certain traffic at Oak Island or elsewhere. Typically, these operating efficiencies translate into reduced operating expenses and reduced transit times, improving the operating cost advantage of shared classification facilities at Oak Island.

The proximity of the Raff property to Oak Island and other rail facilities in the area would suggest that this asset could also be deployed to receive and dispatch trains with blocks of general merchandise, intermodal and automotive traffic that do not require intermediate classification at Oak Island Yard. This important capability would require the construction of several long tracks extending about two miles from Upper Bay Bridge to the Eastbound Receiving Yard at Oak Island. With these tracks in place, CSAO should be able to efficiently handle CSX and NS trains with different types of traffic for the Port District, effectively reconstituting disaggregated flows of former Conrail traffic that once moved in solid trains to various terminals in North Jersey.

Tracks constructed on the Raff property could also be used to efficiently redistribute empty equipment among present and proposed intermodal and automotive terminals. This function would complement existing use of Bay Line Yard along the Greenville Running Tracks and could be expanded to maintain a supply of empty gondolas for scrap loading Port Newark. Centrally located, the Raff property has access to the Northeast Corridor and to Lehigh Line via the Eastbound Receiving Yard at Oak Island. Access to the River Line and Southern Tier is available via the National Docks Branch or the Waverly Loop, when completed. With this in mind, a short list of project stakeholders would include CSX, NS, CSAO, NJDOT and the Port Authority of New York and New Jersey. Anticipated benefits include, but are not limited to, the following items:

- ◆ Reduction in cars rehandled at Oak Island and elsewhere through establishment of additional classifications
- ◆ Reduced transit and costs associated with blocking traffic to avoid classification at Oak Island Yard
- ◆ Improved repositioning and utilization of empty equipment.  
Reduced train starts through consolidation of different traffic flow



**National Docks Branch Line Capacity Improvements** - The scope of this project includes the National Docks Branch and extends approximately four miles from Upper Bay Bridge to a point south of Johnston Avenue in Jersey City. In order to efficiently handle new traffic patterns and competitive service provided by CSX and NS in the Port District, the capacity of the National Docks Branch will be increased by restoring about 2 1/2 miles of second main track between CP GREEN and the former Communipaw Avenue grade crossing ("CF") south of the Johnston Avenue Bridge. Unfortunately, these tracks are intersected at grade by Chapel Avenue approximately 1 mile from CP GREEN and 1 1/2 miles from CF, where double track will end. In order to avoid blocking Chapel Avenue with trains that exceed this length, this rail/highway crossing should be grade-separated as part of this project. For operating flexibility, the existing interlocking plant at CP GREEN will be reconfigured by adding a crossover to permit parallel train movements on the National Docks Branch and the Traffic Control System will be extended to Upper Bay Bridge.

With these improvements, the single-track portion of the National Docks Branch between CP GREEN and CP CROXTON will be reduced from 6 miles to approximately 3 1/2 miles in length. This shorter distance, together with restoration of the second track on the Northern Branch, is expected to significantly increase line capacity on the National Docks route between Oak Island and North Bergen, eliminating further consideration of the Bergen Archways in this regard. Moreover, changing the location where double track ends on the National Docks Branch is expected to reduce both the total amount and delays experienced at CP GREEN adjacent to housing projects. A short list of project stakeholders should include CSX, NS, CSAO, Jersey City, NJDOT and the Authority of New York and New Jersey. Anticipated benefits of this project include, but are not limited to, the following items:

- ◆ Reduction in total amount and severity of train delays on the National Docks Branch at CP GREEN next to housing projects in Jersey City
- ◆ Increased line capacity on the National Docks Branch to handle present and proposed business levels
- ◆ Elimination of highway grade crossing at Chapel Avenue in Jersey City (contingent on availability of state and federal funding for grade-separation)
- ◆ Reduced exposure of shipments to theft and vandalism
- ◆ Release of Bergen Archways route for mass transit initiatives



## **Port Reading & Chemical Coast Lines**

Durham Siding Extension - This project is located in Middlesex County between Port Reading and Bound Brook on the 16-mile Port Reading Secondary Track. Overhead clearances along this single-track line have recently been improved to handle high double stack and multi-level traffic. As a result, it is expected that a number of through freight trains will be rerouted this way to avoid freight and passenger train interference on other lines in North Jersey. In order to meet this additional demand, line capacity on the Port Reading Secondary Track can be increased by extending a short passing siding to accommodate longer (9,000') trains east of Helen Road in Edison Township. This would be accomplished by building additional track on the existing right-of-way from Mile Post 7 to Mile Post 8.5 near Durham, where the Perth Amboy Branch passes underneath.

The installation of a Traffic Control System (TCS) between Port Reading (CP "PD") and Bound Brook ("CP BOUND BROOK") will provide trains with controlled access to Durham Siding and eliminate the need for train crews to stop and throw switches by hand while highway grade crossings are blocked, further enhancing line capacity as train speed limits are increased and signals permit the closer spacing of trains. The installation of signals along this route is also expected to improve safety, especially over sections where hand-thrown switches are located. The short list of project stakeholders reflects some of their previous participation in funding clearance improvements for this line and should include CSX, NS, CSAO, NJDOT and the Port Authority of New York and New Jersey. Anticipated benefits include, but are not limited to, the following items:

- ◆ Increased line capacity to accommodate additional demand
- ◆ Reduced freight and passenger train interference
- ◆ Less disruption of vehicular traffic at highway grade crossings
- ◆ Improved safety for trains operating in "dark territory"

Chemical Coast Line 2<sup>nd</sup> Track - This project would add a second main track along the Chemical Coast Line for a distance of approximately 12 miles between Port Reading (CP-PD) and the Oak Island Yard, to handle increasing train density. This line serves the important northern NJ chemical industry as well as intermodal, transload and carload business from E-Rail, CSX's Trumbull Street Yard and the New Jersey Marine Terminals.

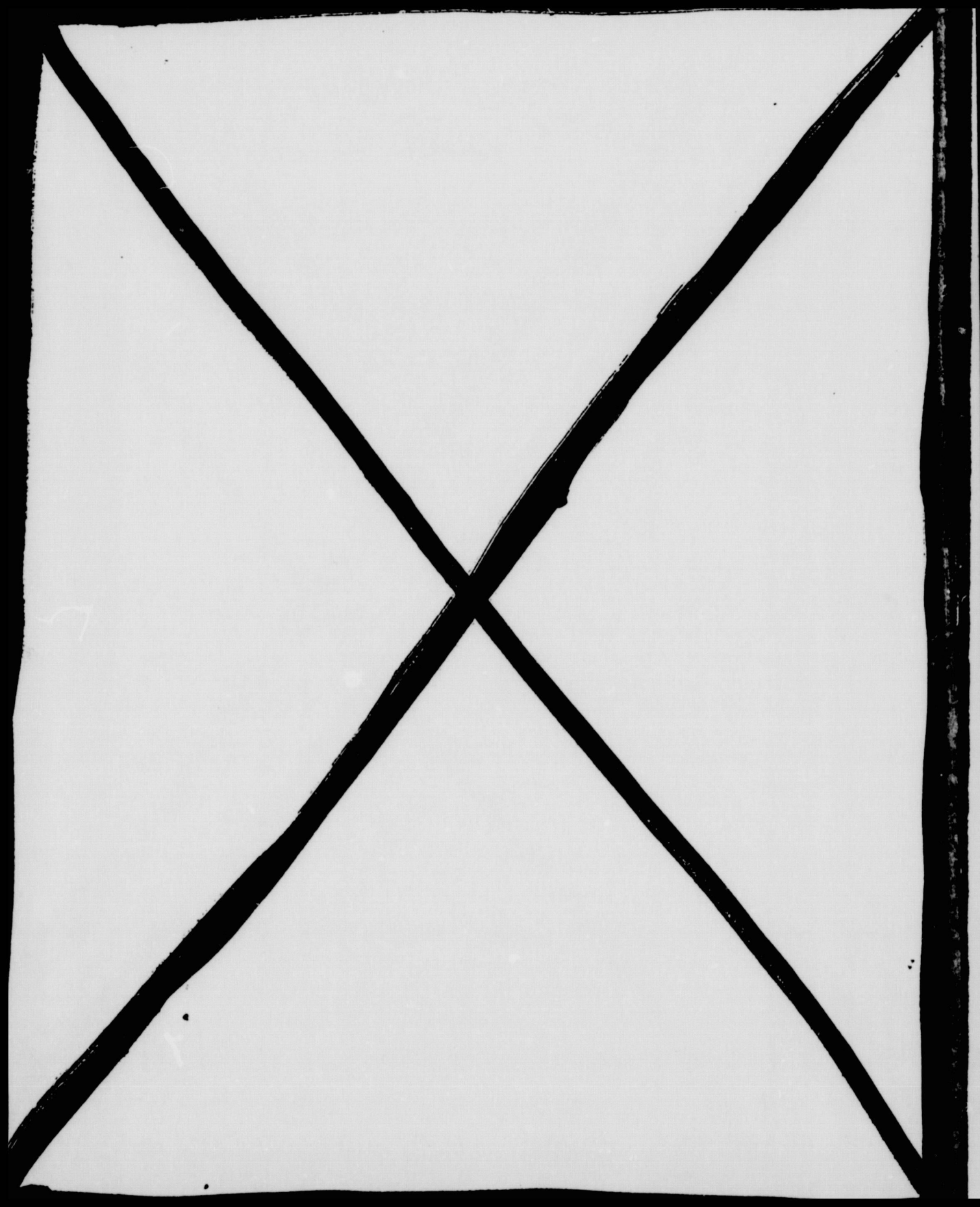
Together with the Port Reading Secondary, the Chemical Coast Line provides high-cube doublestack capability to the west for Norfolk Southern, and for carload traffic to the south for CSX. To the extent that freight trains can be routed via the Chemical Coast and Port Reading lines, this route may also help to mitigate some potential freight-passenger conflicts between Aldene and Newark. The short list of project stakeholders reflects some of their previous participation in funding clearance improvements for this line and should include CSX, NS, CSAO, NJDOT and the Port Authority of New York and New Jersey. Anticipated benefits include, but are not limited to, the following items:

- ◆ Increased line capacity to accommodate additional demand
- ◆ freight and passenger train interference

**Bergen and Waldo Avenue Tunnel Clearance Improvements** - This clearance project extends about two miles in Jersey City on the National Docks Branch through the Bergen and Waldo Avenue Tunnels. These tunnels restrict the movement of certain double stack and multi-level traffic for the Port District that route via the River Line and the Southern Tier.

In order to obtain the necessary clearances to handle this traffic, the 4,181' Bergen Tunnel would be enlarged underneath Jersey City alongside the Bergen Archways. In addition, the short 423' tunnel underneath Waldo Avenue Yard and PATH would be modified in part by changing the alignment and elevation of track next to the south tunnel Portal. Restoration of National Junction to serve local industry at Waldo Avenue would eliminate track above the National Docks Branch near the north tunnel portal and would eliminate further freight use of the Passaic and Harsimus Line through Journal Square, once trains that use the River Line through Hoboken are rerouted via the Northern Branch. These developments offer the potential to redeploy some portions of the right-of-way at Journal Square for mass transit purposes. A short list of project stakeholders includes CSX, NS, CSAO, Jersey City, NJDOT and the Port Authority of New York and New Jersey. Anticipated benefits include, but are not limited to, the following items:

- ◆ Elimination of clearance restrictions for double stack and multi-level traffic destined to and from the Port District
- ◆ Improved utilization of multi-level equipment
- ◆ Improved rail access to Global and MOTBY marine terminals
- ◆ Release of freight right-of-way through Journal Square





STB FD-33388 (SUB 91) 7-14-00 D 199265

**RICHARD R. WILSON, P.C.**

**Attorney at Law**

**A Professional Corporation**

**1126 Eighth Avenue, Suite 403**

**Altoona, PA 16602**

(814) 944-5302

888-454-3817 (Toll Free)

(814) 944-6978 FAX

rrwilson@mail.csrlink.net

Of Counsel to:

Vuono & Gray LLC

2310 Grant Building

Pittsburgh, PA 15219

(412) 471-1800

(412) 471-4473 FAX

July 13, 2000

**VIA FEDERAL EXPRESS**

Office of the Secretary

Surface Transportation Board

Case Control Unit

Attn: STB Finance Docket No: 33388 (Sub No 91)

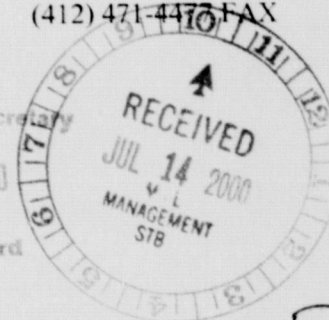
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Washington, DC 20423-0001

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Re: STB Finance Docket No: 33388 (Sub No 91); 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; General Oversight Proceedings

Dear Secretary Williams:

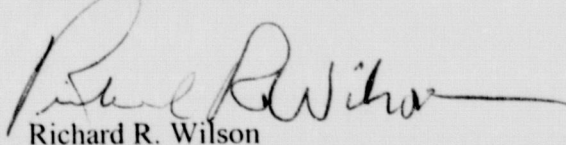
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Please date stamp and return the additional copy of this transmittal letter in the enclosed, self addressed, stamped envelope provided for that purpose.

