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202444

June 1, 2001

BY HAND

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 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-4, the "Second 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 "Second 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,

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

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Enclosures

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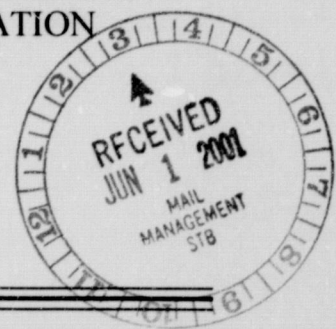
CSX-4

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)

**SECOND SUBMISSION BY APPLICANTS
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Dated: June 1, 2001

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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)

SECOND 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 Decision No. 5 served
February 2, 2001, in the above-captioned matter.

This is CSX's second annual submission in this General Oversight
proceeding. As CSX stated in last year's submission, these annual filings are not,
however, in any sense the only submissions in conformance and cooperation with
the Board's oversight regarding the Conrail transaction (the "Transaction"). As 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."

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, 1993),³ CSXT operating management has continued to keep 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.⁴

² We use the word "combination" throughout this submission to apply 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."

⁴ The divided allocation of Conrail's assets for operation by CSXT and NSR 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.

I. INTRODUCTION

CSX's submission of last year (CSX-1) reviewed the background and implementation of the Conrail Transaction, which was effected on the "Split Date" of June 1, 1999. It also discussed the implementation difficulties that were experienced during the period following the first several relatively stable months after Split Date. Following the receipt of comments from the public, submitted through July 14, 2000, and CSX's and NS's replies thereto, submitted on August 3, 2000, the Board analyzed the record and, in Decision No. 5, served February 2, 2001, concluded that "CSX and NS have substantially resolved their transitional operational and service problems and that the carriers are in the process of successfully integrating from an operational perspective their respective portions of Conrail." Decision No. 5 at 10-11.

In another important development during the year, the United States Court of Appeals for the Second Circuit rejected all court appeals of the Board's action authorizing the Conrail Transaction, in a decision rendered April 25, 2001. This included rejecting all contentions that sought additional conditions on the Transaction.

CSX has made significant progress in implementing the Conrail Transaction and managing CSX's expanded system in three main aspects, Operations, Marketing and Financial Results.

Operations. --- The CSXT network is operating today at or near the highest levels of performance it has ever achieved. In the year since its first annual oversight report, CSXT has made even further improvements to its operations and

these steps are manifesting themselves in superior performance measurements. System terminal dwell, at slightly above 24 hours, is the lowest reported number since at least 1996, while line of road velocity (at more than 21 miles per hour) is at its highest. Yard and terminal fluidity is excellent. Slow order mileage and train delay due either to crew or locomotive unavailability are at historic lows, and are well below plan.

Safety is paramount on CSXT and the report is good. FRA reportable personal injuries are currently occurring at a rate of about 15 per week. It is an improvement from the 17.9 per week experience encountered in 2000. Similarly, FRA reportable train accidents have improved to about 5.5 per week, significant progress from the 8 per week that CSXT reported in 2000. CSXT is endeavoring to improve its safety record and it is confident that its new social compact with Labor will continue to provide the foundation for achieving this goal.

Marketing. — CSX's strategic investment in Conrail was based upon a dedication to growing traffic. CSX did not acquire its portion of Conrail's routes intending merely to acquire Conrail's traffic base, but rather with the intent of melding those new routes into its existing network, expanding the service opportunities available to all customers and growing CSX's rail business. Despite an overall slowdown in the nation's economy, CSX can report significant success in achieving those goals.

Expanded single-system service has enabled coal producers in the Monongahela coal field to market their products to new customers in the Southern and Southeastern states. The elimination of two carrier routing has enabled MGA

coal to find new purchasers — in Virginia and elsewhere. Today, power plants as far south as South Carolina and Florida are routinely able to purchase MGA coal at competitive delivered prices. Prior to the transaction such purchases were far less common and took place mostly on a spot move basis.

Conversely, traditional C&O and B&O origin producers have found customers in former Conrail territory, taking advantage of opportunities for orders in today's high demand, supply-constrained coal market. And MGA producers have been able to take expanded advantage of the re-emergent export coal market, selling their coal for blending with other coals moving over Newport News.

Automotive customers have benefited from the expansion of CSXT's auto train network. These customers are extremely service-sensitive and the addition of traffic volumes to and from former Conrail locations has improved the network efficiencies and enabled CSXT to enhance its support of the automotive network. For example, CSXT today is doing a much more effective job of supplying empty multi-level railcars to assembly plants in eastern Canada and the Midwestern United States than separate CSXT and Conrail had done. More route options and more flexibility have added to CSXT's car distribution options, reducing both empty miles and empty-car days.

One of the most successful new services initiated by CSX to build on the new opportunities of the Conrail integration is its joint line service with Union Pacific, marketed under the name "Express Lane." Fresh fruits and vegetables are loaded on the West Coast into refrigerated cars and assembled into a train dedicated to that service. CSXT receives the train at Chicago and runs it through

on UP power to Selkirk, NY, where the traffic is promptly forwarded on an outbound train for the Hunts Point Market in New York City. This has been a marvelously successful service. With run-through service and the high traffic volumes needed for dedicated service, CSX and UP have combined to offer truly seamless service with guaranteed transit times, which have been cut in half in some lanes. CSX has doubled its perishables business to the Northeast, and the business is expected to continue growing as customers see new opportunities.

