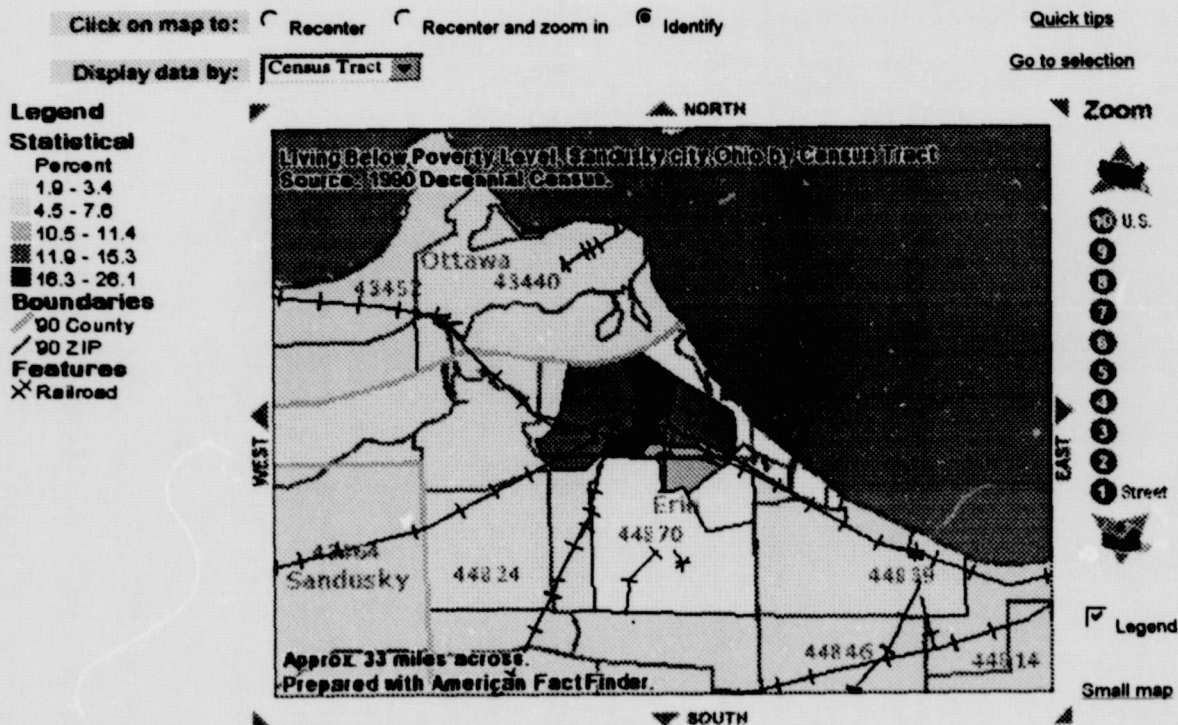
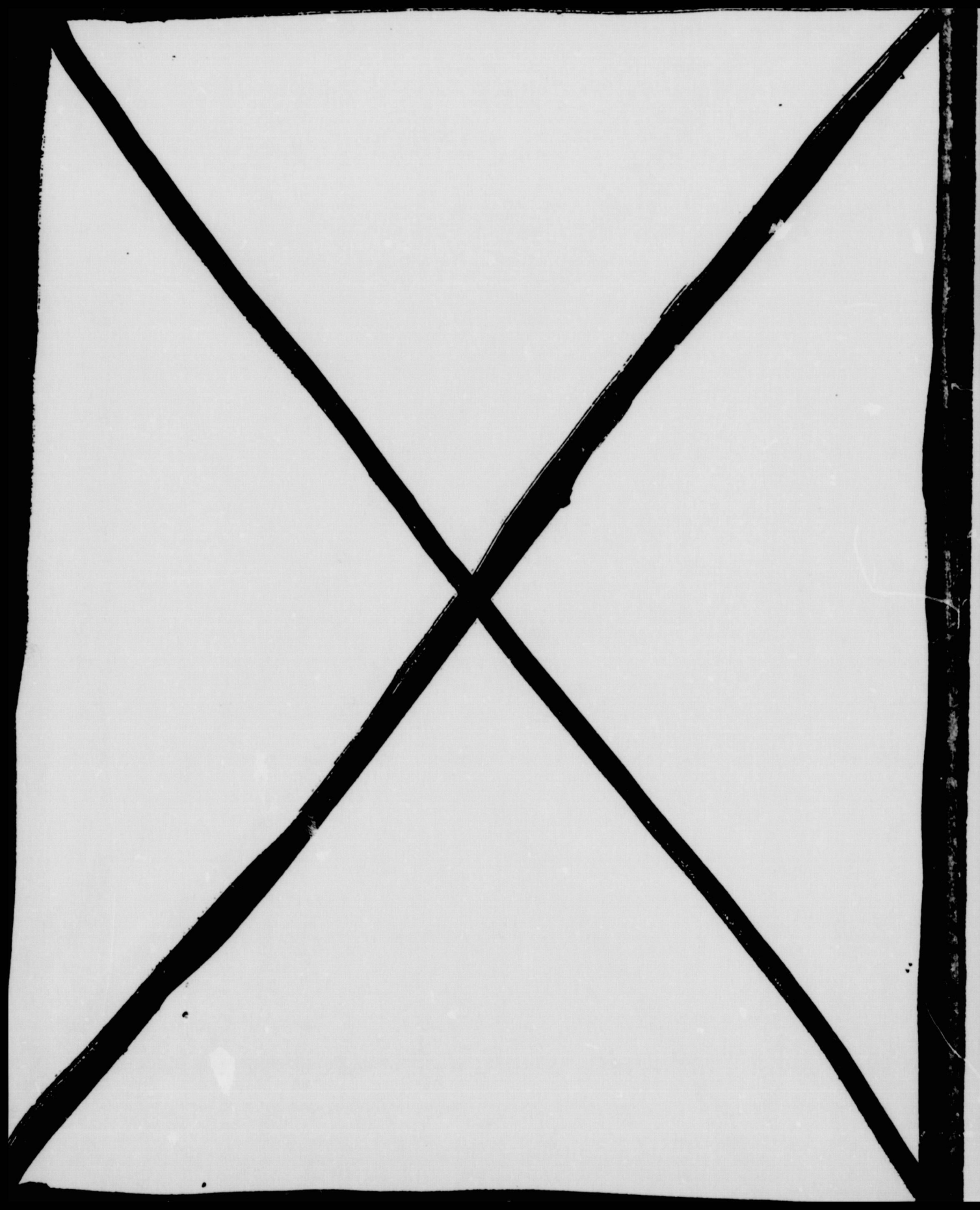


STB FD-33388 (SUB 91) 7-14-00 D 199264 2 OF 2





STB

FD-33388 (SUB 91)

7-14-00

D

199262

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

Pittsburgh, PA 15219

(412) 471-1800

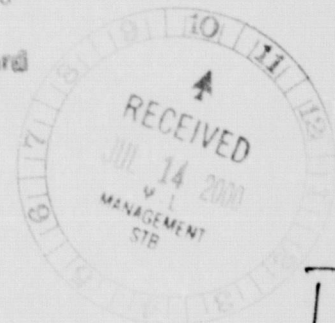
(412) 471-4477 FAX

July 13, 2000

ENTERED
Office of the Secretary

JUL 14 2000

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Public Record



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
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:

Enclosed for filing in the above captioned matter you will find the original and 25 copies of the Comments of Growth Resources of Wellsboro Foundation, Inc. to the First General Oversight Report Submitted by Norfolk Southern Corporation and CSX Corporation. Also enclosed is an electronic copy of this pleading formatted in Word 7.0.

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

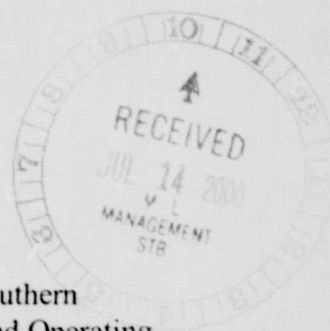
Enclosures

xc: All Parties of Record

Growth Resources of Wellsboro Foundation, Inc.

199252

**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

General Oversight Proceedings

**COMMENTS OF GROWTH RESOURCES OF WELLSBORO
FOUNDATION, INC. TO THE FIRST GENERAL OVERSIGHT REPORT
SUBMITTED BY NORFOLK SOUTHERN CORPORATION AND
CSX CORPORATION**

Filed on Behalf of Growth Resources of
Wellsboro Foundation, Inc. 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

General Oversight Proceedings

**COMMENTS OF GROWTH RESOURCES OF WELLSBORO
FOUNDATION, INC. TO 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").

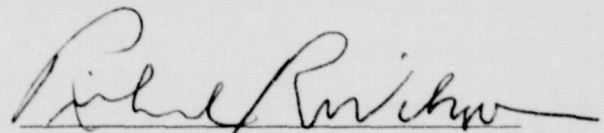
In response to the report filed by NS, Growth Resources of Wellsboro Foundation, Inc. ("GROW") files the enclosed Verified Statement of Ms. Mary Worthington which addresses critical lack of responsiveness on the part of NS with respect to interchange of traffic at its Gang Mills Yard which threatens to jeopardize the continuing rail operations

performed on behalf of GROW by the Wellsboro & Corning Railroad Company. GROW respectfully requests that the STB order NS to name a senior executive to be personally responsible for working with GROW representatives to address these matters and that quarterly joint status reports be filed with the Board's Office of Enforcement to monitor progress on remedial efforts undertaken by the parties at this location.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By:

A handwritten signature in cursive script, appearing to read "Richard R. Wilson", written over a horizontal line.

Richard R. Wilson, Esq.
Attorney for Growth Resources of
Wellsboro Foundation, Inc.

**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

General Oversight Proceedings

VERIFIED STATEMENT OF MARY WORTHINGTON

My name is Mary Worthington, I am Executive Secretary/Treasurer of Growth Resources of Wellsboro Foundation, Inc. ("GROW"). GROW is a non-profit industrial development agency which owns a 35 mile long rail line between Wellsboro, PA and Gang Mills, NY where it interchanges with the Norfolk Southern line at Gang Mills Yard. GROW was formed in 1952 to promote industrial development projects and acquired the 35 mile rail line from Conrail in December, 1992 after Conrail had a proposed abandonment of the line. Had the line been abandoned, it would have severely impacted three major industries in Wellsboro: Orsram Sylvania, Eagle Family Foods and Cornell Brothers, Inc. These three companies employ 527 individuals and provide a payroll of \$11 million to the Wellsboro community. GROW has received funding totaling over \$2 million for this rail line from the Economic Development Administration, the Appalachian

Regional Commission, the Commonwealth of Pennsylvania, local community fund drives and private users.

It has not been easy to preserve local rail service on this line. We have successfully battled floods which washed out a portion of our rail line and have worked closely with our operator, Wellsboro & Corning Railroad Company, to provide efficient, low-cost service to our shippers. By much hard work, we acquired this rail line, increased rail traffic and until the takeover of Conrail by Norfolk Southern, it appeared that we had managed to preserve and promote an important part of our transportation infrastructure in the Wellsboro, PA area.

However, with Norfolk Southern's acquisition of the Conrail Southern Tier line and the Gang Mills Yard, we have encountered severe and recurring service problems which despite our best efforts have not been resolved. Over the last year, Osram Sylvania, our most significant shipper, has lost all faith in rail service and intends to divert as much of its traffic as possible to motor carrier. It is not their intention to return that diverted traffic to rail. Osram has lost major accounts due to poor NS rail service. Our rail operator has observed that while the yard masters at Gang Mills do the best job they can, they do not have enough locomotives or crews to handle the volume of traffic flowing into Gang Mills Yard. Many cars that arrive in Gang Mills Yard take a week to get switched to the Wellsboro & Corning Railroad Company. In addition, the congestion in the Gang Mills Yard interferes with access to Canadian Pacific Railroad which would provide alternative competing routes free from the congestion and service problems on the NS system. These service problems at Gang Mills Yard have reached a point that prospects for retention of existing traffic on our line, let alone future growth of that traffic, have all but disappeared.

Attached to my Verified Statement is a copy of July 7, 2000 letter sent to Senator Madigan in Harrisburg, PA by Thomas J. Conway, Materials Manager for Osram Sylvania. It provides several examples of the mishandling of Osram Sylvania traffic by NS and the lack of operational coordination and administrative delays which seem to characterize so much of NS service today.

What is even more troublesome, however, is the lack of responsiveness on the part of NS to address these problems. We have repeatedly sought the assistance of NS representatives to deal with the operational difficulties at Gang Mills Yard. These problems occurred almost immediately upon acquisition of this Yard by NS and have continued to exist for over a year. I understand the difficulties which NS encountered when it acquired the Conrail lines, but one year is more than an adequate period in which to adjust for these problems and to restore service to levels at least equal to that provided by Conrail before the acquisition.

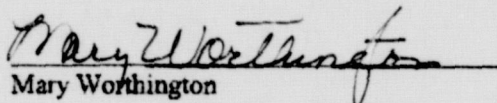
The Commonwealth of Pennsylvania, regional agencies and local business have made a substantial investment in the acquisition of this line and the preservation of rail service to the Wellsboro, PA business community. Moreover, the NS service failures effect not only the relatively modest revenues earned by NS on our traffic, but more importantly, it impacts the business of the shippers on our lines, and their competitive position in their respective industries which in turn impact on the jobs and lives of hundreds and hundreds of people in the Wellsboro community. NS has a common carrier obligation to provide rail service to the public upon reasonable dispatch. Over the last year, the service provided by NS at Gang Mills has been anything but reasonable and cannot possibly be described as provided with "dispatch".

Accordingly, GROW is requesting that the Surface Transportation Board direct NS to designate a senior executive to be responsible for the resolution of our interchange problems at Gang Mills Yard and that this individual directly interface with GROW representatives and the representatives of our operator in resolving these matters. Further, GROW requests that the Board require NS and GROW representatives to file quarterly status reports regarding progress or the lack thereof with respect to NS interchange service at Gang Mills Yard. With these remedial measures, NS can be made accountable for resolving these problems. Without these measures, continued rail operations on our line will have to be severely curtailed and it is questionable as to whether viable rail operations can continue to be provided without substantial public subsidies if the NS service problems cannot be promptly resolved. I earnestly urge the Board to give this matter its most urgent and serious consideration.

VERIFICATION

I, Mary Worthington, declare 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 12, 2000.


Mary Worthington

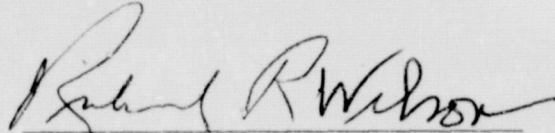
CERTIFICATE OF SERVICE

I hereby certify that on this 13th 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 over a horizontal line.

Richard R. Wilson, Esq.

189252
(814) 944-5302
888-454-3817 (Toll Free)
(814) 944-6978 FAX
rrwilson@mail.cslink.net

RICHARD R. WILSON, P.C.
Attorney at Law
A Professional Corporation
1126 Eighth Avenue, Suite 403
Altoona, PA 16602

Of Counsel to:
Vuono & Gray LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800
(412) 471-4477 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)
1925 K Street, N.W.
Washington, DC 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 Proceedings

Dear Secretary Williams:

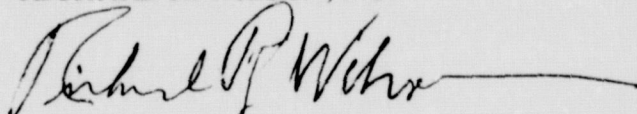
Enclosed for filing in the above captioned matter you will find the original and 25 copies of the Comments of Growth Resources of Wellsboro Foundation, Inc. to the First General Oversight Report Submitted by Norfolk Southern Corporation and CSX Corporation. Also enclosed is an electronic copy of this pleading formatted in Word 7.0.

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
Growth Resources of Wellsboro Foundation, Inc.



STB FD-33388 (SUB 91) 7-14-00 D 199261

199261 **RICHARD R. WILSON, P.C.**

Attorney at Law
A Professional Corporation
1126 Eighth Avenue, Suite 403
Altoona, PA 16602

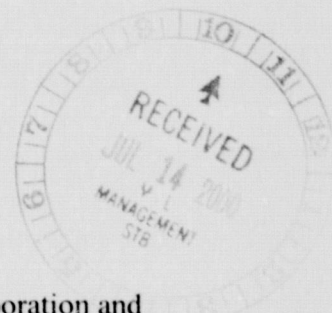
(814) 944-5302
888-454-3817 (Toll Free)
(814) 944-6978 FAX
rrwilson@mail.csrlink.net

Of Counsel to:
Vuono & Gray LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800
(412) 471-4477 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)
1925 K Street, N.W.
Washington, DC 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 Proceedings

Dear Secretary Williams:

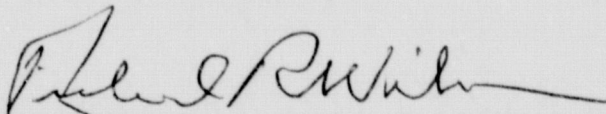
Enclosed for filing in the above captioned matter you will find the original and 25 copies of the Comments of North Shore Railroad Company, et al to the First General Oversight Report Submitted by Norfolk Southern Corporation and CSX Corporation. Also enclosed is an electronic copy of this pleading formatted in Word 7.0.

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

ENTERED
Office of the Secretary
JUL 14 2000
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Public Record

RRW/klh
Enclosures

xc: All Parties of Record
Mr. Richard D. Robey

**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

**COMMENTS OF NORTH SHORE RAILROAD COMPANY,
JUNIATA VALLEY RAILROAD COMPANY, NITTANY & BALD
EAGLE RAILROAD COMPANY, LYCOMING VALLEY RAILROAD
COMPANY, SHAMOKIN VALLEY RAILROAD COMPANY AND
UNION COUNTY INDUSTRIAL RAILROAD COMPANY TO THE FIRST
GENERAL OVERSIGHT REPORT OF NORFOLK SOUTHERN
CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY**

Filed on Behalf of North Shore Railroad
Company, Juniata Valley Railroad
Company, Nittany & Bald Eagle Railroad
Company, Lycoming Valley Railroad
Company, Shamokin Valley Railroad
Company and Union County Industrial
Railroad By:

RICHARD R. WILSON, P.C.
Richard R. Wilson, Esq.
1126 Eighth Avenue, Suite 403
Altoona, PA 16602
(814) 944-5302

ENTERED
Office of the Secretary

JUL 14 2000
Part of
Public Record

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

**COMMENTS OF NORTH SHORE RAILROAD COMPANY,
JUNIATA VALLEY RAILROAD COMPANY, NITTANY & BALD
EAGLE RAILROAD COMPANY, LYCOMING VALLEY RAILROAD
COMPANY, SHAMOKIN VALLEY RAILROAD COMPANY AND
UNION COUNTY INDUSTRIAL RAILROAD COMPANY TO THE FIRST
GENERAL OVERSIGHT REPORT OF NORFOLK SOUTHERN
CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY**

Pursuant to Decision No. 1 in Finance Docket No: 33388 (Sub No. 91) 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") in Decision No. 89 in Finance Docket No: 33388 (served July 23, 1998). ("Decision No. 89"). In response to the report filed by NS, North Shore Railroad Company, Juniata Valley Railroad Company, Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company, Shamokin Valley Railroad Company and Union County Industrial Railroad Company file the enclosed Verified Statement of Richard D. Robey addressing the

difficulties encountered by these short line carriers in implementing the settlement agreement with NS regarding interchange rights with Canadian Pacific Railway System ("CPRS") at Sunbury, PA.

While the parties continue to negotiate implementation of this settlement agreement, it is appropriate that the Board be appraised of the status of these negotiations and the issues involved in the event that it becomes necessary for the parties to seek reopening of the merger proceedings to enforce the settlement agreement or to avail themselves of the Board's mediation procedures.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By:

A handwritten signature in cursive script, appearing to read "Richard R. Wilson", written over a horizontal line.

Richard R. Wilson, Esq.
Attorney for North Shore Railroad
Company, Juniata Valley Railroad
Company, Nittany & Bald Eagle
Railroad Company, Lycoming
Valley Railroad Company,
Shamokin Valley Railroad Company
and Union County Industrial
Railroad

**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

**VERIFIED STATEMENT OF RICHARD D. ROBEY
(GENERAL OVERSIGHT PROCEEDING)**

My name is Richard D. Robey. I am President of North Shore Railroad Company, Juniata Valley Railroad Company, Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company, Shamokin Valley Railroad Company and Union County Industrial Railroad Company. All of these railroads are Class III common carrier railroads located in central Pennsylvania with connections to Consolidated Rail Corporation ("Conrail") on its Harrisburg-Buffalo line between Lock Haven and Sunbury, PA.

On October 16, 1997 I filed Comments in STB Docket No: 33388 advising the Board that based on the Norfolk Southern ("NS") letter of June 10, 1997, we had accepted the terms of that letter and agreed to support Board approval of the acquisition transaction proposed by NS and CSX. (Exhibit 1) Subsequent to the STB's approval of the Conrail acquisition and the takeover date by NS, our short line companies negotiated interim arrangements with NS to implement the provisions of the June 10, 1997 settlement

agreement. The terms of that settlement agreement which were specifically referenced by the Board on page 219 of Decision No. 89 is subject to condition 19 which states:

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

Subsequent to taking over Conrail operations, NS continued in effect the trackage rights between Sunbury and Lock Haven, PA which were originally granted to Lycoming Valley Railroad ("LVRR") and for affiliated railroads by Conrail in 1966. These Conrail trackage rights did not permit interchange rights to CP at Sunbury and were restricted to non-revenue traffic between our affiliated railroads. Under the June 10, 1997 settlement agreement with NS, NS offered to remove the Conrail restrictions and allow interchange with CP in exchange for our support of the NS acquisition of Conrail lines in Pennsylvania. The settlement agreement stated that NS will "grant the five railroads the option to interchange traffic with the Canadian Pacific ("CP") at Sunbury, PA originating or terminating at local points on the CP or at points located on carriers that connect only with CP", effective upon NS gaining control of Conrail properties. When NS took control of Conrail lines in PA, NS granted the interchange rights described above to our five railroads on a temporary basis by an NS letter dated June 24, 1999, pending execution of a formal trackage rights agreement. This letter stated that "NS previously agreed to grant the five railroads the option to interchange traffic with the CP via overhead trackage rights between Lock Haven and Sunbury, PA for traffic originating or terminating at local points on the CP or at points located on carriers that connect only with CP."

Since June 24, 1999, our railroads have used these rights to interchange with CP to develop a modest but growing volume of traffic, all of which conform to the restrictions stated in the two letters and most of which was new traffic to our railroads and to CP. We made a particular effort to assure that new traffic conformed to the provisions of these two letters, in several instances turning down traffic that we considered to be outside the NS stated provisions.

In early February, 2000, NS sent us a proposed formal trackage rights agreement for my signature. I did not execute this agreement because it contained restrictive provisions that were not part of the settlement agreement nor part of the STB imposed Conrail acquisition conditions mentioned in the above letters. Specifically, Section 2 substantially limits our CP interchange traffic only to traffic to or from CP stations in Quebec, and those stations in Ontario approved by NS on a case by case basis. It also states that traffic to and from transload and rail-truck transfer facilities are excluded. Also, Section 21 of the proposed trackage rights agreement states that the agreement has a term of five years with renewals subject the approval of NS. These restrictive terms were not consistent with our original settlement agreement or the STB Conrail acquisition conditions. The addition of these restrictions in the proposed NS trackage rights agreement has the effect of commercially closing this interchange and route for most of the traffic that we have developed since last summer between LVRR and CP. It also severely limits the traffic that we can develop in the future under these interchange and routing restrictions.

We are frankly at a loss to understand why NS has attempted to restrict our efforts to develop a commercial route that serves markets and shippers that are located in a

geographic area substantially distant from the main routes and markets served by NS. The great majority of the traffic we have developed with CP is new traffic to our railroads, not rerouted traffic from NS.

We recognize that the takeover of Conrail has been a difficult task for NS and in fact we worked closely with NS and have cooperated with them and provide switching services for them to classify their traffic at Newberry Yard in Williamsport in an effort to assist in alleviation of congestion at Buffalo for several months after the takeover date. We continue to undertake enhanced customer service to compensate for continuing difficulties with NS service. This includes assisting NS with tracing and routing of cars to facilitate their operations. Our intent is to work in close partnership with NS to provide more efficient operations.

Despite our cooperative and supportive relationship, our railroads simply cannot exceed to a restriction on an established commercial route which considerably alters the settlement agreement made by NS with our railroads as part of the Conrail acquisition proceeding. We have asked NS to reconsider the terms of the trackage rights agreement to eliminate these inappropriate restrictions and discussions between our companies are continuing.

I should add that we highly value our relationship and partnership with NS and it is a matter of considerable concern that we have not yet been able to resolve the issue of the CP interchange at Sunbury, PA. The arrangements we negotiated with NS as part of the Conrail acquisition have been modestly successful in bringing new traffic to the railroad and accommodating shipper service requirements. We believe these arrangements have been beneficial to all parties because they demonstrate the operational

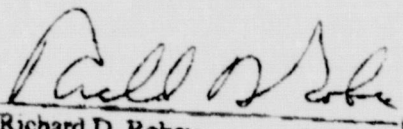
and service efficiencies that can result from acquisition transactions when the parties are able to negotiate interchange arrangements that are fair and provide efficient routing options.

We intend to continue working constructively with NS to resolve this matter and will keep the Board apprised of our progress toward that goal.

VERIFICATION

I, Richard D. Robey, declare 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 13th, 2000.

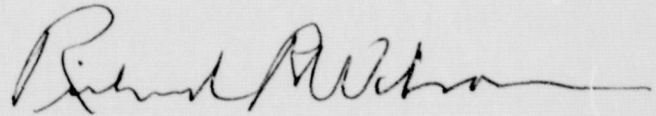

Richard D. Robey

CERTIFICATE OF SERVICE

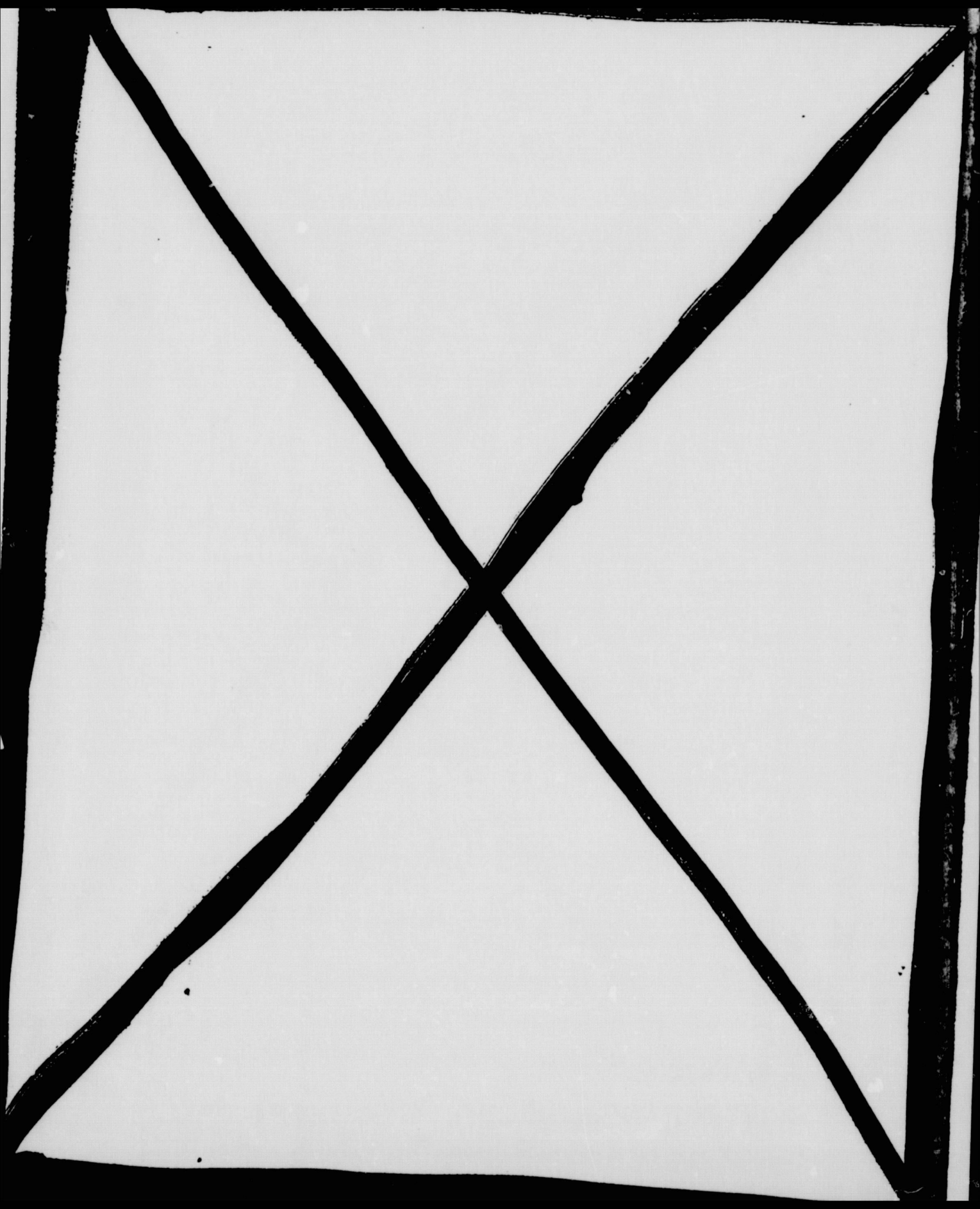
I hereby certify that on this 13th day of July, 2000, a copy of the foregoing
Comments are hereby served by first class U.S. mail addressed as follows:

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 dark ink, appearing to read "Richard R. Wilson", is written over a horizontal line.

Richard R. Wilson, Esq.



STB

FD-33388 (SUB 91)

7-14-00

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199259



City of Cleveland

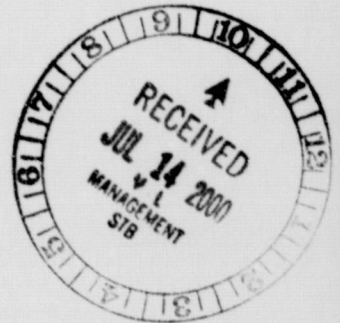
Michael R. White, Mayor

Department of Law
Cornell P. Carter, Director
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
216/664-2800 • Fax 216/664-2663

199259

July 13, 2000

D



The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
1925 K Street, NW
Washington, DC 20423-0001

Re: STB Finance Docket No. 33388 (Sub-No. 91)
CSX Corporation and CSX Transportation, Inc., Norfolk
Southern Corporation and Norfolk Southern Railway
Corporation - Control and Operating Leases/Agreements -
Conrail Inc. and Consolidated Rail Corporation (General
Oversight)

Dear Secretary Williams:

Enclosed are an original and twenty-five copies of the Comments Submitted by the City of Cleveland, Ohio to be filed in the above referenced proceeding. An additional copy is enclosed for date-stamp and to be returned in the enclosed self-addressed stamped envelope. Please note that a diskette in Microsoft Word 97 format is also enclosed.

Very truly yours,

Richard F. Horvath
Chief Corporate Counsel
City of Cleveland

ENTERED
Office of the Secretary

JUL 14 2000

Part of
Public Record

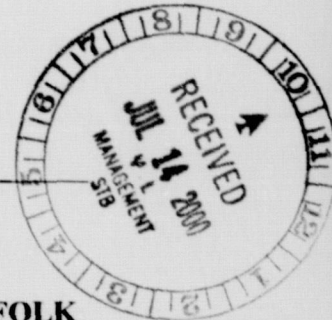
199259

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Office of the Secretary

JUL 14 2000

Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423



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 SUBMITTED BY
THE CITY OF CLEVELAND, OHIO**

Communications with respect to this
document should be addressed to:

Cornell P. Carter
Director of Law
Richard F. Horvath
Chief Corporate Counsel
City of Cleveland
Department of Law - Room 106
601 Lakeside Avenue
Cleveland, Ohio 44114
(216) 664-2675

Counsel for the City of Cleveland, Ohio
Dated: July 13, 2000

**Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423**

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 SUBMITTED BY
THE CITY OF CLEVELAND, OHIO**

The City of Cleveland, Ohio, by its undersigned counsel, hereby submits its comments to the Surface Transportation Board ("Board") in the exercise of the Board's oversight authority concerning the impacts and implementation of the Conrail control transaction (the "Transaction") authorized by the Board in Decision No. 89 in Finance Docket No. 33388 (served July 23, 1998). In Decision No. 89, the Board approved, with conditions, acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, "Conrail") by (a) Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") and (b) CSX Corporation and CSX Transportation,

Inc. (collectively, "CSX"), and the division of the operation of a portion of the assets of Conrail by and between CSX and NS.

In preparing these comments, the City of Cleveland has considered the statements made by CSX and NS in the "First Submission By Applicants CSX Corporation and CSX Transportation, Inc.," filed with the Board on June 1, 2000, (the "CSX Report") and the "First General Oversight Report of Norfolk Southern Corporation and Norfolk Southern Railway Corporation," filed with the Board on June 1, 2000, (the "NS Report").

The City of Cleveland is submitting comments concerning: (1) the significant environmental impacts experienced in Cleveland resulting from the unexpectedly large volume of rail traffic following June 1, 1999 (the "Split Date"), and the lack of proper maintenance of railroad property by CSX; and (2) the status of compliance by NS and CSX with their respective Negotiated Agreements with the City of Cleveland.

I. ENVIRONMENTAL IMPACTS RESULTING FROM THE UNEXPECTEDLY LARGE VOLUME OF TRAIN TRAFFIC FOLLOWING THE SPLIT DATE AND THE LACK OF PROPER PROPERTY MAINTENANCE.

A. Impact of Unexpectedly Large Volume of Train Traffic.

The Transaction has had a direct, substantial and detrimental impact on the citizens of the City of Cleveland. Both NS and CSX in their respective reports note that following the Split Date, they experienced unexpected traffic volumes resulting in congestion and delays on some of their lines. Their statements, however, do not accurately reflect the serious and sustained disruption such increases have caused in local communities such as the City of Cleveland. Moreover, the railroads indicate that they believe that conditions are

improving. To the contrary, the City of Cleveland believes that the serious negative environmental impacts from the unexpectedly large volume of train traffic resulting from the Transaction continue.

The unexpectedly high volume of train traffic following the Split Date has resulted in a 25% increase in train traffic along the CSX Short Line. The adverse impacts in noise and air pollution for neighboring residents has been tremendous. At the time that the environmental impact study was conducted for the Board, traffic along the Short Line was expected to increase from an average of 7 trains per day to an average of 44 trains per day. Since the Split Date, traffic along the Short Line has been closer to an average of 56 trains per day. Similar impacts have been experienced along the other rail lines operated by NS and CSX within the City of Cleveland.