Copies of this pleading have been served on all parties of record.

Very truly yours,

RICHARD R. WILSON, P.C.

  
Richard R. Wilson

RRW/klh

Enclosures

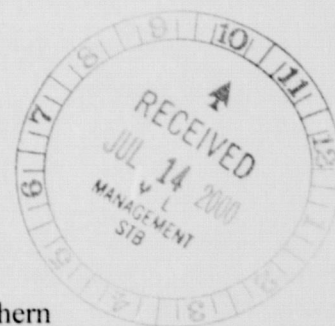
xc: All Parties of Record

The Honorable Richard A. Geist

The Honorable Joseph W. Battisto

**Before the  
SURFACE TRANSPORTATION BOARD**

---



STB Finance Docket No: 33388 (Sub No 91)  
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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**COMMENTS OF THE TRANSPORTATION COMMITTEE CHAIRMEN  
OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES  
ON THE FIRST GENERAL OVERSIGHT REPORT SUBMITTED  
BY NORFOLK SOUTHERN COROPRATION AND  
CSX CORPORATION**

Submitted By:

RICHARD R. WILSON, P.C.  
Richard R. Wilson, Esq.  
Special Counsel for Pennsylvania House  
of Representatives Transportation Committee  
1126 Eighth Avenue, Suite 403  
Altoona, PA 16602  
(814) 944-5302

Dated: July 13, 2000



**Before the  
SURFACE TRANSPORTATION BOARD**

---

STB Finance Docket No: 33388 (Sub No 91)  
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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**COMMENTS OF THE TRANSPORTATION COMMITTEE CHAIRMEN  
OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES  
ON THE FIRST GENERAL OVERSIGHT REPORT SUBMITTED  
BY NORFOLK SOUTHERN CORPORATION AND  
CSX CORPORATION**

Pursuant to Decision No. 1 in Finance Docket No: 33388 (Sub No. 91) ("Decision No. 1") Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS") and CSX Corporation and CSX Transportation, Inc. (collectively "CSX") on June 1, 2000 submitted their first comprehensive reports on the implementation of the Conrail control transaction authorized by the Surface Transportation Board ("STB" or "Board") in Decision No. 89 in Finance Docket No: 33388 (served July 23, 1998) ("Decision No. 89").

The Transportation Committee of the Pennsylvania House of Representatives was an active participant in the proceedings leading to the publication of Decision No. 89 and sought the imposition of a number of protective conditions regarding commitments made by NS and CSX to the Commonwealth of Pennsylvania in that proceeding. In that connection, the Committee was particularly gratified by Condition 19 imposed by the Board which states:

Applicants must adhere to all the representations they made during the course of this proceeding, whether or not such representations are specifically referenced in this decision.

This condition recognizes that Applicants made numerous commitments and representations to many participating parties in the control proceeding, including the Commonwealth of Pennsylvania, not all of which were formally incorporated as conditions in STB Decision No. 89 but which nonetheless constituted binding obligations on the part of the Applicants as part of the Conrail control proceeding.

In general, the House Transportation Committee Chairmen believe that both NS and CSX have made significant progress in the implementation of their acquisition and division of Conrail assets since the conveyance date for this transaction. We are not, however, unmindful of the fact that both NS and CSX have encountered significant problems and are still addressing serious service deficiencies as the result of inadequate planning and unforeseen difficulties arising from the incorporation of Conrail lines into their respective rail systems. In the Commonwealth of Pennsylvania, these service problems have had significant and harmful economic impacts which continue to exist to this day and have yet to be rectified. As NS struggled to incorporate Conrail operations into its system and account for the new Conrail traffic, NS computer systems failed to properly account for cars, track shipments and provide accurate information to railroad managers. Conrail lines and yard facilities in the Commonwealth became choked with delayed trains and NS has been required to call on the services of regional and short line carriers to assist in the switching and classification of traffic throughout the state. As indicated in the Oversight Reports filed by NS and CSX, these problems appear to be slowly improving, but there are still numerous situations throughout the Commonwealth where the failure of NS to adequately prepare



operational plans and martial equipment and personnel have economically damaged citizens and business in the Commonwealth.

As a result of these service problems and failures, the final answer on whether or not this transaction is in the public interest is still in doubt. The current stock price of both NS and CSX suggests that investors are not optimistic given the fact that this acquisition was largely justified on the basis of diversion of substantial volumes of intermodal traffic which has yet to materialize. Indeed, we have observed little, if any, reduction of truck traffic on the Commonwealth's major highways. This was precisely the concern expressed by the House Transportation Committee in its comments in the acquisition proceeding filed with the Board on October 15, 1997. Notwithstanding that fact, this transaction cannot be undone and the Applicants, their connecting carriers, shippers and public agencies must work together to see that this acquisition transaction works efficiently and for the benefit of the public.

In reviewing the NS report, we are particularly concerned regarding the absence of adequate specificity in reporting on the capital commitments made by NS to the Commonwealth of Pennsylvania. In the control proceeding, NS committed to undertake the following capital investments in new and improved facilities within the Commonwealth:

1. NS Triple Crown Rail Terminal at Morristown, PA - \$10 million.
2. NS improvements to Greenwich Yard - \$5 million.
3. NS construction of a new automobile unloading facility near Philadelphia - Norristown - \$15 million.
4. NS construction of a new intermodal facility at Harrisburg, PA - \$40 million.
5. NS increased capacity on the Reading - Harrisburg Line - improved signaling and crossovers - \$10 million.
6. NS - Hollidaysburg, PA Car Shop capital improvements - \$4 million.



7. NS improvements at the Altoona Locomotive Repair Shops - \$63 million.
8. NS construction of a new locomotive repair shop in Beaver County, PA- \$30 million.
9. NS increased capacity at Pitcarin Yard Intermodal Facility at Pittsburgh, PA - \$5 million.
10. NS to establish staff regional and divisional operational headquarters in Pittsburgh, PA.
11. NS upgrading of Harrisburg, PA to Binghamton, NY Mainline.
12. NS relocation of NS mainline from 19<sup>th</sup> Street in Erie, PA.

The NS Report directly addresses only numbers 4, 5, and 12 but makes no mention of the status of the other listed capital improvements. Indeed, to date, NS, the City of Philadelphia and the Commonwealth of Pennsylvania have yet to execute an agreement regarding the development of the Philadelphia Naval Base Center which includes a provision for an intermodal facility at the AmeriPort International Terminal with a capital investment of approximately \$16 million. Moreover, rather than establish its regional divisional/operational headquarters in Pittsburgh, PA, those headquarters were moved to Philadelphia. In addition, NS has reported that it has commenced operations of a new intermodal facility constructed in Bethlehem which was not even listed in the capital commitments made to the Commonwealth in the control application. While this is a commendable project, we would like to confirm that it is in addition to, and not a substitute for other capital projects. NS has proceeded with the construction of the new intermodal facility at Rutherford Yard in Harrisburg, PA and is likewise increasing capacity on the Reading-Harrisburg-Philadelphia main line with improved signaling and crossovers. NS plans to relocate the NS main line from 19<sup>th</sup> Street in Erie, PA have been deferred pending further engineering studies.

However, the NS Report makes no mention of its commitment to a Triple Crown Terminal in Morrisville, PA, to the improvements in Greenwich Yard, to the construction of an automobile unloading center in the Philadelphia-Norristown area, to the capital improvements promised for the Hollidaysburg, PA Car Shop or the Altoona, PA Locomotive Repair Shops. Nor has NS made any comment regarding its commitment to construct new locomotive repair shops in Beaver County, increase the capacity of Pitcarin Yard Intermodal Facility or upgrade the Harrisburg, PA-Binghamton, NY line. All of these commitments were made by NS in connection with its pleadings in the control application proceeding and the Committee would be most interested to learn of the current status of those capital projects which NS failed to discuss its initial General Oversight Report.

With respect to the CSX Oversight Report, CSX lists the construction of a new merchandise facility in Philadelphia, PA and the construction of a new facility at Greenwich Yard but does not discuss its commitment to \$14 million for double stack clearances in Philadelphia or its commitment to assign car repair work to the Hollidaysburg and Altoona shops. The Committee would appreciate a short description of the implementation of these commitments on the part of CSX.

The House Transportation Committee Chairmen are also seriously concerned regarding the impact of NS implementation plans on short line railroads within the Commonwealth. In many cases, short lines have worked diligently with NS to assist in congestion problems on NS main lines and yards. Nonetheless, reports from various carriers indicate that delayed interchange, line congestion and shortages of NS locomotives and crews continues to disrupt and impede efficient rail service for shipments originated or terminated on short lines throughout the Commonwealth. In many cases, it appears that NS gives priority to its own main line trains and traffic leaving its short line connections to be



interchanged if and when crews and locomotives are available. As a consequence, short lines report the serious loss of traffic as well as delayed and lost shipments, which have resulted in diversions of rail traffic to truck and the loss of that traffic for both the short lines and NS. Moreover, short lines report to us that they are not getting timely payments from NS of freight and service revenues which cause serious cash flow shortages for these carriers. Finally, many short lines are reluctant to discuss these matters publicly for fear of economic or operational retaliation from NS local managers.

In other instances, NS has yet to implement various interchange agreements and access arrangements which would afford Commonwealth short lines competitive routing alternatives with other Class I carriers. While these are matters of primary concern to the respective parties involved, they ultimately impact on the rail service provided to Commonwealth shippers and on jobs of Commonwealth citizens. Accordingly, the House Transportation Committee urges NS to promptly implement interchange and access arrangements with Pennsylvania short lines which will facilitate efficient and timely interchange service and the establishment of competitive routing alternatives.

Finally, given its operational problems, NS appears to have lost its focus on growing rail business in the Commonwealth. Former Conrail employees report low morale due to recent layoffs and the top down management style utilized by NS which forces decisions to be made at higher executive levels stifling initiative and innovation at local management levels. Former Conrail employees report that NS managers assigned to Conrail properties are resistant to utilizing Conrail methods of decentralized management decision making and have told Conrail employees that "it is either the NS way or the highway." Vendors that supply Conrail in Altoona and other areas of Pennsylvania are finding it hard to get payments for work completed or supplies purchased during the Conrail transition process. NS

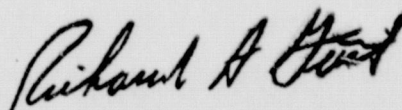


managers have been slow to respond to legislators who have raised these concerns with them.

Despite these failures, the Commonwealth of Pennsylvania has included in its most recent capital budget over \$300 million in funds to lay a third track on the NS main line from the Ohio line to Harrisburg, PA. Given this level of Commonwealth investment in the NS system, NS must honor its commitments to the Commonwealth and work more diligently to develop effective and cooperative partnerships with state government and Pennsylvania shippers and railroads.

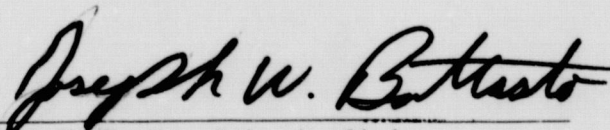
In conclusion, the House Transportation Committee Chairmen, speaking on behalf of our Committee, believe that continued oversight of this acquisition transaction by the STB is necessary and appropriate. Continued monitoring of NS and CSX service parameters should be maintained and the Board should continue to use its resources to assist affected parties in the resolution of arrangements arising as a result of this acquisition transaction. The Board must also continue to monitor carefully the commitments and protective conditions to which CSX and NS are subject and insure that these public interest obligations are fulfilled by the Applicants.