With the integration of Conrail's northeastern operations into the CSX network, CSX now has direct connections with Canadian National (CN) and Guilford Rail System, ideal for bringing Maine and Eastern Canadian newsprint into the Midwest and Southeast. CSX's "PressRunner" service offers daily service from origins on Guilford and CN, enabling the carriers to coordinate schedules and provide reliable service to newspapers in the Midwest and Southeastern United States. Direct connections and operating coordination make it possible for CSXT to share equipment with Guilford and CN, improving car supply for customers as well. The run-through service reduces handling and delays, providing expedited and consistent service for time-sensitive newsprint.

The value of consistent, reliable service and the efficiency of single system service have proven effective for CSXT and chemical customers in Niagara Falls, NY. Despite a depressed market for chloralkalai products, CSX has seen strong volumes of chlorine and caustic soda from these customers. CSXT engaged in a concentrated effort to sustain reliable service through a difficult winter in upstate New York and has been able to maintain single line pricing to these former Conrail

shippers that has kept them competitive through the economic downturn. Indeed, CSX believes that these customers have shifted production to their Niagara Falls plants in recent months, a commercial decision made easier by having the availability of single line rates and consistent service.

The Board will recall that CSXT had lost a limestone movement in Northwest New York State to trucks some months after the Split Date. We are pleased to report that, with creative sourcing of car supply, CSX has been able to win back that traffic. In May 2001, CSX began a sixty-car unit train movement from the Buffalo docks to AES's Somerset generating station handling Michigan limestone shipped across the Great Lakes. This successful bid by CSX will take approximately 6,400 trucks of heavy loading limestone off the highways in the Buffalo area each year.

With the operational difficulties that arose several months into the integration process now surmounted, CSX's challenge is to continue the profitable growth in traffic that motivated it to acquire the Conrail lines allocated to it. Customers routinely indicate that they would use more rail, and indeed often are prepared to pay more for rail, if only railroads could provide better service. The test of this will be in the marketplace. CSXT's operational performance today provides it with a marketing platform to launch a redoubled effort to profitable growth. As it indicated in its Application, CSX expects the vast preponderance of that growth to come from winning traffic from the highways. The unprecedented service and performance levels CSX is delivering today should provide the commercial tools to accomplish that goal.

Financial Results. — With the physical integration of Conrail completed in 1999, CSX's investment in infrastructure for the combined properties returned to a more normalized level in 2000. Combined Capital Expenditures for the full year of 2000 for CSXT and CSX Intermodal ("CSXI") amounted to \$840 million. In addition, Conrail invested \$110 million of capital on CSX's allocated portion of Conrail's track bringing total capital investments to \$950 million.

CSX's financial results started to improve during the second half of 2000. After having recorded combined a combined operating ratio for CSXT and CSXI for the first and second quarter of 91.1% and 91.4% respectively, the operating ratio improved to 89.4% and 88.7% in the third and fourth quarter respectively. Revenue for the full year of 2000 was \$7,243 million with an operating income of \$712.8 million, which yielded an operating ration of 90.2% for the full year.

The third quarter of 2000 marked the first meaningful full quarter year-over-year comparison since the Conrail transaction. Even though the railroad's operations had improved in the third quarter, the financial impact lagged behind. It was not until the fourth quarter that year-over-year comparison showed financial improvements. Operating income declined \$23 million in the third quarter of 2000 on year-over-year comparison, from \$185 million in 1999 to \$163 million in 2000. In the fourth quarter, operational improvements finally started to translate into modest financial recovery for CSX. Operating income for the fourth quarter improved slightly to \$205 million from \$197 million in 1999, an improvement of \$8 million.

This positive trend has continued in 2001. Despite extraordinary fuel costs and a slowing economy, CSXT and CSXI recorded a combined operating income of \$182 million in the first quarter of 2001 vs. \$160 million in 2000, a 13.75% year-over-year improvement. This trend is expected to continue during the rest of the year despite the slowing economy.

* * * * *

In all these areas, much remains to be done. Operating income needs to increase and expenses must be driven down. CSX must earn the kinds of returns its shareholders expect if it is to continue to reinvest in its capital-intensive network. But it can truly be said that CSX's investment in Conrail is now, two years after Split Date, bearing fruit for all CSX stakeholders.

II. CAPITAL PROJECTS

In this section, we present, first, a cumulative list of 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 completed 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 latter 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, 2001, to the extent completed as of that date, is over \$580 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 |
| 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 |
| 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) | Complete |
| Haley, IN (CE&D/St. Louis Line) | Remote control interlocking and upgrade connection track (CSXT/CR) | Complete |
| Tolleston, IN (Fort Wayne Line) | Upgrade connection track (CSXT/CR) | Complete |
| Willow Creek, IN (Garrett SD) | Build SE quadrant connection track (CSXT/CR) | Complete |
| Little Ferry, NJ | Build CR/NYSW connection tracks | Complete |
| Albany, NY - Hoffmans, NY | Double track 14 miles | Design in progress (Funded by Amtrak/NY 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 |

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> |
|---|---|--------------------------------------|
| 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 | Track work complete |
| 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 multilevel/double-stack (20' 2") auto cars | In Planning (Pre-Transition 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) | Complete |
| 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 |
| Newell, PA | Construct staging tracks and Yard Office | Complete |
| Philadelphia, PA | New merchandise facility | Complete |
| <u>INTERMODAL AND FINISHED VEHICLE TERMINALS</u> | | |
| Fairburn, GA | Build new facility | Complete |
| 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 | Complete |

| <u>LOCATION</u> | <u>PROJECT DESCRIPTION</u> | <u>STATUS</u> |
|---|---|---------------|
| <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 | Complete |
| 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 \$39 million in pre- and post-capital expenditures for information system upgrades, integration work, and similar technological upgrades which are not site-specific.