The City of Cleveland has experienced problems that the Board's Environmental Impact Statement in this proceeding did not address and, for which, mitigation has not been received. For example, while the Board as part of the Transaction examined increases in wheel rail noise within areas exposed to a 70 dBA L_{dn} , horn noise and vibrations caused by passing trains was not adequately considered. Yet horn noise and train vibrations have had a tremendous impact on the daily lives of citizens in close proximity to the NS and CSX tracks within the City of Cleveland. While federal law mandates that horns sound when trains approach a crossing or when the crew observes someone or something on the tracks, there are no regulations concerning how loud or how long the horn should sound. These decisions are left to the discretion of the crew. In Cleveland, some residents are able to

identify the crew of a particular train based solely upon how the horn is sounded. Unreasonable horn noise and train vibration constitutes a nuisance and is extremely annoying to citizens living nearby.

A particular concern in Cleveland has been the number of trains that idle for hours along the CSX and NS routes. The City of Cleveland believes that the Board did not fully study the negative environmental impacts caused by stopped and idling trains on adjoining property owners. Rather, the environmental impacts studied as part of this proceeding emphasized impacts resulting from noise and disruptions caused by moving trains. Emphasis was placed on increased rail traffic through local communities. Yet, many of the problems that Cleveland citizens are experiencing as result of the Transaction result to stopped and idling trains:

1. Noise.

The impacts caused by the noise generated by idling trains, as well as the crashing sounds of a train as it stops and starts, were not adequately considered in the environmental studies. Yet these noises have had a severe detrimental impact in Cleveland. The rumble of idling trains over long periods of time and the sharp, piercing noises caused by trains as they stop and start can be more disruptive to a neighboring community than the sound of a train quickly passing through. This impact is particularly true at night when noise is amplified. In addition, because an emphasis is placed on moving trains, the impact on people residing near intermodal facilities, train yards, sidings and repair facilities is not properly studied.

2. Impact Resulting from Converting a Secondary Line to a Main Line.

In Cleveland, the acquisition of Conrail by CSX and NS resulted in the conversion of a secondary rail line into a NS main rail line. The increased rail activity on this new main line has included a significant increase in the stopping, idling and re-starting of trains. The railroad claims that this activity is part of normal daily use of the main line. Yet noise mitigation studies for the neighborhoods adjoining this new main line were based upon a projected number of trains passing through this community at a given speed. Those studies do not address or propose mitigation for the noise caused by the "normal daily activity" of stopping and idling trains in that area.

3. Blocked At-Grade Crossings.

The health and safety impacts caused by increased numbers of stopped trains and the resulting blockage of at-grade crossings throughout the City of Cleveland was never adequately studied or addressed. While the City of Cleveland is fortunate that the number of at-grade crossings within its municipal boundaries is low compared with the total miles of track in the City, Cleveland is not immune to the effects of blocked crossings. When trains block crossings, some City neighborhoods are cut off from emergency services. In recent months, Cleveland has experienced two major incidents where trains blocked crossings for several hours. The residents affected by the stopped trains were faced with the reality of possible delays in police, fire and emergency medical services. Also, blocked crossings generate significant economic

development concerns in the community. Businesses cannot service customers and neighborhoods become less attractive for development. The number of stopped trains and the length of time that crossings are blocked was not accurately addressed in studies conducted in response to the application to acquire Conrail.

4. Pollution.

The impact of emissions from trains that sit and idle for hours, even days, was not adequately studied in this proceeding. The thick, black smoke emitted from the trains leaves black soot on anything within one hundred feet of the train. This pollution is of grave concern to residents living near tracks where these trains sit idling.

Because the volume of rail traffic after the Split Date has been significantly higher than originally expected and the Board did not fully consider the impact of stopped and idly trains as part of its environmental review, the City of Cleveland requests that the Board consider reopening the proceeding to conduct a new study of the environmental impacts caused by the Transaction, with a particular emphasis upon the mitigation of environmental impacts caused by stopped and idling trains.

B. Inadequate Property Maintenance.

In addition to the problems experienced in Cleveland arising out of the unexpectedly large volume of rail traffic after the Split Date, Cleveland has experienced considerable difficulty getting CSX to assume responsibility for maintaining their newly acquired real property assets within the City's borders. Like any other property owner in our community,

Cleveland expects the railroads to keep their property clean, maintained and free from nuisances. Along with the benefits of the Transaction, CSX needs to take responsibility for properly maintaining the assets it is assuming control of and acquiring. It has proved difficult for the City of Cleveland to get CSX to effectively maintain railroad sites by removing debris and vegetation which is causing potential health concerns. As part of the Board's examination of the Transaction, the railroads should be required to develop a meaningful process for addressing complaints about the condition of railroad property and to develop a minimum maintenance plan for railroad property which adjoins residential neighborhoods. It is the responsibility of all property owners in the City of Cleveland to clean and maintain their property. Basic quality of life issues such as the clean up and maintenance of railroad property should be addressed by the Board as part of this oversight proceeding.

II. COMPLIANCE BY CSX AND NS WITH THEIR RESPECTIVE NEGOTIATED AGREEMENTS.

A. Compliance by CSX.

On June 4, 1998, the City of Cleveland and CSX entered into a Settlement Agreement concerning the Transaction (the "CSX Settlement Agreement"). This agreement was reached following extensive negotiation between the City of Cleveland and CSX and each provision constitutes a deal point of significant importance to Cleveland. The City of Cleveland expects CSX to fully comply with its representations and obligations under the agreement. On page 128 of the CSX Report, CSX states that it is complying with the CSX Settlement Agreement, except that CSX has not provided Cleveland with "the study provided in paragraph 11 to determine whether it is feasible to operate two additional trains over the Lakeshore Line." As detailed below, the City of Cleveland can identify a number

of ways in which the railroad is not currently meeting its commitments in the CSX Settlement Agreement.

1. Lakeshore Line Study.

Paragraph 11 of the CSX Settlement Agreement provides that "with respect to the Lakeshore CSX shall conduct, within six months of the Closing Date of the Transaction, a study with Norfolk Southern to determine whether two additional through CSX trains can be operated over the Lakeshore in a safe and efficient manner, without interference with CSX and NS main line train operations, and with schedules that satisfy customer requirements." Pursuant to the agreement, NS is obligated to permit two additional trains to operate over the Lakeshore line if the study concludes that such operations can be conducted "in a safe and efficient manner without interference with the mainline trains and with schedules satisfying customer requirements."

By letter dated March 8, 2000 to the City of Cleveland, a representative of CSX stated that "the report requested in the agreement will be delivered shortly, pending review by Norfolk Southern." By letter dated June 28, 2000 to the City, a representative of NS reported to the City of Cleveland that NS supplied comments on the report to CSX on May 16, 2000. To date, the City of Cleveland has not received any additional information concerning the report. It is currently thirteen (13) months since the Closing Date of the Transaction, four (4) months since CSX stated that the report would be delivered "shortly" and two (2) months since NS supplied its comments to CSX concerning the report.

2. Fencing and Landscaping.

Paragraph 1.E. of the CSX Settlement Agreement provides that "CSX will expend \$2.4 million (two million four hundred thousand) in Cleveland over a five year period for fencing, landscaping or other improvements to limit access to railroad

property, and for the cost of installation of landscaping related to noise mitigation measures.”

By letter dated May 30, 2000 to the City of Cleveland, a representative of CSX stated that an “internal review of expenditures and plans for the Short Line is complete.” The letter continues with the statement: “We have determined that some portion of funds expended in the development of Collinwood Yard and the clean-up we successfully completed this year at the City’s request, are included in the \$2.4 million.” The proposed “Cost Summary” for “Cleveland Mitigation” which is attached to this letter identifies a total of \$778,864.00 to be spent for “Cleveland Mitigation.” A “Project Key List” which is also attached to this letter identifies the scope of work as including the removal of “trash and debris” at a number of sites owned by CSX.

By letter dated June 15, 2000 to CSX, the City of Cleveland noted its objections to CSX’ submittal regarding the use of the \$2.4 million for fencing and other landscaping improvements. Since the letter from CSX states that the review and plans for the Short Line are “complete,” Cleveland has asked the reason why expenditures in the total amount of \$778,864.00 are budgeted when the CSX Settlement Agreement specifies an expenditure of \$2.4 million. Cleveland is seeking an explanation of how CSX intends to spend the remaining \$1.7 million in the fund. In addition, Cleveland takes exception to CSX considering any expenditures for property “cleanup,” such as the removal of trash and debris, as a

proper use of the funds obligated to be spent by CSX pursuant to Paragraph I.E. of the CSX Settlement Agreement. The agreement is clear and unambiguous. A total amount of \$2.4 million is to be spent by CSX in Cleveland over a five (5) year period "for fencing, landscaping or other improvements to limit access to railroad property, and for the cost of insulation of landscaping related to noise mitigation measures." The City of Cleveland expects the full benefit of its bargain with CSX and expects CSX to fully meet its contractual commitment.

Moreover, Cleveland believes that CSX' attempt to use a portion of fencing and landscaping funds for cleanup of trash and debris on its property demonstrates the difficulties Cleveland has experienced in obtaining cooperation from the railroad with respect to the removal of public nuisances on its property. See Paragraph I.B. above. To the extent that the railroad is willing to clean up trash and debris on its property, it seeks to use funds which are specifically earmarked in its contract with Cleveland to limit access to railroad property and for noise mitigation measures.

3. Job Opportunities for City Residents.

Paragraph 8 of the CSX Settlement Agreement provides that "CSX will endeavor to hire up to 40% of the permanent terminal jobs established during the start up period at its expanded intermodal facility from among qualified residents of Cleveland."

In a letter dated March 2, 2000, a representative for CSX acknowledges that CSX projected hiring 50 employees at the Collinwood Yard but states that only four positions will be "permanent." The representative states that the remaining

positions are "contract clerical, lift and equipment maintenance positions" and "independent owner-operator truckers." The City of Cleveland asserts that CSX' interpretation is a clear attempt to avoid its obligation under the CSX Settlement Agreement. Whether the jobs created are CSX managers, or contract employees or truckers, CSX is obligated in the CSX Settlement Agreement to endeavor to hire up to 40% of the permanent jobs from among qualified residents of Cleveland.

4. Participation in the Community Advisory Committee.

In Paragraph 7 of the CSX Settlement Agreement, CSX, along with the City of Cleveland, acknowledged an intention "to continue the working relationship that has developed between them" and to participate in the joint Community Advisory Committee. The meetings of the advisory committee provide an open forum for discussion between community representatives and the railroad. Unfortunately, CSX's representative to the committee is not always prepared to provide accurate updates concerning CSX activities and is slow to respond to community issues. Cleveland does not believe that CSX is currently meeting its commitment to our community and is not currently working to resolve community issues of concern.

B. Compliance by NS.

On May 28, 1998, the City of Cleveland and NS entered into a Settlement Agreement concerning the Transaction (the "NS Settlement Agreement"). On Page 75 of the NS Report, NS states that it is complying with the requirements of the Negotiated Agreement with the City of Cleveland, except that it has requested additional time to

conduct joint inspection with the City of NS and Conrail facilities. NS further states: "Upon completion of these inspections, NS will submit an Asset Management Plan to the City." Cleveland believes that a timely completion of the Asset Management Plan is an integral part of NS' commitment in the NS Settlement Agreement. Yet, Cleveland's experience to date has been one of cooperation from NS concerning compliance with its obligations under the NS Settlement Agreement and with regard to other community concerns. For this reason, Cleveland will continue to work with NS toward a timely completion of the Asset Management Plan.

CONCLUSION.

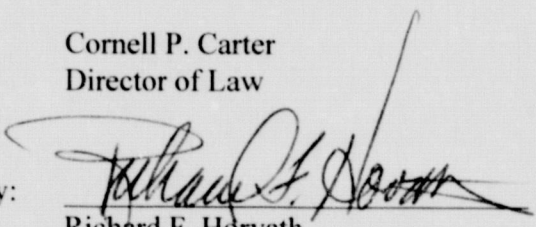
The Transaction has had an enormous impact upon the City of Cleveland. The burdens imposed on the citizens adjoining the CSX and NS rail lines have been great. They have been severely and negatively affected by a greater volume of rail traffic that originally estimated and by the impacts from large numbers of stopped and idled trains. The City of Cleveland believes that these impacts were not fully studied and mitigated in the original proceeding. The affect on quality of life along these rail lines can be far-reaching and potentially devastating. In addition, the City of Cleveland asserts that CSX have not properly maintained its property in our community. Finally, the City of Cleveland does not believe that CSX is currently meeting its commitments under the CSX Settlement Agreement. The City of Cleveland respectfully requests that the Board consider reopening the proceeding to study the environmental impacts caused by the Transaction, with a particular emphasis upon the mitigation of environmental impacts caused by stopped and

idling trains; require CSX to develop a meaningful process for addressing complaints about the condition of railroad property and to develop a minimum maintenance plan for railroad property adjacent to residential neighborhoods; and oversee compliance by CSX of its obligations under the CSX Settlement Agreement.

Respectfully submitted,

Cornell P. Carter
Director of Law

By:



Richard F. Horvath
Chief Corporate Counsel
City of Cleveland
Department of Law - Room 106
601 Lakeside Avenue
Cleveland, Ohio 44114
(216) 664-2675

Counsel for the City of Cleveland, Ohio

Dated: July 13, 2000

VERIFICATION

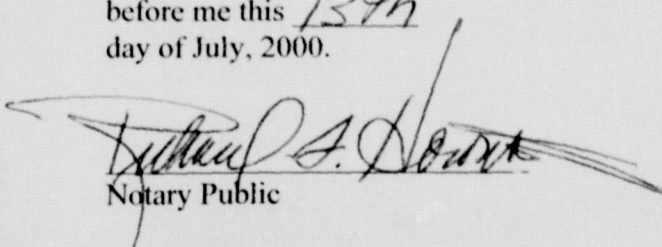
STATE OF OHIO)
)
CITY OF CLEVELAND)

SS:

I, COLLETTE APPOLITO-JACKSON, being duly sworn, depose and say that I am qualified and authorized to file this Verification, and that I have read the foregoing submittal by the City of Cleveland, know the factual contents thereof, and that the factual statements contained therein are true as stated to the best of my knowledge, information and belief.


COLLETTE APPOLITO-JACKSON

Subscribed and sworn to
before me this 13th
day of July, 2000.

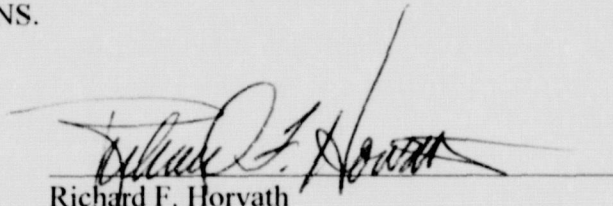

Notary Public

My Commission expires:

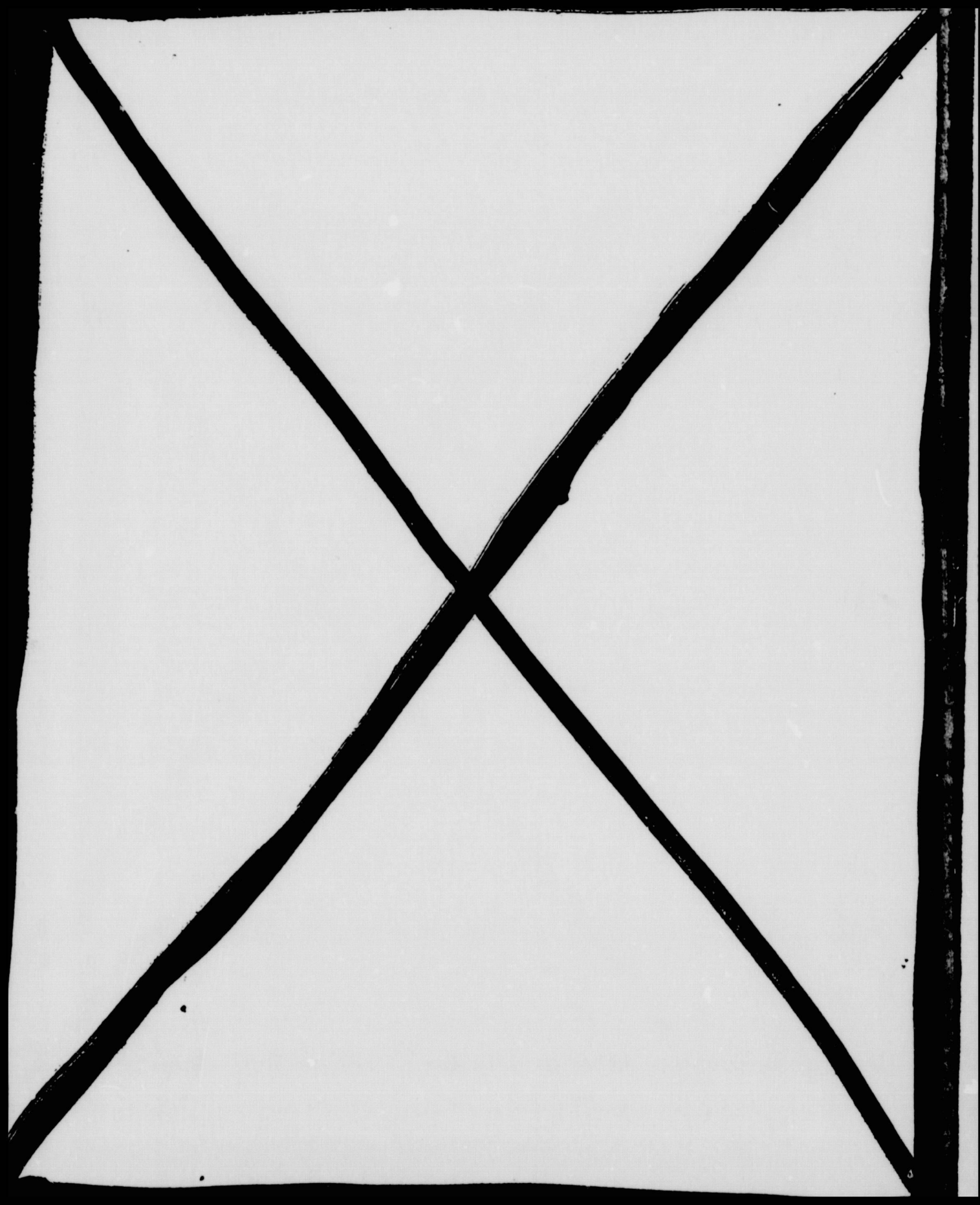
RICHARD F. MORVATH, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2000, a copy of the foregoing Comments Submitted by the City of Cleveland, Ohio was served by first class mail, postage prepaid, upon the counsel for Applicants CSX and NS.



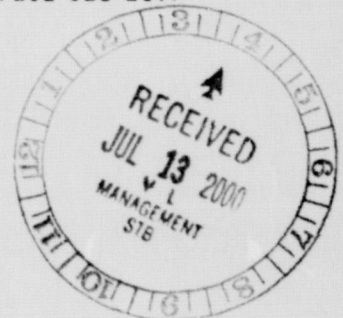
Richard F. Horvath
Chief Corporate Counsel
City of Cleveland
Department of Law - Room 106
601 Lakeside Avenue
Cleveland, Ohio 44114



STB FD-33388 (SUB 91) 7-13-00 D 199248

WEINER BRODSKY SIDMAN KIDER PC

1300 NINETEENTH STREET NW
FIFTH FLOOR
WASHINGTON DC 20036 1609
TEL 202 628 2000
FAX 202 628 2011



July 13, 2000

BY HAND

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

LIRC-3

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:

Louisville & Indiana Railroad Company ("LIRC" or the "Company") files this letter to
advise the Surface Transportation Board (the "Board") as to the progress LIRC and CSX
Transportation, Inc. ("CSXT") have made in addressing certain issues arising in the Consolidated
Railroad Company ("Conrail") control proceeding approved by the Board in STB Finance
Docket No. 33388.¹

Prior to the Board's granting of the applications filed in STB Finance Docket No. 33388,
LIRC notified the Board by letter dated October 21, 1997, that LIRC and CSXT had executed

¹ As a result of this transaction, the number of carriers with which LIRC
interchanges was reduced from two to one.

Honorable Vernon A. Williams

- 2 -

July 13, 2000

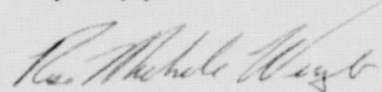
two agreements and expected to execute a third agreement that would address the Company's concerns about the proposed transaction. In that letter, LIRC reserved the right to participate further in the Conrail control proceeding if the third agreement was not executed. Although the third agreement was subsequently executed, disputes between LIRC and CSXT arose as to the proper implementation of one of the three agreements.

In an effort to resolve these disputes, LIRC and CSXT recently entered into a letter agreement, dated June 14, 2000, and soon expects to enter into a definitive settlement agreement. LIRC believes that the settlement agreement, when implemented, will resolve all outstanding issues between the parties regarding the Conrail control proceeding.

In accordance with Decision No. 1 by the Board in the above-referenced proceeding, enclosed for filing in this proceeding are an original and 25 copies of this letter and a 3.5-inch disk containing this filing formatted in Word Perfect.

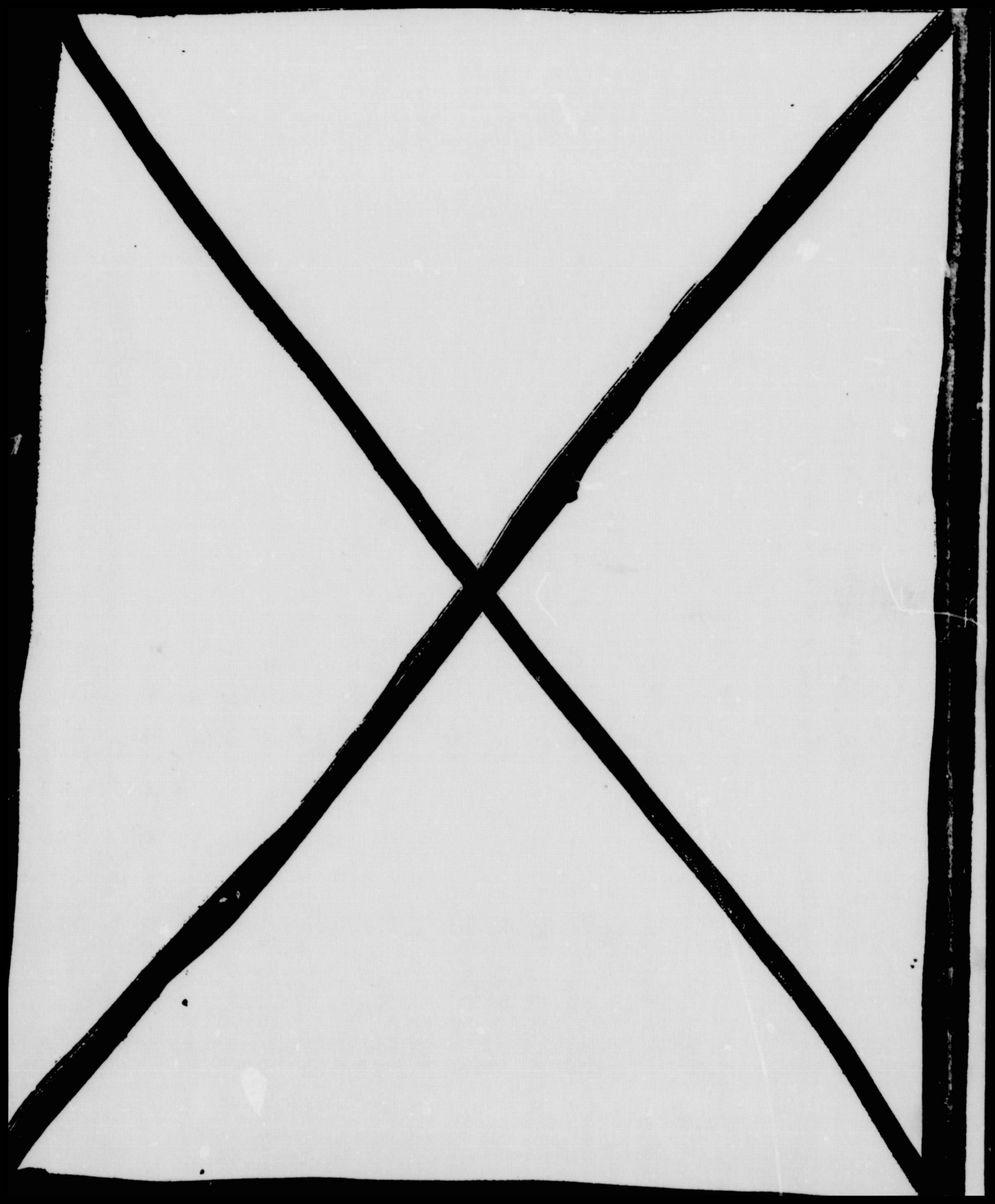
Please acknowledge this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Rose-Michele Weinryb".

Rose-Michele Weinryb

cc: Richard A. Allen (by first-class mail)
Dennis G. Lyons (by first-class mail)



STB FD-33388 (SUB 91) 7-13-00 D 199249

199249

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

ROBERT RANDALL GREEN
LAURA L. PHELPS
GOVERNMENT RELATIONS

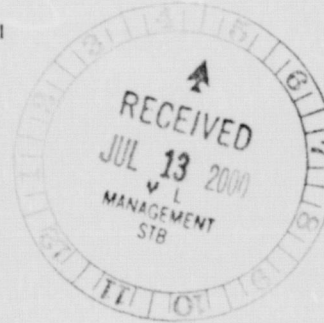
STEPHEN FRERICHS
ECONOMIST

ENTERED
Office of the Secretary

JUL 14 2000

Part of
Public Record

July 13, 2000



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 Motion of New York City Economic Development Corporation For Extension Of Time 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

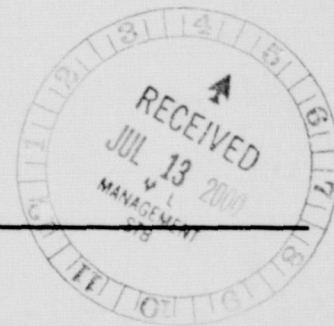
cc: Julia Farr, Esquire
Richard A. Allen, Esquire
Dennis G. Lyons, Esquire

ENTERED
Office of the Secretary

JUL 14 2000

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Public Record

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C.



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

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

(GENERAL OVERSIGHT)

**MOTION OF
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
FOR EXTENSION OF TIME**

The New York City Economic Development Corporation ("NYCEDC"), by its undersigned counsel, hereby moves this Board pursuant to 49 C.F.R. §1104.7(b) for an extension of the time for filing replies to the Progress Reports filed by applicants in this oversight proceeding on June 1, 2000. According to the Board's Notice in Decision No. 1 in this docket, replies are due on Friday, July 14, 2000. NYCEDC hereby seeks leave to file its reply by no later than Wednesday, July 19, 2000, an extension of only five (5) days.

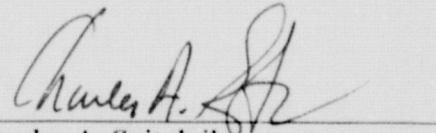
The Board's Rules permit extensions of time upon request and for good cause. Good cause exists here. NYCEDC, a party which has participated actively in all phases of this proceeding, has a vital interest in this Board having a complete record upon which to base its review of the implementation to date of the transaction approved in this proceeding and the conditions that were imposed as part of that approval. To that end, NYCEDC has reviewed carefully and has been working on preparation of comments on the applicants' June 1 reports. However, the individual within the NYCEDC organization who has final responsibility for

reviewing and approving the comments to be filed on July 14 has been unexpectedly called away and is unable to complete that review and approval by that date. To permit that individual to return to the City and review and have meaningful opportunity to comment on the document to be filed, NYCEDC seeks an additional 3 business days (5 calendar days) to complete its submission. This extension will not prejudice applicants, who will be receiving a slew of other comments on the 14th and who have until August 3, 2000 to file their replies to NYCEDC in any event.

In view of the foregoing, NYCEDC asks this Board to extend the time for NYCEDC to file its Comments on applicants' progress reports for five days, through and including July 19, 2000.

Dated: July 13, 2000

Respectfully submitted,

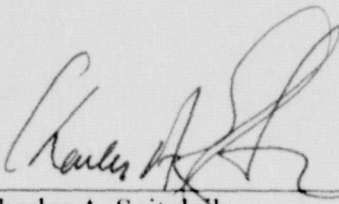
A handwritten signature in dark ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

Charles A. Spitulnik
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20006
(202) 842-2345

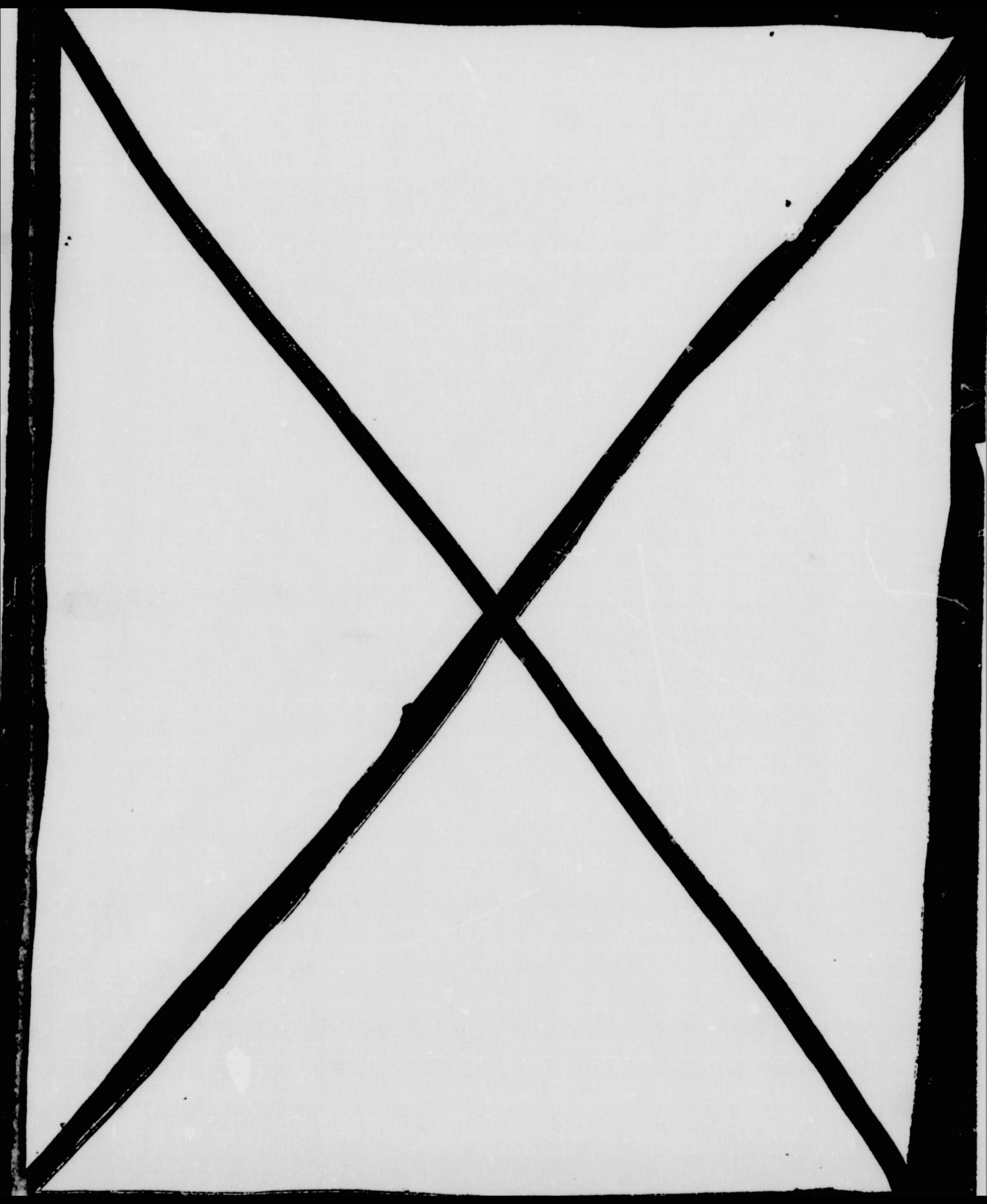
CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing Motion of New York City Economic Development Corporation For Extension Of Time to be served by hand delivery upon: Dennis G. Lyons, Esquire, Arnold & Porter, 555 12th Street, N.W., Washington, D.C. 20004-1202; and Richard A. Allen, Esquire, Zuckert, Scoutt & Rasenberger, LLP, 888 17th Street, N.W., Washington, D.C. 20006-3939.

Dated this 13th day of July, 2000.



Charles A. Spitulnik



STB FD-33399 (SUB 91) 7-13-00 D 199239

199239

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American
Chemistry
Council
*Good Chemistry
Makes It Possible*

July 13, 2000

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



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

Dear Secretary Williams:

Enclosed are the original and 25 copies of ACC-2, the Comments of the American Chemistry Council in the "Conrail General Oversight" proceeding. Also enclosed, in accordance with the Surface Transportation Board's Decision No. 1 in this proceeding, is a 3.5-inch IBM-compatible diskette that contains the text of ACC-2 and this letter.

Sincerely,

Thomas E. Schick
Distribution Counsel

enclosures

cc: Dennis G. Lyons, Esq.
Richard A. Allen, Esq.



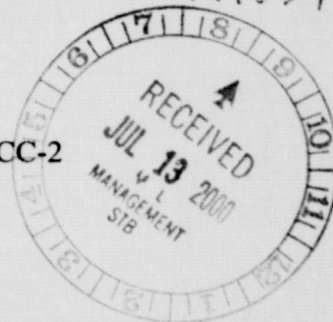
Responsible Care®

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Office of the Secretary

JUL 13 2000

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Public Record

ACC-2



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

(General Oversight)

COMMENTS OF THE AMERICAN CHEMISTRY COUNCIL

June 14, 2000

The American Chemistry Council ("the Council") represents the leading companies engaged in the business of chemistry. Council members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. The Council is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a key element of the nation's economy. It is the nation's largest exporter, accounting for 10 cents out of every dollar in U.S. exports. Chemistry companies invest more in research and development than any other business sector.

Council members depend heavily on railroads for the safe and efficient transportation of raw materials and finished products, which typically move in tank cars and hopper cars that are owned or leased by shippers. The chemical industry is the second largest rail customer segment, shipping 140 million tons of products annually and paying nearly \$5 billion in rail freight costs. In many instances, rail is the only viable shipping option for chemicals. With almost two-thirds of the chemical industry's manufacturing facilities captive to a single railroad, Council members pay rates that are 15% to 60% higher than where there is competition. Captive shippers also tend to bear the brunt of rail service problems.

The Council – formerly the Chemical Manufacturers Association – was a party of record in Finance Docket No. 33388, in which the Surface Transportation Board (“the Board”) approved the Conrail transaction. Having advocated that the Board conduct five years of annual oversight, we welcome this opportunity to comment on the general oversight reports that Norfolk Southern (“NS”) and CSX submitted on June 1, 2000.