Respectfully submitted,



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Richard A. Geist, Chairman  
House Transportation Committee



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Joseph W. Battisto, Minority Chair  
House Transportation Committee

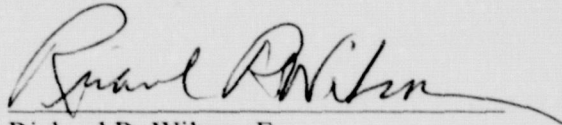
CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of July, 2000, a copy of the foregoing

Comments are hereby served by first class U.S. mail addressed as follows:

Richard A. Allen, Esq.  
Zuckert, Scour & Rasenburger, LLP  
888 17th Street, N.W.  
Washington, DC 20006-3939

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

A handwritten signature in cursive script, appearing to read "Richard R. Wilson", written in dark ink. The signature is fluid and extends to the right with a long, sweeping tail.

Richard R. Wilson, Esq.



**RICHARD R. WILSON, P.C.**

**Attorney at Law**

**A Professional Corporation  
1126 Eighth Avenue, Suite 403  
Altoona, PA 16602**

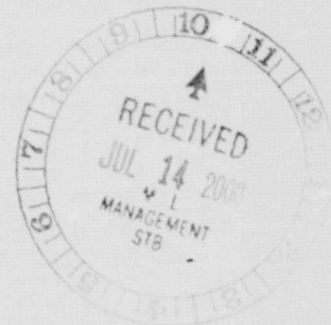
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rrwilson@mail.csrlink.net

Of Counsel to:  
Vuono & Gray LLC  
2310 Grant Building  
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(412) 471-1800  
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July 13, 2000

**VIA FEDERAL EXPRESS**

Office of the Secretary  
Surface Transportation Board  
Case Control Unit  
Attn: STB Finance Docket No: 33388 (Sub No 91)  
1925 K Street, N.W.  
Washington, DC 20423-0001



Re: STB Finance Docket No: 33388 (Sub No 91); CSX Corporation and  
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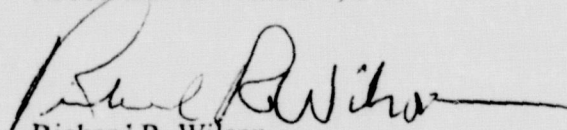
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Very truly yours,

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Richard R. Wilson

RRW/klh

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The Honorable Joseph W. Battisto



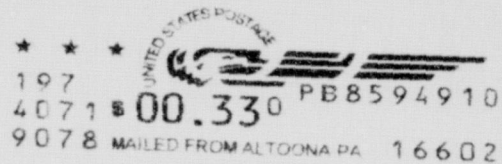
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Richard R. Wilson, P.C.

Attorney at Law

1126 Eighth Avenue, Suite 403

Altoona, PA 16602



Richard R. Wilson, P.C.  
1126 8th Ave., Suite 403  
Altoona, PA 16602

**RICHARD R. WILSON, P.C.**

**Attorney at Law**

**A Professional Corporation**

**1126 Eighth Avenue, Suite 403**

**Altoona, PA 16602**

(814) 944-5302

888-454-3817 (Toll Free)

(814) 944-6978 FAX

rrwilson@mail.csrlink.net

Of Counsel to:

Vuono & Gray LLC

2310 Grant Building

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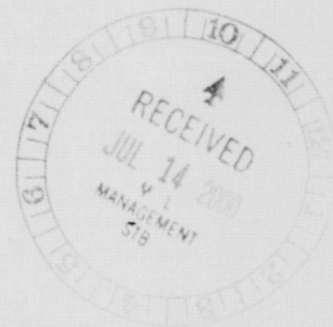
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Richard R. Wilson

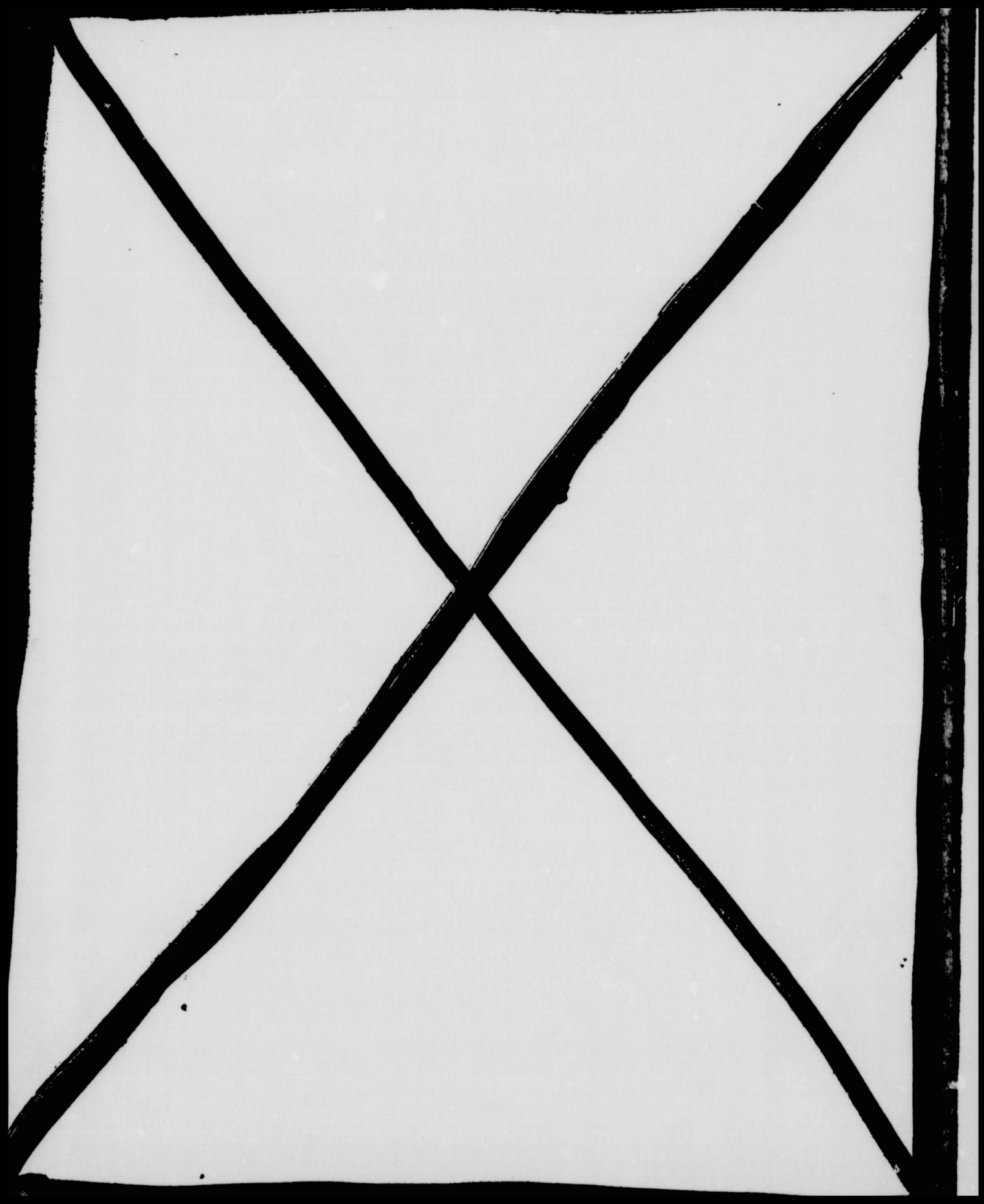
RRW/klh

Enclosures

xc: All Parties of Record

The Honorable Richard A. Geist

The Honorable Joseph W. Battisto





STB FD-33388 (SUB 91) 7-14-00 D 199264 1 OF 2

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET (NO. 33388 (SUB-NO. 91))

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  
(GENERAL OVERSIGHT)

COMMENTS OF  
CITY OF SANDUSKY, OHIO

Pursuant to Decision No. 1 in the above-entitled proceeding, served February 9, 2000, the City of Sandusky, Ohio ("Sandusky") submits its comments. As will be discussed, the Board's conditions on the Conrail transaction have been inadequate to protect Sandusky from serious negative consequences arising directly from that transaction.<sup>1/</sup> The inadequacy of the existing conditions stems, in part, from the fact that the Board's Environmental Impact Statement ("EIS"), at least insofar as it relates to Sandusky, was premised on incorrect data. Certain inadequacies also arise from Norfolk Southern Railway Company ("NS") practices not predicted by the EIS that give the operating convenience of the railroad a far higher priority than the fundamental needs of the City to, inter alia, keep its streets open and its sidewalks available to children walking to and from school.

Sandusky respectfully submits that the Board should engage in a further analysis resulting in the imposition of additional

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<sup>1/</sup> For purposes of these comments, Sandusky assumes that the impacts of the Conrail transaction should be measured from the so-called "Day 1", i.e. June 1, 1999.

mitigation conditions so as to alleviate, at the least, the most serious consequences of the Conrail transaction.

**I. THE BOARD'S EIS RELIED ON INCORRECT/INCOMPLETE DATA**

**A. The Line Segments Of Concern To Sandusky**

Two line segments currently owned and operated by NS are of concern to Sandusky. The first runs north-south between Bellevue, OH and Sandusky Docks, OH and was operated by NS prior to the Conrail transaction. This line crosses Tiffin Avenue (SR 101), Venice Road (SR-6), and Monroe Street in Sandusky. The second line segment, formerly operated by Conrail, generally runs east-west between Vermillion, OH and Oak Harbor, OH. This line crosses Huron Street, Olds Street, Tiffin Avenue<sup>2/</sup>, Edgewater Street, Pipe Street, Remington Street, Campbell Street, and Mills Street in Sandusky.

**B. The Bellevue To Sandusky Docks Line Segment**

According to the NS application, this line segment was used by 1.4 NS trains per day prior to the Conrail transaction.<sup>3/</sup> The

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<sup>2/</sup> Tiffin runs from the southwest to the northeast. Thus, it intersects with both NS lines traversing Sandusky.

<sup>3/</sup> CSX/NS-20 at 468. It is not altogether clear how NS calculated the train traffic over this segment. When Sandusky subsequently asked how many trains crossed Venice Road to reach Sandusky Dock, NS replied "Train movements to and from the Coal Dock are made within yard limits, and therefore considered to be switching movements and records are not maintained on such movements." January 7, 1999 letter from Wm. Charles Steuk, attorney for NS. Exhibit 1. Suffice it to say that it is no comfort to Sandusky to learn that its streets are being blocked by switching movements rather than through trains. If the purpose of the EIS was to determine, inter alia, the level of service (LOS) of Venice Road prior to and after the Conrail transaction, it should have considered all NS traffic over the road, not just the traffic NS categorizes as through trains.



NS application projected a post-acquisition train count of 5.9 trains per day.<sup>4/</sup> This projection was amended by NS late in the proceeding because of a change in the location of a new intermodal (Triple Crown) facility.

Originally, NS proposed to relocate its intermodal facility north from Crestline, OH to Bellevue, OH.<sup>5/</sup> However, NS ultimately decided "to relocate the facility to an existing NS rail yard in Sandusky, OH."<sup>6/</sup> This resulted in a revision to the NS post-acquisition train count projection to 12.9 freight trains per day.<sup>7/</sup>

This April, 1998 change to the NS train count was reflected in the May, 1998 EIS, albeit without giving Sandusky any opportunity to submit comments. As explained in the EIS at 5-239, the increase in the NS train count from 1.4 to 12.9 trains

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<sup>4/</sup> CSX/NS-20 at 468.

<sup>5/</sup> October 31, 1997 letter from Bruno Maestri, System Director, Environmental Protection, NS, to the STB's Michael Dalton. Exhibit 2. It should be noted that Triple Crown trains moving to or from either Crestline or Bellevue would not pass through Sandusky.

<sup>6/</sup> Id. Actually, the new NS facility is located about 1/4 mile south of Sandusky on Old Railroad Road. Sandusky believes that this facility was opened during March, 1999.

<sup>7/</sup> April 8, 1998 letter from Mr. Maestri to Mr. Dalton. Exhibit 3. The basis for Mr. Maestri's projection is unknown. Prior to the creation of the intermodal facility, NS Triple Crown president Jim Newton was quoted as saying that thirty trains a week, i.e. 8.6 round trips per day, would use the facility. If this figure is added to the prior projection of 5.9 trains per day, the total would be 14.5 trains per day, not 12.9.

per day was expected to "increase the total blocked-crossing time from 5.9 minutes to 54.2 minutes per day."<sup>8/</sup>

Mr. Maestri also advised the Board that the Annual Daily Traffic count ("ADT") for Venice (SR-6) was 14,950.<sup>9/</sup> However, without comment, the EIS used an ADT of 4,400 for Venice.<sup>10/</sup> This was an error. Sandusky's June, 1999 and June, 2000 counts of vehicles on Venice Road were 14,670 and 14,560 vehicles per day respectively, virtually identical to Mr. Maestri's figure.