The following list of projects, current as of May 1, 2001 (or are in progress), includes projects not discussed in the application, but which have been completed thereafter in the ordinary course of business, based on a refinement of plans and the 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. The table does not include projects that were shown as completed on a similar table which appeared in CSX's submission of last year, filed June 1, 2000. CSX-1 at 17-18.

| <u>LOCATION</u> | <u>PROJECT DESCRIPTION</u> | <u>STATUS</u> |
|--|---|---------------|
| New Haven, CT | TRANSFLO Facility | Complete |
| Blue Island -- 75th St., IL (Blue Island SD) | Install TCS | Complete |
| Chicago, IL (Blue Island SD) | Rebuild & extend N lead 59th St Terminal | Complete |
| 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 |

| <u>LOCATION</u> | <u>PROJECT DESCRIPTION</u> | <u>STATUS</u> |
|--------------------------------|---|------------------|
| Indianapolis, IN | Install yard air at Avon | Complete |
| Gibraltar, MI | Connection from GTW to Detroit Line | In service as HT |
| Croxtan, NJ - North Bergen, NJ | Install TCS on Northern Running Track | In Progress |
| Elizabeth, NJ | TRANSFLO Facility | Complete |
| North Bergen, NJ | Install yard air | Complete |
| South Kearny, NJ | Expand Intermodal facility | Complete |
| Oak Point, NY | Install yard air | Complete |
| Selkirk, NY | Replace heating system in locomotive shop | Complete |
| Selkirk, NY | Install water heater for locomotive washing | Complete |
| Selkirk, NY | Install new locomotive inspection building | In progress |
| Buffalo, NY | Upgrade car shop (roof, floor system, structural support, and aprons) | Complete |
| Cleveland, OH | Station E fueling & service facility at Collinwood | Complete |
| Cleveland, OH | Station X fueling & service facility at Collinwood | Complete |
| Cleveland, OH (Collinwood) | New hump building | In progress |
| Cleveland, OH (Collinwood) | New terminal office at Station Y | In progress |
| Toledo, OH (Stanley) | Install yard air | In progress |
| Toledo, OH (Stanley) | Reopened 900,000 gallon fuel tank | Complete |
| Toledo, OH (Stanley) | Install fuel truck loading facility | In progress |
| Youngstown, OH | Extend Youngstown connection track to 140-car capacity | Complete |
| Connellsville, PA | Install yard air | Complete |
| New Castle, PA | Consolidated Terminal building | Complete |

The total expenditure through May 1, 2001, on the projects listed immediately above is approximately \$40 million.

Capital expenditures forecast for 2001 will again cover a wide range of car types, with somewhat greater emphasis on rebuilds/repairs. In 2000 CSXT repaired 4220 cars, purchased 578 cars, and leased 425 cars. CSXT plans to continue in 2001 repairing 3480 cars, purchasing 86 cars, and leasing 1440 cars. CSXT will again have a significant number of locomotives in service under short-term arrangements in 2001, including short term leases on 125 GE 4400 HP AC locomotives built in 2000/2001 and 150 locomotives rebuilt in 1999/2000.

Buffalo Infrastructure. — On June 9, 2000, the Board instituted a separate proceeding called the *Buffalo Area Infrastructure* proceeding, involving a review

of infrastructure needs in the Greater Buffalo area, including a meeting of CSX and NS with interested parties in the area, followed by a report and comments. Finance Docket No. 33388 (Sub-No. 93). NS and CSX filed a joint report, other interests commented, and CSX and NS separately made reply comments.

In its submission to the Board in the Buffalo Area Infrastructure matter,⁶ CSXT reviewed its principal infrastructure holdings in the Greater Buffalo area, and stated that in its judgment, CSXT's existing infrastructure was well-suited to support the dual role that its operations in the Greater Buffalo area play in the CSXT network: local pickup and delivery of customer traffic and classification of through traffic moving along the Chicago to Greater New York/New England corridors. Buffalo Infrastructure Submission at 10. CSXT reported that it had made direct capital expenditures of about \$2.3 million in the Greater Buffalo area in 1999. These were largely service-oriented, including intermodal ramp expansion and improvements in a transloading facility. *Id.* at 20.

The Board, in a Decision served February 2, 2001, reviewed the filings of the parties and discontinued the proceeding, ordering, however, that reports on Buffalo Infrastructure issues be made as part of the annual general oversight reports. The following supplies that report on behalf of CSX.

In the years 2000 and 2001 to date, CSXT has made capital expenditures of about \$1.9 million in the Buffalo area. This included expenditures for yard, shop,

⁶ A joint submission with NS, CSX/NS-1, filed September 7, 2000 ("Buffalo Infrastructure Submission").

and TRANSFLO improvements. CSXT's plans for the Greater Buffalo area at the present time remain the same as those reported in the September 2000 Buffalo Infrastructure Submission: CSX is working toward making substantial improvements with the aim of expanding its ability to provide service to Buffalo area customers, and believes that its railroad capacity infrastructure in the area is presently adequate.