Conrail Transaction Council

Since July 16, 1998, the American Chemistry Council has participated in every meeting of the Conrail Transaction Council (“the CTC”). Representatives of many individual member companies also attended the “open” CTC meeting in Philadelphia on January 11, 2000. The CTC provides a useful forum for shipper groups to exchange information with CSX, NS and the Shared Assets Areas (“SAA”) operator. In CTC meetings, as well as other communications, aggregated information from the Council’s member companies has also been provided to the Board and the Federal Railroad Administration (“FRA”).

On behalf of the railroads, the Council has also advised members about the Conrail transaction, both before and after June 1, 1999 (the “Split” date). For example, as CSX notes, before the Split date it was “very important that customers change their bill of lading shipping instructions to delete ‘Conrail’ as the specified carrier and to replace it with either ‘CSX’ or ‘NS.’ ... With the assistance of [CTC] leaders and trade associations, the message was conveyed so effectively to the shipping public that incorrect billing was essentially a *de minimis* problem at start-up.” (See CSX-1 at pages 74-75.) The CTC has facilitated communications about the transaction as well as the unfortunate service disruptions that NS and CSX have experienced since the Split date.

Performance Measures

One positive result of the Board’s oversight process for the Conrail transaction was the identification of several performance measures that CSX and NS issue on a regular basis. This is a marked improvement over several earlier rail mergers in the 1990s, when the public had access only to anecdotal information about post-transaction service problems. Without performance measures, it was difficult for shippers and the Board to determine the level of service. Indeed, in one instance, no data were reported until after the Board had imposed an unprecedented emergency service order.

We also recognize that the performance measures developed in the CTC influenced the “railroad performance measures” for all Class I carriers, which the Association of American Railroads posts on its “www.railroadpm.org” website. However, the Council regrets that the outcome of the CTC process was a series of performance measures that are oriented toward railroad operations. The CTC process did not result in the adoption of two important performance measures that are of particular interest to rail customers:

- First, rail customers in the business of chemistry, like those who ship other products, want to see transit time data for specific corridors. System-wide operating data on velocity (by train type) and cars on line (by car type) are no substitute for corridor-specific transit time data. And while terminal dwell times highlight locations with operational difficulties, shippers want to know how long the entire car cycle (loaded and empty) takes. This is particularly important to the Council's members, which own or lease their rail cars and face intense competitive pressure from their own customers for timely and predictable freight deliveries.
- Second, the CTC process did not establish pre-Split benchmarks of Conrail's performance. Even considering the fact that NS and CSX became substantially different railroads when they absorbed Conrail, it is unfortunate that the Board now lacks historically comparable data. For example, each carrier understandably tends to focus on service vis-à-vis its respective post-Split low-point. But members of the American Chemistry Council still expect that service will meet – and ultimately exceed – that provided before June 1, 1999.

Competition and Service

In comments filed in Finance Docket No. 33388 on October 21, 1997, we observed that the creation of the SAA offered the prospect of more competitive pricing, but also threatened to reduce the quality of service in the SAA. We said that, “[a]t a minimum, shippers in and out of the SAAs can expect to experience worse service than they do currently for shipments to and from the points that are proposed to be included in the SAAs.” (CMA-10 at page 2) In fact, as each railroad recognizes in its oversight report, many shippers have benefited from new competition introduced in the SAA and by the reopening of Conrail's contracts:

- “The competition resulting from the Transaction, spurred by various customers' ability to terminate their existing Conrail contracts after the 180-day period, has had the salutary competitive effect of prompting both carriers, NS and CSX, to renegotiate numerous of these contracts with customers.” (NS-1 at page 31)
- “The widely publicized service difficulties encountered by CSXT have overshadowed the intense competitive environment that prevailed in the sales and marketing efforts of CSXT preparing for the start-up of separate operations of Conrail's lines. Because most of this competitive activity was conducted in private commercial negotiations between shippers and CSXT, it has not been readily recognized. However, its effects are certainly identifiable in terms of revenue impact and traffic volumes.” (CSX-1 at page 28)

Unfortunately, however, many of the same shippers have been among those who have suffered from service disruptions during the past year. These shippers have experienced service problems in the SAA, on other former Conrail lines that are operated

by either CSX or NS, and even in the Southeast. To varying degrees, these problems have continued for 13 months since the Split date.

We also remain concerned that NS and CSX have not taken advantage of the CTC process to provide individual shippers, through their trade associations, with information about each railroad's procedures for addressing freight claims relating to post-Split service disruptions.

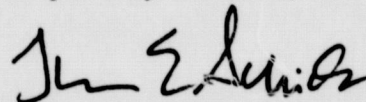
Safety

Finally, with safety always a critical concern, the American Chemistry Council commends the Board, FRA, and especially the railroads for the safe manner in which the Conrail transaction has been implemented. The Safety Integration Plans that the Board imposed in Finance Docket No. 33388, Decision No. 89, as merger conditions 49(A) and 49(B) appear to have been successful in preventing potentially adverse consequences for rail employees, the public, and the environment.

Conclusion

The American Chemistry Council appreciates this opportunity to comment on the general oversight reports of CSX and NS. We believe the Conrail Transaction Council has provided a good forum for discussion of the transaction and service disruptions. While we appreciate the development of performance measures, we regret that they do not include two key elements: specific corridor transit times and pre-Split benchmarks. We agree with the railroads that shippers have benefited from new competition created by the Shared Assets Areas. However, we continue to have concerns about service disruptions. On a positive note, safety has not been compromised by this transaction and we applaud the efforts of the railroads, the Board and FRA in that crucial area.

Respectfully submitted,



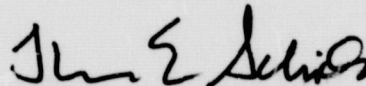
Thomas E. Schick
Counsel
Distribution Team
American Chemistry Counsel
1300 Wilson Boulevard
Arlington, VA 22209
703-741-5172

CERTIFICATE OF SERVICE

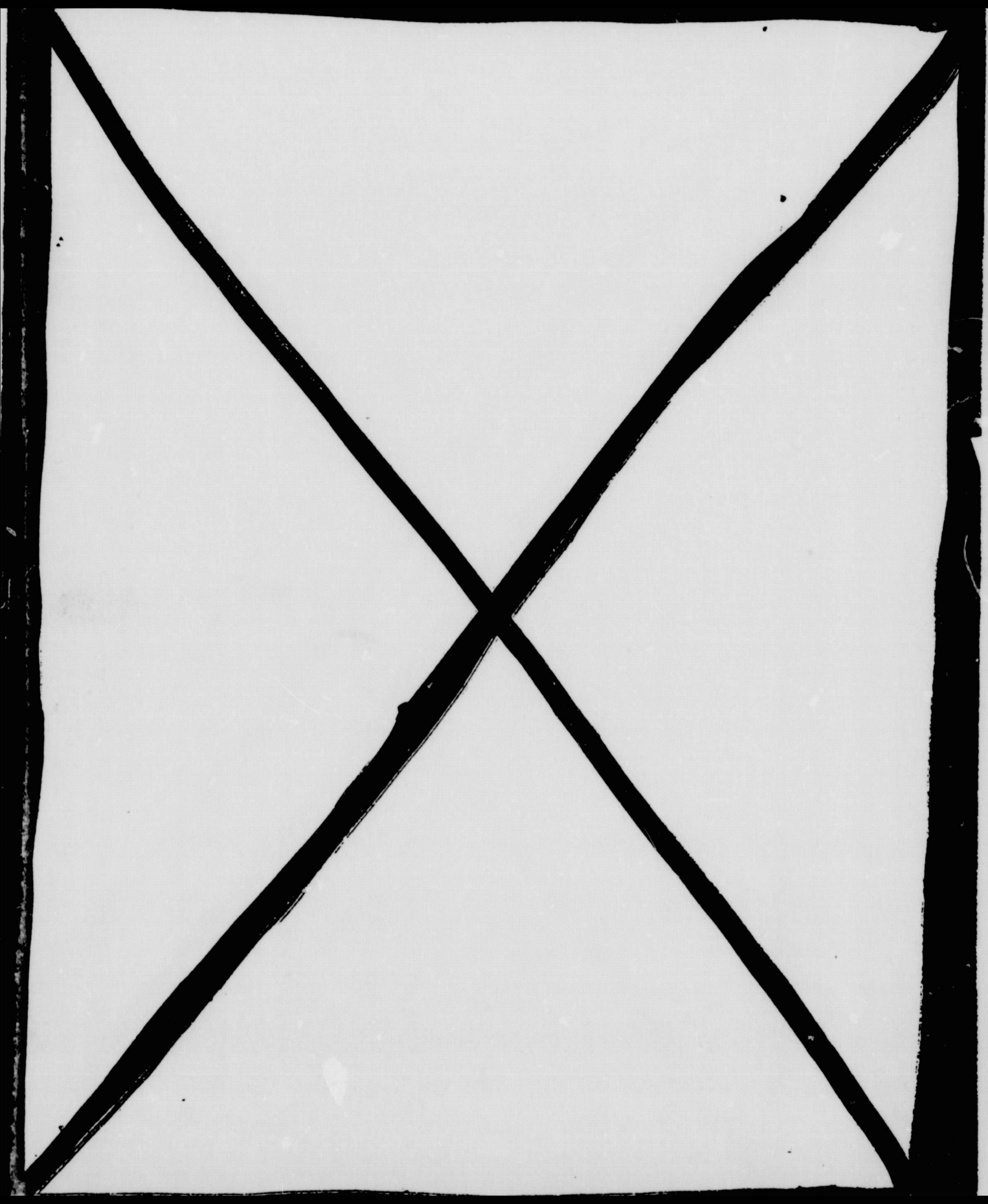
I hereby certify that I have, in accordance with the Board's Decisions in this proceeding, served copies of the foregoing comments this 13th day of July, 2000, by first class mail upon all parties of record and by hand upon the following:

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

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Washington, DC 20006-3939

A handwritten signature in dark ink, appearing to read "Thomas E. Schick", written over a horizontal line.

Thomas E. Schick



STB

FD-33388 (SUB 91)

7-3-00

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U. S. Department of Justice
Antitrust Division

325 7th Street, N.W., Suite 500
Washington, DC 20530

199163

ENTERED
Office of the Secretary

JUL 03 2000
Part of
Public Record

June 28, 2000



Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, DC 20423-0001

D

Re: Conrail Control Case (General Oversight)
STB Finance Docket No. 33388 (Sub-No. 91)

Dear Mr. Secretary:

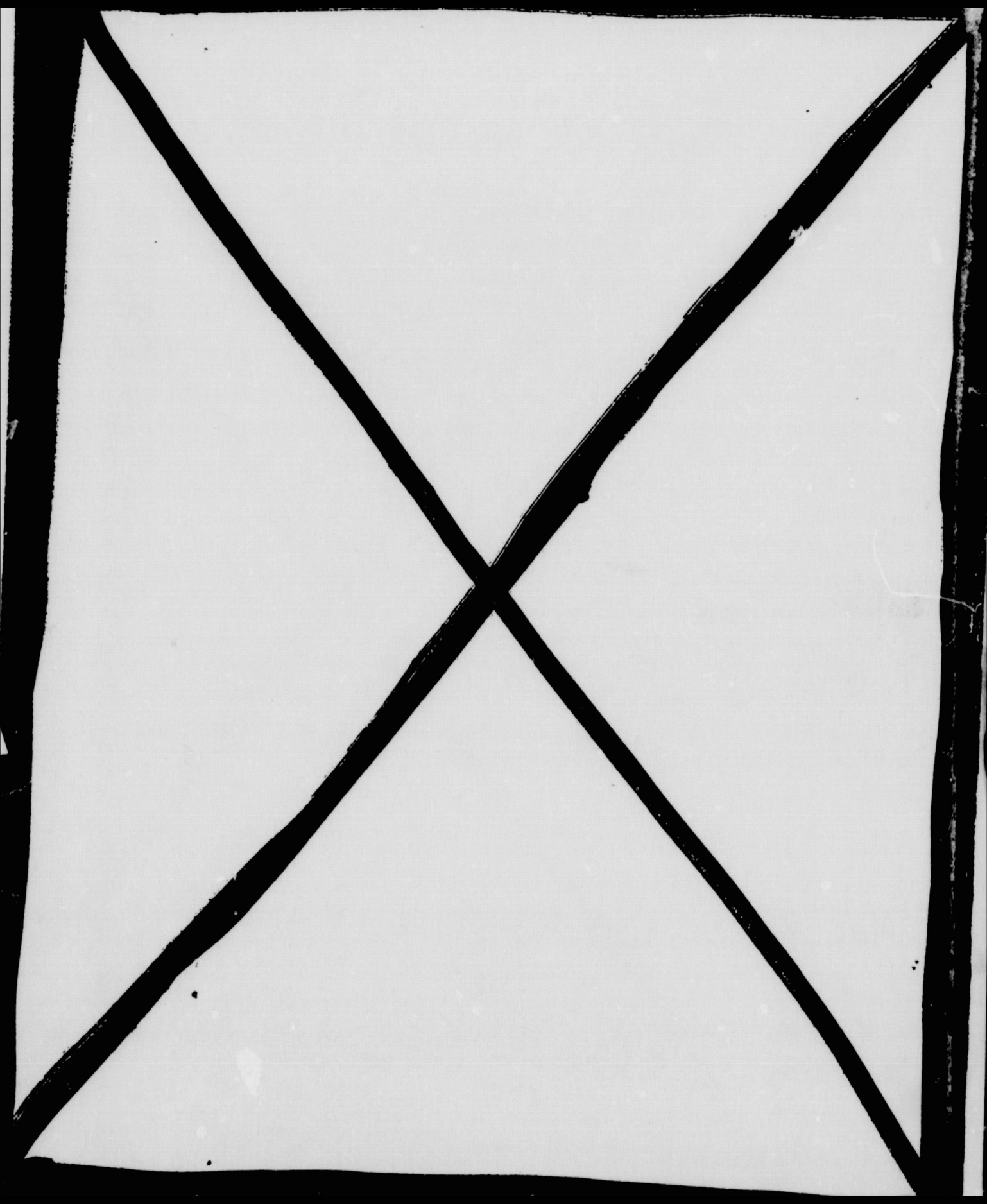
Please put my name on the service list in the above-captioned matter. If you have any questions please feel free to call me at 202-307-6357.

Sincerely yours,

Michael P. Harmonis

Michael P. Harmonis
Attorney
Transportation, Energy and
Agriculture Section

cc Dennis G. Lyons, Esq.
Richard A. Allen, Esq.



STB

FD-33388 (SUB 91)

7-3-00

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199159

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Richard R. Wilson, P.C.
Attorney at Law
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1126 Eighth Avenue, Suite 403
Altoona, PA 16602

(814) 944-5302
888-454-3817 (Toll Free)
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Of Counsel to:
Vuono & Gray LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800
(412) 471-4477 FAX

June 28, 2000

Case Control Unit
Office of the Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

ENTERED
Office of the Secretary

JUL 03 2000

Part of
Public Record



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

Dear Sir:

On May 24, 2000 the undersigned entered an appearance on behalf of the following parties:

Representative Richard A. Geist, Chairman House Transportation Committee
General Assembly of the Commonwealth of Pennsylvania

North Shore Railroad Company, Nittany & Bald Eagle Railroad Company, Lycoming
Valley Railroad Company, Juniata Valley Railroad Company, Union County Industrial
Railroad, Shamokin Valley Railway Company and Stourbridge Railroad Company

SEDA-COG Joint Rail Authority

I would like to add **Growth Resources of Wellsboro** to this list. To facilitate service of documents, Norfolk Southern and CSX need serve only one set of their submissions with the undersigned counsel.

Thank you for your attention to this matter.

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson

RRW/klh

xc: Dennis G. Lyons, Esq.
Richard A. Allen, Esq.
Ms. Mary Worthington



STB

FD-33388 (SUB 91)

6-23-00

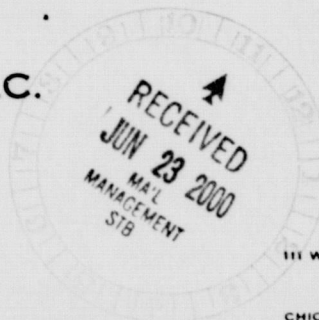
D

199103

LAW OFFICES

EARL L. NEAL & ASSOCIATES, L.L.C.

EARL L. NEAL
MICHAEL D. LEROY
ANNE L. FREDD
RICHARD F. FRIEDMAN
TERRANCE L. DIAMOND
LANGDON D. NEAL
D. RAINELL RAINS
FRANCINE D. LYNCH
GRADY B. MURDOCK, JR.
JEANETTE SUBLETT
JEROME A. SIEGAN
J. PAULA RODERICK
ELIZABETH GRANADOS
MARY A. SMIGIELSKI
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LENNY D. ASARO
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ANDRE M. THAPEDI



111 WEST WASHINGTON STREET

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CHICAGO, ILLINOIS 60602-2766

TELEPHONE 312-641-7144

TELEFAX 312-641-5137

OF COUNSEL
GEORGE N. LEIGHTON
EARL J. BARNES

June 22, 2000

ENTERED
Office of the Secretary

JUN 23 2000

Part of
Public Record

VIA FEDERAL EXPRESS

Vernon Williams
Secretary, Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

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

Dear Mr. Williams:

Yesterday we filed Notice of Intent to Participate on behalf of the Illinois International Port District (the Port of Chicago). We neglected to include 25 copies. Twenty-five copies are submitted herewith.

Very truly yours,

Richard F. Friedman

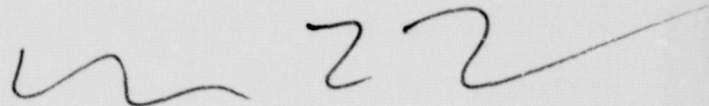
RFF:cm
Enclosure

PROOF OF SERVICE BY MAIL

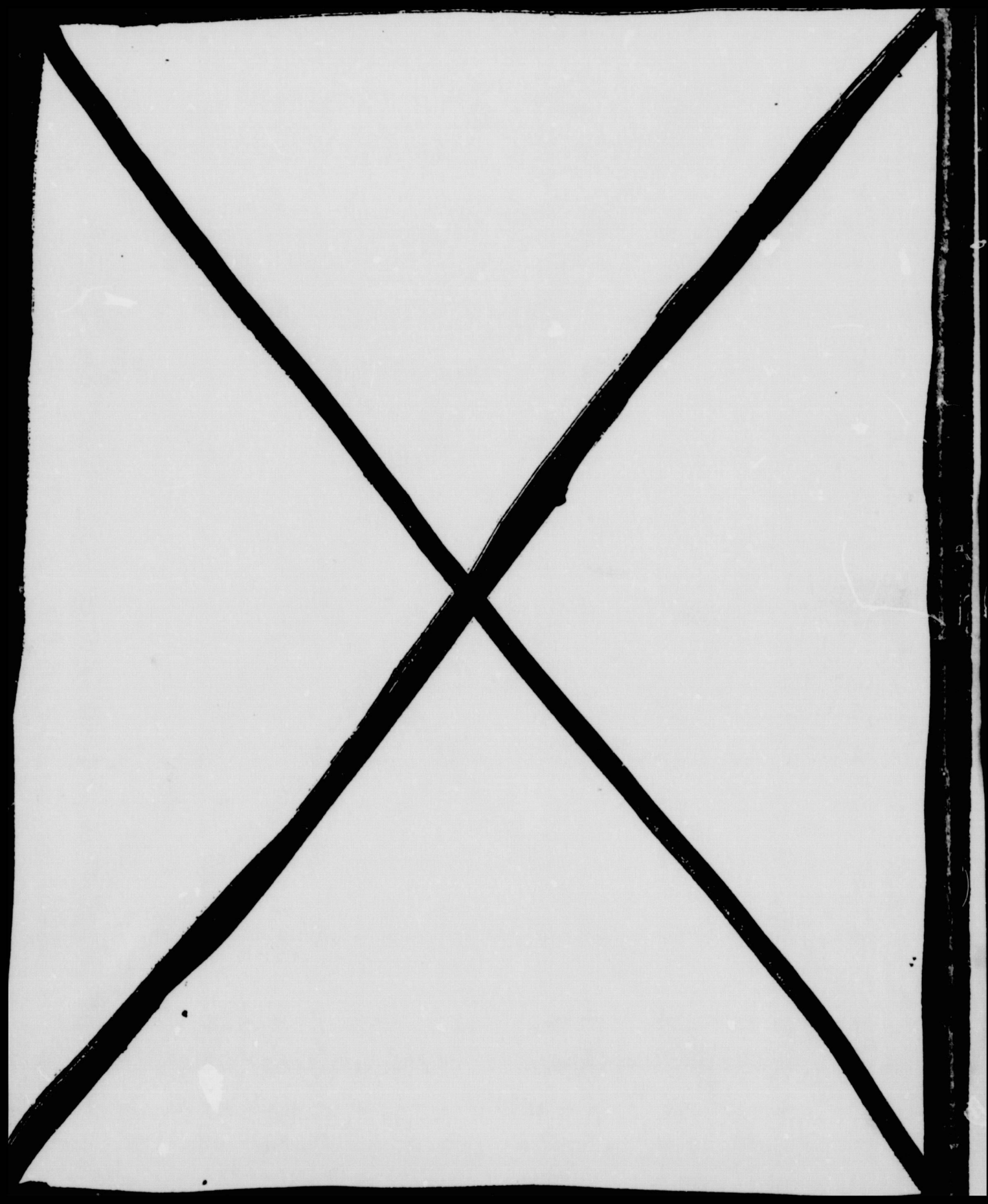
Dennis G. Lyons, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004-1202

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 17th Street, N.W.
Washington, DC 20006-3939

I certify that I served the attached Notice by transmitting same to the above by Federal Express on June 21, 2000.

A handwritten signature in black ink, appearing to read 'R. Friedman', is written above a horizontal line.

Richard F. Friedman



STB

FD-33388 (SUB 91)

6-21-00

D

199112

DENNIS J. KUCINICH

10TH DISTRICT, OHIO

1730 LONGWORTH OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5871

14400 DETROIT AVENUE
LAKEWOOD, OHIO 44107
(216) 228-8850
(216) 228-6465 FAX

5983 W 54TH
PARMA, OHIO 44129
(440) 845-2707



Committees: 199112
Government Oversight
Education and Labor

Congress of the United States House of Representatives

June 16, 2000

ENTERED
Office of the Secretary

JUN 26 2000

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Public Record



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

Re: "Notice of Intent to Participate"
STB Finance Docket No. 33388 Sub No 91

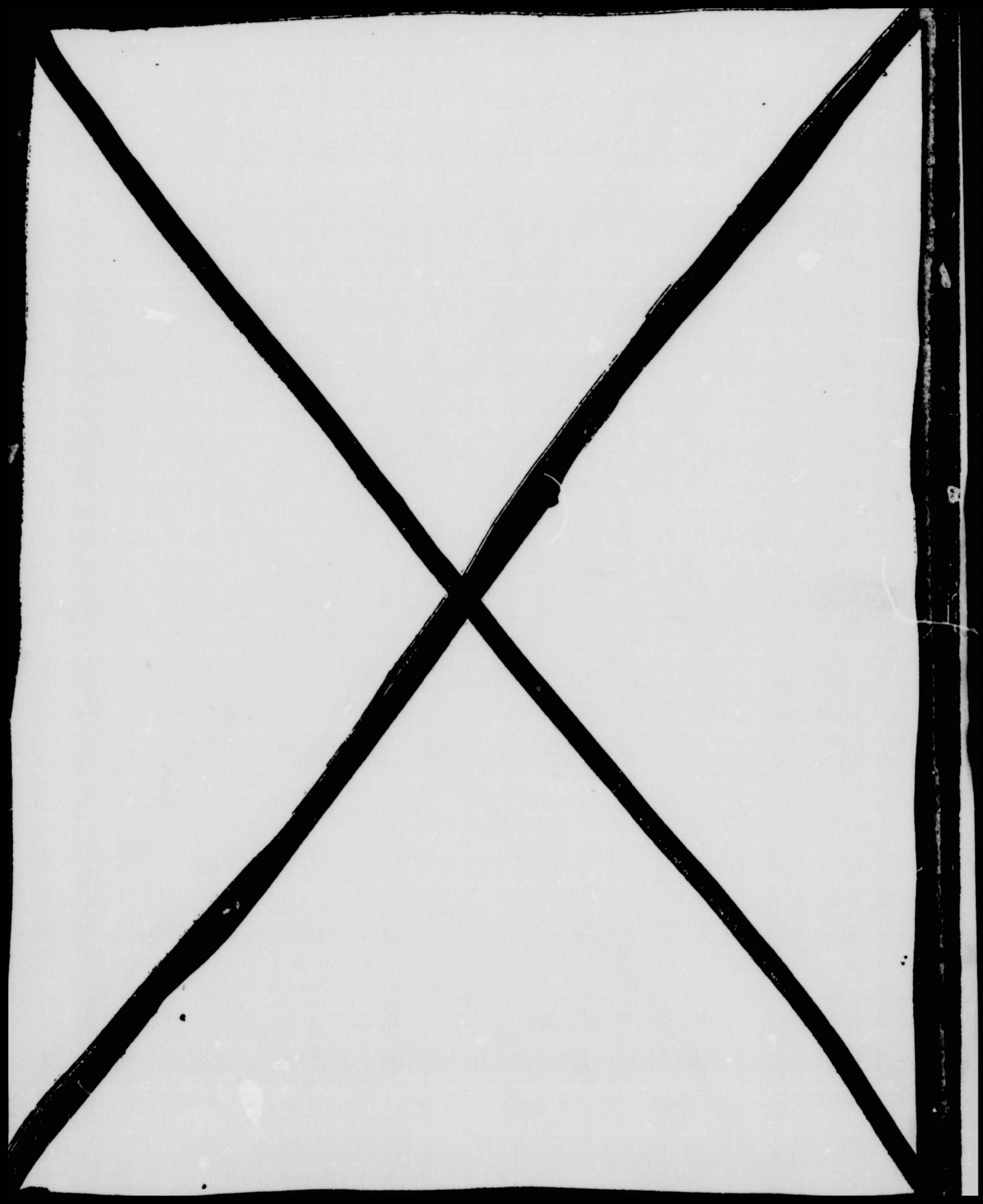
Dear Mr. Williams:

Please note that Congressman Dennis J. Kucinich, a Party of Record to the Conrail Merger proceedings under STB Finance Docket No 33388 Sub No 91, intends to participate in any further proceedings and notices in this docket. You may send any correspondence to my attention at the Lakewood District Office, 14400 Detroit Avenue, Lakewood, Ohio 44107. Thank you very much for your attention to this request.

Sincerely,

Martin D. Gelfand
Staff Counsel

Enclosure (10 copies)



STB

FD-33388 (SUB 91)

6-15-00

D

199033

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GOLLATZ, GRIFFIN & EWING, P.C.

ATTORNEYS AT LAW

PHILADELPHIA OFFICE:
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ERIC M. HOCKY
emhocky@ggelaw.com

ENTERED
Office of the Secretary

JUN 15 2000

Part of
Public Record

June 12, 2000

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, DC 20423-0001

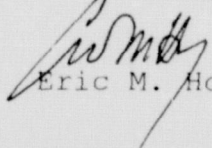
Re: **STB Finance Docket No. 33388 (Sub-No. 91)**
CSX and Norfolk Southern-Control and
Operating Leases-Conrail (General Oversight)
Notice of Intent to Participate

Dear Sir or Madam:

Enclosed for filing in the above referenced proceeding are an original and 25 copies of Notice of Intent to Participate of Buffalo & Pittsburgh Railroad, Inc. and Rochester & Southern Railroad, Inc. (BPRR-1, RSR-1), along with a diskette containing the document in a format (WordPerfect 6/7/8) that can be converted by, and into, WordPerfect 7.0.

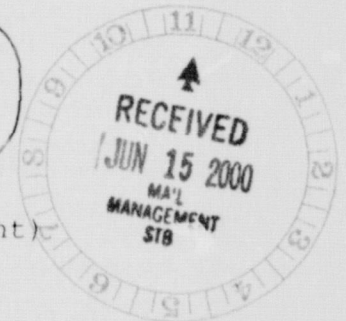
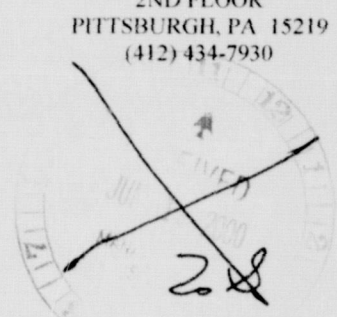
Please time stamp the extra copy of this letter to indicate receipt, and return it to me in the stamped self-addressed envelope provided for your convenience.

Very truly yours,


Eric M. Hocky

Enclosures

cc: Dennis G. Lyons, Esq.
Richard A. Allen, Esq.



199033

ENTERED
Office of the Secretary

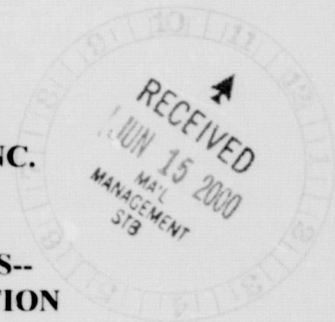
JUN 15 2000

Part of
Public Record

BPRR-1
RSR-1

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388 (Sub-No. 91)

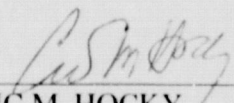
**CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**



(General Oversight)

NOTICE OF INTENT TO PARTICIPATE

Please take notice that Buffalo & Pittsburgh Railroad, Inc. ("BPRR") and Rochester & Southern Railroad, Inc. ("RSR")¹ intend to actively participate in this proceeding.² The undersigned counsel is already on the service list in this proceeding. Please note the additional representation.



ERIC M. HOCKY
WILLIAM P. QUINN
GOLLATZ, GRIFFIN & EWING, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796
(610) 692-9116

Dated: June 12, 2000

Attorneys for Buffalo & Pittsburgh Railroad, Inc.
and Rochester & Southern Railroad, Inc.

¹ BPRR and RSR are both wholly-owned subsidiaries of Genessee & Wyoming Inc.

² Although NS and CSXT have already made their initial filings in this proceeding, the Board's order establishing the proceeding did not set any deadline for filing notices of intent to participate. Comments are not due until July 14, 2000, and acceptance of this filing will not delay the proceeding.

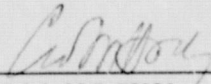
CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Notice of Intent to Participate of Buffalo & Pittsburgh Railroad, Inc. and Rochester & Southern Railroad, Inc. was served by first class mail on the following persons specified in Decision No. 1:

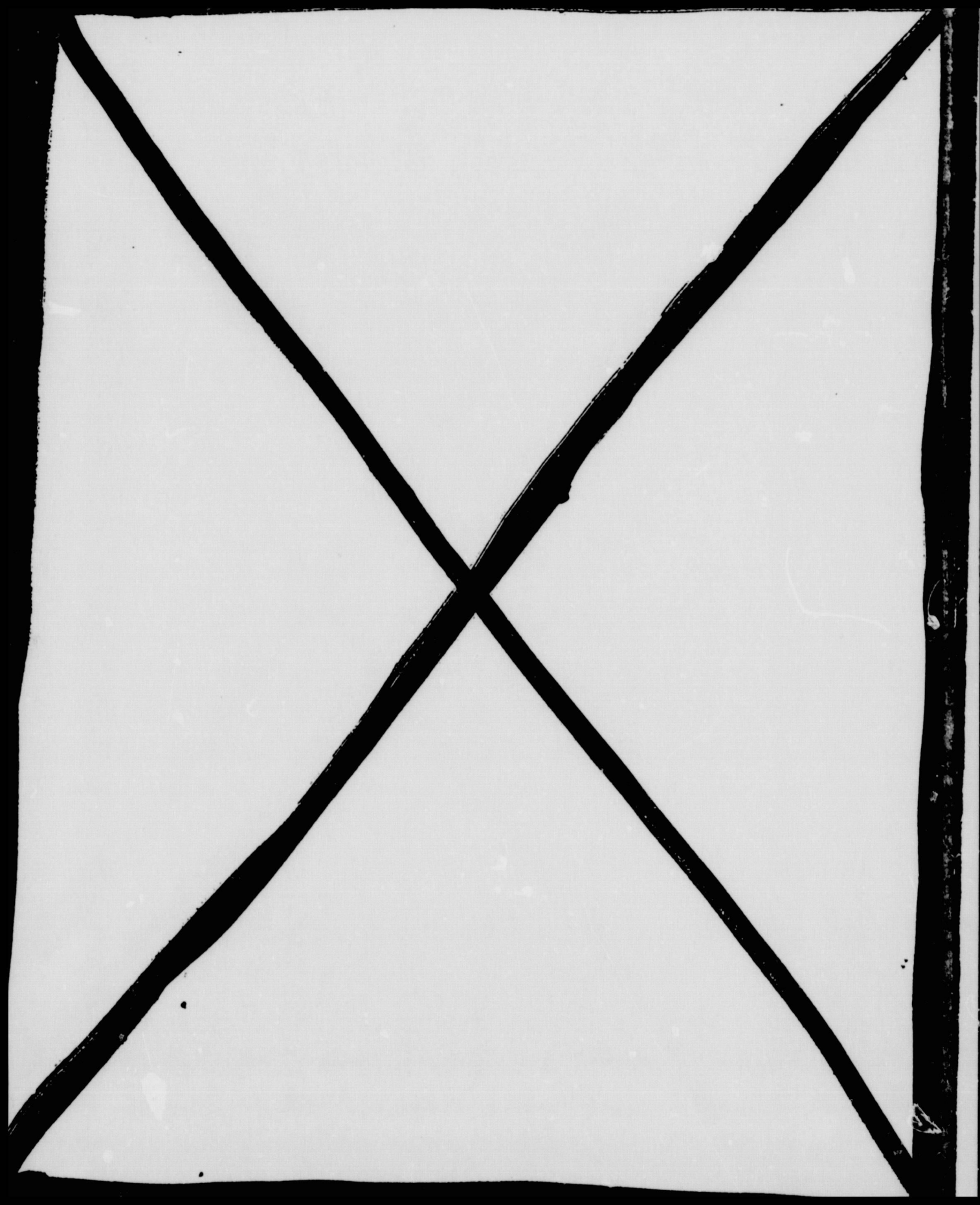
Dennis G. Lyons, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004-1202

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

Dated: June 12, 2000



ERIC M. HOCKY



STB

FD-33388 (SUB 91)

6-12-00

D

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198985

GOLLATZ, GRIFFIN & EWING, P.C.
ATTORNEYS AT LAW

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TWO PENN CENTER PLAZA
PHILADELPHIA, PA 19102
(215) 563-9400

213 WEST MINER STREET
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DELAWARE COUNTY
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205 N. MONROE STREET
MEDIA, PA 19063
(610) 565-6040

Telephone (610) 692-9116
Telecopier (610) 692-9177
E-Mail: gge@ggelaw.com

PITTSBURGH OFFICE:
225 ROSS STREET
2ND FLOOR
PITTSBURGH, PA 15219
(412) 434-7930

ENTERED
Office of the Secretary

JUN 12 2000

Part of
Public Record

May 24, 2000

ERIC M. HOCKY
emhocky@ggelaw.com

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, DC 20423-0001



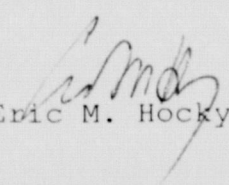
Re: STB Finance Docket No. 33388 (Sub-No. 91)
CSX and Norfolk Southern-Control and
Operating Leases-Conrail (General Oversight)
Notice of Intent to Participate

Dear Sir or Madam:

Enclosed for filing in the above referenced proceeding are an original and 25 copies of Notice of Intent to Participate of Reading Blue Mountain & Northern Railroad Company(RBMN-1), along with a diskette containing the document in a format (WordPerfect 6/7/8) that can be converted by, and into, WordPerfect 7.0.