Even assuming, arguendo, that the ADT used by the EIS was correct, its use masks the real-world impact of NS operations on Sandusky. Sandusky Bay is located within the city and attracts approximately 5,000,000 summer visitors. Sandusky also is the home of the Cedar Point recreational facility which has approximately 3,500,000 visitors during the summer season. Accordingly, using an ADT to measure the impacts of train traffic on Sandusky does not constitute the requisite "hard look" at Sandusky's problems. To the contrary, it masks those problems by pretending that Sandusky's high summer traffic counts do not exist.

A second use of averages also prevented the EIS from properly reflecting the impact of NS operations on Sandusky. That is, the north-south line, i.e. the Bellevue to Sandusky

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<sup>8/</sup> As will be discussed, this projection was woefully understated.

<sup>9/</sup> Maestri 1997 letter at 3.

<sup>10/</sup> EIS, Volume 6B at E44.



Docks line segment, is used for coal trains originating and terminating at the NS docks in Sandusky. Just as Sandusky street traffic is heaviest during the summer, the NS coal dock operation is seasonal, shutting down when lake conditions require.<sup>11/</sup>

The EIS also erred by calculating the impact of the proposed NS operations with the assumption that NS trains would cross Sandusky's streets at the maximum speed allowed by the Federal Railroad Administration ("FRA"), i.e. 15 miles per hour ("MPH"). Even assuming, arguendo, that it ever makes sense to assume that a railroad will operate its trains at an average speed equal to the maximum speed permitted by the FRA, it is clear that the EIS's assumption was in error as it relates to train operations through Sandusky. These trains frequently stop for twenty to twenty-five minutes at the Venice Road crossing and, when they are moving, typically average approximately 5 MPH.<sup>12/</sup>

In order to shed some light on the speed issue, Sandusky first set up surveillance cameras at Venice Road between 11/23/99 and 11/30/99 and again between 1/4/00 and 1/21/00.

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<sup>11/</sup> See the December 9, 1998 letter from Wm. Charles Steuk, attorney for NS, which notes the seasonal use of the docks and the fact that, during peak utilization, the docks will receive up to eight trains a day and will return up to seven trains per day. Exhibit 4.

<sup>12/</sup> The December 9, 1998 Steuk letter asserts that NS operates at a speed of 10 MPH at Venice Road. Sandusky's experience is that NS never operates at 10 MPH at Venice Road, let alone averages that figure. However, even if Mr. Steuk is correct, the EIS assumed that NS would be operating fully 50 percent faster than even NS now claims.



During the November period, the NS coal trains, 65% of the trains viewed, took, on average, 5.4 minutes to cross Venice Road. The non-coal, non-Triple Crown movements, 13% of the movements viewed, took, on average, 1 minute to cross Venice Road. In stark contrast, the new Triple Crown trains, the remaining 22% of the trains viewed, took, on average, 15.2 minutes to cross Venice Road. On average, all of the NS trains and switching movements took fully seven minutes to cross Venice Road.<sup>13/</sup>

During the January period, the NS coal trains were 58% of the total and averaged 5.9 minutes to cross Venice Road. The non-coal, non-Triple Crown trains were 8% of the total and averaged 0.4 minutes to cross Venice Road. The new Triple Crown trains, 34% of the total, averaged 12.5 minutes to cross Venice Road. On average, the NS trains took 7.7 minutes to cross Venice Road.

The results of Sandusky's November, 1999 and January, 2000 analysis actually may understate the impacts of NS operations on Venice Road. During the period between January 29, 2000 and March 19, 2000, the average NS train took 9.8 minutes to cross

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<sup>13/</sup> As noted supra, the EIS assumed that the claimed 12.9 trains would block Venice Road for a total of 54.2 minutes per day, i.e. an average of 4.2 minutes per train. If this figure includes 0.67 minutes for gate down and up time, then the EIS must have assumed that NS trains would take, on average, 3.53 minutes to cross Sandusky's streets. As demonstrated, this is one-half the actual average for all NS trains and is about one-quarter the average for the new Triple Crown trains.

Venice Road. The average Triple Crown train took fully 13 minutes to cross Venice Road.

Similarly, during the period between May 26, 2000 and June 5, 2000, the average NS train took 8.8 minutes to cross Venice Road and the average Triple Crown train took fully 12.4 minutes to cross Venice Road.

It must be emphasized that these times do not fully measure the impact of NS trains on Venice Road traffic. Sandusky's cameras determined the amount of time taken by NS trains to cross the street. However, the cameras did not measure the time that gate arms take to come down and return to the upright position. As the Board knows, this would add approximately 40 seconds of street blockage per train.

Even without counting this "gate down and up time", Sandusky's experience is far different from what the EIS predicted. As noted above, the EIS assumed that Sandusky's streets would be blocked, on average, 54.2 minutes per day. However, Sandusky's videotapes of NS trains establish the following total blockages of Venice Road by NS trains (again excluding gate down and up time).

**TIME TAKEN TO CROSS VENICE ROAD<sup>14/</sup>**

<u>Date</u>	<u>Blockage</u>
5/26/00 weekday	119 minutes
5/27/00 weekend	109 minutes
5/28/00 holiday weekend	20 minutes
5/29/00 holiday	23 minutes

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<sup>14/</sup> The 24-hour periods measured commence at 10:00 a.m. on the day listed and end at 9:59 a.m. on the following day.



5/30/00	weekday	119 minutes
5/31/00	weekday	73 minutes
6/01/00	weekday	93 minutes
6/02/00	weekday	132 minutes <sup>15/</sup>
6/03/00	weekend	47 minutes
6/04/00	weekend	85 minutes

As may be seen from this table, even without including gate down and up time, NS trains blocked Venice Road an average of 82 minutes per day during this ten-day period, over 50 percent more than the EIS predicted. If weekends and holidays are eliminated, the average rises to 107.2 minutes, almost double the amount predicted by the EIS.<sup>16/</sup>

It is also important to note that Norfolk Southern's traffic pattern for its new Triple Crown trains does not conform to an assumption underlying the EIS's LOS analysis. These trains are not spread evenly throughout the day. To the contrary, during the May 26th to June 5th period, fully 93 percent of the new NS Triple Crown trains were passing over Venice Road between the hours of 8:00 a.m. and 9:00 p.m. Moreover, during this period, fully 68 percent of the new NS Triple Crown trains were passing over Venice Road between 11:00 a.m. and 6:00 p.m. In other words, the manner in which NS is conducting its operations maximizes the adverse impact of those operations on Sandusky.

In light of these facts, it is clear that the EIS was not remotely accurate in predicting the impact of the new NS Triple

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<sup>15/</sup> Due to a camera malfunction, this is an understated total that does not include two southbound coal trains.

<sup>16/</sup> See note 15, supra.



Crown trains on the Sandusky portion of the north-south, Bellevue to Sandusky Docks, line segment.

C. The Vermillion To Oak Harbor Line Segment

Prior to the Conrail transaction, this east-west line segment was owned by Conrail and was used by 52.3 trains per day.<sup>17/</sup> The NS application projected a post-acquisition train count of 40.2 trains per day.<sup>18/</sup> In light of this projection, it appears that the EIS did not consider this line segment. There are three errors in this approach.

First, the EIS's reflection of the environmental impacts of a new Triple Crown facility just south of Sandusky should not have been limited to the NS north-south route.<sup>19/</sup> These trains do not remain on that route. Rather, Triple Crown trains move north from the intermodal facility, cross Tiffin Avenue at a snail's pace<sup>20/</sup>, and then either move onto the east-west

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<sup>17/</sup> CSX/NS-20 at 462.

<sup>18/</sup> Id.

<sup>19/</sup> Sandusky assumes that the EIS's consideration of the impact of the new intermodal facility was limited to the Bellevue to Sandusky Docks segment as a result of Mr. Maestri's April 8, 1998 letter which asserted that to be the only affected line segment. Clearly, Mr. Maestri was in error. Sandusky's January 30, 1998 comments on the DEIS, which specifically raised questions as to the impact of the new intermodal facility on the east-west tracks to be acquired by NS, appear to have been ignored.

<sup>20/</sup> See supra. The fact that the NS coal trains and Triple Crown trains both operate over the same north-south line means that Venice Road and/or Tiffin Avenue may be blocked by Triple Crown trains within minutes of being blocked by coal trains. By way of example, on June 5, 1999, just four days after "Day 1", a Triple Crown train and a coal train passed through Tiffin Avenue so closely in time that the traffic gates never went up between the  
(continued...)

mainline, thereby blocking Venice Road (SR-6), or remain on the parallel east-west siding which also crosses Olds, Huron, and Mills. Thus, the EIS should have reflected the impact of the Triple Crown trains on the east-west track, connecting track, and siding.

Second, even assuming that the NS train count estimate for the east-west line was accurate<sup>21/</sup>, the EIS should have reflected a reasonable estimate of the train speeds of the new Triple Crown traffic on the east-west route. According to Sandusky's surveillance camera, NS trains (other than Triple Crown trains) operating on the mainline typically take 2.8 minutes to cross Mills Street. In contrast, Triple Crown trains crossing between the NS north-south and east-west lines move at a snail's pace, 0-5 MPH, when they move at all. As a result, the average Triple Crown train takes 10.4 minutes to cross Mills Street. In other words, in terms of their impact on street traffic, each Triple Crown train has the impact of approximately four non-Triple Crown train.

The slow speeds of the Triple Crown trains in Sandusky result, in part, from the fact that the NS trains are either entering or exiting the new intermodal facility. These slow

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<sup>20/</sup> (...continued)

two trains. Tiffin Avenue was blocked for approximately seventeen minutes.

<sup>21/</sup> Sandusky used a surveillance camera at the Mills Street crossing from November 9, 1999 at approximately 2:30 p.m. to the same time on November 15, 1999. During that period, NS trains crossed Mills Street 50 times per day, not the 40.2 projected by NS.



speeds also result from the tight turning radius between the north-south and east-west lines.<sup>22/</sup> This has a substantial impact on Sandusky's streets, particularly Venice and Mills.

Prior to leaving this subject, it must be noted that a number of the instances of NS trains blocking Sandusky since Day 1 result from the inadequacy of NS facilities. NS airbrake lines break in Sandusky due to a poor design of the railroad. NS is aware of this fact, but has not fixed it. Consider the following from Sandusky police report SP-00-10489, dated May 9, 2000 (Exhibit 6),

... I was advised by Dispatch that the s/b train had broken down and was blocking several intersections on the west side of town.

Ofc. rechecked Venice Rd, and found the intersection to be blocked by a series of Triple Crown trailers. Ofc. checked further and found that the engine, #8491, was s/b at Tiffin Ave., and had come to a stop just south of the Tiffin Ave., intersection. This caused the gates to be down at the Tiffin Ave. crossing also.

Ofc. boarded the train and spoke with Garrison, who was in the engine compartment. Ofc. attempted to ascertain from Garrison what caused the break down. Garrison advised a air line had busted, and was in the process of being repaired. Garrison was asked how long the train was, to which he replied approximately 1 mile long. As Ofc. spoke with Garrison radio traffic could be heard stating that the repairs had been completed, and that as soon as air pressure was up he could move the train. Due to this Ofc. could not go to the location where the repairs were taking place. Garrison advised the Conductor of the train would be coming back to this location, and Ofc. could speak with him if anything further was needed. Pressure was restored to the engine and the train began to move.

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<sup>22/</sup> According to the Sandusky Police Department report of the July 7, 2000 derailment in Sandusky, the NS employee interviewed at the scene attributed the derailment to the train going too fast "around the corner." Exhibit 5.



Ofc. later spoke with Hartswick, who was the conductor. He advised that a air line had busted towards the end of the train. Hartswick had a repair man for Norfolk and Southern with him. Hartswick and the repair man advised the problem arises from the air lines being too short. Both advised there is a section of track west of Mills St. where the train makes a sharp turn. Because the air lines are too short, they get stretched as the train makes the turn, and often snap. They then have to build up pressure, before they can move the train. Both Hartswick and the repair man stated they have advised Norfolk and Southern of the problem, and have been trying to get them to extend the air lines on the cars... (underscoring supplied)

Reduced to its essentials, this means nothing less than Norfolk Southern is knowingly operating its equipment in a manner that causes it to break down within Sandusky. This fact also should be reflected in revised mitigation measures.

Finally, the EIS should have reflected the impact on Sandusky, its street traffic, and its pedestrian traffic resulting from the fact that NS intermodal traffic moving to and from its new intermodal facility via its new east-west line frequently cannot move between the north-south line and the east-west line without being parked on the NS siding. These impacts, principally on children whose route to the Mills (elementary) school is blocked by NS trains parked on the siding, will be addressed infra.