Particular attention is being given to the enlargement of transloading (CSX "TRANSFLO") facilities and intermodal facilities. Previously reported capital improvements have doubled the former Conrail capacity at the William Street Intermodal Yard. The present project is to triple the Conrail intermodal capacity at William Street. To make space for this, the TRANSFLO facility currently located at William Street will be relocated and enlarged. A site on property allocated to CSXT has been identified as the preferable new location for the TRANSFLO facility, and finalization of the site selection, groundbreaking and construction will follow, with the goal of completion of the new TRANSFLO facility in 2002. At that time, the old TRANSFLO facilities will be scrapped and the further enlargement in intermodal facilities at William Street will commence.

CSX has been working with New York State officials, the New York State Department of Transportation ("NYSDOT"), the Port Authority of New York and New Jersey ("PANYNJ") and officials of Erie County and the City of Buffalo on the project, including regulatory and financial support. The objective of PANYNJ is to create an "Inland Port" in Buffalo, with containers delivered by ship at the Port of New York and New Jersey being moved by rail to Buffalo. This would

foster economic development in the region through warehousing, packaging and short haul trucking activities. The expanded William Street Intermodal facility would be a major part of that.

While CSX is engaged in increasing its facilities for customer service in the Buffalo area, the high taxes on railroad properties in New York State remain a factor in determining where to spend a limited capital budget and legislative relief as to the property tax would be constructive.

CSX continues to have a major presence in organizations dedicated in industrial development in the Greater Buffalo area. Gerry Edwards, CSXT's Director of Industrial Development in the Western New York area, is a member of the Area Managers Organization, a group of economic development professionals that meets monthly in Buffalo; Professional Partners Group of the Buffalo-Niagara Enterprise, a privately funded economic development organization that covers six counties of Western New York, including Greater Buffalo; and the New York State Economic Development Council, a statewide group. This underlines CSXT's concentration on economic development and the improvement of customer service facilities in the Buffalo region.

* * * * *

Shared Assets Areas. — The Shared Assets Areas continue to be the subject of capital improvements relating to the continuing Conrail-operated assets. A description of last year's projects in the Shared Assets Areas was supplied in the June 1, 2000 CSX Report.

During the past year, the following significant projects were completed:

- Installation of 7.1 miles of welded rail, primarily in Oak Island Classification Yard and Pavonia Receiving Yard — \$1.9 million
- Installation of 37,500 ties focusing on improving yard conditions in all three shared assets areas — \$2 million
- Installation of new control systems for Pavonia Hump Classification Yard — \$800,000
- Provision of remote control of Milwaukee Jct. Tower to Mt. Laurel dispatcher — \$200,000
- Addition of two new tracks at Bayline Yard at Newark, NJ — \$1.1 million

Twenty million dollars of capital initiatives are planned to be completed in 2001 for the Shared Assets Areas.

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.

In addition, CSX, NS, and Conrail are working closely with New Jersey Transit on a project that will add a second main track from the Weehawken Tunnel at North Bergen, NJ, south to Marion, NJ, to offset former Conrail freight capacity on a parallel segment of the River Line to be used by NJT for light rail service.

III. 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 was challenged on judicial review in the Second Circuit, with the Board's decision on this (and all other litigated issues) being upheld by a unanimous decision of the Court on April 25, 2001.

In their submissions last year, CSX and NS described in detail the actual methods of accounting, required by generally accepted accounting principles, that they were employing with respect to their costs and carrying values with respect to the lines acquired by them in the Conrail Transaction.⁷ That discussion of the accounting methods remains current as far as CSX is concerned.

⁷ See CSX-1 at 21-28; NS-1 at 25-30.

In its Decision No. 5 in this matter, the Board discussed the so-called "acquisition premium" and the position, as the Board then saw it, of the Board's continuing monitoring of the effect of the so-called premium on the jurisdictional threshold for maximum rate regulation and the determination of revenue adequacy. *See generally* Decision No. 5 at 18-19. The Board observed that only one commenter had raised any issue as to the matter.⁸

The Board concluded that there is "no evidence on this record that the 'acquisition premium' or any aspect of purchase accounting rules played any role in pricing decisions made by NS or CSX." *Id.* at 18. It observed that rate changes put into effect by those carriers appeared to reflect current market conditions, including the recent significant rises in diesel fuel costs, and had nothing to do with the purchase price of Conrail. *Id.* The Board also pointed out that a calculation of the 180%-of-variable-cost jurisdictional threshold under the Uniform Rail Costing System ("URCS") depended on movement-specific data, rather than on overall system calculations.⁹ No shipper had introduced evidence on the record showing

⁸ That issue was raised by the Ohio Rail Development Commission, essentially in passing, without detail.

⁹ While the determination of "revenue adequacy" is a system-wide concept, as developed in last year's submission (CSX-1 at 26-28) no purchase accounting adjustments to the value of CSXT's assets in its accounts and Form R-1 were called for with respect to the former Conrail routes, which continue to be owned by Conrail and its subsidiary NYC. Moreover, for the purpose of calculating CSXT's net investment basis, the value of property leased by CSXT is included in CSXT's Schedule 250 at the lessor's (Conrail in this case) historic net book value (historic book value less accumulated depreciation). An annual determination of revenue adequacy is made by the Board as to all Class I carriers. The determination for

Footnote continued on next page

how the calculation of this threshold under URCS had been affected with respect to a movement of significance to the shipper. *Id.* at 18 n.35. The Board noted that there was currently no active rate case before the Board in which the jurisdictional threshold for any CSXT or NS movement is implicated. *Id.* at 18-19.