Please time stamp the extra copy of this letter to indicate receipt, and return it to me in the stamped self-addressed envelope provided for your convenience.

Very truly yours,


Eric M. Hocky

Enclosures

cc: Dennis G. Lyons, Esq.
Richard A. Allen, Esq.

198985

RBMN-1

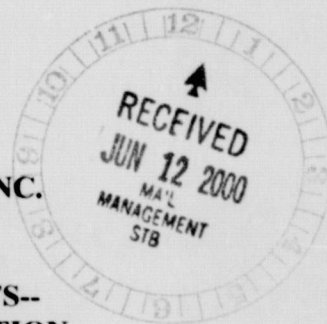
ENTERED
Office of the Secretary

JUN 12 2000

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388 (Sub-No. 91)

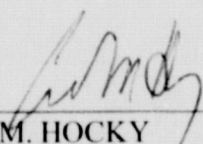
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION



(General Oversight)

NOTICE OF INTENT TO PARTICIPATE

Please take notice that Reading Blue Mountain & Northern Railroad Company ("RBMN") intends to actively participate in this proceeding. The undersigned counsel is already on the service list in this proceeding. Please note the additional representation.



ERIC M. HOCKY
WILLIAM P. QUINN
GOLLATZ, GRIFFIN & EWING, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796
(610) 692-9116

Dated: May 24, 2000

Attorneys for Reading Blue Mountain &
Northern Railroad Company

ORIGINAL

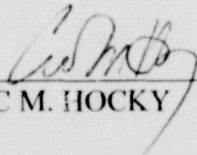
CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Notice of Intent to Participate of Reading Blue Mountain & Northern Railroad Company was served by first class mail on the following persons specified in Decision No. 1:

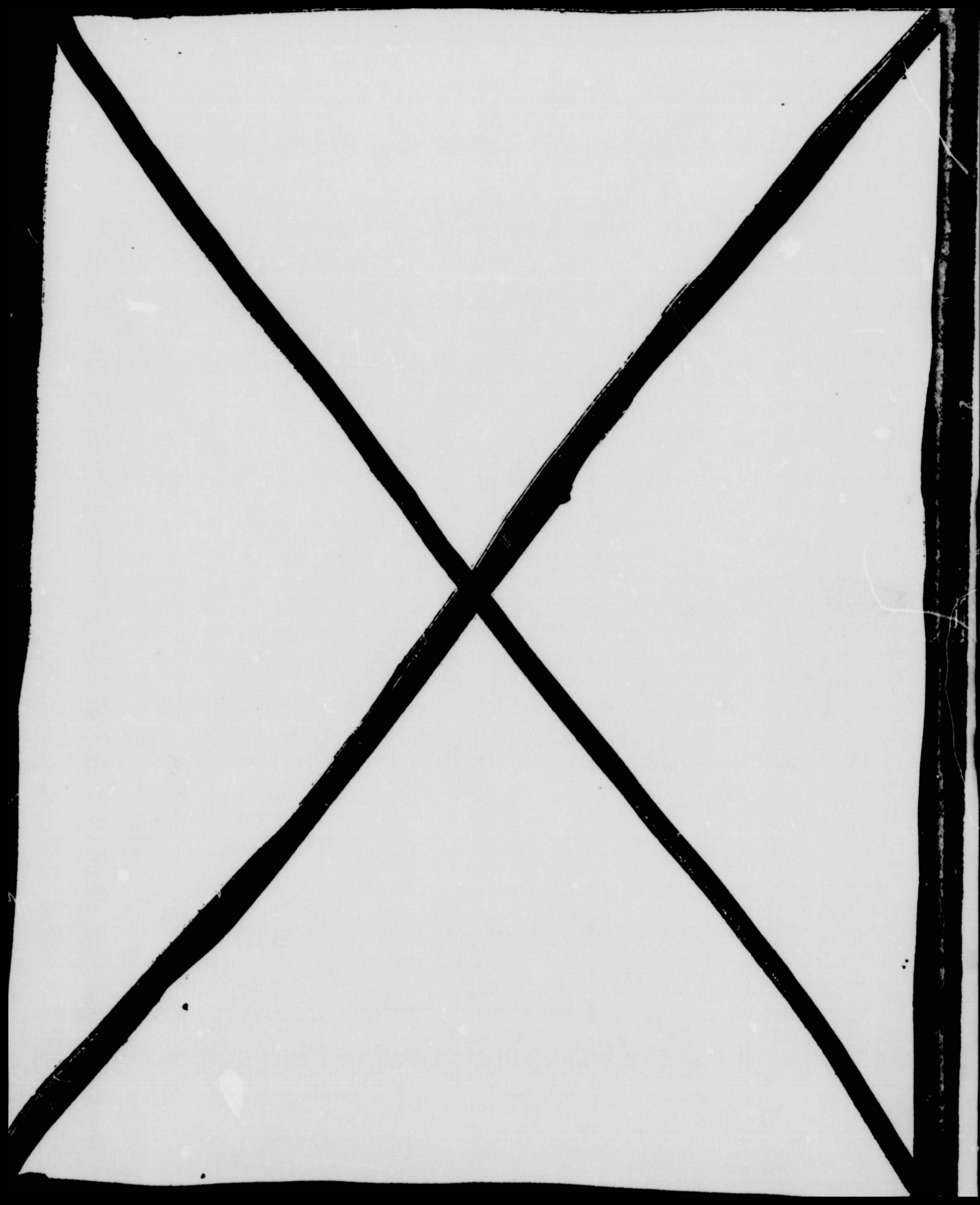
Dennis G. Lyons, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004-1202

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

Dated: May 24, 2000



ERIC M. HOCKY



STB

FD-33388 (SUB 91)

6-12-00

D

198985

ENTERED
Office of the Secretary

JUN 12 2000

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388 (Sub-No. 91)

198985
RBMN-1

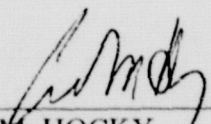
RECEIVED
JUN 12 2000
MAIL
MANAGEMENT
STB

**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)

NOTICE OF INTENT TO PARTICIPATE

Please take notice that Reading Blue Mountain & Northern Railroad Company ("RBMN") intends to actively participate in this proceeding. The undersigned counsel is already on the service list in this proceeding. Please note the additional representation.



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GOLLATZ, GRIFFIN & EWING, P.C.
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West Chester, PA 19381-0796
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Dated: May 24, 2000

Attorneys for Reading Blue Mountain &
Northern Railroad Company

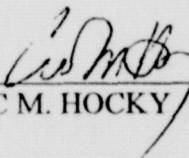
CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Notice of Intent to Participate of Reading Blue Mountain & Northern Railroad Company was served by first class mail on the following persons specified in Decision No. 1:

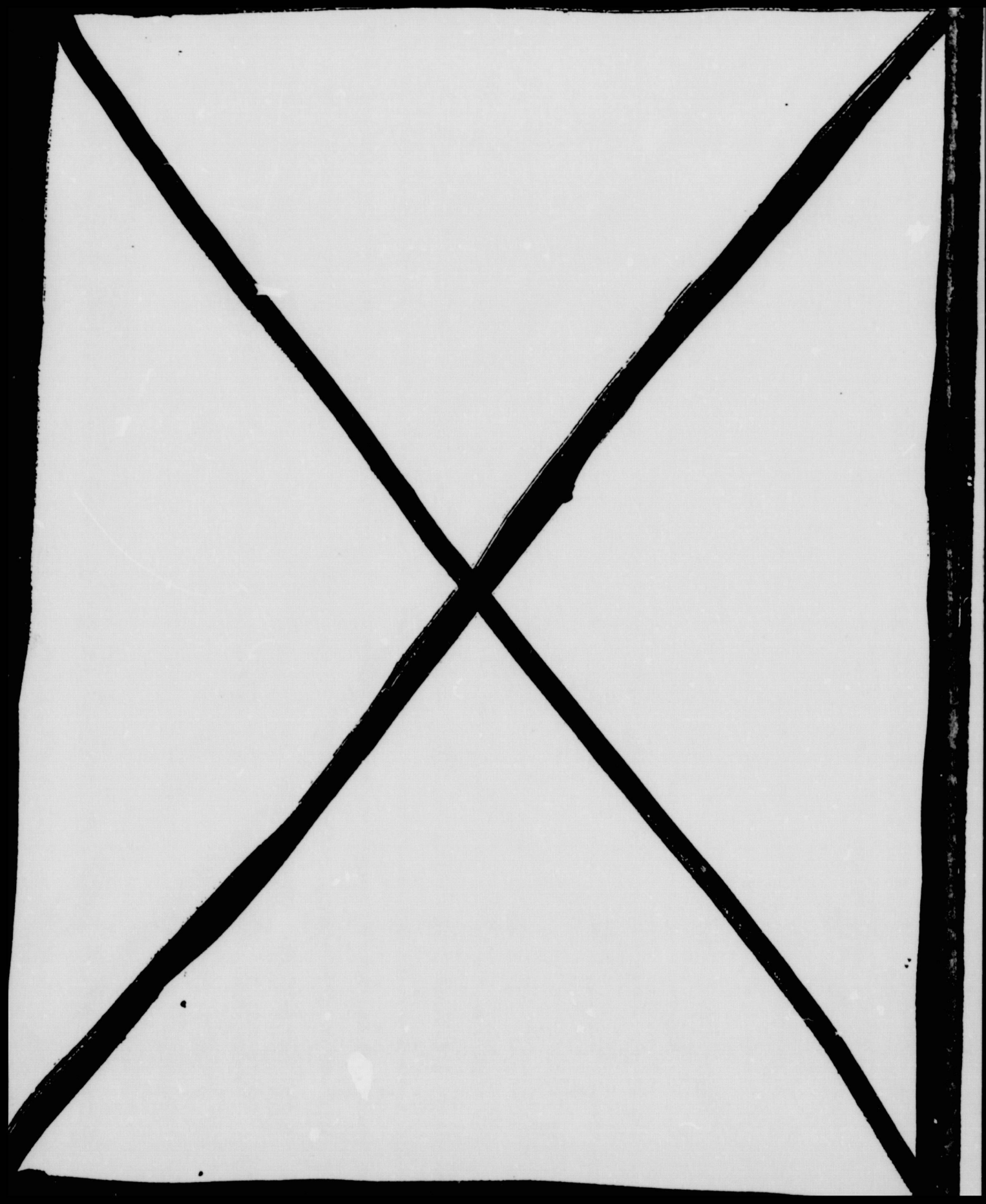
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Dated: May 24, 2000



ERIC M. HOCKY



STB

FD-33388 (SUB 91)

6-12-00

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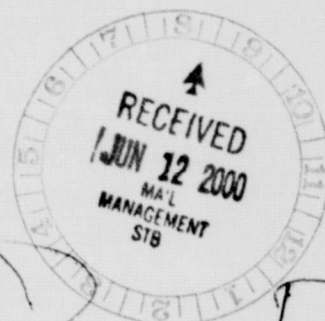
June 12, 2000

198972

**American
Chemistry
Council**
*Good Chemistry
Makes It Possible*

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

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



Dear Secretary Williams:

Enclosed are the original and 25 copies of a notice of intent to participate in the "Conrail General Oversight" proceeding which I am filing on behalf of the American Chemistry Council (formerly the Chemical Manufacturers Association). Also enclosed, as required by the Board's Decision No. 1 in this proceeding, is a 3.5-inch IBM-compatible diskette containing the text of this letter and the notice of intent to participate.

I understand that by filing this notice of intent to participate, I will be placed on the Board's service list and receive copies of CSX's and NS's filings relating to the "Conrail General Oversight" proceeding.

If you have any questions concerning this submission, I can be reached by phone at 703-741-5172.

Sincerely,

Thomas E. Schick
Distribution Counsel

Enclosures

cc: Dennis G. Lyons, Esq.
Richard A. Allen, Esq.



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ACC-1



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

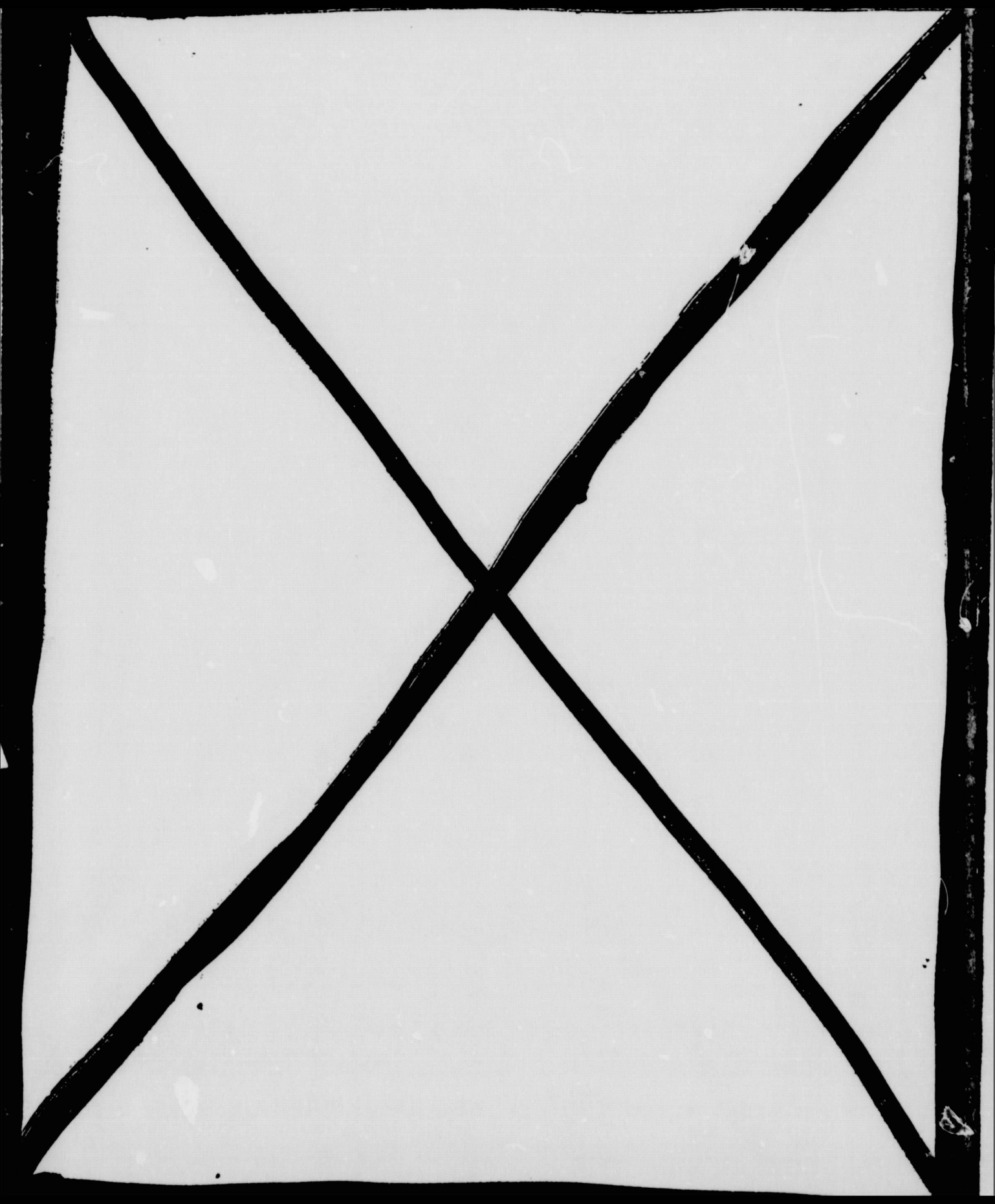
(GENERAL OVERSIGHT)

NOTICE OF INTENT TO PARTICIPATE
OF THE
AMERICAN CHEMISTRY COUNCIL

In accordance with Decision No. 1, which was served on February 9, 2000, the American Chemistry Council (formerly the Chemical Manufacturers Association) hereby provides notice of its intent to participate in the Surface Transportation Board's "Conrail General Oversight" proceeding. Please add my name to the service list for that proceeding.

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

June 12, 2000



STB FD-33388 (SUB 91) 6-1-00 D 198855 1 OF 3

198855

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June 1, 2000

BY HAND

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
1925 K Street, NW
Washington, DC 20423-0001

ENTERED
Office of the Secretary

JUN 02 2000

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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)

Dear Secretary Williams:

Enclosed are an original and twenty five (25) copies of CSX-1, the "First Submission by Applicants CSX Corporation and CSX Transportation, Inc.," for filing in the above-referenced docket.

Please note that a 3.5-inch diskette containing a WordPerfect 5.1 formatted copy of this filing is also enclosed.

Kindly date-stamp the enclosed additional copy of this letter and the First Submission at the time of filing and return them to our messenger.

Thank you for your assistance in this matter. Please contact the undersigned at (202) 942-5858 if you have any questions.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "Dennis G. Lyons".

Dennis G. Lyons
Counsel for CSX Corporation and
CSX Transportation, Inc.

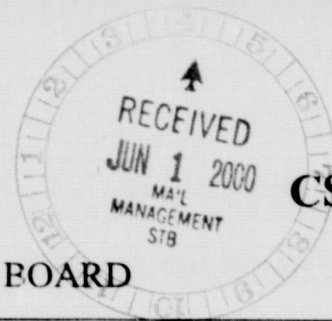
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Enclosures

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Office of the Secretary

JUN 02 2000

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Public Record



CSX-1

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
(GENERAL OVERSIGHT)

**FIRST SUBMISSION BY APPLICANTS
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CSX TRANSPORTATION, INC.**

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Dated: June 1, 2000

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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
(GENERAL OVERSIGHT)

FIRST SUBMISSION BY APPLICANTS
CSX CORPORATION AND
CSX TRANSPORTATION, INC.

CSX Corporation (“CSXC”) and CSX Transportation, Inc. (“CSXT”)¹
respectfully submit this report pursuant to the Board’s order served February 9,
2000, in the above-captioned matter.

This is CSX’s first submission in this General Oversight proceeding. It
is not, however, in any sense the first submission in conformance with and in
cooperation with the Board’s oversight regarding the Conrail transaction (the

¹ Occasionally collectively, “CSX.” We will generally refer to Norfolk Southern Corporation as “NSC,” its subsidiary Norfolk Southern Railway Company as “NSR,” and occasionally the two of them collectively as “NS.”

"Transaction"). As the Board is well aware, this has been the most intensively and thoroughly monitored rail combination² in history.

In addition to the weekly and monthly progress reports, before and after implementation, that the Board has required CSXT to submit under Decision No. 89 in Finance Docket No. 33388 (served July 23, 1998),³ CSXT operating management has kept the Board thoroughly informed in conferences, and through onsite inspections. This General Oversight proceeding is but one additional step the Board is taking in its overall monitoring of the progress of the transaction.

I. INTRODUCTION

The planning for the divided allocation of Conrail's routes between CSXT and NSR and the integration of their operations into the two carriers' systems involved unquestionably the most complex and difficult combination integration ever attempted in the railroad industry. While the Board has indicated that discussion of operational issues is to be reserved for the operational monitoring process, it seems nonetheless appropriate to make a few introductory comments in this

² We use the word "combination" throughout this submission to apply not only to technical combinations, but to all railroad combinations within 49 U.S.C. § 11323. Any reference to "merger" should be similarly construed.

³ See pages 162-65. We refer to this Decision throughout as "Decision No. 89" or sometimes as the "Decision."

submission regarding the planning and the startup of the divided operations of CSXT's allocated Conrail assets as part of CSXT's system.

The challenge facing both CSXT and NSR planners was daunting. They were to plan a transformation under which the operation of Conrail's unitary network would be split and integrated into each of the two carriers' operations — and this transformation was to take place essentially all at once, rather than in a staged transition.⁴ Each railroad's dependence upon modern information systems and the nature of the two (often, three) systems made it virtually impossible to effect a gradual phase-in. Accordingly, it was concluded early on that a "flash cut" transition was the only practicable way of effectuating the division without employing a process almost guaranteed to create recurring serious disruptions. So it was decided that on the day before the Split Date, there would be a free-standing Conrail, operating a major system throughout the North-East quadrant of the

⁴ The divided allocation of Conrail's assets for operation by CSXT and NS was effected through Consolidated Rail Corporation's ("CRC's" or "Conrail's") conveyance of all of its assets (other than the shared assets and certain of the retained assets) to one of two limited liability companies ("LLCs") wholly owned by Conrail. The two LLCs were New York Central Lines LLC and Pennsylvania Lines LLC ("NYC" and "PRR" respectively). In turn, the assets conveyed to NYC are being operated by CSXT, and the assets conveyed to PRR are being operated by NSR, under long-term Operating Agreements executed on the Split Date. To simplify the descriptions in this submission, we will refer to Conrail's assets as being "allocated" to CSXT or NSR, to refer to the process just described. The simplified descriptions do not purport to change the actual legal status of the assets in question and the rights to them.

United States; and on the next day, Conrail would simply be involved in local movements in the three Shared Assets Areas, and CSXT and NSR would be separately operating all the rest of the Conrail routes in accordance with their respective allocations.

To manage this extraordinary overnight transformation and the massive effort needed to bring it about, CSXT implemented a program management process. Central coordinating teams were assigned to various aspects of the integration and a single oversight committee was created, reporting to a senior officer charged with the implementation. The extent of the tasks involved with the information systems was such that a separate program management office was created for the technology issues, with a managed process to ensure close coordination between the systems designers and the actual business managers who would be using the systems.

Over fifty thousand individual non-technology tasks were identified. Hundreds of people, many of them assigned full-time to the project, were charged with developing implementation plans to accomplish each of the necessary tasks. The entire planning process took over two years. On the Split Date — June 1, 1999 — following a Memorial Day (May 31) semi-shutdown of railroad operations and a cut-over of computer systems, CSXT commenced operations on an integrated basis with those portions of Conrail which had been allocated for

operation by it. That Split Date cut-over was a success story which has been largely overlooked. On Split Date, all CSXT computer systems functioned properly. Normal train operations were conducted without disruption. Hazardous materials shipments were correctly identified and safely moved. Customer shipping instructions were received and processed, freight car accounts were managed correctly, etc. The service difficulties that ensued on both carriers have unfairly overshadowed the very real fact that the massively difficult flash cut was accomplished, and that railroad operations were carried out on an integrated basis over the Conrail routes allocated to the two carriers. There was no paralysis of the rail network east of the Mississippi.

Although the massive cut-over was accomplished with minimal disruption, problems did begin to surface. In the months following the rerouting of traffic over the new CSXT and NSR systems difficulties — sometimes significant ones — were encountered. Some yard management systems, especially those that interacted with the former Conrail systems allowed some cars to be placed in incorrect status. Although this was an exception that affected only a small percentage of cars, as the number grew yards were stressed. Additionally, traffic flows were not exactly as anticipated by the planners. In some locations there were insufficient crews to man the larger number of trains needed to handle the traffic. Baltimore, Philadelphia and Cumberland were particularly hard-hit by this

difficulty. CSXT has readily acknowledged the service problems that arose following the Split Date, but by and large, with extraordinary efforts, major impacts on customers were avoided.

As indicated, many of the initial startup difficulties could be attributed to one of two factors: unexpected traffic volumes and classification data integrity. First, the operating plan was designed to accommodate projected traffic volumes based upon CSXT's best assessment of the likely flows. A large number of customers on former Conrail-operated routes, however, chose not to commit their traffic to either CSXT or NSR well in advance of the split. Thus, in some locations, CSXT was simply not in a position to accommodate the volumes that were routed to it. Further, the operating plan clearly needed to be adjusted to comply with experience (as CSXT always knew it would). And CSXT and NSR both were affected by the extent of the other's ability to accept interchange at particular locations.

Second, CSXT encountered a car classification problem early on. At some locations cars were assigned the wrong classification code (for their next movement) as they passed through the yard. This problem reflected the different approaches that Conrail and CSXT personnel followed in inputting the correct load/empty status of equipment as well as the timely reporting of train arrivals and departures from yards. In brief, the computer systems misunderstood the cars'

intended paths and many cars were misrouted as the classification system operated on incorrect data. In some situations, Conrail's systems used old waybill information for certain event reporting which resulted in incorrect classification of cars. The differences in CSXT and Conrail work practices in "naming" trains and entering their identification codes into the system created occasional situations where cars could not be classified.

Interface problems with other carriers, particularly NSR, were an additional difficulty. CSXT and NSR acted cooperatively, but clearly the problems of one had a spillover effect on the other. Cars mistakenly delivered in interchange by one would inevitably contribute to operating congestion at the receiving road's yards, imposing demands on local managers. Due to the changes that needed to be made to accommodate the fact that Rail Industry systems could no longer recognize "Conrail" as a valid reporting mark, some short lines had significant problems reporting interchanges, which forced CSXT to hold received cars in terminals awaiting waybill information.

One of the features of the Conrail Transaction, and one of the great tasks of its implementation, was the creation and operation of the three Shared Assets Areas, including the entirety of Conrail's operations in Northern New Jersey (where neither CSXT nor NSR had system operations previously), Philadelphia and South Jersey (where only CSXT had had any prior presence) and Detroit

(where each of the two carriers had had some prior presence). The Shared Assets Areas reflected the desire and significant investment of both carriers to obtain the major additions to their systems for which they had paid in acquiring the Conrail stock. The lines of road which Conrail operated lead to enormous markets in which the two of CSXT and NSR previously had little or no presence — the Greater New York market, largely served through Northern New Jersey; the Philadelphia area market; and the industrial complexes of Detroit. The method chosen to obtain the primary goal of expansion to all shippers and industries within the Conrail presence in those three markets was the creation of Shared Assets Areas, which would be allocated to neither of CSXT nor NSR exclusively, but would primarily be operated by the continuing Conrail with access to both CSXT and NSR, and with operations by each of them as well as by Conrail. 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.

After the first few weeks following Split Date CSXT was able to take advantage of the miners' holiday and scheduled automotive plant shutdowns in July to make adjustments to the operating plan and work process changes, basically to "reset" the railroad. By the end of July, CSXT's system velocity peaked at a level slightly better than the highest system velocity experienced over the six months prior to split. Programmed maintenance of way work had been scheduled across the system so as to avoid curfews on the Chicago-New York lines during June and July. By August, this work began and resulted in some slowdown in the railroad's operations on the former Conrail lines. Generally speaking, however, CSXT was transitioning to normal operations status by the first week in September 1999.

Two things happened in September that had a major impact on CSXT. *First*, the anticipated fall peak in shipments — which CSXT had planned for — began sooner than normal. Early grain shipments were a large part of that, but the booming American economy and the uptick in shipments prior to the holiday season produced more traffic than had been expected. *Second*, Hurricane Floyd, and two lesser hurricanes that followed soon thereafter, were major disruptions to CSXT's operations. Floyd threatened the Florida coast, forcing evacuation of many communities. Many of CSXT's headquarters personnel were ordered to

evacuate their homes. The hurricane struck in the Southeast and worked its way up the East Coast, progressively shutting down operations along CSXT's I-95 corridor as it went. Every CSXT subdivision on the east coast was affected.

Perhaps the worst-felt impact resulted from extensive flooding within the North Jersey Shared Assets Area, affecting the ability of the shared assets operation to accept incoming eastbound traffic. The impact of this kind of disruption on rail operations is not well understood outside the industry. As the North Jersey and South Jersey/Philadelphia Shared Assets Areas were forced to shut down and CSXT was unable to use its routes along the East Coast, traffic had to be rerouted over more inland lines, causing congestion at major terminals that were forced to accommodate far more traffic than usual. Locomotive power, always scarce and tightly managed, was soon out of position, and the overall balance of the CSXT system was severely affected. Shippers in the Midwest and West did not stop consigning freight to the East Coast even though there was nowhere for it to go. Factories and chemical plants in the Houston area continued to tender cars to Union Pacific and BNSF and those and other western roads continued to bring traffic to CSXT for interchange at the gateways. Cars could not be advanced into the two Shared Assets Areas in the Mid-Atlantic region and had to be held: first at Albany, then at Buffalo, and then at points farther West. As CSXT began the effort to work its way out of these disruptions to its system, the

Fall traffic surge (which strains operations even in a normal year) had to be dealt with, too.

It was not until December 1999 with the Fall peak beginning to abate that CSXT's network could be said to have begun to return to equilibrium. In the first quarter of 2000, however, it can fairly be said that by and large the major difficulties had been overcome and CSXT was operating fluidly though not at optimum pace.

As CSXT looks back on the process of the integration, it is clear to it that the challenge proved to be even more difficult and involved more unpredictables than had been anticipated. The difficulties of conducting Shared Assets Area operations with three carriers now operating over an infrastructure that had been designed for operations by a single carrier were profound. Mother Nature did not help. While certainly good excuses can be offered why the transition difficulties were encountered, CSXT has readily acknowledged its difficulties in the integration.

In the same spirit of fairness, it should be equally clear that CSXT's extensive planning paid large dividends. The most difficult form of integration: dividing a massive, single-system carrier in two, and incorporating the halves into the systems of the two independent carriers essentially in a single day, while carrying on commercial and operational activities, was achieved. Service was not paralyzed. Transit times, while irregular and in many cases extended, largely

remained within acceptable, or at least tolerable, limits. No service meltdown occurred on either carrier. Above all, the transition was accomplished safely: There were no train accidents relating to dispatching or start-up errors. No lives were lost on the two systems during the entirety of 1999 following the Split.

Many of the difficulties encountered were necessary consequences of the flash-cut division of Conrail's routes between CSXT and NSR and the rerouting of all Conrail traffic. New trains could not be started a few at a time over new routes. New class tracking could not be phased in. New locomotive utilization plans could not be staged. Unlike two systems being put together, Conrail's system had to be divided and the severed parts integrated all at once. A lesson learned is not that planning was inadequate or that rail combinations cannot be accomplished, but rather that gradual integration of rail networks is preferable to sudden change — where possible. Here, that simply was not possible.

In recent months, CSXT has returned to basic railroading. Our emphasis has been placed on fewer, more central performance measurements. We have brought on additional locomotive power and are beginning to run a more scheduled railroad. The benefits of capacity improvements we have made since Split date are now apparent. In short, things are turning around.

Looking forward, CSXT is optimistic that it is now transitioning to normal operations. The number of daily cars on line has trended downward in late April

and early May and as of the third week in May, was at its lowest point since October 13, 1999. Over the same period, system line of road velocity has ranged between 17 and 18 miles per hour, with the current (seven-day average) at its best level (18 miles per hour) in several months. Terminal dwell has also improved on a steady basis. In early May, dwell time reached the best level (29.3 hours) we had seen since shortly after Split Date. In the most recent week prior to this submission (May 20 to May 26) CSXT reported dwell continued in that same range, 30.7 hours.

Importantly, the number of special movements, manual intervention, and other non-routine actions that had to be taken to protect shipments early on has now dropped to the low levels expected in normal rail operations. CSXT believes that its system is poised to continue gradual improvement in these and other performance measurements over the next several months. This will be an incremental process. Performance measurements will fluctuate, but a gradual favorable trend is expected to continue.

II. CAPITAL PROJECTS

In this section, we present, first, the capital projects which were discussed in the Application to the Board to effect CSXT's part of the Conrail Transaction, or which were agreed to in negotiated agreements referenced in Decision No. 89, and second, important CSXT capital projects which have been authorized in the

ordinary course of business following the Transaction, but which have been necessitated by the growth in business, beyond CSXT's expectations, that have occurred following the Split Date. Some of these later projects relate to improvements in the historic CSXT system.