## II. THE CAUSES OF OTHER TRAFFIC IMPACTS

In addition to their failure to accurately address the above-discussed impacts of the Conrail transaction on highway users in Sandusky, the EIS and the Board's subsequent order also did not predict other instances of NS's inability or unwillingness to maintain its equipment located in Sandusky and

its trains passing through Sandusky following the Conrail transaction.

Two points should be noted at the outset of this discussion. First, contrary to Sandusky's expectations, the FRA's interest in the operation of crossing protection equipment is not universal. That is, while the FRA requires railroads to submit information as to crossing protection malfunctions when that equipment fails to warn street traffic of an oncoming train, i.e. "activation failures"<sup>23/</sup>, the FRA does not even require information submittals from railroads relating to equipment failures of the type frequently occurring in Sandusky, i.e. crossing protection lights and/or gates being activated when no train is coming or trains breaking down in the middle of grade crossings.<sup>24/</sup>

Second, while Sandusky is able to document a large number of cases in which its streets were blocked by NS, either as a result of crossing protection malfunctions, train breakdowns, or derailments, the list below is certainly not complete.<sup>25/</sup> Rather, it is limited to incidents reported to the Sandusky police.

The recurring NS equipment failures listed below nonetheless have a substantial impact on the human environment in addition to

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<sup>23/</sup> On June 19, 2000, Sandusky advised the FRA of just such activation failures since Day 1, particularly the recurring failures at Mills. Exhibit 7.

<sup>24/</sup> See FRA's June 2, 2000 letter. Exhibit 8.

<sup>25/</sup> This listing terminates in early June, 2000. However, it should be noted that, as recently as July 7, 2000, an NS train derailed, blocking Venice, Olds and Mills for several hours.



the blockages of Sandusky's streets caused by NS trains that actually move. Street traffic, including emergency service provider traffic, is delayed, business becomes more difficult to attract and, ultimately, someone used to such failures will attempt to drive around gates and will be killed.

POST DAY 1 BLOCKAGES OF  
TIFFIN, VENICE AND MILLS BY NS<sup>26/</sup>

<u>STREET</u>	<u>DATES</u>
TIFFIN	6/28/99 T
	7/17 T
	7/26 T
	7/28 T
	8/13 T
	9/1 T
	10/4 T
	10/5 T
	10/15 T
	10/18 T
	10/20 G
	10/29 D
	11/4 T
	11/10 T
	12/2 T
	12/9 T
	12/16 T
	12/17 T
	1/15/00 T
	1/21 T
	2/10 G
	2/11 T
	2/12 T
	2/19 T
	2/22 T
	3/29 T
	4/6 T
	4/7 T
	4/14 T
	5/9 T
	5/28 G

<sup>26/</sup>

"T" = streets blocked by a train stopped in the crossing.  
"G" = streets blocked by a signal malfunction, i.e. gate  
arms down when no train is coming.  
"D" = street blocked by a derailment.



	5/31	T	
	6/5	G	
VENICE	6/2/99	G	
	6/29	G	
	8/11	T	
	8/24	T	
	8/26	T	
	9/11	T	
	9/11	G	
	9/29	T	
	10/1	T	
	10/6	T	
	10/14	T	
	10/15	T	
	10/16	T	
	10/17	T	
	10/20	G	
	10/21	G	
	10/28	T	
	10/28	G	
	10/29	D	
	11/4	T	
	11/10	T	
	12/2	T	
	12/9	T	
	12/16	T	
	12/17	T	
	12/28	G	
	1/11/00	T	
	1/21	T	
	2/3	T	
	2/11	T	
	2/16	T	
	2/20	T	
	3/2	T	
	3/29	T	
	4/6	T	
	4/18	T	
	5/9	T	
	5/16	G	
	5/18	T	
	5/25	T	
	5/25	G	
	5/31	T	
MILLS	6/5/99	G	
	6/7	T	
	6/24	G	(twice in one day)
	6/25	T	
	6/28	G	(twice in one day)
	7/27	G	

7/28	G	
7/29	T	
7/30	G	
7/31	G	
8/6	G	
8/12	T	
8/28	T	
9/11	T	
10/8	C	
10/9	T	
10/17	G	(twice in one day)
10/21	G	
10/26	T	
10/29	D	
11/9	T	
11/30	G	
12/1	G	
12/2	T	
12/5	G	
12/6	D	
12/6	G	
12/16	G	
12/20	G	
1/7/00	T	
1/26	G	
2/3	T	
2/9	T	
2/22	T	
3/2	T	
4/6	T	
6/4	G	

In addition to the above-listed incidents, approximately three per month at each of Tiffin, Venice, and Mills, Sandusky police reports reflect approximately fifty cases of other Sandusky streets being blocked by NS between June 1, 1999 and early June, 2000 due to NS equipment failures of one kind or another.

### III. MILLS SCHOOL IMPACTS

The Mills School is located at 1918 Mills Street, 0.34 miles south of the NS siding. It serves 355 students in grades 5 and 6.

Currently, NS interferes with Mills Street in three ways. Its east-west mainline crosses Mills Street, its tracks between its east-west mainline and its north-south mainline cross Mills Street, and it also has a siding that crosses Mills Street.

NS trains frequently use the siding blocking Mills Street. NS does so without regard to the time of day, i.e. without regard to whether the trains interfere with children walking to or from school.

When NS trains are blocking Mills Street, pedestrians, including Mills School students, have very few options. Given that NS trains normally are on the siding for between nine and eighteen minutes, pedestrians can wait, frequently in cold weather, an unknown period for the train to clear the intersection; they can walk around the train (Sandusky's Department of Engineering Services reports that the next available crossing is at Camp Street), which adds 0.74 miles to their walk; or they can attempt to climb through the train.

While climbing through trains is an obvious safety risk in any case, it must be noted that NS makes this particularly hazardous. That is, on information and belief, NS does not "stop" its trains for extended periods on this siding because to do so would violate ordinances prohibiting trains from blocking streets. Rather, NS "inches" its trains forward in order to avoid being fined for "stopping" on crossings. NS's success with this semantic game violates the spirit, if not the letter, of the



law, and creates substantial inconvenience and safety risks in Sandusky.

Because some children are likely to attempt to walk through the train if they are not supervised, Sandusky has been forced to hire school crossing guards for this location at a cost of approximately \$32,500 annually. While these crossing guards have been successful in preventing children from crawling through the NS trains (at least at the Mills Street location), their hours are limited to the periods immediately before and after school opening and closing times.

Despite requests from Sandusky, NS continues to block Mills Street and it has refused to reimburse Sandusky for the cost of the crossing guards.

#### **IV. ADDITIONAL HEALTH AND SAFETY IMPACTS**

Sandusky has been placed at risk by the delays to emergency service providers blocked by NS trains. Prior to listing recent reported incidents<sup>27/</sup>, it should be noted that when the crossing at Venice Road is blocked, the shortest secondary route would be to backtrack to Tiffin Avenue, approximately one-half mile. However, Tiffin frequently is blocked at the same time as Venice. This forces the equipment to detour to Route 2, west, exiting at Route 6. This detour adds 7.48 miles.<sup>28/</sup>

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<sup>27/</sup> It should be emphasized that emergency service providers do not typically maintain records when they are blocked by NS trains. Thus, the listed incidents are not a complete record of these events.

<sup>28/</sup> The underpass at Miller Road and Old Railroad isn't high enough for a fire vehicle.

The Sandusky Division of Fire reports that it averages approximately 200 fire and EMS responses in the area west of the railroad tracks. Even though Sandusky attempted to deal with the impact of the historic level of NS train operations by constructing its Venice Road Fire Station east of the tracks in 1969, its fire department still experiences train-related delays.

Until April of this year, the fire department did not document incidents in which its equipment is delayed by NS operations. However, it reports the following delays since the Conrail transaction's Day 1.

1. June 24, 1999. Incident # 1284-A. A man was ill. CPR was in progress. The response to a 911 call was blocked by a train at three crossings.

2. September 29, 1999. Fire equipment was blocked at the Venice Road crossing.

3. April 4, 2000. Incident # 00-007027. Fire equipment was delayed at Edgewater as it was responding to a reported fire.

3. April 29, 2000. Incident # 280. A fire alarm was activated at Providence Hospital. The response was blocked for nine minutes at the Venice Road crossing.

4. May 11, 2000. Incident #00-009898. A woman was ill and unresponsive. EMS was blocked by a train at Venice Road.

5. May 17, 2000. Incident #00-009946. A woman was ill. EMS was blocked by a train at Venice Road for approximately four minutes on the way to the hospital.



6. May 25, 2000. Incident #00-009995. A woman with a history of cardiac and diabetes problems was ill. EMS was delayed at the Venice Road crossing for three minutes on its way to the hospital with the patient.

7. June 1, 2000. The Sandusky videotapes show a Sandusky ambulance blocked for two minutes on Venice Road.

8. June 4, 2000. Incident #00-010067. Structural fire. Venice and Tiffin Avenues were blocked by a coal train. Fire equipment was rerouted to Monroe Street.

The City's Division of Police also has been negatively impacted by the Conrail transaction. The police department has only one station, located in the east end. However, the City complex for servicing city vehicles, including refuelling vehicles, is in the west end. Obviously, railroad-related delays to police vehicles moving to or from the City complex creates public safety risks.

Sandusky police reports indicate that its personnel were delayed by a trains blocking Mills Street on June 7, 1999 and June 4, 2000. Its personnel were delayed by trains blocking Venice Road on August 24, October 9, and December 28, 1999.

On May 3, 2000, both police and fire personnel were delayed by a train blocking Venice.

On June 7, 2000, a police officer was blocked first at Venice Road and then at Edgewater Ave. on the way to an incident. The officer did not arrive at the incident until 28 minutes after receiving the call.



On June 11, 2000, a police officer was blocked by a train at Edgewater while responding to a call.

Sandusky police reports also note that the twenty-five minute NS blockage of Tiffin Avenue on April 7, 2000 prevented Ohio Edison from responding to a report of a downed electrical wire which had caused a grass fire.

There is a fourth category of safety risks. As discussed, NS refuses to maintain its crossing gates in an adequate manner. Thus, Sandusky-area motorists have become used to the idea that NS gates malfunction and a few of them have taken the chance and gone around the gates. Ultimately, this will lead to an accident.

#### **V. WEST-END DEVELOPMENT**

For purposes of these comments, Sandusky will define its west end as property lying to the west of the NS north-south line. Development in the west end has been particularly affected by the Conrail transaction.

By way of example, the Sandusky Public Schools were scheduled to move their bus garage and bus offices to the new City Service Complex. However, during the Fall of 1998, the school system declined to make the move because of the serious problems which would result from the frequently blocked crossing at Venice Road.

For the same reason, Sandusky's Department of Community Development has had great difficulty marketing the forty-five acre business park it created in the west end. It reports that

[good roads and close highway access] are meaningless if trucks cannot easily get to them due to constant interruptions by trains crossing pavement on major transportation arteries. Fully infrastructured sites, with correct zoning and attractive pricing are difficult to sell if the business location is considered unsafe for employees and customers.

Sandusky distributed a survey form to its major area factories and business during November, 1999, to learn their view of the impact of NS operations on their businesses. Given three choices to the question "what effect if any does the railroad traffic in the west end have on your business", i.e. "none at all", "hinders it somewhat", and "hinders it a lot", Sandusky received the following responses.

Did not answer question:	1
Said "none at all":	1
Said "hinders it somewhat":	9
Said "hinders it a lot":	11

#### **VI. ENVIRONMENTAL JUSTICE**

As reflected in Sandusky's January 30, 1998 comments on the DEIS, Sandusky has "Impacted City Status" with 53 percent of its population in the low to moderate income level and a significant (23 percent) minority population. Moreover, as reflected on the census map, fully 26.1 percent of Sandusky residents near the intersection of the NS north-south and east-west tracks are living below the poverty level. Exhibit 9. This disadvantaged population should not be, but has been, required to bear a disproportionate share of the adverse environmental consequences of the Conrail transaction.



**CONCLUSION**

As demonstrated herein, the environmental mitigation mandated by the Board as part of its approval of the Conrail transaction has been inadequate to protect Sandusky. This failure stems from the use of both erroneous and inadequate information. A supplemental analysis should be conducted to address each of the matters raised in these comments.