That state of affairs found by the Board remains the same as far as CSX is concerned. CSX is currently not subject to any rate case involving movements pertinent to the Conrail Transaction. CSX understands that the Board will continue to monitor this issue, but believes that the Board's Decision No. 89 finding is correct: that the application of generally accepted accounting principles to CSX's accounts in connection with the Conrail acquisition will not have a material effect upon the statutory threshold for rate regulation or on the determination of revenue adequacy, is correct.

IV. LABOR¹⁰

1. 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

Footnote continued from previous page

1999 is the most current one; it was made by the Board in a decision served July 26, 2000, in Ex Parte No. 552 (Sub-No. 4), and as has been the case for many years, CSXT was found not to be revenue adequate.

¹⁰ 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.

Conrail transaction. Most of the implementing agreements were achieved through negotiations. That cooperative approach between CSXT and its unions has continued with respect to the Conrail Transaction.

As reported last year, all litigation over the formation of the implementing agreements has been concluded except for one late filed proceeding. As then reported (CSX-1 at 33-34) in December 1999, the Brotherhood of Maintenance of Way Employees ("BMWE") filed a petition to vacate the arbitration award issued by Referee William E. Fredenberger, Jr. STB Finance Docket 33388 (Sub No. 88). BMWE's petition did not criticize its settlement with CSXT, but that settlement had included the work force allocation methodology from the arbitrated implementing agreement. On January 26, 2001, the STB denied BMWE's petition to vacate the arbitration award. STB Finance Docket No. 33388 (Sub. No. 92). The BMWE, on March 2, 2001, appealed the STB's decision to the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals has granted CSXT's, NS's and Conrail's motions to intervene.

Several of the implementing agreements negotiated in conjunction with the Conrail Transaction provided procedures to govern future coordinations that are determined to be necessary to realize the transportation benefits of that 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

provided the procedures for future coordinations of work, services or operations in conjunction with the Conrail Transaction.

As anticipated, additional coordinations of work, services or operations have been necessary as a result of the Conrail Transaction. These coordinations have been accomplished either under the provisions governing future coordinations in the negotiated implementing agreements or under the employee protective conditions which were imposed by the STB in its decision in the Conrail transaction. Recently CSXT, most of the other Class I carriers, and a number of the rail unions entered into an agreement entitled Revised Standards for Preemption of Collective Bargaining Agreements for Transactions Initiated Pursuant to Section 11323 of the Interstate Commerce Act ("Revised Standard Agreement"). It resolves the issues concerning the override or modification of "Collective Bargaining Agreements in the implementation of consolidations, mergers and acquisitions of control ('Major Transactions') pursuant to Section 11323 of the Interstate Commerce Act." Revised Standards Agreement, p. 1. The unions which agreed to this agreement include the Brotherhood of Locomotive Engineers ("BLE"), Brotherhood of Railroad Signalmen ("BRS"), Sheet Metal Workers International Association ("SMW"), Carmen Division of Transportation Communications International Union ("Carmen"), Brotherhood of Maintenance of Way Employees ("BMWE"), International Association of Machinist ("IAM"), TCU and Transport Workers Union of America ("TWU"). The United Transportation Union ("UTU") had previously entered into a similar Revised Standards Agreement with CSXT and most of the other Class I carriers.

These two agreements will govern future coordinations under the Conrail Transaction with the signatory unions, except to the extent the Conrail implementing agreements already provide specific procedures for such future coordinations.

On May 21, 2001 CSXT completed the transfer and consolidation of its customer service work from the former Conrail National Customer Service Center in Pittsburgh, PA to CSXT's Customer Service Center in Jacksonville, FL. This coordination was accomplished under the procedures established by the Conrail implementing agreement entered into with the TCU. In addition to this consolidation, CSXT has completed four other consolidations concerning its clerical work force. These coordinations were also accomplished through the procedures of the implementing agreement with TCU. CSXT also has served two other notices concerning the coordination of clerical work. One is for the coordination of Conrail's print shop work into CSXT's operation in Jacksonville and the other is for the coordination of customer service work from Garrett, IN to Jacksonville and Barr Yard in Chicago. Again, both of these notices are governed by the coordination procedures of the TCU implementing agreement.

On the operations side, CSXT negotiated an implementing agreement in December 2000, that coordinated the five yardmasters at Danville, IL on the former C&EI property with CSXT's yardmasters at East St. Louis, IL (former Conrail property). The five yardmasters at Danville were placed in Region 9 of the CSXT System Yardmaster Agreement with the Yardmasters Department of UTU. This agreement was reached pursuant to the procedures of Article I, Section 4 of

the employee protective conditions imposed by the STB in the Conrail Transaction. CSXT also has served a notice on the UTU and the BLE to consolidate its train operations between Charlottesville, VA and Richmond, VA into its Central District.

CSXT anticipates that other coordinations or transfers of work will likely occur from time to time. Any such future coordinations will be accomplished under the applicable implementing agreements, the two recent Revised Standards Agreements, or the STB imposed labor conditions.

2. Application of Employee Protective Conditions

There has been very little disagreement between CSXT and its unions over the application of the implementing agreements since obtaining the initial implementing agreements for the Conrail Transaction. Perhaps more importantly, there have not been any labor disruptions of CSXT service because of disputes over the implementation of the Conrail Transaction. Similarly, there have been relatively few arbitrations under Article I, Section 11 of the STB's employee protective conditions over the application or interpretation of the Conrail Transaction implementing agreements.