The following presents a status report on all of the capital projects mentioned in Volume 3A of the Application or agreed to in negotiated agreements referenced in Decision No. 89.⁵ The total cost of the projects mentioned in this section, through May 1, 2000, to the extent completed as of that date, is over \$525 million.

| <u>LOCATION</u> | <u>PROJECT DESCRIPTION</u> | <u>STATUS</u> |
|--|--|---|
| <u>CHICAGO AREA/NORTHEASTERN GATEWAY SERVICE ROUTE</u> | | |
| Calumet City, IL | Co-locate CSXT and IHB dispatchers | Complete |
| Chicago, IL (Blue Island SD) | Build BOCT/BRC connection track (75th St. SW) | Deferred |
| Chicago, IL (Blue Island SD) | Remote control 75th St. (Forest Hill) interlocking to BOCT train dispatcher including power switches and switch heaters for BRC/BOCT NE quadrant connection, BRC, NS and Metra Routes | Complete (Pre-Transaction project) |
| Chicago, IL (Blue Island SD) | Upgrade connection directly between BOCT and BNSF (22nd St./21st St.) | Complete |
| Chicago, IL - Cleveland, OH | Double track and install TCS signals | Complete |
| Dolton, IL (Barr SD) | Build NE quadrant UP/BOCT connection track (Dolton Junction) | Complete (Pre-Transaction project) |
| Dolton, IL (Barr SD) | Build BOCT/IHB connection track (Lincoln Ave.) | Complete |
| Rock Island Jct, IL | Upgrade track and signals on CR/BRC connection track at CP 509 to increase speed from 10 mph to 20 mph | Complete |
| Barr Subdivision, IN | Install new signals, power crossovers and dispatcher control at 7 rail intersections (East Curtis, Pine Junction, Clarke Junction, Calumet Tower, Republic, Columbia Ave., and State Line) | In Progress (Anticipate completion in June 2000) |
| Haley, IN (CE&D/St. Louis Line) | Remote control interlocking and upgrade connection track (CSXT/CR) | Complete |

⁵ A few projects are included which were planned prior to the Transaction but which play an important role in handling post-Transaction traffic.

| <u>LOCATION</u> | <u>PROJECT DESCRIPTION</u> | <u>STATUS</u> |
|---|--|--|
| Tolleston, IN (Fort Wayne Line) | Upgrade connection track (CSXT/CR) | Complete |
| Willow Creek, IN (Garrett SD) | Build SW quadrant connection track (CSXT/CR) | Complete |
| Little Ferry, NJ | Build CR/NYSW connection tracks | Complete |
| Albany, NY - Hoffman's, NY | Double track 14 miles | In Progress (Funded by Amtrak/New York State) |
| Albany, NY - North Jersey | Extend 3 sidings (Milton, Nyack, Alsen) | Complete |
| Selkirk, NY | Install signals and power switches at rail intersection (SK) | Complete |
| Crestline, OH | Build connection track (CR/CR) | Complete |
| Greenwich, OH | Build double-track NW quadrant connection track (CSXT/CR) | Complete |
| Marion, OH (Columbus SD) | Upgrade NW quadrant connection track (CSXT/CR) | Complete |
| Sidney, OH (Toledo SD) | Build SE quadrant connection track (CSXT/CR) | Complete |
| <u>ALTERNATIVE CHICAGO GATEWAY - FT. WAYNE - CLEVELAND SERVICE ROUTE</u> | | |
| Fort Wayne Line | Rehabilitate Tolleston-Clarke Junction | In Progress |
| Fort Wayne Line | Rehabilitate Hobart-Tolleston | Complete |
| <u>ST LOUIS GATEWAY SERVICE ROUTE</u> | | |
| Exermont, IL | Build connection track (CSXT/CR) | Deferred |
| <u>MEMPHIS GATEWAY SERVICE ROUTE</u> | | |
| Alice, IN | Extend siding | Complete |
| Harwood, IN | Extend siding | Complete |
| <u>ATLANTIC COAST SERVICE ROUTE</u> | | |
| Virginia Avenue, DC | Clear tunnel for multi-level/double-stack (20' 2") auto cars | In Planning (Pre-Transaction project) |
| Virginia Avenue, DC | Rehabilitate track | Complete |
| Belmont, PA | Build new siding (block swap track) | Complete |
| Eastwick, PA (Philadelphia SD) | Restore CSXT/CR connection | Complete |
| <u>MERCHANDISE/UNIT TRAIN YARDS</u> | | |
| Chicago, IL | Rehabilitate Blue Island Yard (IHB) | In Progress (Anticipate completion in Sept. 2000) |
| Indianapolis, IN | Replace Avon Yard hump processor control | In Planning |
| Buffalo, NY | Replace Frontier Yard hump processor control | In Planning |
| Albany, NY | Replace Selkirk Yard hump processor control | In Planning |
| Willard, OH | Expand east/west blocking yard | Complete |

| <u>LOCATION</u> | <u>PROJECT DESCRIPTION</u> | <u>STATUS</u> |
|--|---|---|
| Newell, PA | Construct staging tracks and Yard Office | Complete |
| Philadelphia, PA | New merchandise facility | In Progress (Anticipate completion in Dec. 2000) |
| <u>INTERMODAL AND FINISHED VEHICLE TERMINALS</u> | | |
| Fairburn, GA | Build new facility | Complete (Pre-Transaction project) |
| Bedford Park, IL | Expand capacity & build 2nd entrance | Complete |
| Chicago, IL (Blue Island SD) | Build new facility at 59th Street | Complete |
| Forest Hill, IL | Expand yard | Complete |
| Little Ferry, NJ | Expand yard and build new entrance | Complete |
| Cleveland, OH | Expand Collinwood Yard to hub facility | Complete |
| Marysville, OH | Expand track capacity in Honda plant | Complete |
| Philadelphia, PA | Build new facility at Greenwich Yard | In Progress (Anticipate completion in Nov. 2000) |
| <u>ADDITIONAL CONNECTION (MULTIPLE SERVICE ROUTES)</u> | | |
| Carleton, MI (Saginaw SD) | Upgrade CSXT/CR connection & rehabilitate 3 miles of track | Complete |
| <u>FUELING, SERVICE & MECHANICAL FACILITIES</u> | | |
| Various | Service, lights, cranes, fueling, tracks, work platforms | In Progress (Considerable work done in Selkirk, Toledo, and Buffalo) |
| System | Convert all fuel facilities and locomotives to Snyder Class II system | Complete |
| Selkirk, NY & Buffalo, NY | Install heating systems in car shops | Complete |
| Walbridge, OH | Consolidate car repair shops into a single shop | Complete |

The foregoing chart does not include approximately \$35 million in capital expenditures for information system upgrades, integration work, and similar technological upgrades which are not site-specific.

The following projects, current as of May 1, 2000, are projects not discussed in the application, but which were authorized thereafter in the ordinary course of

business, based on a refinement of plans and lessons learned after the Control Date to respond to traffic flows. The list is restricted to those on the former Conrail lines or those in the vicinity of the Conrail lines that are more closely related to the integration of operations between the allocated Conrail lines and the historic CSXT lines.

| <u>LOCATION</u> | <u>PROJECT DESCRIPTION</u> | <u>STATUS</u> |
|--|--|---|
| Blue Island -- 75th St., IL (Blue Island SD) | Install TCS | In Progress |
| Blue Island -- Argo, IL (McCook SD) | Install TCS Blue Island Jct. to Argo (McCook Subdivision); build third main between 87th St. and 71st St.; doubletrack connection from BRC/BOCT to Bedford Park intermodal facility (71st St.) | Complete |
| Calumet Park, IL (Barr SD) | Install new crossovers and signal layout for increased speed | Complete |
| Chicago, IL (Blue Island SD) | Connection at 35th Street (BOCT/BNSF) | Complete |
| Chicago, IL (Blue Island SD) | Rebuild & extend N lead 59th St Terminal | In Progress |
| Chicago, IL | Build third main track (Blue Island Jct.-Riverdale) and 2 9000-ft surge tracks (Barr Yard); install TCS (Blue Island Jct.-Dolton) | In Progress |
| Rockwell Jct, IL | Relocate turnout for access to Global 1 | Complete |
| Gary, IN (Barr SD) | Rehabilitate Pine Jct. (BOCT) -- Buffington (CR) Connection | Complete |
| Indianapolis, IN | Install yard air at Avon | In Progress |
| Carleton, MI - Ecorse, MI | Rehabilitate Lincoln Secondary | Complete |
| Gibraltar, MI | Connection from GTW to Detroit Line | In Progress |
| Croxtan, NJ - North Bergen, NJ | Install TCS on Northern Running Track | In Progress (Some financing by N.J. Transit) |
| North Bergen, NJ | Install yard air | In Progress |
| South Kearny, NJ | Expand Intermodal facility | In Progress |
| Teaneck, NJ | Restore 16,850 ft siding | Complete |
| Oak Point, NY | Install yard air | In Progress |
| SK, NY - Ravenna, NY | Extend Double Track | Complete |
| Cleveland, OH | Station E fueling & service facility at Collinwood | In Progress |
| Cleveland, OH | Station X fueling & service facility at Collinwood | In Progress |
| Cleveland, OH | Lead changes at west end Collinwood Yard | Complete |
| Marysville, OH | Johnson Road Siding | Complete |
| Marysville, OH | Locomotive storage track & support building | Complete |
| Toledo, OH | Replace retarder in Stanley Yard | Complete |
| Walbridge, OH | Stanley Yard radio shop | Complete |

| <u>LOCATION</u> | <u>PROJECT DESCRIPTION</u> | <u>STATUS</u> |
|-------------------|--|---------------|
| Walbridge, OH | Upgrade Myers Lead connection track between Walbridge and Stanley Yard | Complete |
| Walbridge, OH | Upgrade track and signals to add second main track with TCS operation through Walbridge Yard | Complete |
| Walbridge, OH | CSX Intermodal facilities track construction | Complete |
| Youngstown, OH | Extend Youngstown connection track to 140-car capacity | In Progress |
| Brownsville, PA | Upgrade UG Bridge | Complete |
| Connellsville, PA | Install yard air | In Progress |
| Glassport, PA | Rehabilitate & extend siding | Complete |
| New Castle, PA | Construct 4-130 car MGA hopper inspection tracks | Complete |
| New Castle, PA | Consolidated Terminal building | In Progress |
| Webster, PA | Construct 10,355 ft 2nd main track | Complete |

The total expenditure through May 1, 2000, on the projects listed immediately above is approximately \$80 million.

CSXT invested heavily in freight cars in 1999 to position itself for the post-split competition with Norfolk Southern. Total capital expenditures on freight cars were \$160 million. This spending covered a wide range of car types, including every major merchandise car type. In addition to shorter-term leases, CSXT purchased 151 locomotives in 1999 at a total capitalized cost of \$370 million. Capital expenditures forecast for 2000 will again cover a wide range of car types, with somewhat greater emphasis on rebuilds/repairs. CSXT will again have a significant number of locomotives in service under shorter-term arrangements in 2000 and currently plans to purchase up to 41 locomotives.

Total capital expenditures for the Conrail integration during the period 1997 to date come to over \$640 million on the part of CSXT. To put this in context, total capital spending of CSXT during 1999 was \$1,435 million.

The Shared Assets Areas were the subject of capital improvements relating to the continuing Conrail operated assets. Examples of significant Shared Assets Area capacity improvement projects completed by Conrail since Split Date include:

- Adding two new, high capacity yard tracks at Port Reading Yard in Woodbridge, NJ
- Adding a new connection to NYS&W near Croxton Yard
- Expanding capacity of Dillard yard in Detroit

CSXT will continue to upgrade the combined system of CSXT and the Conrail lines allocated for its operation to the extent cost-justified and prudent with available capital resources.

III. FINANCIAL ASPECTS OF THE INTEGRATION

In addition to capital invested in infrastructure relating to the Conrail Transaction and the portions of Conrail allocated to CSXT, the process of planning and structuring the integration was itself expensive. Close to \$250 million was spent by CSXT in that process. Of that amount, fully \$122 million was spent on information technology. Neither figure includes the cost of management time or of forgone opportunities.

Those capital projects and that integration planning placed a burden on CSXT's finances in 1997, 1998 and the first half of 1999. And thereafter,

significant costs have been incurred in starting up combined operations and addressing post-integration congestion and operating problems. Those costs have included more crew starts, greater car hire expense, and additional leased locomotive power. They are reflected in CSX's reported poor financial performance in the quarters starting with the third quarter of 1999.

Although the addition of Conrail traffic in June 1999 raised surface transportation (rail and intermodal) revenues from \$5.604 billion in 1998 to \$6.582 billion in 1999, increased operating costs drove down operating income, adjusted for one-time items, by 12% from \$1.034 billion to \$907 million in the same periods.

Expenses related to planning, executing and addressing problems associated with the Conrail integration have negatively impacted the railroad's operating ratio. From an all-time record of 72.9% in the second quarter of 1997, the CSXT operating ratio rose to 79.8% for 1998 and 85.4% for 1999. In the first quarter of 2000, CSXT reported an operating ratio of 90.3%.

In addition, rate compression from increased rail competition following the division of Conrail reduced CSX's surface transportation revenues by an estimated \$150 million on an annualized basis.

Eliminating one-time items, CSX reported net earnings of \$339 million, \$1.59 per share for the year 1999, versus \$428 million, \$2.00 per share in 1998 and \$799 million, \$3.72 per share in 1997.

Wall Street investors have been very displeased with CSX's performance. CSXC's stock price has dropped from a 1998 high of \$60 ³/₄ to a low of \$19 ³/₄ per share in May 2000. Some of this drop may be attributable to the market disruption caused by the proposed CN-BNSF merger, to the perceived threat of reregulation and to the movement of investment capital from blue chips and other securities perceived as "old economy" companies to technology stocks.

Despite these financial setbacks, CSXT intends to continue to invest in cost-justified rail and intermodal infrastructure projects to the extent that capital is available and return on investment is acceptable. The 2000 budget currently contemplates \$724 million in capital expenditures. This plan will be reviewed throughout the year and adjusted depending upon traffic conditions and financial performance, as well as anticipated returns from each project.

IV. EFFECT OF THE TRANSACTION ON JURISDICTIONAL THRESHOLD AND REVENUE ADEQUACY

In Decision No. 89, the Board discussed at length the arguments of some parties that CSXC and NSC had paid an excessive price for the Conrail stock and the requests for conditions of these parties that would have prohibited Applicants from using their costs of acquiring the Conrail stock in calculating jurisdictional

thresholds under 49 U.S.C. § 10707(d)(1)(A) or in calculating revenue adequacy. The conditions these parties requested would have required instead the use of predecessor (*i.e.*, Conrail's) historic book value for those purposes. The parties making these claims referred to an "acquisition premium." The Board rejected their arguments and declined to impose the requested conditions. The Board's Decision indicated that in the oversight proceedings it would assess the effect of the Transaction on the jurisdictional threshold applicable to rate reasonableness cases and on the Board's revenue adequacy determinations.

In the Board's Decision, among other things, the Board found that the price CSXC and NSC paid for Conrail was not excessive or unfair to any of the parties or their shareholders, but instead represented the best evidence of Conrail's fair market value. Dec. No. 89 at 66. The Board found that the requested conditions were unwarranted and the positions urged by the protesting parties were also contrary to Generally Accepted Accounting Principles ("GAAP"), principles which the Board's predecessor had specifically adopted for use in revenue adequacy determination in Ex Parte No. 483, Railroad Revenue Adequacy – 1988 Determination, 6 I.C.C. 933 (1990), an action affirmed judicially in *Association of American Railroads v. ICC*, 978 F.2d 737 (D.C. Cir. 1992). *Id.* at 62-65. Although different parties defined the term "acquisition premium" in different ways, the Board in Decision No. 89 defined it as "the difference between the book

value [*i.e.*, the value of Conrail's properties stated on Conrail's books before the Transaction] and the purchase price of the Conrail properties." *Id.* at 62, n. 93.

CSXC and CSXT concur fully with the Board's discussion of these issues in Decision No. 89. There is no basis for the suggestion, implied in the term "acquisition premium," that CSXC and NSC paid an excessive price for Conrail or for the contention that using asset value contemporaneous with the acquisition of the Conrail stock for the properties of Conrail operated by CSXT and NSR as part of their railroad systems is inappropriate or that it is likely to have a significant effect on jurisdictional thresholds or extent of revenue adequacy. The Board's resolution of these issues (and others) in Decision No. 89 is, as the Board knows, pending judicial review in the Second Circuit.

In terms of the Board's oversight, it is too early to make any precise assessments of the Transaction's effect on these matters for the reasons discussed below.

Effects on Jurisdictional Thresholds. — With respect to jurisdictional thresholds, we note at the outset that the determination of jurisdictional thresholds for reviewing challenged rail rates under 49 U.S.C. § 10707(d)(1)(A) depends on the specific characteristics of the movement in question, and those characteristics can vary widely from movement to movement. It is therefore not possible to generalize about the effects of the Transaction on those determinations, except

with reference to a hypothetical, but in practice nonexistent, "average" movement using system-wide figures.

Even in terms of a hypothetical average movement based on system-wide figures, it is not possible at this point to make a quantitative comparison between pre-Transaction and post-Transaction URCS costs because the Board has not yet determined and issued the 1999 ratios of variable to fixed costs ("variability ratios") for the various cost categories of the individual Class I railroads, and is not expected to do so until September 2000. Accordingly, although CSXT has filed its 1999 Form R-1 reporting its 1999 revenues and costs, CSXT is unable at this time to quantify its total 1999 variable costs. Since jurisdictional thresholds are determined by the ratio of a railroad's revenues to its variable costs, a hypothetical system-wide revenue/variable cost ratio, whether or not meaningful, cannot even be determined yet for 1999.⁶

⁶ Even when the variability ratios for 1999 are determined, the variable cost figures for 1999 will be of limited usefulness in depicting the effects of the Transaction on CSXT's system-wide variable costs for several reasons. First, the 1999 R-1 includes costs from two very different periods: the last seven months, which include costs associated with Conrail properties operated by CSXT, and the first five months, which do not. Because of the mid-year implementation of the Transaction, the 1999 R-1 figures are not representative of the results that would be obtained from a full year of operations by the combined CSXT/Conrail system, even if there were no changes in costs and revenues from one year to the other. Second, the figures from 1999 are not representative of what may be expected in a normal post-Transaction year for the additional reason that CSXT's costs since

Footnote continued on next page

Although it is not possible at this time to make quantitative comparisons between pre-Transaction and post-Transaction revenue/variable cost ratios, one point should be made. As explained in Decision No. 89 (pages 22-30), the Transaction is structured not as an acquisition of Conrail's assets by CSXT and NSR but as operating agreements and leases by the two railroads, CSXT and NSR, of assets that continue to be owned by Conrail and its subsidiaries, NYC and PRR⁷

The Application, in its *pro forma* financial statements, analyzed the acquisition under "purchase accounting" principles, allocating 58% of the value of Conrail's total assets to NS and 42% to CSX. The effects of purchase accounting are reflected in the consolidated financial statements of CSXC, which holds a non-controlling equity interest in the jointly owned company that was the vehicle for the joint acquisition of Conrail. The jointly owned company employs purchase accounting to account for its ownership interest in Conrail. However, each of CSXT and NSR ultimately determined that, consistent with GAAP, the appropriate method of accounting for the Transaction at the railroad level, and hence for

Footnote continued from previous page

Day One have been affected by the costs associated with the difficult process of integrating two railroad systems discussed above in Part I.

⁷ At the same time, however, the two holding companies, CSXC and NSC have become the joint owners of the outstanding Conrail stock through "Green Acquisition Corp."

reports to the Board, was as an operating agreement and a lease of the Conrail subsidiaries' assets by CSXT and NSR.

As set forth in the transaction documents filed with the Board, annual operating fees and lease charges are payable to Conrail and its two subsidiaries by the two railroads. While the Conrail property operated and leased by CSXT does not appear in its R-1 as CSXT property, the payments made by CSXT to Conrail and its subsidiary constitute CSXT operating expenses, some percentage of which is deemed variable costs under URCS. The amounts of those payments are based on independent appraisals which established fair rental value for the Conrail assets on a basis contemporary with the Transaction, not on the historic book values of Conrail. *See* Decision No. 89 at 30; CSX/NS-18 at 45. Thus, the form of accounting adopted at the railroad level does involve a contemporaneous reevaluation of Conrail at the time of the Conrail Transaction (as does the purchase accounting method). Accordingly, while the Transaction certainly affects the total revenues and variable costs of CSXT and NSR as reported on their 1999 R-1 filings, the effects are not identical to the effects that would have been obtained through the employment of purchase accounting at the railroad level.

Effects on Revenue Adequacy. — Each year the Board determines the railroad industry's cost of capital, on the basis of which it then makes an annual determination of each Class I railroad's "revenue adequacy" in accordance with the

standards developed in Standards for Railroad Revenue Adequacy, 364 I.C.C. 803 (1981), Standards for Railroad Revenue Adequacy, 3 I.C.C.2d 261 (1986), and Supplemental Reporting of Consolidated Information for Revenue Adequacy Purposes, 5 I.C.C.2d 65 (1988). The Board made its most recent revenue adequacy determination, for the year 1998, in Ex Parte No. 552 (Sub-No. 3), Railroad Revenue Adequacy—1998 Determination, served September 9, 1999, finding only one Class I railroad, Illinois Central Railroad Company, to be revenue adequate. The Board has not yet made its revenue adequacy determinations for the year 1999.

Inasmuch as a carrier's revenue adequacy is a determination the Board must and will make, it is neither necessary nor appropriate for CSXT to attempt to predict that determination in this report. However, the same general comments made earlier as to why the figures from CSXT's 1999 Form R-1 are of limited utility in depicting the effects of the Transaction on CSXT with regard to jurisdictional threshold determinations apply as well to the determination of revenue adequacy. Furthermore, CSXT's revenue adequacy will also not be directly affected by the amount CSXC paid to acquire its interest in Conrail, including the so-called "acquisition premium." As explained earlier, because the Transaction is structured as an operating agreement and lease of assets that continue to be owned by Conrail and its subsidiary NYC, rather than as a sale of

assets to CSXT, no purchase accounting adjustment to the value of CSXT's assets in its accounts and Form R-1 was called for. Indeed, for purposes of calculating CSXT's net investment base (and thus its return on investment and revenue adequacy) using Schedule 250, the value of property leased by CSXT is included in CSXT's Schedule 250 at Conrail's historic net book value (gross book value less accumulated depreciation), not at fair market value, which results in a lower net investment base, and thus a higher return on net investment and higher degree of revenue adequacy than would be the case if those assets had been acquired by CSXT and written up in value to reflect their acquisition cost.

V. CSXT HAS COMPETED AGGRESSIVELY TO WIN BUSINESS FOLLOWING THE START-UP OF SEPARATE OPERATION OF CONRAIL'S LINES

The widely publicized service difficulties encountered by CSXT have overshadowed the intense competitive environment that prevailed in the sales and marketing efforts of CSXT preparing for the start-up of separate operations of Conrail's lines. Because most of this competitive activity was conducted in private commercial negotiations between shippers and CSXT, it has not been readily recognized. However, its effects are certainly identifiable in terms of revenue impact and traffic volumes.

The divided allocation of Conrail's routes was the result of a carefully and vigorously negotiated plan hammered out by CSXT and NSR to give each what

they had bargained for in connection with the acquisition of Conrail's stock.

While there were, of course, operating advantages associated with shorter through routes which became available due to the improved networks created by the Transaction, the real, fundamental value of the Transaction lay in the opportunity to reach and to serve Conrail's customers using the allocated lines. The greatest return would come from new traffic opportunities, not new operating routes for old moves.

In certain areas (the Shared Assets Areas) both parties insisted on direct access to all shippers. CSXC and NSC agreed to share the value of their investment in those areas. That was the result of their negotiations and each paid for those rights. In other areas (*e.g.*, Indianapolis) one of the carriers succeeded to the Conrail routes, and to address the two-to-one issues the other carrier was granted trackage rights and/or cost-based switching, all as provided in the Transaction Agreement. These steps preserved and to some extent enhanced the competitive options of shippers. In yet other areas (*e.g.*, Greater Buffalo), the two carriers paid for the right to reach the metropolitan area with the ability to serve customers on the routes allocated to them, and with Conrail's reciprocal switching arrangements preserved. With the NITL settlement, Conrail's comparatively high switching charges were reduced to the level generally prevailing between CSXT

and NSR on a reciprocal basis throughout their service territories, thus increasing commercial access.

All these factors created an environment of increased competition. Further, a point probably recognized by CSX and NS but by few others, the "split" of Conrail's routes favored NSR in an important way. Relatively more originating and terminating traffic was located on PRR-allocated lines than on NYC-allocated lines. But with tremendous cost of lines such as the New York to Cleveland Water Level Route, it was essential to CSXT that it win a substantial amount of directly competitive business, particularly to and from the North and South Jersey Shared Assets Areas, if it were to secure a business level sufficient to support that cost. That, in short, made CSXT more dependent on winning competitive traffic to and from the former Conrail customers than was NSR.

CSXT's commercial strategy was complicated by the fact that many shippers refused to commit their traffic far enough in advance to enable CSX to add resources or make network improvements to accommodate the actual volume that materialized. While this was certainly the shippers' right, it meant that CSXT could not predict with precision what volume of traffic it would win over the Water Level route. Since CSXT could not say with confidence what traffic volume it would be carrying, sound business strategy appeared to be to compete very aggressively to win as much of the most competitive business as possible.

This commercial strategy was successful — quite possibly, from an operating standpoint, too successful. When Split Date came, the volume of traffic that had been awarded following successful negotiations, to CSXT, coupled with the uncommitted traffic that appeared on our lines, was more than sufficient to meet CSXT's needs. And, as NSR's early operating difficulties became apparent, customers shifted uncommitted traffic to CSXT. The result was a tremendous strain on capacity in several corridors, most particularly the Water Level Route. And the impact of reduced revenues has certainly been felt in CSX's financial performance.

Creating new competition was an outcome of the private negotiations that developed the divided acquisition of Conrail's routes between two arch-competitors. Certainly, the Board was correct that increased competition is a public benefit of the transaction; but it was an understood consequence, not a motivating consideration. CSXT understood the competitive consequences of the transaction it negotiated and, of course, accepted them as well as all the other aspects of the deal. CSXT adopted, out of necessity, an aggressive sales and marketing strategy that ensured a traffic base sufficient to support the cost of the assets allocated to it. With traffic volumes in some corridors at capacity, CSXT is now balancing the ability to expand capacity with its need to find the right pricing

levels for every customer that will balance the services that CSXT's rail network can supply with its customers' demand.

VI. LABOR⁸

A. Implementing Agreement Process

Prior to the June 1, 1999 implementation of the Conrail Transaction, CSXT, NSR and Conrail had obtained all the implementing agreements with their respective unions, which were necessary for the Split Date implementation of the Conrail transaction. Most of the implementing agreements were achieved through negotiations. To achieve the eighteen implementing agreements only four arbitrations were necessary with respect to CSXT.

In three of the cases in which arbitration was necessary, the arbitrator in each of the three cases basically imposed the agreement that had been negotiated. The Yardmaster implementing agreement had been signed by the International and two general chairmen. Arbitration was necessary only because a third general chairman had a dispute over one provision in the agreement. Similarly, the implementing agreement that was imposed through arbitration on the Brotherhood of Locomotive Engineers ("BLE") was the agreement that had been negotiated

⁸ The material in this section is a general presentation of the topic, and also is responsive to Condition Nos. 21(e), 27, 77, 78, 79 and 80 in the Board's Decision No. 89 in Finance Docket No. 33388.

with the recognition of prior rights added. Arbitration was needed because the agreement had failed to be completely ratified by the BLE's membership. The implementing agreement with the Transport Workers Union of America ("TWU") also had been negotiated and signed by the Brotherhood of Railway Carmen and TWU, but the agreement failed to be completely ratified by TWU and arbitration with TWU was necessary. Additionally, in the case of the implementing agreements with the Brotherhood of Maintenance of Way Employees ("BMWE") and TWU, CSXT was able to reach a settlement with both organizations after an implementing agreement had been imposed through arbitration.

At this time, all litigation over the formation of the implementing agreements has been concluded except for one late filed proceeding. In December 1999, BMWE filed a petition to vacate the arbitration award issued by Mr. William E. Fredenberger, Jr. STB Finance Docket 33388 (Sub-No. 88). CSXT replied to BMWE's petition on January 18, 2000 and expressed its position that BMWE's petition is without merit and should be rejected. As related to CSXT, BMWE's petition does not criticize the settlement with CSXT over the implementing agreement. That settlement, however, includes the work force allocation methodology from the arbitrated implementing agreement. Accordingly, if the Fredenberger award is vacated *ab initio* and the NSR settlement reopened, as may be the intent of the BMWE's petition, then the allocation of the

approximately 3,000 Conrail maintenance of way employees between CSXT, NSR and Conrail (as operator of the Shared Asset Areas), could be in jeopardy. The STB has not ruled on BMW's petition.

Several of the implementing agreements negotiated in conjunction with the Conrail Transaction provide procedures which will govern any future coordinations that may be necessary to realize the transportation benefits of the Conrail Transaction. For example, Chapter II of the implementing agreement with the Transportation Communications International Union ("TCU") contains the procedures applicable to future transfers of positions and/or work. Similarly all of the implementing agreements negotiated with the various shop craft unions acknowledge the possibility of and provide the procedures that will be applicable to future coordinations of work, services or operations in conjunction with the Conrail Transaction.⁹

CSXT does anticipate that such future coordinations of work, services or operations will be necessary as a result of the Conrail Transaction. These future

⁹ The unions are Brotherhood of Railway Carmen Division TCU; International Association of Machinist and Aerospace Workers; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; National Conference of Fireman & Oilers; Sheet Metal Workers International Association; TWU.

coordinations will be accomplished either under the provisions governing future coordinations in the negotiated implementing agreements, where applicable, or under the employee protective conditions, which were imposed by the STB in its decision in the Conrail transaction. For example, CSXT recently served several coordination notices under Chapter II - Future Coordinations of its implementing agreement with TCU. These notices transferred clerical positions from former Conrail and CSXT locations to the newly created regional offices and transferred train and engine employee claims work to these five new regional offices. Other notices transferred certain clerical work from Selkirk, NY to Jacksonville and transferred yard, agency and calling duties from Central Junction, WV to Jacksonville and Rowlesburg, WV.

CSXT also has served a notice under Article 1, Section 4 of the employee protective conditions imposed in the Conrail Transaction to coordinate the yardmasters from the former C&EI into its Region 10 under the CSXT System Yardmaster Agreement. Other coordinations or transfers of work under the STB imposed labor conditions or applicable implementing agreements will likely occur over time.

B. Application of Employee Protective Conditions

Since obtaining the initial eighteen implementing agreements for the Conrail transaction, there has been very little disagreement between CSXT and its unions

over the application of the implementing agreements. To date there have been no labor disruptions of CSXT service caused by disputes over the implementation of the Conrail transaction.

Also, to date there has been the need for only two Section 11 arbitrations over the application or interpretation of the implementing agreements. In one arbitration, one of the TWU's local committees supported CSXT's application of the implementing agreement, while another local committee opposed CSXT's position. The dispute concerned the question of whether CSXT in its application of the implementing agreement with the TWU had improperly denied certain former Conrail carmen at Buffalo their prior rights seniority. The arbitrator, Mr. Richard R. Kasher, found that CSXT's application did not violate the TWU implementing agreement.

The second arbitration was over certain seniority and equity issues between the former SCL and C&O UTU committees at the Richmond terminal arising under the terms of the implementing agreement with the United Transportation Union ("UTU").

The STB, in approving the Conrail transaction, imposed various employee protective conditions in paragraphs 77, 78, 79, and 80 of Decision No. 89. These employee protective conditions, however, each provided for the same level of monetary protection. Since the implementation of the Conrail transaction CSXT

has either certified as eligible to receive protection or has received claims for labor protection from approximately 7,900 employees. CSXT has reviewed or is in the process of reviewing these claims for monetary protection. CSXT has paid protective benefits to approximately 3,700 employees. Between June 1, 1999 and February 29, 2000, CSXT has paid approximately \$3.5 million in protective benefits related to the Conrail transaction.

CSXT also was sued by several employees who, when employed by Conrail, were represented by the United Railway Supervisors Association (hereinafter "URSA"). These lawsuits sought to recover the monetary payments allegedly required by the labor protection conditions imposed by the STB in Decision No. 89. CSXT has responded to each of the claims that have been submitted for labor protection by these employees and intends to make monetary payments to those individuals who have demonstrated a loss in earnings as a result of the transaction below his or her respective test-period average. The United States District Court in Cleveland recently granted CSXT's motion to dismiss these lawsuits, finding the exclusive forum for resolution of disputes over an individual's entitlement to labor protection is Section 11 arbitration under the applicable STB imposed protective conditions.

C. **Labor Meetings on Integration and Safety**

In Decision No. 89, the STB directed the applicants to meet with labor representatives and to form task forces for the purpose of promoting labor-management dialogue concerning the implementation of the approved transaction and any safety issues arising from the implementation. Condition No. 27, at 177. Prior to Split Date, CSXT sent an invitation to each of its unions with which an implementing agreement had been reached and which would continue to represent CSXT employees after the Split Date. The invitation was to participate with CSXT in a labor task force similar to the task force established with the United Transportation Union. A number of the unions responded affirmatively to CSX's invitation. These included the American Train Dispatchers Department-BLE; Brotherhood of Railway Signalmen; the International Brotherhood of Boilermakers, Ironship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electric Workers; National Conference of Firemen & Oilers and TCU. CSXT has held labor task force meetings with a number of its unions and plans to hold additional meetings as the need arises.

CSXT also made an effort to have frequent communications with its unions to guarantee that any integration or safety issues which may arise with regard to implementation of the transaction receives CSXT's prompt attention. For instance, after the implementation of the Conrail Transaction, the President, Senior Vice

President of Operations, Vice President and Chief Safety Officer, and Vice President of Labor Relations of CSXT started participating in weekly conference calls with the UTU and BLE General Chairman to discuss any problems with transition. Later it was agreed to hold these calls on a biweekly basis. Despite the passage of a year since Split Date, these biweekly calls between CSXT's senior managers and the operating craft unions have continued.

On a monthly basis, senior management officials from the Labor Relations, Transportation, and Finance Departments of CSXT meet with the general chairmen of the UTU and BLE. The purpose of this meeting is to provide the general chairmen with an update of the company's performance in these key areas and to discuss matters of concern which either the general chairmen or CSXT may have regarding CSXT operations.

Also the General Chairmen of the various shop craft unions have voluntarily participated in the Mechanical Department Safety Steering Committee which meets on a quarterly basis to review all safety related issues and policies. The shop craft unions were instrumental in the development and rollout of a new labor/management cooperative Safety Plan which was effective August 10, 1998, and the Individual Development and Personal Accountability Policy ("IDPAP"), which became effective on January 20, 1999.

As implementation issues developed, CSXT's Labor Relations Department has worked with the involved union(s) to find satisfactory solutions. For example, when the Conrail maintenance of way work force was originally allocated between CSXT, NSR and Conrail there was an arrangement to accommodate employees whose allocation created bona fide hardship. Notwithstanding this effort, several maintenance-of-way employees still claimed a hardship because of their allocation. To alleviate this problem, CSXT, NSR and Conrail recently entered into a hardship agreement with the BMWF which will provide these individuals with the opportunity for twelve months to transfer their employment to one of the other carriers.

Similarly, CSXT and TCU reached an agreement resolving an issue which arose when the transfer of CSXT's customer service work from Pittsburgh to Jacksonville was delayed. Several clerical employees had transferred to Jacksonville in anticipation of the transfer of the customer service work. In the agreement reached with the TCU, CSXT agreed that nineteen (19) clerical employees would be offered the opportunity to return to Pittsburgh and CSXT would pay their relocation costs. CSXT further agreed that when it did move its customer service work from Pittsburgh that it would follow the provisions in the implementing agreement with the TCU concerning future coordinations.

Yet another example of labor/management cooperation with respect to the implementation of the Conrail Transaction occurred with the BLE and UTU. Because of heavy train traffic CSXT was experiencing on its line between Rochester and Greater New York, CSXT and the involved general chairman of the UTU and BLE reached an agreement to permit the New York, Susquehanna & Western Railway Company to haul certain CSXT trains to alleviate the congestion on CSXT's tracks.

To date, there have been no labor disruptions on CSXT as a result of the implementation of the Conrail Transaction. CSXT believes this is due in large part to the improved communications it has established with its unions. CSXT intends to continue its efforts in this regard.

**D. Continuing Conrail — Application
of Employee Protective Conditions**

On the continuing Consolidated Rail Corporation ("Conrail"), there have been few disputes regarding labor protective conditions. A total of 612 employees have been certified as entitled to *New York Dock* displacement allowances, with approximately 50 displacement allowances being paid each month. Claims for displacement allowances have been submitted under the *New York Dock* protective conditions on behalf of employees represented by several labor organizations. Discussions of these claims are ongoing. One organization, the BMW, has requested arbitration. Discussion of these claims has been requested by Conrail.

VII. SAFETY

The safety aspects of the integration of CSXT's portion of the Conrail system into CSXT have been given the highest priority at CSXT from the earliest planning stages for the acquisition. The scope of planning and resources devoted to a safe integration of the two rail systems has been unprecedented and has yielded highly successful results to date. CSXT is thus pleased to report that there have been no major rail accidents on the CSXT system, and no injuries or loss of life, associated with the Conrail integration process.