Respectfully submitted,

**CITY OF SANDUSKY, OHIO**

By: 

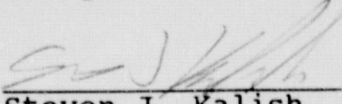
Steven J. Kalish  
McCarthy, Sweeney  
& Harkaway, P.C.  
Suite 600  
2175 K Street, N.W.  
Washington, D.C. 20037  
202-393-5721

Its Attorney

Dated: July 14, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have, this 14th day of July, 2000, served copies of the foregoing by first class mail, postage prepaid, upon (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, D.C. 20004-1202 and (2) Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, LLP, 888 17th Street, N.W., Washington, D.C. 20006-3939.

  
Steven J. Kalish

G:\steve\sancom.fat





# FLYNN, PY & KRUSE

A LEGAL PROFESSIONAL ASSOCIATION

OTTAWA COUNTY OFFICE:  
115 WEST PERRY STREET  
PORT CLINTON, OHIO 43452  
TELEPHONE (419) 734-3174  
TELECOPIER (419) 734-3175

165 EAST WASHINGTON ROW  
SANDUSKY, OHIO 44870

TELEPHONE (419) 625-8324  
TELECOPIER (419) 625-9007

JAMES F. FLYNN (1887-1963)  
JOHN R. PY (1908-1969)  
RICHARD R. KRUSE (1910-1997)  
RAYMOND N. WATTS, RETIRED

MELVYN J. STAUFFER  
WM. CHARLES STEUK  
CHARLES W. WATERFIELD  
JOHN D. PY  
JOHN A. COPPELER  
JOHN E. ROSINO  
JAMES W. HART\*  
MARY JANE S. HILL  
CHRISTOPHER M. MARINKO  
WM. R.S. STEUK

\*ALSO LICENSED IN TEXAS

January 7, 1999

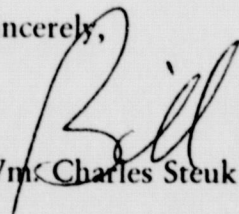
Mr. Steve Kalish  
McCarthy, Sweeney & Harkaway  
1750 Pennsylvania Ave. N.W.  
Washington D.C. 20006

Dear Steve:

This information is provided in response to the request concerning the Venice Road crossing in Sandusky, Ohio.

Train movements to and from the Coal Dock are made within yard limits, and therefore considered to be switching movements and records are not maintained on such movements.

Sincerely,

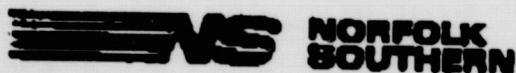


Wm. Charles Steuk

WmCS/erk/1-7Kalish







Norfolk Southern Corporation  
1500 K Street, N.W., Suite 375  
Washington, D. C. 20005  
202 383-4166  
202 383-4425 (Direct)  
202 383-4018 (Fax)

Bruno Maestri  
System Director  
Environmental Protection

**ADMINISTRATIVELY CONFIDENTIAL**

Washington D.C. - October 31, 1997

**BY HAND**

Mr. Michael Dalton  
Surface Transportation Board  
Section of Environmental Analysis  
1925 K Street, N.W.  
Washington, D C 20423-0001

Re: Finance Docket No 33388: CSX and NS — Control and Acquisition of Conrail  
Subject: Updated Information on Impacts at Sandusky and St. Louis Intermodal Facilities

SEA #: NS-V-0009

Dear Mr. Dalton:

On October 10, 1997, we submitted a letter (# NS-R-0004) in response to Bill Novak's October 3, 1997 request for more information on several intermodal facilities. For two of the facilities, Bellevue and St. Louis, NS's plans had changed since the submission of the Application, resulting in changes in the potential environmental impacts. This letter provides the updated information on those potential environmental impacts.

**Bellevue, Ohio Intermodal Facility**

As stated in the October 10, 1997 submittal, the relocation of the Crestline facility to Bellevue, as described in the ER, is no longer being considered. Current plans are to relocate the facility to an existing NS rail yard in Sandusky, OH. The access would be four miles north of Route 2 on Route 101. The estimated number of trucks at the new TCS facility is 71 per day. The environmental analysis for the new TCS facility in Sandusky is as follows and supersedes the Bellevue intermodal facility discussion presented in the ER.

Mr Michael Dalton  
October 31, 1997  
Page 2

### Sandusky, Ohio Intermodal Facility

#### Potential Environmental Impacts from the Proposed NS Intermodal Facility in Sandusky, Ohio

Intermodal Facility	County	Air Quality Status	Trucks per Day		Change in ADT on local roads (%)
			Pre- Acquisition	Post- Acquisition	
Sandusky	Enc	A	0	71	0.9 - 2.6

• A = Attainment

### Air Quality Impacts

#### Estimated Increases in Emissions for the Proposed NS Intermodal Facility in Sandusky, Ohio

Intermodal Facility	Estimated Increases in Emissions (tons per year)					
	NO <sub>x</sub>	CO	VOC	SO <sub>2</sub>	PM	Pb
Sandusky	0.88	1.56	0.21	0.09	0.33	0.000017

• NO<sub>x</sub> = nitrogen oxides, CO = carbon monoxide, VOC = volatile organic compounds, SO<sub>2</sub> = sulfur dioxide, PM = particulate matter, Pb = lead

### Noise Impacts

#### Estimated Noise Impacts of the Proposed NS Facility in Sandusky, Ohio

Intermodal Facility Location	Trucks per Day		Change in ADT on local roads (%)	Intermodal Yard	
	Pre- Acquisition	Post- Acquisition		Change in dBA	Approx. Dist. To 65 dBA Ldn Contour
Sandusky	0	71	0.9 - 2.6	U	73 feet

• U = Background unknown



Mr. Michael Dalton

October 31, 1997

Page 3

The Sandusky facility would be located on Huron Road in southern Sandusky. Truck transportation to the facility is via US-6, State Route 101 and State Route 2. The land use surrounding the planned location of the facility is predominantly industrial.

Post-Acquisition, this new facility would serve an estimated 71 trucks per day, resulting in a 0.9 - 2.6 percent increase in the ADT on local roads (see transportation impacts below). The activity at the facility is expected to cause an increase in noise levels at the property boundary; however, these increases cannot be determined because the background noise level is unknown. No noise-sensitive receptors would be within the 65 dBA Ldn contour for either pre- or post-Acquisition conditions. The additional truck traffic on local roads would not result in an increase of 2 dBA or greater.

#### Transportation Impacts

NS plans to relocate the Crestline TCS facility to an existing NS rail yard on Huron Road in Sandusky, OH. Truck transportation to the facility is via US-6, State Route 101, and State Route 2. Annual Daily Traffic (ADT) for the vicinity was obtained from the Ohio Department of Transportation and is as follows:

- US-6 - approximately 11,290 vehicles per day
- SR-101 - approximately 5,530 vehicles per day
- SR-2 - approximately 14,950 vehicles per day

Traffic counts reported are from data collected in 1992 and represent the average count for both directions.

Post-Acquisition, the Sandusky intermodal facility would serve approximately 71 trucks per day. The trucks were assumed to be distributed throughout a 24-hour day. The total daily increase of 142 truck trips represents about a 1.3 percent increase in ADT on US-6, a 2.6 percent increase in ADT on SR-101, and a 0.9 percent increase in ADT on SR-2. Such small increases in total traffic would have only a minor impact on transportation.

#### St. Louis, MO Intermodal Facility

At the time of the ER, NS planned to keep both the conventional NS and TCS St. Louis-Luther facilities at their current location on Hall Street. As a result of further planning, NS now proposes to keep the conventional intermodal facility at the current location and find a new location for the TCS facility. The specific location for the new TCS site has not yet been identified. The revised analysis for the current location is presented below.



Mr. Michael Dalton  
October 31, 1997  
Page 4

**Potential Environmental Impacts from Traffic Changes at the  
NS Intermodal Facility in St. Louis, Missouri**

Intermodal Facility	County	Air Quality Status	Trucks per Day		Change in ADT on local roads (%)
			Pre- Acquisition	Post- Acquisition	
St. Louis-Luther-NS, TCS*	St. Louis	N	188*	251*	0.2 - 10.4
<ul style="list-style-type: none"> <li>* Currently, the St. Louis site has both conventional and TCS intermodal facilities. Post-Acquisition, only the conventional (NS) facility would remain at the current location.</li> <li>* N = Nonattainment</li> </ul>					

**Air Impacts**

**Estimated Increases in Emissions for the  
NS Intermodal Facility in St. Louis, Missouri**

Intermodal Facility	Estimated Increase in Emissions (tons per year)					
	NOx	CO	VOC	SO <sub>2</sub>	PM	Pb
St. Louis-Luther-NS	3.04	5.42	0.73	1.33	1.14	0.0001
<ul style="list-style-type: none"> <li>* NOx = nitrogen oxides, CO = carbon monoxide, VOC = volatile organic compounds, SO<sub>2</sub> = sulfur dioxide, PM = particulate matter, Pb = lead</li> </ul>						

**Noise Impacts**

**Estimated Noise Impacts of the St. Louis, Missouri NS Intermodal Facility**

Intermodal Facility Location	Trucks per Day		Change in ADT on local roads (%)	Intermodal Yard	
	Pre- Acquisition	Post- Acquisition		Change in dBA	Approx. Dist to 65 dBA Ldn Contour
St. Louis-Luther-NS, TCS*	188*	251*	0.2 - 10.4	< 2	—
<ul style="list-style-type: none"> <li>* Currently, the St. Louis site has both conventional and TCS intermodal facilities. Post-Acquisition, only the conventional (NS) facility would remain at the current location.</li> <li>* -- = Not applicable</li> </ul>					

Mr. Michael Dalton  
October 31, 1997  
Page 5

Currently, the St. Louis-Luther conventional intermodal and TCS facilities are at the same location and serve 188 trucks per day. Post-Acquisition, the conventional intermodal facility would stay at the current location and serve 251 trucks per day. The TCS facility would be moved to a new site. The NS St. Louis-Luther intermodal facilities are on Hall Street in North St. Louis. Truck transportation to the existing St. Louis facility is via I-70, East Carrie Avenue and Hall Street. The land use around the facility is predominantly urban commercial and industrial.

The increases in noise levels from the intermodal trucks and cranes at the facility would not exceed the impact criterion of 2 dBA at the property boundary, therefore no further noise analysis was performed. The additional truck traffic on local roads would not result in an increase greater than 2 dBA.

#### Transportation

The NS St. Louis-Luther intermodal facility is on Hall Street in North St. Louis. Trucks access the facility via I-70, E. Carrie Avenue and Hall Street. The Average Daily Traffic (ADT) for the vicinity of the St. Louis-Luther facility was obtained from the Missouri State Highway Department and is as follows.

- I-70 - approximately 60,304 vehicles per day
- East Carrie Avenue - approximately 1,211 vehicles per day

Traffic counts reported represent the average count for both directions. Traffic data was not available for Hall Street.

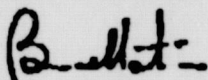
Post-Acquisition, truck traffic at the current location of the St. Louis intermodal facility would increase by 63 trucks per day. The total daily increase of 126 truck trips represent about a 0.2 percent increase in ADT on I-70, and about a 10.4 percent increase in ADT on East Carrie Avenue. The estimated ADT is higher than 10 percent on East Carrie Avenue; however, because East Carrie Avenue is a side street in an industrial area, the increased truck traffic on East Carrie Avenue would not impact local traffic flows.



Mr. Michael Dalton  
October 31, 1997  
Page 6

Please contact me or Julie Sanford at Burns & McDonnell if you have questions on this  
submittal or other needs in this area

Sincerely yours,



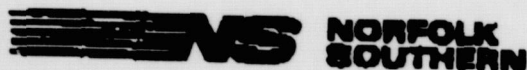
Bruno Maestri  
System Director  
Environmental Protection

cc. John Morton  
Bill Novak  
Steve Lee  
Constance A. Sadler  
Andrew R. Plump  
Carl Gerhardstein  
Mary Gabrielle Sprague

J A Allman  
C J. Wehrmeister  
W J Harris  
A G Jordan  
R L Crawford  
J Sanford  
S Burrows







Norfolk Southern Corporation  
1500 K Street, N.W., Suite 375  
Washington, D. C. 20005  
202 383-4188  
202 383-4425 (Direct)  
202 383-4018 (Fax)

Bruno Mascini  
System Director  
Environmental Protection

**ADMINISTRATIVELY CONFIDENTIAL**

Washington D.C. - April 8, 1998

**BY HAND**

Mr. Michael Dalton  
Surface Transportation Board  
Section of Environmental Analysis  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Re: Finance Docket 33388: CSX and NS - Control and Acquisition of Conrail:

Subject: NS Proposed Sandusky, Ohio Triple Crown Services Facility -  
Update on Truck Traffic Routing and Train Traffic Routing

SEA#: NS-R-00041

Dear Mr. Dalton:

This letter provides an update and changes regarding truck traffic routing and train traffic routing to our planned Triple Crown Services facility in Sandusky, Ohio. NS engineers are progressing plans for the facility and have incorporated some improvements.