The previously reported arbitration over certain seniority and equity issues between the former SCL and C&O UTU committees at the Richmond Terminal has been concluded with the issuance of an award by Referee Fischbach.

Another arbitration was required to resolve twelve issues between the B&O and L&N general committees of the BLE. Referee Eckehard Muessig rendered an

award in this dispute on February 24, 2001. This award supported the carrier's interpretation of the applicable implementing agreement in eleven of the twelve issues.

The STB, in approving the Conrail Transaction, imposed various employee protective conditions in ordering 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 8,340 employees. CSXT has reviewed or is in the process of reviewing these claims for monetary protection. CSXT has paid protective benefits to approximately 2,161 employees.¹¹

As reported in CSXT's Initial Submission (CSX-1 at 37), CSXT was sued in federal district court by several former Conrail supervisors who became CSXT supervisors after Split Date. They claimed that they had improperly been denied labor protective benefits imposed by the STB in Decision No. 89 or were not being paid the correct amount of such benefits. The United States District Court in Cleveland subsequently dismissed their lawsuits, finding that the exclusive forum for resolution of disputes over an employee's entitlement to labor protection is through the dispute resolution procedures specified in the applicable STB imposed protective conditions. Since the dismissal of their lawsuits, the parties have

¹¹ Last year's report erroneously stated that 3,700 employees had received protective benefits. *Id.* at 37. Unfortunately, that number was the result of double counting certain claim payments.

continued their discussions and CSXT has provided information to their attorney on how CSXT has made the protective benefit calculations. CSXT anticipates that there will be further discussions after the employees' attorney has analyzed the data provided by CSXT. These employees have not instituted an arbitration under Article I, Section 11 of the protective conditions.

Other employees have also made claims for New York Dock benefits as a result of the Conrail Transaction, which are in dispute. To date, most of these claims have been resolved without the need for arbitration under the Board's conditions. However, there are two arbitrations pending. One dispute is with BLE Northern Committee and concerns the calculation of test period averages. The other dispute involves a claim for protection by 16 signalmen.

3. Labor Meetings on Integration and Safety

CSXT has continued its efforts to ensure frequent communications with its unions in an effort to see to it that integration and safety issues associated with the Conrail Transaction receive CSXT's prompt attention. For example, CSXT has continued its biweekly telephone conference call, which was started after the implementation of the Conrail Transaction. CSXT's senior operating, labor and safety officials participate in this call with operating unions and any other union that desires to participate. Normally present on these calls for CSXT are its Executive Vice President of Transportation, Senior Vice President of Transportation, and Vice President of Labor Relations.

On a monthly basis, senior management officials from the Labor Relations, Transportation, and Finance Departments meet with the General Chairmen of the UTU, BLE, Yardmasters and Dispatchers organizations. The purpose of this meeting is to provide the General Chairmen with an update of the company's performance in key areas and to discuss matters of concern which either the general chairmen or CSXT may have regarding CSXT operations. CSXT has used these monthly meetings as the forum to introduce the unions to its new initiatives such as Six-Sigma.¹²

The quarterly meetings with the General Chairmen of the various shop craft unions in the Mechanical Department Safety Steering Committee also have continued. The purpose of these meetings is to review safety related issues and policies of the Mechanical Department.

Finally, CSXT is pleased to be able to report that the BRS, except on the former B&O and the former L&N,¹³ has joined the list of unions that are participating in the Individual Development and Personal Accountability Program, which is the cornerstone of what is known on CSXT as the "Social Compact." To date, thirteen unions have agreed to participate in the Social Compact on CSXT.

¹² Six-Sigma is a quality initiative that measures, analyzes, improves and controls business processes through the application of statistical tools that help identify the key causes of process variation. It is a strategic problem-solving methodology that is fact based and data driven.

¹³ The L&N committee has served notice of withdrawal effective June 21, 2001.

CSXT's Labor Relations Department is also continuing its efforts to work with the unions to find satisfactory solutions to any labor issues arising from the Conrail Transaction. One example was the previously mentioned coordination of the customer service center work from Pittsburgh into Jacksonville. CSXT Labor Relations Department cooperated with the TCU General Chairman for CSXT-North Agreement to provide a transition methodology that was beneficial to both the employees and CSXT. The arrangement provided for a "rundown" to fill the new positions in Jacksonville instead of the normal advertising and awarding of positions, which would have taken place in six phases. This consolidated selection process allowed the employees to know the exact time of their move anywhere from five to twenty-four weeks in advance of the move. The arrangement also permitted spouses to coordinate their relocations so they could relocate to Jacksonville at the same time. From CSXT's standpoint, being able to know earlier in the process how many employees were transferring identified the number of vacancies that would need to be filled and allow CSXT to avoid a manpower shortage.

Another cooperative management/union endeavor was an agreement between CSXT and its UTU General Chairmen, which kept surplus trainmen who otherwise would be furloughed on the payroll for a specified period of time. This agreement also benefited CSXT by precluding recent trainmen hires from being furloughed. If the new hires were furloughed, there was a likelihood that some might not return to CSXT when recalled.

As previously noted, CSXT has not experienced any labor disruptions as a result of the implementation of the Conrail Transaction. CSXT believes that the improved communications with its unions and cooperative efforts have contributed greatly to the success of the ongoing implementation of the Conrail Transaction. The two Revised Standards Agreements which resolve the issues pertaining to the override or modification of collective bargaining agreements hopefully will eliminate problems concerning the future coordinations which may become necessary as a result of the Conrail Transaction.