CSXT has been, and remains, in full compliance with the two safety-integration related Environmental Conditions set forth in Board Decision No. 89. Specifically, it has been implementing its Safety Integration Plan ("SIP") in a manner that recognizes evolving conditions and has been working cooperatively with Federal Railroad Administration ("FRA") officials in doing so, as envisioned by the Board.¹⁰

In conformity with the Board's intensified interest in the safety aspects of major rail transactions, and specifically in accordance with Decision No. 52 (served November 3, 1997), CSXT filed its SIP with the Board on December 3, 1997. On that day, CSXT, NSR and Conrail also jointly filed a SIP with respect to

¹⁰ See Conditions 49(A) and 49(B), Decision No. 89 at 419.

the Shared Assets Operations. These SIPs were prepared in coordination with FRA and in conformity with its SIP guidelines.

The purpose of the SIPs was to describe the differences in safety procedures and programs between CSXT and the historic Conrail, to identify the relevant best practices of each railroad and to describe the programs and practices to be utilized following the acquisition and the steps that would be followed to implement those programs and practices. The SIPs address a broad range of safety-related issues, including plans for integrating the corporate cultures of the railroads; training programs; operating rules and practices; motive power and equipment issues; signal and train control; engineering with respect to tracks and structures; hazardous materials safety programs; dispatching issues; highway-rail grade crossing safety programs; allocation of personnel and workload/quality of life issues; the relationship between passenger and freight service; and information systems compatibility.

The SIPs were published for public comment as part of the Draft Environmental Impact Statement issued on December 12, 1997. Following the issuance of the Final Environmental Impact Statement by SEA, the Board adopted the two safety integration conditions referenced above in Decision No. 89. Since the Board's approval of the Conrail acquisition in July 1998, the SIPs have been used as a working, and flexible, blueprint for safety integration planning.

The specific FRA role in monitoring safety integration was spelled out in the May 19, 1998 Memorandum of Understanding ("MOU") between FRA and the STB. Under the terms of that MOU, FRA was charged with monitoring, evaluating and reviewing the progress of the Applicants in implementing the SIPs; keeping the Board informed of the progress of these efforts and reporting to the Board on an as-needed and periodic basis until the integration process is completed successfully. In carrying out the multiplicity of tasks contemplated by the SIPs, CSXT has been in regular communication with FRA officials. That close working relationship between a railroad and FRA, which is continuing as the integration process moves forward, has been unprecedented in its scope.

CSXT has made substantial progress in fulfilling the safety integration plans in each of the areas addressed by the SIPs, and numerous integration plans have already been fully implemented. For example, CSXT successfully completed a hiring program that resulted in having more employees, including trainers, available on the Split Date than would normally be required; operating rules training, including "train the trainer" programs were successfully completed prior to the Split Date; train and engine employee qualification training has been fully implemented to familiarize employees with yards or terminals that may be new to them; CSXT procedures for accident/incident reporting have been extended to the acquired Conrail territory and related training has been completed; uniform drug

and alcohol testing programs and related CSXT policies/programs were fully implemented on the Conrail allocated territory as of the Split Date; the CSXT and Conrail crew calling systems have been fully integrated; different cab signal systems used on the Conrail territory and on certain CSXT lines have been modified so that a compatible system is now in use on all lines; an integrated book of CSXT and Conrail safety rules has been drafted and is scheduled for publication in the near future; several major Conrail mechanical facilities have been upgraded; the Conrail hazardous materials rail car inspection program has been integrated into CSXT safety programs; signs showing the same emergency telephone number used on the rest of the CSXT system have been posted at grade crossings along acquired Conrail track; full integration of the CSXT and Conrail police command centers has been accomplished and work on integrating the information systems of the two railroads is largely completed.

With respect to the SIP prepared in connection with the Shared Assets Areas, CSXT has also made significant progress in implementing the key safety elements of its plan. For example, crew dispatching has been relocated from Detroit to Mt. Laurel, NJ; NORAC operating rules have been uniformly adopted for all of the Shared Assets operations; a plan to facilitate access by CSXT, NS and personnel of the continuing Conrail shared assets organization ("CSAO") to waybills for hazardous materials cargo in the event of an emergency has been fully

implemented; and all Shared Assets locomotives operated on the Northeast corridor have been outfitted with new cab signals as planned.

CSXT has also worked closely with its employees on safety implementation, and on extending employee-sponsored safety programs to the acquired Conrail lines. For example, CSXT is coordinating with labor to expand to the Conrail acquired territory the BLE's Structured Employees Network for Safety Empowerment or SENSE. This is a safety program under which the engineers monitor safety issues and take steps to resolve safety concerns, consulting with CSXT management as appropriate. A similar UTU sponsored program, known as Safety Model, is also being expanded to the Conrail territories, as are safety programs sponsored by the maintenance of way and mechanical employees.

The above offers just a sampling of hundreds of steps that CSXT has taken to effectuate the integration as safely as possible on its own lines and in the Shared Assets Areas. As noted, the FRA has closely monitored CSXT's safety integration efforts.

The MOU contemplates the preparation of periodic progress reports by FRA to the Board concerning the SIP process. To date, the FRA has issued one such report. The FRA's First Briefing Report to the Board, issued on May 4, 1999, reviewed the integration process for the period July 23, 1998 through April 15, 1999, a period during which there were significant pre-Split Date safety integration

activities. The Report reviewed in detail the efforts that CSXT had undertaken during that period and concluded that "at this time there are no performance/safety conditions identified or foreseen by FRA on the NS, CSXT or CSAO acquired territories which the Agency believes warrant STB oversight actions to correct deficiencies and/or address safety problems arising out of approval of the merger and its ongoing integration."

Conrail has established Safety Districts for each of the three areas in which it continues to operate as CSAO: Northern New Jersey, Philadelphia/Southern New Jersey and Detroit, Michigan. In each Safety District there is a Safety Committee consisting of both agreement and non-agreement personnel. Each committee member functions two days per month. Field visits and safety inspections are scheduled for each Safety District and safety concerns identified by or brought to the attention of the Safety Committee members are followed up and corrected.

In addition, CSAO has established and posted a Safety Hotline telephone number that can be utilized by any employee to report unsafe conditions. There is written documentation of all calls to the Safety Hotline and all corrective actions are similarly documented.

Finally, CSAO has established, in the Northern New Jersey Safety District, an e-mail bulletin board which permits employees to report safety concerns. Actions taken to address reported concerns are posted on the bulletin board.

CSAO is in the process of implementing a similar system in the Philadelphia/Southern New Jersey and Detroit Safety Districts.

VIII. ECONOMIC DEVELOPMENT IN THE AREA FORMERLY SERVED BY CONRAIL

CSXT has long recognized that the lifeblood of any railroad is new or expanded companies that locate facilities on our system. Particular attention has been paid by CSXT's Industrial Development Department to new or expanded businesses on the Conrail lines that are now operated by CSXT or on lines in the Shared Assets Areas.

Since June 1, 1999, 35 companies have announced the construction of new or expanded facilities on Conrail lines that are now served by CSXT. These projects, listed by company name, location, commodities and estimated annual carloads, are as follows:

| <u>NAME OF COMPANY</u> | <u>LOCATION</u> | <u>PRIMARY COMMODITY</u> |
|---|------------------|---|
| Metals Management, Inc. | North Haven, CN | Scrap Metal & Auto Fluff |
| Hagar Group | Fortville, IN | Truss Materials |
| Belmont Warehousing | Indianapolis, IN | Warehousing Materials |
| Little John Grain | Martinsville, IN | Grain |
| Ampacet | Terre Haute, IN | Plastics |
| Robert Karpp Co., Inc. | Attleboro, MA | Lumber |
| ECDC | Beapark, MA | Municipal Solid Waste |
| Bechtel Power | Charleton, MA | Boiler Parts, Transformers & Generators |
| Cerestar, Inc. | Framingham, MA | Corn Syrup & Sweeteners |
| Millis Industries | Freetown, MA | Scrap Metal |
| Delta Bulk Packaging & Distribution, Inc. | Leominster, MA | Plastic Resin |

| <u>NAME OF COMPANY</u> | <u>LOCATION</u> | <u>PRIMARY COMMODITY</u> |
|---------------------------------|----------------------|------------------------------------|
| Barrett Warehouse | Mansfield, MA | Beer |
| Price Brothers | Northboro, MA | Pipe |
| Norwood Contracting Company | Norwood, MA | Building Bricks & Blocks |
| Allied Cold Storage | Southboro, MA | Frozen Foods |
| Merchandise Warehouse | Walpole, MA | Paper |
| Sanford and Hawley | West Springfield, MA | Lumber |
| Voss Lantz | Detroit, MI | Steel |
| Bridgewater Resources, Inc. | Bridgeport, NJ | Municipal Solid Waste |
| New Haven Distributors | Carney, NJ | Beer |
| Cary Compounding | Dayton, NJ | Plastics |
| Champion International | Jamesburg, NJ | Cut Sheet Paper |
| Recycling and Salvage | Newark, NJ | Construction & Demolition Material |
| Certified Steel | Trenton, NJ | Steel Processing |
| Bronx Metal Recycling | Bronx, NY | Scrap Metal |
| Whitacre Engineering | Clay, NY | Rebar |
| Georgia Marble Company | Emeryville, NY | Decorative & Garden Stone |
| American Ref. Fuel | Niagara Falls, NY | Municipal Solid Waste |
| NRG Energy | Oswego, NY | Fuel Oil |
| Fortek | Syracuse, NY | Lumber |
| Eastern Hay | W. Albany, NY | Hay |
| Kaiser | W. Albany, NY | Contaminated Dirt |
| Industrial Services Group, Inc. | Ashtabula, OH | Industrial Scrap Residue |
| Pinnacle Plastic Products | Bowling Green, OH | Plastic Resin |
| Southeastern Container | Bowling Green, OH | Plastic Resin |

The total carloads per year are estimated at 24,400.

As noted, the foregoing list is only for announced projects. CSXT is currently involved in confidential negotiations for over 60 additional projects for new or expanded facilities in the territory formerly served by Conrail.

IX. INTERMODAL

This section will first provide an overview of the infrastructure improvements that were made to improve intermodal capacity and service reliability relative to the Conrail Transaction. It will then review intermodal commercial initiatives and their impact.

A. Infrastructure Improvements

Over two-thirds of Conrail's intermodal business originated or terminated in Chicago. Therefore, a major focus of the pre-integration development included expansion and right of way improvements in Chicago.

To provide the necessary terminal capacity to handle the Conrail business, CSX Intermodal, Inc. ("CSXI") expanded its Bedford Park and Forest Hill terminals. In addition, the access to the west end of the Bedford Park terminal, between the Indiana Harbor Belt Railroad Company ("IHB") and the Belt Railway Company of Chicago ("BRC"), was expanded to provide power switches and bi-directional train movement. CSXI also completed construction of a new terminal on the property of the former Pennsylvania Railroad Panhandle yard at 59th Street on the BOCT in Central Chicago.

The access routes for intermodal trains to and from Chicago were also improved with the construction or upgrade of a number of connections, as detailed above in Part II (Capital Projects). Together these improvements give CSXT more

flexibility to route Chicago/ Northeast intermodal trains via four different routes thus improving service reliability.

At Cleveland, CSXI constructed a new terminal and support track adjacent to Collinwood Yard. This new facility will increase terminal capacity and enable use of Collinwood Yard as an intermodal hub to facilitate block swapping and interchange of traffic between CSXI's east/west and north/south trains.

At Philadelphia a new terminal was built at the Greenwich Yard formerly operated by Conrail. Although this terminal was placed in service on June 1, 1999, it will not be completed until the fourth quarter of 2000. When completed, it will enable the closure of the existing CSXI terminal at Snyder Avenue. A new connection was built at Eastwick enabling direct head end movement into Philadelphia via the former Conrail Grays Ferry Bridge. Using this route to the new Greenwich yard terminal improves transit time by about three hours relative to the previous CSXT route to the Snyder Avenue terminal.

In Northern New Jersey, the South Kearny intermodal terminal was expanded. In addition, a 32-acre parcel of property adjacent to the APL/Pacer terminal at South Kearny was acquired and improved for container and trailer parking. This new parking area is being used to support the South Kearny parking requirement. Part of it is also being used to support the APL/Pacer terminal parking requirement.

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CSXI's Little Ferry New Jersey terminal was also expanded. This terminal, served by the NYS&W railroad, is adjacent to the Conrail River Line. New connections were established between the NYS&W and the River Line enabling intermodal trains to run into the Little Ferry terminal via the River Line to the North and to the South.

In Atlanta, CSXI completed construction of its new terminal in Fairburn, Georgia. This terminal was planned prior to the Transaction and was placed in service prior to Split Date providing the terminal capacity in Atlanta that was necessary for the new Atlanta/Northeast I-85 service. This new terminal capacity was also instrumental in handling the new Pacer Stacktrain business that came on in the fourth quarter of 1999.

B. New Services

CSXI's existing I-95 intermodal service between Florida and the Northeast was extended beyond Philadelphia, its former northern terminus, to Northern New Jersey and New England. Two trains per day in each direction operate in this lane.

A new intermodal service was established in the I-85 corridor between Atlanta and Northern New Jersey with connecting service to New England.

I-75 service between Florida and Detroit continued to operate via highway beyond Cincinnati due to light volumes and line congestion North of Cincinnati.

Intermodal service between Florida and Cleveland was established via a routing over Chicago.

Intermodal service between Memphis, on the one hand, and points in Ohio and the Northeast, on the other, was established in conjunction with CN/IC via a connection between that railroad (which serves the Memphis/St. Louis leg) and CSXT in St. Louis. Service between Nashville and Ohio/Northeast points was established via an efficient, all-CSXT routing over Chicago.

In the East/West lanes between Chicago and the Northeast CSXI integrated the former Conrail network with the CSXI network to optimize terminal utilization and train operations. These services, in conjunction with the I-85 and I-95 services, enabled elimination of all CSXI drayage between Philadelphia and New Jersey/New England, between Chicago and Columbus and between Chicago and Cleveland. These CSXI drayage services had been in effect prior to the Conrail integration.

C. Obtaining Pacer Stacktrain Business

In the fall of 1998, Neptune Orient Lines ("NOL") placed its APL Stacktrain business up for sale. In May of 1999, the sale transaction concluded and the company was renamed Pacer Stacktrain. At that time, CSXI was successful in securing all of the former APL Stacktrain business in the Northeast and Southeast. This business, which is mostly doublestack, added more than 250,000 new

domestic and international container units to the CSXI network. Most of this business transferred to CSXI in November and December of 1999 creating a number of short term infrastructure development and operational challenges in the second half of 1999 and the first quarter of 2000. The intermodal infrastructure development noted earlier in this report played a significant role in enabling CSXI to secure and handle this new business. Pacer Stacktrain is now one of CSXI's largest customers.

D. Upgradings

CSXI presently (and in fact continuously) reviews its network to optimize the capacity of its terminals and available trains. When present reviews are completed there may be service changes particularly involving the I-75 and I-85 service lanes.

X. RELATIONSHIPS WITH AMTRAK AND COMMUTER AUTHORITIES

A number of passenger railroads participated in Finance Docket No. 33388, raised numerous concerns about potential impacts on their on-time performance and ridership levels (both short-term and long-term), and sought various conditions. *See* Decision No. 89, Appendix D, at 231-36. In response to these concerns, the Board determined that it would monitor "transaction-related impacts on Amtrak passenger operations and regional rail passenger operations" during the

five-year oversight period. Slip op. at 173-74 and n. 262. The Board rejected all other requests for conditions on the following ground:

On the whole, the requested conditions do not arise out of operational or economic impacts attributable to the transaction. Rather, they appear to be an effort to use our approval process to obtain concessions, revisions or extensions that the passenger entities have apparently been unable to work out through the normal process of commercial negotiation. Applicants maintain that they have worked in good faith with passenger railroads and agencies in the past and that they will continue to do so after the transaction is consummated.

Decision No. 89, at 97. The Board found no basis for departing from this private-negotiation approach at the time it rendered Decision No. 89, and no basis has appeared since then that would warrant the Board's doing so at this time.

CSXT is in substantial compliance with all of the agreements executed with passenger railroads in connection with Finance Docket No. 33388. The following agreements were entered upon during the case:

- Two agreements with the National Railroad Passenger Corporation ("Amtrak") — "The principles of cooperation between Amtrak and CSX Transportation associated with the Conrail acquisition" and "The principles of cooperation concerning the Northeast Corridor" — dated May 14, 1998,
- Agreement with the Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois ("Chicago Metra") dated February 19, 1998,
- Agreement with the State of Maryland dated September 24, 1997 (relating to MARC),

- Agreement with the State of Massachusetts dated October 31, 1997 (relating to the Massachusetts Bay Transportation Authority, or "MBTA"),
- Agreement with the New Jersey Department of Transportation/New Jersey Transit Corporation ("NJDOT/NJT") dated March 20, 1998,
- Agreement with the Southeastern Pennsylvania Transportation Authority ("SEPTA") dated June 1, 1998, and
- Agreement with the State of Pennsylvania and City of Philadelphia dated October 21, 1997 (relating to SEPTA).

Moreover, as explained below, most passenger operations conducted over lines CSXT owns or operates generally have proceeded smoothly since the Conrail Split, as have CSXT freight operations conducted over lines owned or operated by passenger railroads. There have been service difficulties on certain of the lines. With respect to Amtrak, the trend in on-time performance since the Conrail Split generally has been positive. CSXT and Amtrak are working together to address problems as they arise. CSXT believes that the Conrail Transaction has had no significant adverse effect on the commuter service offered by Chicago Metra, MBTA, Metro North, NJT, SEPTA, and Virginia Railway Express ("VRE"), and indeed, commitments made by CSXT in connection with Finance Docket No. 33388 have provided benefits to a number of these passenger agencies. Relationships with these commuter agencies generally have been positive. On the other hand, the on-time performance of MARC trains on the Camden Line (Washington-Baltimore via Laurel) has been below desirable levels in most

months because of capacity constraints on this line segment and increased freight traffic following the Split Date. On-time performance of trains on the Brunswick Line was troublesome in 1999, but has improved to pre-Split levels in recent weeks. The operating agreement with MARC expired on December 31, 1999, but has been extended temporarily while negotiations on a new agreement are ongoing. It is CSXT's position that a new operating agreement must address the need for additional capacity on the line.

A. Amtrak

Pursuant to the oversight condition and the May 14, 1998 agreement with Amtrak, quarterly reports are submitted to the Board regarding Amtrak on-time performance. The reports filed October 12, 1999, February 14, 2000, and May 16, 2000, indicate that there was a positive trend in on-time performance during the period June 1, 1999 through March 31, 2000. In the quarter that is now ending, there have been problems on the former Seaboard Coast Line and Louisville & Nashville lines. It should be noted that few problems have occurred on the Conrail lines now being operated by CSXT; the most significant problems have occurred in the South distant from the Conrail lines added to the CSXT system through the Conrail Transaction.

CSXT management attention is focused on problem areas as they arise on a daily basis. CSXT managers confer with Amtrak managers each morning (seven

days a week) to facilitate Amtrak operations throughout the CSXT system. In addition, CSXT and Amtrak participate in the "Partners in Performance" program which brings local CSXT and Amtrak management together to address problems on the local level.

B. Chicago Metra

CSXT entered into an agreement with Metra dated February 19, 1998, that addresses the movement of Metra trains through three interlockings: the 75th Street (Forest Hill) interlocking (controlled by CSXT), the Belt Junction interlocking (controlled by the IHP) and the Chicago Ridge interlocking (controlled by the BRC).

Metra trains have been moving through these interlockings in timely fashion since the Split Date. Pursuant to the agreement, CSXT affords Metra trains priority slotting through the 75th Street interlocking. With respect to the other two interlockings, CSXT has been participating in the Joint Review Committee established under the agreement. The Joint Review Committee meets regularly and has facilitated coordination at the Belt Junction and Chicago Ridge interlockings, as anticipated in the agreement. CSXT has also been cooperating in the study of a possible rail-rail grade separation at Forest Hill, as provided in the agreement, but the study has not yet progressed to a stage where any decisions can be made.

In addition, capital improvements made and planned by CSXT in Chicago benefit Metra as well as CSXT. During 1999, CSXT rebuilt the 75th Street interlocking to current technology standards for switches and signals by installing a remote control switch with heaters. Chicago Ridge was upgraded to current technology as part of adding Traffic Control System ("TCS") operation between Blue Island and Argo on the McCook Subdivision. CSXT also colocated its dispatcher with the IHB dispatcher at the Calumet City, Illinois Command Center. CSXT is in the process of upgrading to TCS operation on the Blue Island Subdivision between the 75th Street interlocking and Blue Island Junction which should further improve CSXT's ability to move freight trains through Chicago without interfering with passenger service.

C. MARC

From a norm of 93-95% on-time performance before the Split Date, on-time performance on MARC's Camden Line has fallen by 10 points on average since the Split Date, with some months running close to the pre-Split norm and other months (such as March 2000) running as low as 71%. On the Camden Line, there are 23 daily conflicts between MARC trains moving in opposite directions, without even taking into account the freight traffic on the line which has increased since the Split Date. On-time performance is limited by the capacity of the line. Capital

improvements are required to increase the capacity of the line if MARC train service is to be maintained at an acceptable level of on-time performance.

As noted above, on-time performance of trains on the Brunswick Line was troublesome in 1999, but has improved to pre-Split levels in recent weeks.

The operating agreement with MARC expired on December 31, 1999, but has been extended in two month intervals while negotiations on a new operating agreement are underway.

D. MBTA

MBTA's on-time performance on the Boston Main Line (controlled by CSXT) has been an excellent 98% since the Split Date (exceeding the target of 96% on-time performance set in the October 31, 1997 agreement with the Commonwealth of Massachusetts). In addition, CSXT has agreed to extend, as of May 8, 2000, six existing MBTA train schedules on the Boston Main Line from Framingham to Worcester. Some startup difficulties in on-time performance have been experienced with those trains. As provided in the October 31, 1997 agreement, serious discussions are also ongoing between CSXT and MBTA regarding MBTA's proposed extension of commuter service to Fall River and New Bedford.

E. Metro North

Metro North owns and thus controls all the lines over which CSXT operates on the east side of the Hudson south of Poughkeepsie to New York City. On-time performance of Metro-North trains is thus generally not an issue. However, there have been some operating problems caused by CSXT locomotives and freight cars that were not in compliance with Metro North requirements (to accommodate the third rail required for its passenger operations). CSXT has been using its best efforts to bring its equipment into compliance with Metro North requirements and gratefully acknowledges Metro North's cooperation during the transition period.

F. New Jersey Transit

NJT owns and thus controls most of the lines with NJT passenger service over which CSXT and the Conrail Shared Assets Operation operate. NJT on-time performance is thus generally not an issue on these lines and no specific problems have arisen following the Conrail Split. NJT had expressed concern during the proceeding about transaction-related effects on passenger service on the NK to Aldene line segment of the Lehigh Line (controlled by CSAO), but there has been no adverse effect on on-time performance on that line segment. Indeed, construction of a new passenger rail station on that line segment at Townley, as agreed to in the March 20, 1998 agreement, is well underway.

Following upon the discussions to which the parties agreed in the March 20, 1998 agreement, Conrail has sold its Bordentown Secondary to NJT for construction of a light rail line between Trenton and Camden. NJT has not proceeded with studies of the other proposals for new passenger rail service identified in the March 20, 1998 agreement. However, CSXT is continuing to meet with NJDOT and NJT representatives regarding studies of a number of other proposals for new passenger rail service and will cooperate in their development where feasible — *i.e.*, where the passenger service will not result in a compromise of safety standards, increased liability for the freight railroads, direct or indirect subsidy of passenger service by freight, or reduced capacity of cost-efficient, reliable freight service. None of these studies has yet progressed to a stage where any decisions can be made.

G. SEPTA

SEPTA owns about half the lines with SEPTA passenger service, but under present contractual arrangements, SEPTA controls all of the lines over which it operates. SEPTA's on-time performance is thus generally not an issue on these lines and no specific problems have arisen following the Conrail Split. SEPTA had expressed concern during the proceeding about transaction-related effects on its R3 and R8 passenger services which operate over portions of the CSXT Trenton

Line, but there has been no adverse effect on SEPTA's on-time performance on that line segment.

H. VRE

On-time performance has averaged an excellent 95% since the Split Date and VRE ridership is at an all-time high. Contrary to concerns expressed by VRE during the control proceeding, the infrastructure over which VRE operates, as improved by capital projects funded by VRE, has had sufficient capacity to handle both commuter and freight traffic following the Split Date.

XI. CHICAGO OPERATIONS/IHB

The Board's interest in this topic is expressed at page 161 of Decision No. 89, which specifically calls for oversight as to the impact of the transaction within the Chicago Switching District (or "Chicago Terminal"), including the effect of IHB's management change on its role as a neutral switching carrier.

Chicago is the largest and most important railroad hub in the United States. It is the traditional major gateway between East and West, and between the United States and Canada. All major U.S. and Canadian railroads reach Chicago and use the Chicago Terminal to interchange a very large part of the nation's transcontinental and U.S./Canadian traffic. A recent study has shown that more than 25% of U.S. Class I freight (or \$9.4 Billion in revenue) moves through Chicago. On any given day 22 per cent of all U.S. carloads will be somewhere

within the Chicago Terminal. This traffic volume manifests itself in the approximately 1500 freight and passenger trains that operate in the terminal daily.

Operations in Chicago depend in great part on Chicago's three major switching railroads: The Baltimore and Ohio Chicago Terminal Railroad Company ("BOCT"), an affiliate of CSX; the Belt Railway Company of Chicago ("BRC"); and the Indiana Harbor Belt Railroad Company ("IHB"). Before the Conrail Transaction, Conrail owned 51% of IHB's stock. Upon approval of the Transaction, NSC and CSXC gained control of Conrail, and thus controlling interest in IHB.¹¹ In its operating plan, CSXT proposed various changes to improve the fluidity of traffic in Chicago, including capital improvements to the IHB and changes in CSXT's uses of the various BOCT, BRC and IHB yards to reduce inter-yard transfers and to provide a smoother flow of traffic through those yards.

¹¹ Prior to the Split, IHB was owned 51% by Conrail and 49% by Soo Line Railroad. After the Split, NSC and CSXC indirectly held 29.58% and 21.42% equity interests in IHB, respectively. Pursuant to an Ancillary Agreement between CSXC and NSC, the ownership interest of Conrail in IHB continues to be held by the continuing Conrail entity, and CSXC and NSC have the right to select an equal number of directors of IHB to be elected by Conrail. See Agreement Relating to the Contractual Rights and Ownership Interest of Consolidated Rail Corp. with respect to the Indiana Harbor Belt Railroad Company ("IHB Agreement"), Vol. 8C, Exhibit FF, at 693 *et seq.* of the Control Application (CSX/NS-25).

Given the tremendous value of the transportation infrastructure in Chicago, it was hardly surprising that a number of parties sought Chicago-related concessions in the control proceeding, primarily urging some restructuring of ownership of the IHB (often to themselves). The argument most commonly used to support the proposed restructuring was that because CSX and NS would control IHB, IHB might begin to discriminate against other carriers to disadvantage them in their efforts to move trains efficiently through Chicago. They claimed that the loss of IHB as a "neutral switching carrier" in the Chicago Switching District would disadvantage customers as well as other railroads. Others took a different tack, arguing that the increased traffic and proposed changes in operations would result in confusion, congestion and disruption of service in the terminal, possibly even of the magnitude experienced in Houston after the UP/SP combination.

As the Board quite correctly found, there was no basis for the requested conditions and imposing them would have hampered Applicants' efforts to manage their operations efficiently following the start-up of separate operations. Decision No. 89 at 92. The Board also found that the CSXT and NSR operating plans for Chicago promised significant improvements in Chicago. The Board found no basis for concern that the interchange options of any carriers would be disadvantaged by the changed ownership of IHB, particularly given the CSX and NS representations that IHB would continue to be managed as a neutral switching

carrier. However, the Board was mindful of the UP's experience in Houston after the UP/SP combination and realized that a similar crisis in the Chicago Terminal would have a catastrophic affect on the rail operations of all major railroads and could adversely affect commerce in all parts of the U.S. and Canada. Accordingly, the Board determined to monitor the situation and gave particular emphasis to the Chicago Switching District and IHB's management in its general oversight provision.

The experience since Split Date has confirmed that the expressed concerns about the ownership of the IHB were unfounded. There have been no complaints of discrimination in the way that IHB switches traffic in Chicago. Despite a change of control at the Board of Directors level, there has in fact been continuity in management personnel at IHB — at all levels. From a corporate control standpoint, Conrail continues to hold 51% of IHB stock and IHB continues to report to a Board of Directors whose members are employees of major railroads in the Chicago area. The Transaction brought no changes in operating personnel; the pre-Transaction IHB operating personnel have continued in their pre-Split positions.

Moreover, no gridlock remotely approaching that which gripped Houston following the UP/SP transaction ever materialized. That is not to say that there were no operating problems in the Chicago area, for there clearly were.

Particularly in October and November 1999, congestion in Chicago presented a significant problem and affected all railroads in the Terminal. Some of the causes of these difficulties were Transaction-related. For example, the CSXT traffic flows changed as planned in the operating plan, but volumes were larger than expected. These unexpected additional volumes, coinciding with the traditional peak period for grain, coal and merchandise traffic, created congestion in the Chicago area. Delays in obtaining an easement for the construction of the last 100 feet of a Third Main track through Barr Yard also complicated matters.¹²

On the other hand, pre-Split Chicago did not operate at anything remotely approaching perfection. Indeed, the need to improve operations in Chicago goes back as far as any railroad employee's memory. It would be unfair to lay all the service issues confronting Chicago operations since Split Date at the feet of the Conrail Transaction.

¹² The new Third Main track through Barr Yard is a critical element of the infrastructure needed to implement CSXT's operating plan in Chicago. After lengthy and difficult negotiations with the Forest Preserve District of Cook County, CSXT obtained an easement to construct a fill along the Third Main on a strip of Forest Preserve land. It has turned out, however, upon discovery of a surveying error, that CSXT needs to construct the last 100 feet of track, not just the fill, on an eight-foot-wide strip of the land subject to the easement. The Forest Preserve District has to date refused to amend the easement to permit the completion of the track. CSXT is working diligently to resolve this problem so that the Third Main can be completed before the Fall heavy traffic season.

Chicago has always been an area with difficult operational issues, and given the magnitude of traffic in the Chicago Terminal will continue to present operational challenges. But, while adversely affecting the situation somewhat in October and November 1999, the Conrail Transaction has brought a renewed vigor to cooperation among carriers in the Chicago Terminal. The capital expenditures by CSXT have triggered interest in cooperation, and study/planning groups have taken more active roles, in large part to address the opportunities now available. Because of these capital improvements and the establishment of a good structure for cooperation by all Class I railroads in resolving operating issues, Chicago was able to handle the increased volumes in October and November and quickly return to normalcy.

This marked increase in cooperation between railroads in the Chicago area was brought about at least in part by the Transaction. For example, several months prior to Split Date, the Executive Vice Presidents of Operations of all of the Class I railroads convened to review overall Chicago operations, traffic flows and the operating plans of CSXT and NSR. They charged a specific team, the Chicago Planning Group, with responsibility to coordinate operations and facilities planning and to facilitate the exchange of operationally critical information concerning traffic in Chicago. The team was jointly headed by an eastern road (CSXT) and a western road (BNSF) with members representing each of the Class I railroads, the

three switching railroads, AMTRAK and Metra. At the instigation of this team, high-level service planners from all of the railroads worked through the details of blending the proposed CSXT and NSR post-Split operations with existing operations. To facilitate cooperation between carriers, they established Interline Service arrangements to govern joint line movements. The team developed a method of rapid communication between railroads, between yards, and between yards and railroads to provide immediate response to situations as they arise. The Chicago Rail Carriers Association was reactivated to oversee the coordination of maintenance of way and curfew work over the 700 route miles of track in the Chicago Terminal. Primary and secondary routes for all carriers were identified and, to assure that the switching carriers could handle all carriers' traffic, cooperative arrangements were made for the provision of additional crews and locomotives. Labor leaders for employees of the carriers played an important and constructive role in making this a reality.

In addition, the railroads have partially implemented centralized and coordinated dispatching. CSXT and IHB have co-located their dispatchers at Calumet City to better coordinate traffic over CSXT and IHB lines. UP also has begun to co-locate its own dispatchers from Omaha to Proviso Yard to facilitate coordination of UP train operations with others in the terminal. CSXT and IHB believe that co-location of dispatchers has facilitated rapid communication and

more coordinated dispatching and are sharing this positive experience with other railroads.

These and other cooperative measures¹³ have been successfully implemented, with tangible results. Since Split Date, the average dwell time in the measured yards (BOCT's Barr Yard and IHB's Blue Island Yard) is less than 24 hours, compared to 24-28 hours pre-split. Recently Barr Yard has handled 1722 cars with an average dwell time of 21.8 hours, and Blue Island bettered its best turn around time for 1999. Thus, far from causing catastrophic service disruptions in Chicago, the Transaction has promoted vigorous cooperative efforts that have resulted, and will continue to result, in improved traffic flows throughout the Chicago Terminal area.

This is not to say that there are no continuing operational issues in Chicago or individual concerns that need to be addressed, but those concerns are beyond the

¹³ The Planning Group has initiated studies to improve coordinated train operations, including: hiring a consultant to simulate train operations and to consult with workers on the best way to process management changes; development of an improved web-based system to ascertain at any given time the line up of trains, actual train locations and estimated times of arrival; use of a shared AAR screen to allow dispatchers to see the dispatching screens of other railroads; and creation of a new Chicago Transportation Coordination Office ("CTCO") to focus on long-range planning, with particular emphasis on coordinated planning for seasonal flows.

scope of this oversight proceeding. The Board has established an ongoing process to monitor operational issues. In compliance with that process, CSXT and NSR have provided weekly reports to the STB on operations in Chicago, and the STB has been closely involved in monitoring developments in the Chicago Terminal. Any specific operational concerns in Chicago should be addressed through that process. In this proceeding, it suffices to say that while implementation of the Transaction has at times exacerbated a difficult situation, it has also resulted in increased cooperative efforts to improve operations in Chicago. These cooperative efforts, brought about in large part by the need to coordinate implementation of recent combinations, have kept Chicago functioning in the face of extremely heavy traffic volumes and promises to provide even greater benefits in the future.

XII. IMPLEMENTATION OF GENERAL CONDITIONS

Here there commences the response to the list of general (*i.e.*, non-environmental) conditions which are found in Decision No. 89 at pages 173 and following, and which are not elsewhere discussed herein.¹⁴

¹⁴ Environmental conditions are discussed in Part XIII of this submission.