Regarding truck routing, this letter updates and amends information provided in my October 31, 1997 letter (NS-V-0009) to you and my March 3, 1998 letter (NS-R-0029) letter to you. In order to improve the efficiency of local road transportation systems and truck access, the truck route to the facility has been revised. The entrance/exit is now proposed to be on Railroad Road, which parallels the yard to the east. A truck leaving the facility headed for SR 2 or the Turnpike would go north on Railroad Road to Perkins Avenue, turn right on Perkins to SR 4, and then turn right on SR 4 to SR 2 or the Turnpike. Tiffin would not normally be a truck route to the facility. NS engineers have discussed these plans with both the city and county engineers.

Regarding train traffic routing, this letter updates and amends my April 3, 1998 letter (NS-R-0040) to you. Please disregard the routing information in that letter. The following line

segments will not experience a change in train counts, MGT or HazMat traffic as a result of locating the TCS facility in Sandusky rather than Bellevue:

N-467	Bellevue to Fort Wayne
N-041	Butler to Fort Wayne
N-303	Airline to Butler
N-086	Miami to Airline
N-077	Oak Harbor to Miami
N-294B	Sandusky Dock to Oak Harbor

Only one line segment will be affected by operation of the TCS facility in Sandusky - 1.2 additional trains (above the count in the DEIS) will be routed over N-085 Bellevue to Sandusky Docks. The information in the DEIS should be changed as follows:


ID#	Segment Description	Freight Trains/Day		MGT	
		Pre	Post	Pre	Post
N-085	Bellevue to Sandusky Docks	1.4	12.9	5.9	14.6

One hazardous materials carload per day would be affected as shown below.

ID#	Segment Description	HazMat Carloads/Day		HazMat Carloads/Year	
		Pre	Post	Pre	Post
N-085	Bellevue to Sandusky Docks	0	3	0	1095

Please contact me if you have questions on this submittal or other needs in this area.

Sincerely yours,



Bruno Maestri  
System Director  
Environmental Protection





# FLYNN, PY & KRUSE

OTTAWA COUNTY OFFICE:  
115 WEST PERRY STREET  
PORT CLINTON, OHIO 43452  
TELEPHONE (419) 734-3174  
TELECOPIER (419) 734-3175

A LEGAL PROFESSIONAL ASSOCIATION  
165 EAST WASHINGTON ROW  
SANDUSKY, OHIO 44870  
TELEPHONE (419) 625-8324  
TELECOPIER (419) 625-9007

JAMES F. FLYNN (1887-1963)  
JOHN R. PY (1908-1969)  
RICHARD R. KRUSE (1910-1997)  
RAYMOND N. WATTS, RETIRED  
—  
MELVYN J. STAUFFER  
WM. CHARLES STEUK  
CHARLES W. WATERFIELD  
JOHN D. PY  
JOHN A. COPPELER  
JOHN E. ROSINO  
JAMES W. HART\*  
MARY JANE S. HILL  
CHRISTOPHER M. MARINKO  
WM. R.S. STEUK  
\*ALSO LICENSED IN TEXAS

December 9, 1998

Mr. Steven Kalish  
McCarthy, Sweeney & Harkaway  
1750 Pennsylvania Ave. N.W.  
Washington, D.C. 20006

Dear Steve:

This information is provided in response to the request concerning the Venice Road crossing in Sandusky, Ohio.

The train speed of Norfolk Southern Railway Company (NSR) at the Venice Road crossing is 10 miles per hour.

NSR has no record of receiving any crossing blocking citations at this crossing.

There are few trains of NSR through the crossing during the months of January and February. The loading of boats with coal usually ceases in December and does not begin again until late March. Ground storage, however, may continue until the end of January. Usually, at that time the Docks shut down for four (4) to six (6) weeks of maintenance.

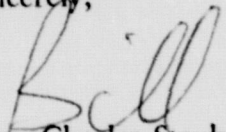
If the Dock requires 24-hour operations, six (6) to eight (8) cuts of sixty (60) coal cars each will go to the Dock and there will be a return of six (6) to seven (7) cuts of sixty (60) to eighty (80) empty cars. Several times a week Norfolk will deliver one (1) or two (2) cars to the Conrail interchange or pick up one (1) or two (2) cars at that track.

Occasionally, NSR receives a loaded train of one hundred (100) cars of coal from Conrail and then returns the empties to Conrail after discharge of the coal at the coal pier. Transshipment of coal from Lake Erie ports is and has been competitive; consequently the tonnage handled at any port can and does vary.

NSR may receive eighty (80) empty cars from Conrail for stone loading and then return to Conrail following loading. This does not occur every week. The duration and frequency of this traffic in the future is uncertain.

It is my understanding that the NSR intermodal facility will operate trains on a six (6) days a week schedule with one (1) train a day in each direction. These trains will probably have consists of ninety (90) to one hundred (100) cars. That terminal itself will operate seven days a week.

Sincerely,



Wm. Charles Steuk

WmCS/erk/11-23Kalish





<b>Sandusky Police Department</b>				<b>SP-00-16401 07/07/2000</b>	
<input type="checkbox"/> Investigation <input type="checkbox"/> Accident <input type="checkbox"/> Arrests Made <input type="checkbox"/> Suspects				OFFICER: <b>1984</b> <b>LEWIS, DANNY J</b>	
<b>Incident Report Form</b>					
1. Log Number <b>SP-00-16401</b>		1a. Incident Number	1b. File Number	1c. Case Number	2. UCR
3. Incident Type <b>0132S Railroad Crossing Complaint</b>			4. Dispatcher <b>JPrice</b>	5. Source	6. District
7. Status <b>NEW</b>					
8. Date Received <b>07/07/2000</b>		8a. Rcvd <b>1439</b>	8b. Disp <b>1442</b>	8c. Arr <b>1445</b>	8d. Cld <b>1501</b>
9. Disposition <b>COMM See Comment</b>					
INCIDENT OCCURRED AT OR BETWEEN					
10. Location <b>VENICE RD OH 44870</b>			10a. Cross Street		10b. Intersection <input type="checkbox"/>
11. Premise Code			12. Business Name		
13. Modus Operandi Coding					
ENTRY:			VICTIM:		
EXIT:			PROPERTY:		
METHOD:			AREA:		
			TIME OF DAY:		
14. Caller / Complainant Type <b>A - Anonymous</b>					
15. Involved Persons		STREET ADDRESS		INVOL DOB	
<b>FRY, WILLIAM</b>		<b>109 FINCH ST SANDUSKY, OH 44870</b>		<b>05/17/1962</b>	
				<b>R S PHONE W M</b>	
21. Comments / Narratives					
DISPATCH COMMENT		CREATED		UPDATED	
<b>07/07/2000 FJones</b>		<b>07/07/2000 FJones</b>		<b>Y</b>	
<b>TRAIN DERAILED 3 CROSSINGS BLOCKED-VENICE, OLDS, MILLS</b>					
TRAIN DERAILMENT		CREATED		UPDATED	
<b>07/07/2000 DLewis</b>		<b>07/07/2000 DLewis</b>		<b>Y</b>	
<b>984</b>					
<p>A call was received of a train derailment at the Venice Rd. crossing. This officer arrived at the scene and found Fry working on the train.</p> <p>Fry stated that he was in charge and stated the train will be blocking the tracks for at least the next 3 hours. Fry stated that he believed the train was going to fast around the corner and that was what caused the accident. Fry said they will attempt to clear the crossing as soon as possible.</p> <p>The street department responded to the area and set up barricades to block Venice Rd. Sgt. Hofacker also contacted the local radio stations so they could let the general public know the crossings at Venice, Olds and Mills would be blocked for several hours so people could make the necessary adjustments while driving. As of writing this report at 1730 hrs. the tracks are still blocked.</p> <p>Ofc. D. J. Lewis/984</p>					





# Sandusky Police Department

SP-00-10489 05/09/2000

☐ Investigation ☐ Accident ☐ Arrests Made ☐ Suspects

OFFICER: 1863 ALEXANDER, RICHARD D SR

## Incident Report Form

1. Log Number SP-00-10489	1a. Incident Number	1b. File Number	1c. Case Number	2. UCR
3. Incident Type 0132C Railroad Crossing Complaint		4. Dispatcher HHaupt	5. Source	6. District
7. Status NEW				
8. Date Received 05/09/2000	8a. Rcvd 1622	8b. Disp 1624	8c. Arrv 1630	8d. Clrd 1639
9. Disposition				

INCIDENT OCCURRED AT OR BETWEEN 8e. Earliest Date and Time 8f. Latest Date and Time

10. Location TIFFIN AVE	10a. Cross Street	10b. Intersection <input type="checkbox"/>
11. Premise Code	12. Business Name	

13. Modus Operandi Coding	VICTIM:
ENTRY:	PROPERTY:
EXIT:	AREA:
METHOD:	TIME OF DAY:

14. Caller / Complainant Type Not Available
--

15. Involved Persons	STREET ADDRESS	INVOL	DOB	R	S	PHONE
HARTSWICK, GARY	340 SUNRIDGE DR. FREEDOM, PA 15042		03/11/1948	W	M	
GARRISON, BRIAN	849 GENEVA AVE. TOLEDO, OH 43609		02/07/1968	W	M	(419) 381-6474
NORFOLK & SOUTHERN, 00						

21. Comments / Narratives	CREATED	UPDATED	LOCK
RAILROAD CROSSING COMPLAINT	05/10/2000 RAlexan	05/10/2000 RAlexan	Y
Railroad Crossing Complaint	1863 5/9/2000		

Ofc. was enroute to a call on the western most outskirts of town. While crossing Venice Rd. a s/b Norfolk and Southern train was s/b at Venice Rd. Upon completion of the call, I was advised by Dispatch that the s/b train had broken down and was blocking several intersections on the west side of town.

Ofc. rechecked Venice Rd, and found the intersection to be blocked by a series of Triple Crown trailers. Ofc. checked further and found that the engine, #8491, was s/b at Tiffin Ave., and had come to a stop just south of the Tiffin Ave.. intersection. This caused the gates to be down at the Tiffin Ave. crossing also.

Ofc. boarded the train and spoke with Garrison, who was in the engine compartment. Ofc. attempted to ascertain from Garrison what caused the break down. Garrison advised a air line had busted, and was in the process of being repaired. Garrison was asked how long the train was, to which he replied approximately 1 mile long. As Ofc. spoke with Garrison radio traffic could be heard stating that the repairs had been completed, and that as soon as air pressure was up he could move the train. Due to this Ofc. could not go to the location where the repairs were taking place. Garrison advised the Conductor of the train would be coming back to this location, and Ofc. could speak with him if anything further was needed. Pressure was restored to the engine and the train began to move.

Ofc. later spoke with Hartswick, who was the conductor. He advised that a air line had busted towards the end of the train. Hartswick had a repair man from Norfolk and Southern with him. Hartswick and the

**Sandusky Police Department****SP-00-10489 05/09/2000**☐ Investigation ☐ Accident ☐ Arrests Made ☐ SuspectsOFFICER: **1863** **ALEXANDER, RICHARD D SR****Incident Report Form**

repair man advised the problem arises from the air lines being too short. Both advised there is a section of track west of Mills St. where the train makes a sharp turn. Because the air lines are too short, they get stretched as the train makes the turn, and often snap. When this happens they have to located the busted line, and add an extension. They then have to build up pressure, before they can move the train. Both Hartwick and the repair man stated they have advised Norfolk and Southern of the problem, and have been trying to get them to extend the air lines on the cars. Hartwick was advised a report on the breakdown would be on file, and that he may be contacted later.

Ofc. R. D. Alexander





LAWRENCE W. BIERLEIN  
DOUGLAS M. CANTER  
JOHN M. CUTLER, JR.  
ANDREW P. GOLDSTEIN  
STEVEN J. KALISH  
RICHARD D. LIEBERMAN  
HARVEY L. REITER

OF COUNSEL  
WILLIAM I. HARKAWAY  
KAREN R. O'BRIEN  
DANIEL J. SWEENEY

LAW OFFICES  
McCARTHY, SWEENEY & HARKAWAY, P.C.  
SUITE 600  
2175 K STREET, N.W.  
WASHINGTON, D. C. 20037  
(202) 393-5710

FACSIMILE  
(202) 393-5721

E-MAIL  
MSH@MSHPC.COM

WEBSITE  
HTTP://WWW.MSHPC.COM

June 19, 2000

David R. Myers  
Regional Administrator  
U.S. Department of Transportation  
Federal Railroad Administration  
2 International Plaza  
Suite 550  
Philadelphia, Pennsylvania 19113

Re: Norfolk Southern Operations In Sandusky, Ohio

Dear Mr. Myers:

Thank you for your letter of June 2, 2000.