4. Continuing Conrail — Application of Employee Protective Condition

On Consolidated Rail Corporation ("Conrail"), there have been few disputes regarding labor protective conditions. A total of 493 employees have been certified as entitled to *New York Dock* displacement allowances, with approximately 148 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. Two organizations, the BMW and TWU, have requested arbitration, but to date the parties are still in discussion over these claims.

V. SAFETY

Safety has continued to be the central focus of CSXT's integration of its portion of the pre-transaction Conrail into the CSXT system. As the Board is aware, CSXT has devoted an unprecedented level of resources to planning for the

safe integration of the Conrail assets. This planning has continued to pay off — CSXT's good safety record achieved during the first year following the Split Date has improved during the second year, and CSXT is working toward an even safer year in 2001-2002. Further, as discussed below, the Safety Integration Plans ("SIP") CSXT prepared with respect to the Conrail transaction have now, with only one exception, been fully implemented. CSXT understands that the FRA will soon file its final SIP implementation report with the Board.

Board Decision No. 89 imposed two safety-integration related Environmental Conditions on the Conrail transaction, Condition Nos. 49(a) and 49(b).¹⁴ These Conditions require that CSXT implement its Safety Integration Plan ("SIP") filed with the Board as part of the environmental review process and work cooperatively with the Federal Railroad Administration ("FRA") with respect to SIP implementation. CSXT has continued to comply fully with these conditions, both with respect to its own SIP and the separate SIP prepared for the Conrail Shared Assets Operator ("CSAO").

CSXT filed its SIP with the Board on December 3, 1997 and, jointly with NS and Conrail, simultaneously filed a SIP governing the CSAO operations. Among other matters covered, the SIPs describe the differences in safety procedures between CSXT and the pre-transaction Conrail, identify relevant best practices and describe the steps to be followed in implementing safety programs and practices during the course of integration. The SIPs address a broad range of

¹⁴ Decision No. 89 at 419.

safety issues, including corporate safety cultures and plans to resolve differences in those cultures; operating rules and practices; motive power issues and information system compatibility. The scope of issues addressed in the SIPs adhered to detailed SIP guidelines that the FRA issued soon after the Board required that the SIPs be prepared.

The SIPs, and related SIP accountability reports that CSXT has prepared in connection with the implementation of the SIPs, have provided a useful and flexible blueprint for safety integration planning and implementation over the last two years. As they have from the beginning of the integration process, CSXT and CSAO officials have met with FRA officials on a regular basis to address the progress of SIP implementation. Railroad officials have provided data to FRA and discussed a variety of issues with FRA, continuing the unprecedented degree of cooperation between that agency and the railroad that has characterized the SIP process.

Since CSXT filed its first oversight report in June 2000, FRA has submitted two semiannual status reports on SIP implementation to the Board pursuant to the May 19, 1998 Memorandum of Understanding between the Board and FRA. These two reports, submitted in December 1999 and August 2000, cover SIP integration progress for six month periods, with the more recent report covering the period through June 2000. The reports identify a variety of areas as to which FRA has consulted with CSXT, NS and the CSAO, describe areas where integration efforts are continuing and address the significant progress that has been made in the safe integration of the Conrail assets. The August 2000 FRA report notes that,

while certain issues remained at that time to be resolved, the railroads "have achieved a laudable safety record since June 1, 1999, despite operational difficulties lasting for many months. This achievement is reflected in their closure of nearly all identified safety and training issues identified in their [SIPs]."

Among the issues that FRA identified in its August 2000 report as requiring more attention were excessive dwell time of cars in major yards, long delays of trains awaiting crews and the overall accuracy of hazmat documentation. CSXT has addressed each of these issues and it believes that marked improvement has been achieved in each area.

In fact, by several measures CSXT has achieved substantial safety improvements, above its already outstanding safety record, over the past year. Employee injuries have been reduced by 30% between the first quarter of 2000 and the first quarter of 2001; the number of derailments declined by 40% during that period; and service levels have improved markedly as measured by terminal dwell, cars on line, velocity and other measures. Further, CSXT has also achieved a substantial improvement in its record of calendar day inspections (an FRA-required inspection of a locomotive by an engineer every 24 hours) as a result of joint labor-management efforts. FRA has now recognized CSXT as having one of the better records among Class I railroads in performing calendar day inspections.

CSXT also has taken aggressive steps to address FRA concerns about track maintenance and has complied fully with a compliance agreement that it entered with FRA in April 2000 to address maintenance issues. All of the conditions that FRA cited in its report that resulted in this agreement were promptly corrected

within 60 days and since that time CSXT has continued its efforts to ensure track safety. To date, CSXT believes that it has satisfied all outstanding FRA expectations in regard to the track maintenance matter. The ongoing FRA monitoring program will continue to be carried out through the Safety Assurance and Compliance Program ("SACP") oversight process that FRA ordinarily employs in addressing safety issues of this sort.

With only one exception, CSXT has now fully implemented its SIP. It has, in other words, fully completed hundreds of integration steps identified in its SIP. These include the integration of operating rules and procedures, hazmat procedures, hazmat and other training programs, and a wide variety of safety policies and programs. Information technology systems have also been fully integrated.