**1. Six-Month Termination Privilege of Contracts
With Antiassignment Clauses (Cond. 10)¹⁵**

The Applicants proposed, in the Transaction, that all of Conrail's rail Transportation Contracts ("RTCs") in existence at the Split Date be allocated for performance for the remainder of their terms, subject to all of their terms and conditions, by one or the other of CSXT or NSR (or in some cases, partially by each of them). The allocations were to be made pursuant to a formula set forth in the Transaction Agreement and the Application. To the extent that there were anti-assignment clauses in the RTCs, the Applicants requested that they be overridden to permit this allocation of the Conrail RTCs. Certain shippers opposed this treatment, and the Board determined in Condition No. 10 that Conrail RTCs that had antiassignment clauses could be terminated, at the discretion of the shipper, at the end of a six-month period starting on the Split Date (or, at the shipper's discretion, the RTC could be continued until its expiration date with the carrier to which it was allocated). The six-month override term ended on December 1, 1999. A number of contracts were terminated by shippers invoking the Board's ruling at the close of that time period. CSXT is aware of only one situation in which any

¹⁵ "Cond." numbers relate to the numbered ordering paragraphs found in Decision No. 89, pages 173 *et seq.* Omitted numbers are of paragraphs not containing conditions, or containing conditions dealt with solely in NS's response or otherwise dealt with herein.

controversy has emerged over a shipper's effort to terminate a contract under this condition, and that was due solely to another participating carrier's position that the contract was not terminable as to it. CSXT and in its understanding, NSR, have in all cases acquiesced in shippers' attempts to invoke their rights under this condition. A number of contracts were renegotiated in light of shippers' rights under this condition, but by and large, the unexpected delay in Split Date resulted in a considerable number of contracts expiring by their terms (including contracts allocated under § 2.2(c) of the Transaction Agreement), prior to December 1, 1999.

2. NITL Conditions, As Modified by Board (Cond. 20)¹⁶

a. Conrail Transaction Council

The Conrail Transaction Council was created as part of the CSX/NS settlement with the National Industrial Transportation League. The Council consists of representatives of CSXT and NSR as well as representative shippers and trade associations of affected rail users. The Council was intended to function as a forum for communication and constructive dialogue on issues related to the transaction and has been highly successful. It was organized prior to the Split Date and has met virtually every month; a total of 21 meetings has been held. With the administrative support of the NITL and occasional facilities support from other

¹⁶ The NITL Settlement is discussed in Decision No. 89 at 53-58.

trade associations and leadership of individuals from important shippers (Mr. Robert Evans of Occidental Chemical and Mr. Jack Pruh of Millennium Inorganic Chemicals), the Council has fulfilled its purposes.

In the course of the pre-Split planning process, CSXT and NSR brought to the Council meetings the individuals responsible for virtually every area related to preparations for the separate operations of Conrail. Council members heard detailed presentations on preparations and had opportunity for questions and suggestions. Operations Planning, Information Technology, winter preparations, Customer Service, Labor Relations, Safety, and administrative support were just a few of the myriad areas which the carriers described for the Council members. Never before in the history of railroad combinations have the shippers had such thorough insight and opportunity for input into the carriers' planning.

The Council has proven an excellent forum for two-way communications. Early on in the preparations for start-up, it became evident to CSXT and NSR that it would be very important that customers change their bill of lading shipping instructions to delete "Conrail" as the specified carrier and to replace it with either "CSX" or "NS." Unlike prior combinations, where computers could be programmed to recognize the former carrier as the new carrier, "Conrail" would no longer be recognized by industry computers as a valid railroad. With Conrail's routes subject to divided allocation, use of "Conrail" in bill of lading shipping

instructions on traffic moving over commonly served gateways would inevitably lead to mishandling of cars, since western roads would not know whether to deliver the cars to CSXT or NSR. This point was made repeatedly at the Council, and Council trade associations were quick to seize the opportunity to alert their membership. With the assistance of Council leaders and trade associations, the message was conveyed so effectively to the shipping public that incorrect billing was essentially a *de minimis* problem at start-up.

A major accomplishment of the Council was the development of a negotiated set of service performance measurements. This unprecedented arrangement came about as a result of a cooperative effort among the shipper and carrier members. Shipper members wanted more detailed information than had ever been made available to the public to monitor the carriers' progress and serve as an early warning of possible difficulties. These service measurements became the standard that was ultimately adopted by the Association of American Railroads for all Class I members.

Council meetings have been well-attended, with active participation by shippers as well as representatives of FRA and STB. At the early request of shipper members, representatives of Conrail have attended and reported monthly on operations within the Shared Assets Areas.

At the STB's direction, the Council has reported to the STB monthly submitting its minutes and copies of presentations so that the Board has been fully apprised of developments on a month by month basis.

b. Shared Asset Area Manuals

CSXT has complied with this condition.

c. Preparations for Implementation

CSXT has complied with this condition.

d. "One-to-Two" Situations

This provision of the NITL settlement entitled Conrail shippers that had at least 50 cars shipped in the calendar year 1997 in single-line Conrail service, where that service would become joint-line CSXT/NSR service after the Split, to have their Conrail rate maintained (subject to RCAF-U increases) in fair and reasonable joint-line service, and to have an arbitration remedy in the case of a claim of inappropriate routing or use of an interchange point. CSXT has complied with this condition.

e. Board Oversight

This provision of the NITL Agreement was modified and extended by the Board, and as modified, is the basis of the current project in Sub-No. 91, of which this report is a part, and other forms of oversight conducted by the Board.

f. Conrail RTCs

This provision of the NITL Settlement was designed to give shippers whose contracts were allocated for performance under § 2.2(c) of the Transaction Agreement the opportunity to seek better service from the other carrier. The relief granted by the Board to shippers with anti-assignment clauses in their contracts was more extensive, and therefore largely superceded this provision of the NITL Settlement Agreement. The unexpected delays in postponing Split Date, as noted above, substantially reduced the number of contracts that extended beyond the Split Date. Nonetheless, this provision remains available to shippers who have long-term contracts without anti-assignment clauses (or which have not been terminated) and who are dissatisfied with the service provided by one carrier or the other. No shipper has yet invoked this provision.

g. One to Twos: Three-Year Protection (expanded to cover connections with Class III's serving shipper)

CSXT is complying with this condition and will continue to do so. A shipper's rights under this condition are self initiated, and can be invoked directly with any marketing officer with rate setting authority. Accordingly, no specific quantitative report of this condition's use can be made, except to say that in a number of instances shippers have invoked the provision with CSXT and CSXT has maintained the preexisting Conrail rate (subject to RCAF-U).

h. Gateways

CSXT has complied with this condition.

i. Reciprocal Switching (expanded) (other direction switching — CSXT or NSR for Conrail; also re shortlines)

CSXT has provided for \$250 per car switching charges at all locations where Conrail previously furnished reciprocal switching to NSR or CSXT, or where CSXT or NSR previously furnished reciprocal switching to Conrail. In addition, CSXT has offered, to all shortline railroads to which Conrail furnished reciprocal switching, to reduce switching charges to \$250 in exchange for a reciprocal reduction to that amount on the part of the shortline, at locations at which CSXT has succeeded to Conrail.

j. Facilities within the SAAs

CSXT is complying with this condition which requires all new shipper-owned facilities within the shared assets areas to be served by both CSXT and NSR.

- 3. Applicants must comply with the operational monitoring condition imposed in this decision, and, in connection therewith, must file periodic status reports and progress reports, as indicated in this decision. (Cond. 18)¹⁷**

CSXT has complied and will continue to comply with this condition.

¹⁷ We thus quote the texts of the Board's conditions henceforth in this Part.

4. **Applicants must adhere to all of the representations they made during the course of this proceeding, whether or not such representations are specifically referenced in this decision. (Cond. 19)**

CSXC and CSXT have complied and will continue to comply with this condition.

5. **Applicants must adhere to the terms of the settlement agreements that were entered into with Amtrak, ESPA, STWRB, the City of Indianapolis, and UTU. (Cond. 21)**

The Board specifically mentioned five settlements:

- a. **Amtrak**

This topic is discussed in the discussions of Amtrak and commuter operator relationships in Part IX, above.

- b. **Empire State Passenger Association**

CSXT is complying with this Settlement Agreement which was entered into on December 19, 1997.

- c. **Southern Tier West Regional Planning and Development Board**

The settlement with this entity is discussed in NS's report.

- d. **City of Indianapolis**

This Settlement Agreement was entered into on June 1, 1998 and has been complied with.

e. UTU

This settlement has been complied with and is discussed under the general discussion of "Labor" in Part VI above.

6. **Applicants must monitor origins, destinations, and routings for the truck traffic at their intermodal terminals in Northern New Jersey and in the Commonwealth of Massachusetts in a manner that will allow us to determine whether the CSX/NS/CR transaction has led to substantially increased truck traffic over the George Washington Bridge. Applicants should report their results on a quarterly basis. (Cond. 22)**

CSXT has complied and will continue to comply with this condition and has submitted five reports covering, *in toto*, the period January 1, 1999, through February 29, 2000.

7. **Applicants: must allow IP&L to choose between having its Stout plant served by NS directly or via switching by INRD; must allow for the creation of an NS/ISRR interchange at MP 6.0 on ISRR's Petersburg Subdivision for traffic moving to/from either the Stout plant or the Perry K plant; and must provide conditional rights for either NS or ISRR to serve any build-out to the Indianapolis Belt Line. (Cond. 23)**

a. **NS Trackage Rights to Stout**

This condition gave IP&L the option of choosing between having its Stout plant served "directly" by NS via trackage rights or via switching by INRD. In February 1999, CSX caused INRD, through its Board of Directors, to make a grant of appropriate trackage rights as necessary to permit NSR to have "direct" access to the Stout Plant over INRD. INRD and NSR thereafter negotiated the terms of

those trackage rights. While NSR could reach the plant by operating from INRD's West Street connection to the former Indianapolis Belt Track to INRD's Milepost 3.85 where the turnout to INRD's side track is located, NSR requested that it be given rights to operate beyond that turnout to milepost 5.0, an additional 1.15 miles, to give NSR head and tail room to work in and out of the plant. After negotiations, INRD agreed to NSR's requested additional trackage rights even though that concession was not required by Condition 23. Remaining issues were resolved and the trackage rights agreement was executed in May 2000. The trackage rights fee established between INRD and NSR is 35¢ a car mile, subject to annual adjustment up or down under an index provided for in the agreement. Accordingly, CSX has complied with this requirement.

b. Interchange for NSR and ISRR

In Decision No. 89, the Board adopted the Department of Justice's suggestion that the ISRR/NSR interchange take place at Mile Post 6. During the proceedings, neither IP&L nor ISRR raised any question about the use of this interchange point. Decision No. 96 at 14 n.14. After Decision No. 89 was served, however, IP&L contended that Mile Post 6 was an inconvenient interchange point and requested that CSXT's Crawford Yard (formerly operated by Conrail) be the interchange point. IP&L-15 at 2. In Decision No. 96, the Board ordered the parties to negotiate "a mutually satisfactory solution to this problem." Decision

No. 96 at 14. Notwithstanding that track space at Crawford Yard is at a premium, CSXT agreed to make such track available to NSR in order to serve IP&L. Accordingly, CSXT, NSR, and ISRR agreed to make Crawford Yard the interchange point for movements to both the Perry K and Stout plants. In a January 19, 1999 letter to the Board, IP&L stated that the parties had agreed that Crawford Yard was the "appropriate" interchange point for NSR and ISRR and expressed no objection to that location.

CSXT and NSR have entered into a trackage rights agreement for NSR movements of coal (including ISRR-origin coal) to IP&L's Stout plant to the extent CSXT track is to be used. Under that agreement, ISRR will move ISRR-origin coal between Milepost 6 and Crawford Yard. Upon arrival at Crawford Yard, NSR, using its trackage rights on CSXT, will move the coal to the West Street connection with INRD and then, using its trackage rights on INRD, will go directly on into IP&L's Stout plant. (For non-ISRR-origin coal NSR will operate over INRD in the same way.) Under the agreement, NSR will pay CSXT a \$0.29 per car mile trackage fee. The \$0.29 per car mile trackage fee is the same fee as provided in other mutual CSXT/NSR agreements addressing two-to-one situations in the Conrail transaction. The agreement contains a provision for adjustments similar to those other agreements.

c. Build-Out Connection to IP&L's Stout Plant

Condition 23 also requires that CSXT "must provide conditional rights for either NS or ISRR to serve [IP&L's Stout plant from] any build-out to the Indianapolis Belt Line." As yet, CSXT has received no indication from either NSR or ISRR of an intention to construct a build-out to the Indianapolis Belt Line to serve Stout. In the event such track is built, CSXT will provide those rights. Such rights would be exercised solely to provide direct access to IP&L's Stout plant by either NSR or ISSR. Those rights also will be consistent with safe operating procedures, including, but not limited to, engineering requirements, such as signaling required for safe operation, as provided in 49 U.S.C. § 11103. CSXT has thus complied with this requirement and will continue to do so.

d. IP&L's May 1, 2000 Letter to the Board

In a May 1, 2000 letter to the Board, IP&L stated that it is "dissatisfied with the working of the conditions imposed by the Board to provide relief to IPL at the E.W. Stout and Perry K Plants." IP&L requested the Board to direct NS to address in its June 1, 2000, filing "whether it has been able to compete for any business at the Stout or Perry K Plants, or whether any rates or other terms it may have proposed to IPL were deemed uncompetitive by IPL, and whether it was thereafter able to offer competitive rates." IP&L also requested the Board to require CSXT to state in its filing whether INRD "has felt any competitive pressure from NS at

either the Stout or Perry K Plants.” Finally, IP&L expressed continued dissatisfaction with the Board’s refusal to require CSXT or NSR to provide IP&L a copy of the trackage rights documentation involved in NSR’s access to Stout. Although the Board has not ordered CSX or NS to respond to IP&L’s May Day filing, otherwise than by providing copies of the trackage rights agreements, CSXT addresses IP&L’s points below.

Perry K. As to IP&L’s dissatisfaction with the “working of the conditions imposed by the Board to provide relief” at the Perry K plant, it is unclear to what “working of the conditions” IP&L is referring. In Decision No. 89, the Board concluded that “no remedy is required at Perry K.” Decision No. 89 at 116. In Decision No. 96, the Board affirmed that “[w]e continue to believe that no special relief has been justified at Perry K.” Decision No. 96 at 14. In that decision, the Board also observed that “IP&L also wants to avoid paying any switching charge at Perry K.” *Id.* at 15 (emphasis in original). CSX agreed to, and the Board imposed, a condition guaranteeing a cost based switch to Perry K. *Id.* As stated above, CSXT has agreed to make Crawford Yard the interchange point for movements to Perry K, and IP&L, in its submission to the Board, did not disagree with that decision. In fact, IP&L suggested such a designation. IPL-15 at 2. Thus, it is not clear where IP&L’s dissatisfaction lies.

As to competition at Perry K, INRD has moved no coal traffic to Perry K post-transaction. All coal traffic to that plant has moved via ISRR and CSXT.

Finally, according to press releases issued on March 23, 2000, by Citizens Gas & Coke Utility ("Citizens") and IPALCO Enterprises, Inc. ("IPALCO"), the parent company of IP&L, Citizens and IPALCO have signed an agreement for Citizens to purchase the Perry K steam plant operated by IP&L. Today the Perry K plant only burns 100,000 tons of coal per year. Following the sale, the remaining coal-fired boilers are expected to burn coke oven or natural gas, therefore requiring no coal movements to the plant.

Stout. IP&L's dissatisfaction with the "working of conditions imposed by the Board to provide relief" at Stout is similarly puzzling. As indicated above, CSXT has complied with the conditions imposed by the Board vis-à-vis the Stout plant. Accordingly, IP&L now has the option of moving Southern Indiana coal to the plant via INRD direct; via ISSR to NS for switching by INRD; or via ISRR to NSR direct into the plant. As to INRD feeling "competitive pressure" from NSR, in 1996, IP&L entered into a Coal Transportation Agreement with INRD that requires IP&L to move a large percentage of the coal received at Stout via INRD

during the contract period.¹⁸ That contract remains in effect; accordingly, only a small percentage of Stout's coal requirements are eligible for transport by an ISSR/NS movement. Since the INRD/IP&L contract became effective, virtually 100% of Stout's coal requirements moved over INRD. The exception was during October and November 1998 when ISRR moved a mere two trains of coal (the equivalent of approximately 10,000 tons) via Conrail to INRD for movement to Stout.

Trackage Rights Agreements. As per Decision No. 2, CSXT is making the pertinent trackage rights agreements available to IP&L's counsel. CSXT has disclosed the CSXT/NS 29¢ trackage rights fee in its brief in the Second Circuit Appeal and the 35¢ trackage rights fee for the INRD movement appears to CSXT to be a reasonable fee for a particularly short movement.

8. Applicants must consult with ASHTA concerning the routing of its hazardous materials shipments. (Cond. 24)

On August 10, 1998, even before the effective date of Decision No. 89, CSXT officials met with senior managers of ASHTA at ASHTA's offices. They consulted regarding the routing of ASHTA hazardous material shipments and

¹⁸ The contract is Highly Confidential and so its exact terms are not quoted here. It may be found in the Highly Confidential version of CSX/NS-178, Volume 3D, starting at page 396, in the main Docket.

jointly discussed the new proposed CSXT routing. ASHTA approved CSXT's proposed routing which appeared to offer advantages over the former Conrail routing.

With actual operational experience, however, it became necessary to modify the proposed routing. The details of those changes and the efforts to improve service for ASHTA are properly the province of Operational Monitoring, but for purposes of this report, CSXT can state that it has consulted with ASHTA on the routing of its hazardous materials shipments and will continue to do so. CSXT officials have met with ASHTA's senior distribution management several times, and CSXT will continue to work with ASHTA on service-related matters and new traffic opportunities.

9. **Applicants and the Port of Wilmington must enter into discussions respecting any problems concerning switching services and charges, and must advise us, no later than September 21, 1998, of the status of these discussions. (Cond. 25)**

CSXT has complied with this condition and so advised the Board on September 21, 1998.

10. **Applicants must adhere to their representation that, although the NS will have operational control of Conrail's MGA lines, CSX will have equal access to all current and future facilities located on or accessed from such lines. (Cond. 26)**

At the present time, CSXT has no material complaints concerning NSR's handling in the MGA.

11. **CSX must attempt to negotiate, with CP, an agreement pursuant to which CSX will grant CP either haulage rights unrestricted as to commodity and geographic scope, over the East-of-the-Hudson Conrail line that runs between Selkirk (near Albany) and Fresh Pond (in Queens), under terms agreeable to CSX and CP, taking into account the investment that need to continue to be made to the line. If CSX and CP have not reached an agreement by October 21, 1998, we will initiate a proceeding addressing this matter. CSX and CP should advise us, no later than October 21, 1998, whether they have or have not reached an agreement. (Cond. 28)**

Despite negotiations which continued, under an extension granted by the Board, until early November 1998, CSXT and the Canadian Pacific Railway Company and its subsidiaries (collectively "CP") were unable to reach agreement as to the haulage or trackage rights imposed by this condition, and CP requested that the Board institute a proceeding to fix the terms of the rights. The Board launched such a proceeding with respect to the Conrail "Hudson Line," to be allocated to CSX, on an expedited basis by Decision No. 102, served November 20, 1998.

While in the ensuing proceeding both parties expressed the view that trackage rights, rather than haulage rights, should be the rights awarded, they agreed on little else. CP asked for access over three CSXT line segments on the north end in order to reach the Hudson Line from its own extensive presence in the Albany area. In the south, CP requested access, both in its own right and via CSXT switch, to all points to be served by the CSXT-allocated lines in the Bronx

and Queens, as well as an interchange with the New York and Atlantic Railroad ("NYA") at Fresh Pond Junction, in Queens. CP proposed 29¢ per car mile as a fee for trackage rights and \$250 per switched car as a switching fee where CSXT switching was involved. CP requested the right to serve all shippers on the northern access routes, as well as on the Hudson Line between the Albany region and New York City, although it later corrected its filing to exclude local service rights along the access routes, which included a number of major CSXT facilities in the Albany area.

CSXT's proposal was that CP be afforded a single access route to the Hudson Line at the north, that the nature of the trackage rights along the Hudson Line to New York City be purely overhead, and that CP have the right to serve all shippers and rail facilities in the Bronx and Queens on a "joint terminal" approach, paying a variable fee based on usage and a fixed annual fee, to be negotiated between the parties or determined by the Board in a further proceeding, based on 50 percent of the condemnation value of the trackage and yard property involved. As to the trackage rights fee on the line-haul movements between the Albany area and New York City, CSXT proposed that it be established by agreement between the parties or, failing agreement, in a further proceeding before the Board under the Board's established principles of compensation for Board-ordered trackage rights. CSXT also sought an override or cancellation of the October 20, 1997, Settlement

Agreement with CP to the extent that it provided CP the right of independent ratemaking over the Hudson Line, on the grounds that the availability of that right of independent rate-making would be inconsistent with the trackage rights and would be a potential distraction from CP's exercise of those trackage rights. The parties also disagreed on a number of more incidental matters.

In Decision No. 109, served December 18, 1998, the Board resolved the open issues between the parties. CP was to have a single access route to the Hudson Line at the north end, and the Board prescribed the use of the Chicago Main Line between Rensselaer and Schenectady for this. CP's trackage rights were to be solely overhead north of the New York City limits. In the Bronx and Queens CP would be permitted to access all shippers by switching performed by CSXT, and to reach the Fresh Pond interchange point between itself and NYA either by CSXT switch or directly through use of its trackage rights. A switching fee of \$250 per car was ordered initially, with the right of each party to call for a six-month special switching study to determine a more precise switching cost. CP's proposal for unrestricted access to shippers in its own right and without switching throughout the Bronx and Queens was rejected, as was the CSXT proposal to have the Bronx and Queens operated as, and expenses and fees costed and paid as, a joint terminal facility. As to the trackage rights fee, CSXT's proposal that a separate proceeding establish that fee was rejected, although CP

had offered expert cost-based and "interest-rental" oriented testimony as to the compensation level only in its response; CP's proposal in its original filing had been a simple endorsement of use of the reciprocal arrangements, involving 29¢ per car mile, contained in the Application covering reciprocal trackage rights between NS and CSXT, covering situations where "two-to-one" situations were avoided by giving one of them trackage rights on the other. The Board, however, rejected CP's approach also, and proceeded to fix the trackage rights fee itself based on publicly available data, and the rebuttal data furnished by CP; the Board reached a trackage rights fee of 71¢ per car mile. The Board rejected CSXT's proposal to end CP's rights of independent rate-making over the Hudson Line, thus leaving CP with two alternative means of commercial access to the Bronx and Queens.

The Board's decision indicated that a petition for reconsideration would be in order from CSXT since the only study submitted by the parties in connection with the trackage rights fee had been submitted by CP in a filing to which CSXT had no right of reply. Decision No. 109, at 4 n.7. In fact, both sides did file petitions for reconsideration and the amount of the per car mile trackage rights fee was disputed in opening and responding submissions by each party, with experts submitting verified statements and, indeed, supplemental statements. In Decision No. 123, served May 20, 1999, the Board recomputed the trackage rights fee at 52¢

per car mile, and adjusted the initial switching charge. The Board held that the trackage rights fee might be revalued at a starting point of at least one year from service start-up, and every three years thereafter. The Board's earlier provision for a six-month cost study to recalculate the switching fee was left in place. The Board's Decision resolved certain other matters in dispute between the parties, mainly concerning interpretation of the December 1998 decision.

CSXT considered seeking judicial review of the Board's Decision reducing the trackage rights fee, and of the Board's decision to change the initial switching fee in the absence of any request by CP to do so, thereby depriving CSXT of its right to present argument or evidence on that subject. However, since the split of Conrail was to occur, and did occur, 11 days after the May 20 decision, and in the light of the fact that either party can call for recalculation of the trackage rights fee after one year from the start of CP operations over the trackage rights and the switching charges after six months, CSXT determined not to seek judicial review.

Service by CP over the Hudson Line using the trackage rights commenced in July 1999, following the giving of the notice and waiting period required under the pertinent labor protective provisions.

In the original proceedings before the Board on the Application, CSXT opposed the insertion of a second carrier to serve the Bronx and Queens from the north on the line east of the Hudson River. It did so, not only as unsupported by

the Board's precedents and practices, but also on the grounds that neither the historic traffic on the line nor the expectable future traffic would support two systems at a level that would justify substantial private-sector investment in capital improvements. But given the size of the New York City consumer market, the fact that shippers east of the Hudson (where over 95% of the rail freight to and from Greater New York is handled) would receive service from two Class I carriers, and other factors, the Board determined to make an exception from its usual principle that rail combination proceedings are not to be the occasion of introducing additional compensation other than that proposed by the Applicants. The Board thus determined to award the rights contemplated by Condition No. 28 to CP. CSXT has accepted that condition; the Board has resolved, in Decisions Nos. 109 and 123, the disputes between CSXT and CP concerning the rights in question; and a further controversy between them, concerning various issues of access to Harlem River Yard and Hunts Point Terminal, brought before the Board by the parties in the summer of 1999, has been resolved by agreement between CSXT and CP following their exchanges of evidence and argument before the Board. CSXT is living up to its obligations under the trackage rights and, indeed, negotiated a trackage rights document with CP which in CSXT's view went beyond the rights which had been awarded CP by the Board.

CP is currently operating a southbound train three nights a week and a northbound train on other nights three times a week. CSXT operates two trains nightly, one in each direction. In addition, three to four nights a week CSXT operates up to two other trains. These are sometimes combined with the regular nightly trains depending upon operating circumstances. Various local CSXT trains also operate four or five times a week serving customers north of Croton (north of New York City). The Hudson Line remains capacity-constrained, given the enormous dedication of the line to commuter operations as far north as Poughkeepsie, and rail freight facilities in the Bronx remain very limited physically. But at the present level of operations, and under the present arrangements, there have been no substantial operating problems in connection with CP's exercise of its rights.¹⁹ CSXT is committed to fair treatment of its tenant, CP, under the arrangements prescribed by the Board and its contractual arrangements with CP.

Freight traffic to and from East of the Hudson points in or adjacent to New York City has picked up materially since the Split Date. *See* Paragraph 13, below.

¹⁹ Both operators have had equipment difficulties because of third rails on certain of the segments held under lease by Metro North. *See* the discussion under item 13, below, for other general operating issues of interest to the parties.

12. **CSX must make, by October 21, 1998, an offer to the City of New York to establish a committee intended to develop ways to promote the development of rail traffic to and from the City, with particular emphasis on Conrail's Hudson Line, as well as ways to address the City's goals of industrial development and the reduction of truck traffic that is divertible to rail movement, and CSX's goals to provide safe, efficient, and profitable rail freight service. (Cond. 29)**

CSX made an offer to the City to establish such a committee. Instead, however, CSX and the City and other groups devoted to increase rail service within New York City have participated in extensive discussions — both formal in committees or study groups and informal — to explore ways to enhance rail freight service East of the Hudson. These are discussed in paragraph 13, below.

13. **CSX must cooperate with the New York interests in studying the feasibility of upgrading cross-harbor float and tunnel facilities to facilitate cross-harbor movements, and, in particular, must participate in New York City's Cross Harbor Freight Movement Major investment Study. (Cond. 30)**

Cross Harbor Freight Movement Study

CSX has cooperated fully and extensively in the work of the NYC Economic Development Corporation and its consultants to explore the feasibility of developing an improved system of cross harbor rail freight service. Over the past two years, CSXT State Relations, Marketing, Intermodal, Asset Management, Real Estate and Legal representatives have met on both a formal basis at the regularly scheduled meetings of the Technical Advisory Committee for this project, and

informally on more than a dozen occasions with the NYC EDC staff and its consultants.

CSXT has provided extensive background information on current rail operations, and has responded both orally and with written comments to various scenarios developed by the consultants regarding different kinds and levels of potential rail service.

CSXT has attempted to ensure that special attention is paid to the complexities and challenges unique to the successful operation of freight rail networks as distinct from the more limited parameters of a commuter rail network, or the greater flexibility afforded by trucks operating over public streets and highways.

CSXT has emphasized the need for adequate yard, track and related land side infrastructure that would be necessary on both sides of the harbor to satisfactorily handle the volumes projected under various rail car float and/or rail tunnel options. CSXT has suggested that spending several billion dollars in public funds to build a new rail tunnel will not, in and of itself, ensure commercial success if it is to be operated as part of a private economic venture that must compete with the speed, flexibility and cost of truck delivery. And, CSXT has also pointed out that there are institutional issues that need to be addressed — including responsibility for ownership, access, operation, maintenance, and labor relations —

among the various public agencies and competing private railroads involved in such a project.

CSXT is hopeful that the great variety of differing parties and interests can be reasonably accommodated in the consultant team's preliminary report due for public review this summer. CSXT looks forward to continuing to work with the City's representatives to refine and help implement a feasible proposal.

East of the Hudson Task Force

Another group, led by Congressman Nadler, the East of the Hudson Task Force, has had numerous meetings in which CSXT has participated (eight so far, plus a half dozen more informal subgroup sessions) convened by Representative Nadler, and including: representatives from the NYC Economic Development Corporation; the New York Metropolitan Transportation Commission; the NY State DOT; Metro North; Amtrak; Long Island RR; New York and Atlantic RR; CP/D&H; and NS.

CSXT representatives from State Relations, Real Estate, Asset Management, Intermodal Marketing, Operations and Legal have provided extensive background information about existing operations, constraints and opportunities for enhanced service. CSXT has also contributed financial support for independent consultants to the Task Force from Constantine Eristoff and William Galligan.

The group has focused on identifying physical and policy constraints that, if removed, would be a significant benefit to increased freight service to the East of the Hudson.

These include:

- **Raising vertical clearances** on the Metro North-owned portion of the Hudson Line, and portions of the LIRR traversed by the NY&A. Such clearances are required to permit not only Plate F boxcars, but also TOFC and CP Expressway equipment — which require at least 17.2 inches (or 17 3/4 inches for CP Expressway), plus several more inches of safety buffer (normally 4 inches on the national freight rail system, but 6 inches on Metro North passenger lines).

Metro North has recently agreed to modify its 6-inch safety margin to 5 inches. Specific locations requiring such work along the Hudson Line have been identified, and NYS DOT is working with the railroads and property owners involved to achieve such clearances. NYS DOT has also agreed to undertake a detailed analysis of the required clearances on the LIRR.

- **Permitting 286,000 pound freight cars** to be used on Metro North and LIRR tracks. The use of such equipment is becoming widespread throughout the national freight rail network, where their greater capacity and revenue efficiency have more than compensated for slightly increased track maintenance costs.

However, the NY area passenger agencies have been unwilling to permit the use of such equipment without some assurance of increased budgetary authority to cover extra maintenance.

The cost and benefit tradeoffs will be made more clear as the Task Force completes its work this summer and points out that without this additional public support, the east of Hudson area will continue to suffer a competitive disadvantage with respect to rail service. That is because it would not be economic for the private sector (either the railroads or their shippers) to bear the extra costs of downloading freight from larger cars to smaller ones just to penetrate the last few miles of the market area.

- **Ensuring adequate lateral clearances and curvature** along the Hudson Line and LIRR segments to be traversed by the new generation of longer and wider freight cars and locomotives, without damaging passenger platforms or electrified third rails.

- **Ensuring adequate time slots** during which freight trains may safely operate without risk of interfering with passenger service.

These last two points may lead to consideration of developing more dedicated freight track, separate from passenger service.

- **Development of adequate yard, track and signal capacity** to accommodate growing freight rail traffic.

This point is particularly significant in view of the Board's Condition No. 28, which granted CP the right to operate over the restricted Hudson Line segments owned by Metro North and NYS DOT, and the growth in cross-harbor rail freight service from the NJ Shared Assets Area where NSR and CSXT have introduced competitive rail service. The resulting increase in rail traffic, as reflected in both number of carloads being delivered to the Bronx, and interchanged with the NY&A for delivery to Brooklyn, Queens and the remainder of Long Island, has highlighted the need for more rail yard capacity and related infrastructure. This need would be increased significantly if the city's plans for an enhanced rail car float and/or rail tunnel and new marine terminals at Brooklyn were to be realized.

To begin to address this issue, CSXT has entered into commercial agreements with the NY&A to develop three new transload facilities (at 65th Street in Brooklyn, at Maspeth in Queens, and at Farmingdale on Long Island). These facilities are currently in the final planning stages and are expected to be in operation this summer.

In addition, CSXT and CP/D&H have agreed on a design for additional trackage at the Harlem River Yard Intermodal Terminal (owned by the State, but leased to a private operator) that would support equal and equivalent direct train service by either or both railroads. Funding sources for that improvement are

under discussion among the various public and private agencies involved in the development of this facility.

Finally, CSXT is participating with public agencies and the other railroads in a State-sponsored study of feasibility of using a portion of the Pilgrim State Hospital site at Islip, Long Island for development as a new intermodal/transload facility.

Future efforts of the Task Force will focus on ways to encourage greater public involvement and investment to alleviate some or all of these constraints, and also on how future freight rail service can be effectively marketed.

Other Local Public Freight Improvement Efforts

In addition to the East of the Hudson Task Force described above, CSXT is also participating in several other related and supportive efforts to improve rail freight service to New York City.

These include:

- **Goods Movement Task Force** of the New York Metropolitan Transportation Commission. This group has met on a monthly basis since 1998 to identify needs and strategies for the more efficient movement of freight throughout the New York area — with a particular emphasis on the use of rail.

There is a broad cross section of public agencies and citizens organizations participating in this effort. The CSXT State Relations Vice President for this area

has been an active member of Steering Committee, and has been invited to make several presentations concerning the company's operations and plans for the area. And company representatives have provided extensive data regarding facilities and freight movement throughout the region.

- **Freight Synthesis Study for NYC Office of City Planning.** CSXT has actively participated in providing background information and analysis of various projects and proposals being considered as part of the city's efforts to develop a comprehensive plan and program for freight handling. So far, three increasingly detailed reports have been prepared as part of this undertaking.

- **Bronx Community Coalition** meetings have been held to discuss current and potential rail freight issues. CSXT has participated so far in six meetings with local community organizations interested in improving the quality of life in the Oak Point/Hunts Point neighborhoods served by the railroad.

These discussions have included such matters as:

- How current freight trains are being scheduled and switched between Oak Point, Hunts Point, and Harlem River Yards;
- How further movement of rail merchandise in and municipal waste out can be accommodated under the current capacity constraints noted above; and
- How the community and the railroad might work more effectively together to deal with such issues as illegal dumping and semi-organized theft on rail property.

Freight Traffic Increases

Freight traffic to and from East of the Hudson points in and adjacent to New York City during the first quarter of 2000 has grown considerably over average months in a base year of 1997. Inbound loaded cars to the Bronx via CSXT are up over 20%, reflecting new traffic from the West, and outbound loaded cars from the Bronx via CSXT are up over 50%, reflecting new movements of municipal waste. Movements inbound and outbound at Westchester are up, those northbound very substantially. Movements to and from the interchange with the New York & Atlantic at Fresh Pond Junction in Queens are, for the inbound movements (southward), flat or somewhat down, probably reflecting some diversion to cross-harbor ferries, but outbound (northward) car loadings are up. Since these comparisons reflect a comparison simply of CSXT against the 1997 Conrail, they understate the development of the East of the Hudson freight movements since the Year 2000 figures do not include CP's movements via its overhead trackage rights which must be taken into account in evaluating the flows to and from the Bronx and to and from Fresh Pond. While the size of the numbers certainly does not suggest a change in the balance between West of the Hudson and East of the Hudson rail movements serving New York City, and while the operating constraints on the largely passenger-devoted Hudson Line are severe, the figures

should nonetheless be encouraging to those who like CSXT look forward to a growth in East of the Hudson freight movements.