I'm enclosing a number of Sandusky police reports for your review which I believe may be characterized fairly as reflecting "activation failures."

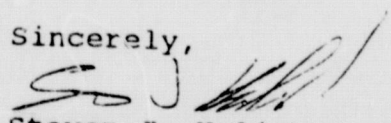
1. 7/22/99, Remington Avenue, Huron, Ohio
2. 10/14/99, Mills Street, Sandusky, Ohio
3. 12/20/99, Mills Street, Sandusky, Ohio
4. 1/26/00, Mills Street, Sandusky, Ohio
5. 2/2/00, Monroe Street, Sandusky, Ohio
6. 5/21/00, Mills Street, Sandusky, Ohio

For your information, the Mills Street school (fifth and six grades) is very close to the Norfolk Southern crossing.

I'm also enclosing another Sandusky police report, dated May 9, 2000, which indicates that Norfolk Southern is knowingly operating trains through Sandusky in a manner causing brake air lines to break.

I would appreciate any information you would be willing to provide as to FRA's response to these police reports.

Sincerely,

  
Steven J. Kalish

enclosures

cc: D. Icsman, Esq.

INDUSKY POLICE DEPARTMENT COMPLAINT REPORT NO. 2890		DATE 07/22/99	TIME 09:57
NATURE OF COMPLAINT		LOCATION OF COMPLAINT	RECEIVED BY
GATE MALFUNCTION		REMINGTON AVE	PHONE
COMPLAINANT	ADDRESS	TELEPHONE	
JOHN HARTLEY	3118 HULL RD HURON, OH		
REPORTED BY	ADDRESS	TELEPHONE	
JOHN HARTLEY	3118 HULL RD HURON, OH		
WATCHER	DISPATCHED	ARRIVED	CLEARED
03/461	08:57	08:57	09:04
			463

The complainant advised she was traveling southbound on Remington Ave. When crossing the railroad tracks she noticed the train was close to the intersection but the gates had not gone down. The complainant advised when the gates went down there was no delay before the train crossed the intersection.

Conrail was contacted and advised of this problem. Ofc. Feldmann advised it was because the train was not going fast enough to trip the motion detectors. Feldman advised he would have someone check the problem.

IS ARRESTED

POSITION-----EVIDENCE Y N

WRITTEN BY:

DATE

SUPERVISOR'S SIGNATURE

07/22/99

Sgt. R. C. Conner



SANDUSKY POLICE DEPARTMENT COMPLAINT REPORT NO. - 14670		DATE	TIME
		10/14/99	11:39
RE OF COMPLAINT	LOCATION OF COMPLAINT	RECEIVED BY	
INFORMATION REPORT	MILLS ST X-ING	PHONE	
INVESTIGATOR	ADDRESS	TELEPHONE	
SANDUSKY POLICE	222 MEIGS ST SANDUSKY, OH		
REPORTED BY	ADDRESS	TELEPHONE	
SENT TO	SANDUSKY, OH		
OFFICER	DISPATCHED	ARRIVED	CLEARED
461	11:39	11:41	11:41
			464,952

At 11:39 this department was contacted by ECSO and advised that there was a train passing through the above location and that the crossing gates were not down. Officer Nixon was dispatched and arrived at 11:41 advising the train had already passed and that the gates were up. Contact was made with Conrail and Rick Haldi advised he would look in to the problem.

ARRESTED

SITATION-----EVIDENCE Y *CM*

WRITTEN BY:

*G. H. H. H. H. H.*

DATE

10/14/99

SUPERVISOR'S SIGNATURE

*HC/28*



Incident Data Sheet

For: SP-99-19577

12/20/1999

**Reports / Narratives / Comments**

<u>CREATED</u>	<u>BY</u>	<u>UPDATED</u>	<u>BY</u>	<u>TITLE</u>	<u>LOCKED</u>
12/20/1999	F Jones	12/20/1999	MCampbe		
12/20/1999		Mills St crossing		gate malfunction	
				462	S

Received a call from a citizen saying that the gates on Mills St didn't go down until the train was already crossing the road. Mercury, at N&S was contacted and he advised he would get someone out to repair it.

F Jones

**Picture(s)**

# Sandusky Police Department

SP-00-01872 01/26/2000

☐ Investigation ☐ Accident ☐ Arrests Made ☐ Suspects

OFFICER: 1460

## Incident Report Form

1. Log Number <b>SP-00-01872</b>	1a. Incident Number	1b. File Number	1c. Case Number	2. UCR
3. Incident Type <b>0132 Railroad Crossing Complaint</b>		4. Dispatcher <b>ATheria</b>	5. Source	6. District
7. Status <b>NEW</b>				
8. Date Received <b>01/26/2000</b>	8a. Recd <b>1342</b>	8b. Disp <b>0000</b>	8c. Arrv <b>0000</b>	8d. Clrd <b>1344</b>
9. Disposition				
10. Location <b>MILLS ST</b>			10a. Cross Street	10b. Intersection <input type="checkbox"/>
11. Premise Code			12. Business Name	
13. Modus Operandi Coding				
ENTRY:		VICTIM:		
EXIT:		PROPERTY:		
METHOD:		AREA:		
TIME OF DAY:				
14. Caller / Complainant Type <b>Not Available</b>				
15. Involved Persons				
STREET ADDRESS		INVOL	DOB	SSN
<b>SKINNER, SUE</b>				R S PHONE

21. Comments / Narratives	CREATED	UPDATED	LOCK
TRAIN CROSSING MALFUNCTION	01/26/2000: ATheria 460	01/26/2000: ATheria	YES

Sue advised that while she was sitting at the Mills St crossing, a train was going by and the guards never came down. Becky, Norfolk Southern Police, was contacted and given this information, she advised that she would have someone respond and correct the problem.

ATheriault

# Sandusky Police Department

SP-00-02399 02/02/2000

☐ Investigation ☐ Accident ☐ Arrests Made ☐ Suspects

OFFICER: 1462

Incident Report Form

1. Log Number SP-00-02399 1a. Incident Number 1b. File Number 1c. Case Number 2. UCR

3. Incident Type 0132S Railroad Crossing Complaint 4. Dispatcher FJones 5. Source 6. District 7. Status NEW

8. Date Received 02/02/2000 8a. Rcvd 1943 8b. Disp 1944 8c. Arrv 0000 8d. Clrd 1945 9. Disposition

10. Location MONROE ST 10a. Cross Street EDGEWATER AVE 10b. Intersection ☒

11. Premise Code 12. Business Name

13. Modus Operandi Coding ENTRY: VICTIM: EXIT: PROPERTY: METHOD: AREA: TIME OF DAY:

14. Caller / Complainant Type Not Available

15. Involved Persons	STREET ADDRESS	INVOL	DOB	SSN	R	S	PHONE
POST 22, 00-02	511 FREMONT AVE	CALLE					

21. Comments / Narratives	CREATED	UPDATED	LOCK
02/02/2000 crossing gate malfunction	02/02/2000 FJones	02/02/2000 FJones	NE

02/02/2000 crossing gate malfunction 1896, 1462

Post 22 received a call from a citizen informing them that the gates at the above location were malfunctioning. They advised that one gate was down and the other was still up while a train was going through the crossing. Kathleen Clayto, at N&S was contacted and she said she would have someone check it out. Ofc Ruffin was also advised of the problem and will check the crossing periodically through the night.

F Jones



# Sandusky Police Department

SP-00-11594 05/21/2000

☐ Investigation ☐ Accident ☐ Arrests Made ☐ Suspects

OFFICER: 1456 PRICE, JOSEPH T

## Incident Report Form

1. Log Number SP-00-11594	1a. Incident Number	1b. File Number	1c. Case Number	2. UCR
3. Incident Type 0132 Railroad Crossing Complaint		4. Dispatcher JPrice	5. Source	6. District
7. Status NEW				
8. Date Received 05/21/2000	8a. Rcvd 1255	8b. Disp 1259	8c. Arrv 1259	8d. Clrd 1259
9. Disposition				

INCIDENT OCCURRED AT OR BETWEEN 8e. Earliest Date and Time 8f. Latest Date and Time

10. Location MILLS ST OH 44870	10a. Cross Street	10b. Intersection <input type="checkbox"/>
11. Premise Code	12. Business Name	

13. Modus Operandi Coding	VICTIM:
ENTRY:	PROPERTY:
EXIT:	AREA:
METHOD:	TIME OF DAY:

14. Caller / Complainant Type  
N - Normal

15. Involved Persons	STREET ADDRESS	INVOL	DOB	SSN	R	S	PHONE
REARDON, MICHELLE	537 50TH ST SANDUSKY, OH 44870-4927	CALLE					(419 6251781)

21. Comments / Narratives	CREATED	UPDATED	LOCK
05/21/2000 1255hrs Ref- RR crossing gate malfunction	05/21/2000 JPrice 456	05/21/2000 JPrice	N

Caller stated she approached the Railroad crossing with 2 other vehicles and began to cross the tracks. A train was approaching but did not trip the gates until it was almost upon the crossing. The caller stopped on the tracks when the gates came down and she was forced to back off the tracks to avoid the train. N&S railroad-Police/Toledo East was notified of the problem and need for a maintainer to check. Zone cars were advised to check periodically for any problem.





U.S. Department  
of Transportation

**Federal Railroad  
Administration**

Region II

2 International Plaza  
Suite 550  
Philadelphia, PA 19113

June 2, 2000

Steven J. Kalish, Attorney  
McCarthy, Sweeney & Harkaway, P.C.  
2175 K Street, N.W., Suite 600  
Washington, D.C. 20037

Dear Mr. Kalish:

Please refer to your letter dated May 26, 2000, concerning "grade crossing signal malfunctions" in Sandusky, Ohio. In response to your questions, I forwarded your report, evidently taken from Sandusky Police Department records, to our Signal and Train Control Specialist for analysis.

The Specialist was able to determine that all of the malfunctions listed in your report meet the definition of a "False Activation." **False Activations** are not required by Federal Regulations to be reported to the Federal Railroad Administration (FRA). **False Activations** should not be confused with **Activation Failures**, which are required to be reported. As information, there were no **Activation Failures** reported by Norfolk Southern for Sandusky, Ohio, in 1998 or 1999.

The definitions and related text from 49 Code of Federal Regulations, Part 234, are indicated below.

**§ 234.5 Definitions.**

As used in this part:

*Activation failure* means the failure of an active highway-rail grade crossing warning system to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing, or to indicate the presence of a train occupying the crossing, unless the crossing is provided with an alternative means of active warning to highway users of approaching trains. (This failure indicates to the motorist that it is safe to proceed across the railroad tracks when, in fact, it is not safe to do so.) . . . .

*False Activation* means the activation of a highway-rail grade crossing warning system caused by a condition that requires correction or repair of the grade crossing warning system. (This failure indicates to the highway user that it is not safe to cross the railroad tracks when, in fact, it is safe to do so.)



Steven J. Kalish  
Page Two  
June 2, 2000

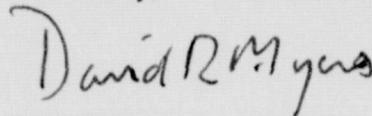
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**§ 234.9 Grade crossing signal system failure reports.**

Each railroad shall report to FRA within 15 days each activation failure of a highway-rail grade crossing warning system. FRA Form Nol 618-83, "Highway-Rail Grade Crossing Warning System Failure Report," shall be used for this purpose and completed in accordance with instructions printed on the form.

To summarize, then, **Activation Failures** must be reported to FRA. **False Activations** are not reported to FRA. Norfolk Southern reported no **Activation Failures** for Sandusky, Ohio, in 1998 and 1999. FRA maintains no general database of grade crossing signal malfunctions. Hence, neither FRA Philadelphia nor FRA Washington has any records of Norfolk Southern grade crossing signal malfunctions in Sandusky for the years 1998 and 1999.

Sincerely,

A handwritten signature in dark ink, appearing to read "David R. Myers". The signature is fluid and cursive, with the first name "David" being the most prominent.

David R. Myers  
Regional Administrator