- 14. CSX must discuss with P&W the possibility of expanded P&W service over trackage or haulage rights on the line between Fresh Pond, NY, and New Haven, CT, focusing on operational and ownership impediments related to service over that line. (Cond. 31)**

CSXT has complied with this condition and will continue to evaluate mutually-beneficial proposals for such cooperation with P&W.

- 15. CSX must adhere to its agreements with CN and CP that provide for lower switching fees in the Buffalo area and increased access to these carriers for cross-border, truck-competitive traffic. (Cond. 32)**

CSXT has complied with these agreements.

- 16. CSX must meet with regional and local authorities in the Buffalo area to establish a committee to promote the growth of rail traffic to and from the Greater Buffalo area. (Cond. 33)**

Working with regional and local authorities and local shippers, CSXT has participated in meetings of a committee to promote the growth of rail traffic to and from the Greater Buffalo Area. The committee, called the "Greater Buffalo Area Regional and Local Authorities Committee," has held five meetings to date, with a sixth meeting scheduled for July. Meetings have been held alternatively at Buffalo and at several locations in Niagara County. The initial meeting, attended by 20 representatives of local interests and 13 representatives of CSXC or CSXT provided an overview of CSXT's service in Buffalo; an operational update; and a

discussion of the local sales and industrial development presence of CSXT in the area. Issues raised by the group included issues relating to service in the Winter; technological improvements; the establishment of customer hotlines; switching rates; coordination with NSR; and the high rate of property taxes in the area. Senior public officials, including Senator Schumer, members of the House of Representatives, representatives of state and county governments and members of business and other organizations were in attendance.

The second meeting, held in December 1999 at Lockport in Niagara County, included 29 representatives of local interests and 9 representatives of CSXT. Discussion focused on switching costs, provision of hotline numbers, the current rail congestion problems in the region and alternatives with respect to CP Draw. There was also a discussion of local infrastructure priorities, including crossing repairs and highway bridge clearances. As a result of discussions in the meeting, efforts were launched to send CSXT representatives to work on a one-to-one basis with customers to identify means of improving service. While representation from federal and local officials continued, as did representation from business organizations, 13 representatives of individual shippers attended the meeting.

The third meeting, held in January 2000, was attended by 29 representatives of local interests and 11 CSXT representatives. Operational and commercial issues were discussed, including a report on the first six weeks of the project for one-to-

one meetings with shippers. The infrastructure priority issues discussed at the prior meeting were responded to by CSXT, which also indicated its position with respect to CP Draw.

The fourth meeting was held in March 2000, attended by 11 representatives of local interests and eight representatives of CSXT. Held at Niagara Falls, the focus was on operational issues and commercial outreach issues, with shipper issues being raised in response. Five railway labor representatives attended in addition to public officials, shipper and shipper organization representatives.

The fifth meeting was held in May 2000 and was attended by 15 representatives of local interests and ten CSXT representatives. Governmental representatives identified local issues and operational issues were reviewed with a focus on chemical shippers' needs. A discussion of the effort toward railroad property tax reform and of potential funding for CP Draw took place. Representatives attending included federal, state and county government representatives, representatives of business organizations, and four members of individual chemical shippers.

- 17. CSX must transfer to NS the trackage rights now held by CSX over the Conrail line that was formerly a Buffalo Creek Railroad line. (Cond. 34)**

CSXT has complied with this condition.

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- 18. CSX must adhere to its representation regarding investment in new connections and upgraded facilities in the Buffalo area. (Cond. 35)**

In 1999, CSXT made capital expenditures of about \$2.3 million in the Buffalo area. This included expenditures for intermodal ramp expansion, rail relay in yards and on the main line, improvements to the CSX TransFlo facility and in mechanical shop improvements. All of these investments were specifically aimed at improving customer service and transportation efficiency. In addition, CSXT has spent \$15.9 million between Buffalo and Philadelphia to improve the capacity and speed of the CSXT lines linking Buffalo to the metropolitan centers of the east coast.

- 19. CSX must attempt to negotiate, with IC, a resolution of the CSX/IC dispute regarding dispatching of the Leewood-Aulon line in Memphis. CSX and IC must advise us, no later than September 21, 1998, of the status of their negotiations. (Cond. 36)**

CSXT has complied with this condition, as reported to the Board in a series of letters discussing the negotiations starting on September 18, 1998. The solution that was introduced on a trial basis is still being employed.

- 20. The \$250 maximum reciprocal switching charge provided for in the NITL agreement must be applied to certain points in the Niagara Falls area for traffic using International Bridge and Suspension Bridge, for which Conrail recently replaced its switching charges with so-called "line-haul" charges. (Cond. 37)**

CSXT has complied and will continue to comply with this condition.

- 21. A 3-year rate study will be initiated to assess whether Buffalo-area shippers will be subjected to higher rates because of the CSX/NS/CR transaction. (Cond. 38)**

CSXT has cooperated and will continue to cooperate with the Board, submitting data and commentary as requested. CSXT's first submission has been made. The rate study is being handled by the Board in Sub-No. 90 and not in the present proceeding.

- 22. As respects any shortline, such as RBMN, that operates over lines formerly operated over by CSX, NS, or Conrail (or any of their predecessors), and that, in connection with such operations, is subject to a "blocking" provision: CSX and NS, as appropriate, must enter into an arrangement that has the effect of providing that the reach of such blocking provision is not expanded as a result of the CSX/NS/CR transaction. (Cond. 39)**

The Conrail Transaction has not expanded the reach of any arrangement which CSXT has with a shortline requiring additional compensation to the line owner for shipments not routed via the owner. In at least one case, the transaction has had the opposite effect. CSXT will not treat the Conrail Transaction as expanding the reach of such a provision.

- 23. As respects AA's new contract with Chrysler, CSX and NS must take no action that would undermine, or interfere with AA's ability to provide quality interline service under, this contract. (Cond. 40)**

CSXT has complied with this condition.

- 24. The Belt Line Principle advocated by PBL will continue to have, after implementation of the CSX/NS/CR transaction, the effect, if any, that it presently has. Nothing in this decision should be taken to preempt that principle in any way. (Cond. 41)**

This condition is self-executing.

- 25. Conrail's trackage rights on the NS line between Keensburg, IL, and Carol, IN, must be transferred to CSX. (Cond. 42)**

NSR has conveyed to CSXT such trackage rights as Conrail possessed on the Split Date with respect to the line in question.

- 26. As respects Wyandot and NL&S, CSX and NS: must adhere to their offer to provide single-line service for all existing movements of aggregates, provided they are tendered in unit-trains or blocks of 40 or more cars; and in other circumstances including new movements, for shipments moving at least 75 miles, must arrange run-through operations (for shipments of 60 cars or more) and pre-blocking arrangements (for shipments of 10 to 60 cars). (Cond. 43)**

This condition was clarified by the Board in Decision No. 96 as being applicable for five years with respect to the performance of certain single-line service via run-through trains. CSXT has complied with this condition to the best of its ability. It will be recalled that the condition in question granted National Lime and Wyandot Dolomite rights similar to those accepted by Martin Marietta Materials after similar proposals were made to all three companies. NSR is the operator of the unit train run-through service for Martin Marietta, and CSXT provides the unit train run-through service for National Lime and Wyandot Dolomite under the condition. CSXT has been requested to provide, and has

obtained trackage rights to provide, unit train run-through service upon request under the condition for National Lime from Spore, Ohio, to Wooster, Ohio, over the Crestline, Ohio, junction point with NS, and similarly over Crestline to provide service for Wyandot Dolomite from Carey, Ohio, to Alliance, Ohio. CSXT has not received any request for additional single-line service under the terms of the condition. CSXT notes that the service from Carey to Alliance has been suspended because of commercial reasons between Wyandot Dolomite and the receiver of the shipments, not caused by CSXT. CSXT also notes that National Lime and Wyandot Dolomite are challenging the adequacy of this condition in the Second Circuit Appeal.

- 27. NS will have access to any new line constructed by JS&S or NS, or by any entity other than CSX, between the JS&S facility at Capital Heights, MD, and any line over which NS has trackage rights. (Cond. 44)**

CSXT will comply with this condition. No build-out has been proposed, to date, however.

- 28. In STB Finance Docket No. 33388 (Sub-No. 39), the responsive application filed by LAL: is granted to the extent necessary to permit LAL to operate across Conrail's Genesee Junction Yard to reach a connection with R&S; and, otherwise, is denied. CSX and LAL: must attempt to negotiate the details of such operations; and, if negotiations are not fully successful, may submit separate proposals no later than September 21, 1998. (Cond. 56)**

CSXT has complied with this condition and the trackage rights have been conveyed.

29. In STB Finance Docket No. 33388 (Sub-No. 75), the responsive application filed by NECR: is granted insofar as it seeks to require CSX to grant NECR trackage rights between Palmer, MA, and West Springfield, MA; and, otherwise, is denied. CSX and NECR: must attempt to negotiate the details of such trackage rights; and, if negotiations are not fully successful, may submit separate proposals no later than September 21, 1998. (Cond. 64)

CSXT has complied with this condition and the trackage rights have been conveyed.

30. In STB Finance Docket No. 33388 (Sub-No. 80), the responsive application filed by W&LE is granted in part and denied in part. As indicated in this decision, applicants must (a) grant W&LE overhead haulage or trackage rights access to Toledo, with connections to AA and other railroads at Toledo, (b) extend W&LE's lease at, and trackage rights access to, NS' Huron Dock on Lake Erie, and (c) grant W&LE overhead haulage or trackage rights to Lima, OH, with a connection to IORY at Lima. Applicants and W&LE must attempt to negotiate a solution with regard to these matters; and, if negotiations are not fully successful, may submit separate proposals no later than October 21, 1998. Further, applicants and W&LE must attempt to negotiate an agreement concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregates shippers or to serve shippers along CSX's line between Benwood and Brooklyn Junction, WV, and inform us of any such arrangements reached. (Cond. 68)

The matters referred to in clauses (a) and (b) will be reported on in NS's report. As to item (c), CSXT has complied with this condition by granting overhead trackage rights to W&LE from Carey, Ohio to Lima, Ohio with a connection to the IORY. As to the final sentence of the condition, the meaning was explained by the Board in Decision No. 96, served October 19, 1998. CSXT

is willing to discuss any "mutually beneficial arrangement" proposed by W&LE involving the line between Benwood and Brooklyn Junction, WV, or elsewhere; no such mutual arrangements have to date been reached.²⁰

XIII. IMPLEMENTATION OF ENVIRONMENTAL CONDITIONS

A. Conditions Applicable to CSXT

CSXT has to date made substantial progress in implementing the Environmental Conditions imposed by the Board in Appendix Q of Decision No. 89. As required in a number of conditions, CSXT has certified to the Board that it has complied with those conditions, as explained below. CSXT has also submitted 23 Negotiated Agreements to the Board for its approval which supersede the specific terms of various environmental conditions, and the Board to date has accepted 19 of those Negotiated Agreements, with four recently submitted agreements still pending before the Board. In addition, with respect to all of the conditions, CSXT has provided regular status reports to the Section of Environmental Analysis.

²⁰ Condition Nos. NS-77 through 80 are discussed in Part VI above, dealing with Labor. The environmental conditions, ordered in Condition No. 17 and found in Appendix Q, are discussed in Part XIII, which follows.

1. Environmental Condition 1(A)
[Safety: Highway/Rail At-Grade Crossings]²¹

CSXT certified compliance with Environmental Condition 1(A) by letter to the Secretary dated August 31, 1999.

2. Environmental Condition 1(B)
[Safety: Highway/Rail At-Grade Crossings]

CSXT certified compliance with Environmental Condition 1(B) by letter to the Secretary dated May 17, 1999.

3. Environmental Condition 1(C)
[Safety: Highway/Rail At-Grade Crossings]

It is CSXT policy and practice to comply with applicable Federal, state and local regulations regarding maintenance of public highway/rail at grade crossings, including on the 44 rail line segments listed in Environmental Condition 1(A).

4. Environmental Condition 1(D)
[Safety: Highway/Rail At-Grade Crossings]

CSXT made Operation Lifesaver programs available to the communities, schools and other organizations located along the 44 rail line segments listed in Environmental Condition 1(A) on or before May 21, 1999.

²¹ For a full description of the environmental conditions, *see* Decision No. 89, Appendix Q, at 382-423, as amended in Decision No. 96.

5. Environmental Condition 2
[Safety: Hazardous Materials Transport]

It is CSXT policy and practice to comply with the current Association of American Railroads "key train" guidelines.

6. Environmental Condition 3
[Safety: Passenger Rail Operations]

CSXT reported on its consultations with the FRA, Amtrak, MARC and VRE by letter to the Secretary dated August 5, 1999 with copies to the FRA, Amtrak, MARC and VRE. In addition, CSXT reports that there have been no accidents on the five line segments addressed in Environmental Condition 3 since the Split Date.

7. Environmental Condition 4(A)
[Safety: Hazardous Materials Transport]

CSXT certified compliance with Environmental Condition 4(A) by letter to the Secretary dated May 17, 1999.

8. Environmental Conditions 4(B) and 4(C)
[Safety: Hazardous Materials Transport]

CSXT certified compliance with Environmental Conditions 4(B) and 4(C) by letter to the Secretary dated March 25, 1999.

9. Environmental Condition 4(D)
[Safety: Hazardous Materials Transport]

CSXT certified compliance with Environmental Condition 4(D) by letter to the Secretary dated April 20, 2000.

10. Environmental Condition 5(A)
[Safety: Hazardous Materials Transport]

CSXT certified compliance with Environmental Condition 5(A) by letter to the Secretary dated March 25, 1999, as clarified by letter of April 8, 1999.

11. Environmental Condition 5(B)
[Safety: Hazardous Materials Transport]

It is CSXT policy to notify the U.S. Fish and Wildlife Service and the appropriate state departments of natural resources in the event of a reportable hazardous materials release with the potential to affect wetlands or wildlife habitats.

12. Environmental Condition 6
[Safety; Hazardous Materials Transport]

CSXT certified compliance with Environmental Condition 6 by letter to the Secretary dated August 20, 1999.

13. Environmental Condition 7
[Safety: Freight Rail Operations]

It is CSXT policy and practice to conduct track inspections to detect rail flaws on a rail line segment at least once every 40 million gross-ton miles of rail traffic, or annually, whichever occurs first, including on the three rail line segments listed in Environmental Condition 7.

14. Environmental Conditions 8(A) and 8(B)
[Safety: Highway/Rail At-Grade Crossings]

CSXT entered into a Negotiated Agreement with the Public Utilities Commission of Ohio and the Ohio Rail Development Commission regarding highway/rail at-grade crossing improvements in Ohio which supersedes Environmental Condition 8(A) with respect to the 20 highway/rail at-grade crossings located in Ohio which are listed under "CSX" in Environmental Condition 8(A). The Board approved the Negotiated Agreement in Decision No. 129 (served June 16, 1999).

CSXT entered into a Negotiated Agreement with the Indiana Department of Transportation regarding highway/rail at-grade crossing improvements in Indiana which supersedes Environmental Condition 8(A) with respect to the 16 highway/rail at-grade crossings located in Indiana which are listed under "CSX" in Environmental Condition 8(A). The Board approved the Negotiated Agreement in Decision No. 142 (served February 18, 2000).

15. Environmental Condition 9
[Transportation: Highway/Rail At-grade Crossing Delay]

CSXT notified the Board of the successful completion of negotiations with the City of Garrett and the Indiana Department of Transportation regarding construction of a grade separation at Randolph Street and the CSXT rail line in Garrett, Indiana by letter to the Secretary dated December 11, 1998. Construction

of the underpass has been completed. The road surface work is in progress and the project is expected to be put in service on September 1, 2000.

16. Environmental Condition 10

[Transportation: Highway/Rail At-grade Crossing Delay]

Traffic delay at the Dixie Highway and Broadway-135th Street at-grade crossings of the CSXT Blue Island Subdivision (Rail line segment C-010) is being addressed through improvements to signal, track and yard infrastructure near the crossings and through other improvements in Chicago. Both crossings are west of Barr Yard near Blue Island Junction. Train operation was upgraded to TCS operation on the Blue Island to Argo McCook Subdivision prior to June 1, 1999. Additional upgrades to TCS operation on the Barr Subdivision have been completed from Dolton at the east end of Barr Yard to Blue Island Junction, including the two existing main tracks that bypass Barr Yard. The work completed at the west end of Barr Yard included converting seven switches to power operation to reduce the number of times that trains must stop entering and leaving the yard. Signal equipment was also added at Blue Island Junction to show the operation of trains through this junction directly on the dispatcher displays for the BOCT and IHB dispatchers for this territory. As explained in more detail in Part IX (Chicago Operations/IHB) above, a third main track around Barr Yard will be put in service when an easement for track construction can be obtained across the Forest Preserve District of Cook County at the west end of Barr Yard. The

installation of TCS operation between Blue Island Junction and 75th Street (Forest Hill) should also improve operation and reduce train delays near these crossings.

Traffic delay at the W. Noel Avenue at-grade crossing of the CSXT rail line in Madisonville, Kentucky (Rail line segment C-021) is being addressed by increasing train speeds through Madisonville from 20 mph to 25 mph. The speed increase was put into effect upon replacement of the railroad bridge over West Arch Street in May 2000.

Traffic delay at the Vine Street at-grade crossing of the CSXT rail line in Hamilton, Ohio and at the Township Avenue crossing of the CSXT rail-line in Cincinnati, Ohio (Rail line segment C-063) is being addressed through a planned speed increase from 20 mph to 35 mph facilitated by capital and operational improvements in the area which are scheduled to be completed in 2000.

17. Environmental Condition 11 [Noise]

CSXT entered into 20 Negotiated Agreements with responsible local governments pursuant to Environmental Condition 11. Sixteen of those Agreements have been approved by the Board and four are pending, as follows:

1. Village of Deshler, OH, approved Decision No. 121 (served April 14, 1999)
2. Village of New London, OH, approved Decision No. 130 (served July 9, 1999)
3. City of Plymouth, IN, approved Decision No. 130 (served July 9, 1999)

4. Town of Etna Green, IN, approved Decision No. 135 (served December 10, 1999)
5. City of Tontogany, OH, approved Decision No. 136 (served December 30, 1999)
6. Township of Washington, OH, approved Decision No. 137 (served December 30, 1999)
7. Township of Middleton, OH, approved Decision No. 138 (served February 2, 2000)
8. Township of New London, OH, approved Decision No. 139 (served February 16, 2000)
9. Township of Weston, OH, approved Decision No. 140 (served February 16, 2000)
10. Village of Haskins, OH, approved Decision No. 141 (served February 16, 2000)
11. Borough of Belle Vernon, PA, approved Decision No. 146 (served April 13, 2000)
12. Borough of Elizabeth, PA, approved Decision No. 147 (served April 3, 2000)
13. Village of Custar, OH, approved Decision No. 148 (served April 13, 2000)
14. Township of Milton, OH, approved Decision No. 149 (served April 18, 2000)
15. Village of Lagrange, OH, approved Decision No. 150 (served April 18, 2000)
16. Township of Washington, Belle Vernon, PA, approved Decision No. 151 (served April 18, 2000)
17. City of Cuyahoga Heights, OH, submitted April 12, 2000.
18. Village of Grafton, OH, submitted April 12, 2000.
19. Township of Forward, PA, submitted May 17, 2000.

20. Village of Wellington, OH, submitted May 17, 2000.

Negotiations are ongoing in the following communities: Lorain County, OH; Milton Center, OH; Perrysburg, OH; Rochester, OH; Fayette City, PA; Glassport, PA; Lincoln, PA; McKeesport, PA; and Newell, PA.

It is the present position of the following communities that CSXT should proceed by contacting individual property owners: Weston, OH; Elizabeth Township, PA; and Rostraver Township, PA.

**18. Environmental Conditions 12, 13 and 14
[Cultural Resources]**

The Board imposed these three environmental conditions on CSXT in support of the Board's obligations under Section 106 of the National Historic Preservation Act. CSXT's compliance with these conditions was reported by the Board to the Advisory Council on Historic Preservation by letter dated September 3, 1999. *See* pages 11-12 (Environmental Conditions 12 and 14) and pages 14-15 (Environmental Condition 13).

**19. Environmental Condition 17
[Chicago, Illinois]**

CSXT has complied with the terms of the permits granted by the City of Chicago for the 59th Street Intermodal Facility.

20. Environmental Condition 21
[Four City Consortium, IN]

As amended by Decision No. 114 (served February 5, 1999), Environmental Condition 21 requires CSXT to comply with the terms of its Negotiated Agreement with the Four City Consortium. The goal of the Agreement is "to alleviate Acquisition-related highway/rail at-grade crossing traffic delay and safety concerns in East Chicago, Hammond, Gary, and Whiting, Indiana through operational improvements and safety measures." Capital improvements are required to achieve this goal. CSXT has made substantial progress on the capital projects included in the Operating Plan for the Chicago area as well as on additional capital projects, but those projects have not all been completed. Because rail traffic movements within any portion of the Chicago area depend on conditions throughout the entire area, the beneficial effects of these capital improvements may not be experienced in the Four Cities area until late 2000. A crucial aspect of these capital improvements is the construction of the Third Main track through Barr Yard. This project will facilitate the flow of east-west traffic through the yard while the first and second mains are simultaneously used to handle arriving and departing trains. As explained above, in order to construct the Third Main, CSXT needs to occupy a strip of land (approximately 8 feet wide and 100 feet long) owned by the Forest Preserve District of Cook County. CSXT's inability to date to obtain an easement to complete the construction of the Third Main at Barr Yard

limits CSXT's ability to take full advantage of the improvements already made, and contributes to continued highway/rail at-grade crossing delays in the Four Cities and Chicago.

CSXT is presently working on the final phases of a complete upgrade of the signal system on the Barr Subdivision (Pine Junction through Barr Yard to Blue Island Junction) to provide TCS operation and increase the speed to 40 mph. This work has included:

- Installation of constant warning time circuits for the highway/rail at-grade crossing warning systems at the following crossings: Sheffield Avenue, Hohman Avenue, Calumet Avenue, Columbia Avenue, Indianapolis Boulevard, Railroad Avenue, Kennedy Avenue. The 5th Avenue crossing (US20) has not been upgraded because train operation on this segment has not been started. The other crossings on the Barr Subdivision between Pine Junction and State Line have been changed to motion sensor circuits.
- Installation of new current technology signals, power crossovers and dispatcher control at the following rail/rail crossings in Indiana: East Curtis, Pine Junction, Clarke Junction (additional power crossover and dispatcher-controlled signals), Calumet Tower (new BOCT signals, crossovers, and remote dispatcher display), Republic (new dispatcher-controlled signals), Columbia Avenue (removed CSS&SB crossing and simplified signals and crossovers for local switching), and State Line (removed old crossover, added new crossovers and signals including westbound signals east of Sheffield and Hohman Avenue to hold trains clear of these highways).

This work on the Barr Subdivision is complete with the exception of the changes at State Line which are scheduled to be completed in June 2000.

Other capital improvements underway in the Chicago area will also facilitate improved operations through the Four City Area. These improvements include

Calumet Park (the next control point on the Barr Subdivision west of State line; new crossovers and signal layout for increased speed), connections at Lincoln Ave. (located on the Barr Subdivision at Dolton just east of Barr Yard; new crossovers and connections with IHB and UP for access to alternate routes), and the Dolton to Blue Island Junction corridor (signal system and crossover upgrades to allow trains to move in either direction on each track and to allow the dispatcher to follow train movements on display screens, and construction of third main around Barr Yard).

The CSXT and IHB dispatchers have been co-located at the Calumet City Command Center.

With respect to the installation of the train display board for the city emergency response dispatchers, it is currently planned to use a system similar to a system currently being tested on the South Florida commuter rail corridor. A final decision will be made taking into account the results of the South Florida testing. Installation is planned to be completed in 2000.

CSXT has met on numerous occasions with representatives of one or more of the Four Cities to discuss various aspects of this issue, and on March 15, 2000 and April 27, 2000, met with representatives of NS, the IHB and each of the Four Cities as required by Environmental Condition 21 and the CSXT Negotiated Agreement. Work is approaching completion on the Barr Subdivision to provide full TCS operation in June 2000 (1) to allow speed increases, (2) improve

coordination among railroads, and (3) improve flexibility (by allowing trains to run in each direction on each track).

**21. Environmental Condition 23
[New Orleans, LA]**

CSXT reported to the Board its compliance with Environmental Condition 23 by letter to Chairman Morgan dated October 19, 1998.

**22. Environmental Condition 26
[Greater Cleveland Area, OH]**

CSXT has complied with Environmental Condition 26(B) by stationing supervisory personnel with emergency response authority within the Greater Cleveland Area seven days a week and 24 hours a day. In addition, CSXT has stationed a Manager, Field Services-Hazardous Materials Systems in the Greater Cleveland Area.

Pursuant to Environmental Condition 26(C), a Hot-Bearing Detector and Dragging Equipment Detector has been installed at Marcy. High-Wide Indicators are scheduled for installation at Wickliffe and Olmsted Falls in 2000, and a Wheel Impact Load Detector is scheduled for installation at Grafton in 2000.

CSXT has complied with Environmental Condition 26(D) by (a) installing continuous welded rail ("CWR") (all main track in the Greater Cleveland Area is now CWR), (b) installing several rail lubrication systems at curves where it was appropriate to reduce wheel-squeal noise, (c) inspecting bridges and overpasses to

ensure that they are structurally sound and well maintained (all were found to be safe for the level of traffic using them), and (d) establishing a community liaison who has been working closely and regularly with local government representatives and citizens to address community concerns.

23. Environmental Conditions 27(A) [Cleveland Heights, OH], 29(B) [Defiance, OH], 31(E) [Fostoria, OH], 32(A) [Holgate, OH], 34(B) [New London, OH], 38(A) [Tiffin, OH] and 41(A) [Willard, OH]

CSXT certified compliance with these environmental conditions, which required it to adapt and modify the local component of its Hazardous Materials Emergency Response Plan to account for the special needs of minority and low-income populations, by letter to the Secretary dated February 19, 1999.

24. Environmental Condition 29(A) [Defiance, Ohio]

CSXT entered into a Negotiated Agreement with the Ohio Department of Transportation regarding upgrade of the warning system at the highway/rail at-grade crossing at U.S. Route 24, which Agreement superseded the specific requirements of Environmental Condition 29(A). This Agreement was approved by the Board in Decision No. 128 (served May 28, 1999).

25. Environmental Conditions 29(C) [Defiance, OH], 31(F) [Fostoria, OH], 32(B) [Holgate, OH], 34(C) [New London, OH], 38(B) [Tiffin, OH] and 41(B) [Willard, OH]

CSXT certified compliance with these environmental conditions, which required it to provide computer hardware, Operation Respond software and training, by letter to the Secretary dated April 8, 1999.

26. Environmental Conditions 29(D) [Defiance, OH], 31(G) [Fostoria, OH], 32(C) [Holgate, OH], 34(D) [New London, OH], 38(C) [Tiffin, OH] and 41(C) [Willard, OH]

CSXT funded participation in a training session held at the National Training Center in Pueblo, CO in September 1999 for representatives of the emergency response providers in these communities.

27. Environmental Conditions 31(A), (B), (C) and (D) [Fostoria]

Installation of the real-time train monitoring system required by Environmental Condition 31(A) is scheduled for the third quarter of 2000. CSXT has completed installation of constant warning time circuits at all CSXT highway/rail at-grade crossings equipped with active warning devices, as required by Environmental Condition 31(B). CSXT has also completed installation of a direct voice hotline as required by Environmental Condition 31(C). It is CSXT's policy to hold trains so as to minimize trains blocking major highway/rail at-grade crossings in Fostoria, as required by Environmental Condition 31(D). The upgrade of the signal system through Fostoria provides TCS operation on both the CSXT

and NS routes through Fostoria and provides increased speed and flexibility for multiple train movements at the same time. The added dispatcher displays have improved the planning and coordination of train movements through Fostoria on all routes.²²

28. Environmental Condition 34(A)
[New London, OH]

CSXT reported on Environmental Condition 34(A) by letter to the Secretary dated February 16, 1999 (filed February 22, 1999).

29. Environmental Condition 40
[Wellington, OH]

CSXT reported on its consultations with Wellington, OH by letter to the Secretary dated February 16, 1999 (filed February 22, 1999).

30. Environmental Conditions 44, 45, 46 and 47
[Constructions and Abandonments]

CSXT complied with these various requirements with respect to the listed construction projects and abandonment.

31. Environmental Conditions 49(A) and 49 (B)
[Safety Integration Conditions]

Compliance with these conditions is discussed in Part VII (Safety) of this report.

²² Compliance with Environmental Conditions 31(E), 31(F) and 31(G) is documented above.

**32. Environmental Condition 51
[Negotiated Agreements]**

CSXT's compliance with numerous Negotiated Agreements is reported above. We report below on CSXT's compliance with the remaining Negotiated Agreements listed in Environmental Condition 51:

a. City of East Cleveland, OH (February 11, 1998)

CSXT is complying with the terms of this agreement.

b. City of Brook Park, OH (February 17, 1998)

CSXT has complied with the terms of this agreement.

**c. Village of Greenwich and the Board of Huron County, OH
(March 23, 1998)**

CSXT has complied with the terms of this agreement.

**d. City of Newark, DE and the University of Delaware (May 12,
1998)**

CSXT has complied with the terms of this agreement.

e. City of Indianapolis, Indiana (June 1, 1998)

CSXT has complied with the terms of this agreement.

f. City of Cleveland, OH (June 4, 1998)

CSXT is complying with the terms of this agreement, except that CSXT has not yet provided to the City of Cleveland the study provided for in paragraph 11 to determine whether it is feasible to operate two additional trains over the Lakeshore Line.

g. Cities of Brook Park and Olmsted Falls, OH (February 24, 1998) (CSX and NS)

CSXT is complying with the terms of this agreement.

h. City of Berea, OH, June 1, 1998 (CSX and NS)

CSXT is complying with the terms of this agreement.

B. Conditions Applicable to the Conrail Shared Assets Operator ("CSAO")

**1. Environmental Condition 1(A)
[Safety: Highway/Rail At-Grade Crossings]**

CSAO certified compliance with Environmental Condition 1(A) by letter to the Secretary dated May 24, 1999.

**2. Environmental Condition 1(B)
[Safety: Highway/Rail At-Grade Crossings]**

CSAO certified compliance with Environmental Condition 1(B) by letter to the Secretary dated May 24, 1999.

**3. Environmental Condition 1(C)
[Safety: Highway/Rail At-Grade Crossings]**

It is CSAO policy and practice to comply with all applicable Federal, state and local regulations regarding maintenance of public highway/rail at-grade crossings. CSAO enhanced the condition of the crossings on the Carleton, MI to Ecorse, MI line segment (S-020) in connection with the rehabilitation of the Lincoln Secondary.

4. Environmental Condition 1(D)
[Safety: Highway/Rail At-Grade Crossings]

CSAO made Operation Lifesaver programs available to the communities, schools and other organizations located along the Carleton, MI to Ecorse, MI line segment (S-020).

5. Environmental Condition 2
[Safety: Hazardous Materials Transport]

It is CSAO policy and practice to comply with the current Association of American Railroads "key train" guidelines.

6. Environmental Condition 4(A)
[Safety: Hazardous Materials Transport]

CSAO certified compliance with Environmental Condition 4(A) by letter to the Secretary dated May 24, 1999.

7. Environmental Condition 4(B)
[Safety: Hazardous Materials Transport]

CSAO certified compliance with Environmental Condition 4(B) by letter to the Secretary dated May 24, 1999.

8. Environmental Condition 4(C)
[Safety: Hazardous Materials Transport]

CSAO certified compliance with Environmental Condition 4(C) by letter to the Secretary dated May 24, 1999.

9. Environmental Condition 4(D)
[Safety: Hazardous Materials Transport]

CSAO certified compliance with Environmental Condition 4(D) by letter to the Secretary dated April 19, 2000.

10. Environmental Condition 5(A)
[Safety: Hazardous Materials Transport]

CSAO certified compliance with Environmental Condition 5(A) by letter to the Secretary dated May 24, 1999.

11. Environmental Condition 6
[Safety: Hazardous Materials Transport]

CSAO certified compliance with Environmental Condition 6 by letter to the Secretary dated August 22, 1999.

12. Environmental Condition 8(A)
[Safety: Highway/Rail At-Grade Crossings]

CSAO certified compliance with Environmental Condition 8(A) by letter to the Secretary dated December 14, 1999.

13. Environmental Condition 11 [Noise]

CSAO entered into a Negotiated Agreement with Brownstown Township, MI, which agreement was approved by the Board in Decision No. 152 (served April 18, 2000). Negotiations are ongoing with Ash Township, MI; Huron

Township, MI; and Lincoln Park, MI. It is the present position of Allen Park, MI that CSAO should proceed by contacting individual property owners.

**14. Environmental Conditions 49(A) and 49(B)
[Safety Integration Conditions]**

Compliance with these conditions is discussed in Part VII (Safety) of this report.

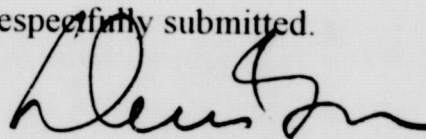
XIV. CONCLUSION

The first year of CSXT's operations of its portion of Conrail was marred by implementation problems that were extremely trying to CSXT and to its customers. CSXT believes that the problems are being solved, that the pertinent indicators are improving, and that the operations of the extended CSXT system will come to meet the expectations of CSXT and its customers. The problems of the first year of operations should not obscure the great permanent benefits that will result from the Conrail Transaction. As developed herein, new competitive rail service has been brought to portions of the eastern United States where previously there had been no major railroad competition or very little such competition. This was done not only through the innovation of the three Shared Assets Areas, but by the allocation of routes in other locations as well. The Transaction also created many new single-line service routes for CSXT's customers, both historic customers and those located on Conrail's lines. The Board's conditions have generally worked

well and CSXC and CSXT have complied with them to the best of their ability.

The Conrail Transaction is emphatically, overall, "in the public interest."

Respectfully submitted.



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Dated: June 1, 2000

CERTIFICATE OF SERVICE

The undersigned counsel for CSX Corporation and CSX Transportation, Inc. hereby certifies that on this 1st day of June, 2000, a copy of the foregoing "First Submission by Applicants CSX Corporation and CSX Transportation, Inc.," was served on all parties of record by first-class mail, postage prepaid, or more expedited method.



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