The one item still open in the CSXT SIP is the full implementation in the Northeast portion of the former Conrail system of Operation Redblock. This is a union-initiated, management supported drug/alcohol awareness and prevention program. That program, in place for over 15 years at CSXT, has been extended to the system acquired from Conrail, except in the Northeast states, where implementation of the program is now underway and will be completed in the next several months.

The CSAO SIP has been fully implemented. Employee training programs, for example, have been established as set forth in the SIP, and all community-based training and safety coordination programs contemplated in the SIPs have been put into place. At the same time, the CSAO has continued to improve its

safety record. Notably, its ratio of injuries per 200,000 man-hours, a measure used by FRA, has seen a 43% improvement between the first quarter of this year and the first quarter of 2000, and is lower than the pre-Conrail transaction figure. The CSAO accident rate also declined significantly during the same period.

As a result of the implementation of all SIP measures by CSXT, with the one noted exception, FRA has determined, and has advised CSXT, that the safety integration of the former Conrail into CSXT has been completed. A similar determination was reached by FRA with respect to the CSAO. Therefore, as of February 7, 2001 the regular SIP compliance/implementation meetings between railroad and FRA officials have been discontinued. CSXT also understands that FRA is in the process of preparing its final report to the STB pursuant to the FRA/STB Memorandum of Understanding governing the SIP process. Continued FRA safety oversight of CSXT and the CSAO will be take place, as in the case of any other railroad, through ordinary channels and, where appropriate, through the SACP process, which as noted is the program that FRA normally uses to address any specific rail safety issues that might arise.

VI. ECONOMIC DEVELOPMENT IN THE AREA FORMERLY SERVED BY CONRAIL

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

In its filing last year, CSX reported that since June 1, 1999, 35 companies had announced the construction of new or expanded facilities on Conrail lines that are now served by CSXT. CSX-1 at 48-49. Since that report, 34 additional announcements by companies have been made with respect to the construction of new or expanded facilities on the Conrail lines now operated by CSXT. These projects, listed by company name, location and commodities, are as follows:

| <u>NAME OF COMPANY</u> | <u>LOCATION</u> | <u>PRIMARY COMMODITY</u> |
|----------------------------------|-------------------|---------------------------------|
| Anastasio Reload | North Haven CT | Scrap Metal |
| Applied Tech., Naddel Industries | Stratford CT | Plastic Manufacturing |
| Agar Supply Co. | Taunton MA | Dry / Frozen Food |
| Barrett Warehouse | Westwood MA | Beverage Distributor |
| Cashman | Fall River MA | Steel Distribution |
| Eastwood Carriers | Westfield MA | Wooden Pole Distributor |
| Etarco Quebec | Milford MA | Boiler Modular Pieces |
| Gas Supply Resources | Westfield MA | Propane Facility |
| Tighe Warehouse | Mansfield MA | Warehouse & Distribution Center |
| Universal Fibers | Westfield MA | Scrap Paper Processor |
| Bitumar | Baltimore MD | Asphalt Facility |
| Coastal Sunbelt Produce | Jessup MD | Food Distributor |
| Koppers Industries | Hagerstown MD | Utility Poles |
| PCS | Baltimore MD | Potash |
| BASF | Jamesburg NJ | Chemicals |
| C. C. Consultants | Manville NJ | Iron Oxide |
| CTI Logistix | Avenel NJ | JIT Auto Parts Rail Center |
| Home Depot | Bridgeport NJ | Lumber Distribution |
| Plywood Specialties, Inc. | Elizabeth NJ | Plywood Distribution |
| Action Ready Mix | Bronx NY | Aggregate Distribution Yard |
| Armor Box Company | Buffalo NY | Box Manufacturer |
| Karta Corp. | Peekskill NY | C&D Debris, Scrap Metal |
| New York Post | Bronx NY | Newsprint |
| Sonwil Distribution Center | Cneektowaga NY | Warehouse / Distribution |
| Team Freight | Buffalo NY | Food Distribution |
| Williams Lumber | Kingston NY | Lumber Distribution Facility |
| Wyman Gordon Inc. | Buffalo NY | Machinery Movement |
| CTI Logistix | Toledo OH | RLC Autoparts Distribution |
| Dlubak Glass | Upper Sandusky OH | Cullet |

| <u>NAME OF COMPANY</u> | <u>LOCATION</u> | | <u>PRIMARY COMMODITY</u> |
|---------------------------------|-----------------|----|--------------------------|
| Franklin Storage at James River | Chambersburg | PA | 3rd party Warehouse |
| General Motors SPO | Morrisville | PA | Distribution Center |
| Heinz Company | Pittsburgh | PA | Food Products |
| Olympic Steel | Chambersburg | PA | Steel |
| RBLX Enterprises | Clokey | PA | Passenger Car Storage |

The total carloads per year are estimated at approximately 34,000.

As noted, the foregoing list is only for announced projects. CSXT is currently involved in confidential negotiations for over 80 additional projects for new or expanded facilities in the territory formerly served by Conrail.

VII. INTERMODAL

Over the last twelve months the major focus of CSX Intermodal ("CSXI") has been improvement in service reliability and the development of service improvement initiatives. During this time period, train service reliability has improved significantly. Current on time train performance, as measured by the arrival at destination intermodal terminal within thirty minutes of schedule, is 82% for all intermodal trains. This is up from 61 percent a year ago. This section will provide an overview of service initiatives. It will then review intermodal infrastructure improvements.

1. Service Initiatives

A number of service initiatives were established to attract new business or improve service reliability. A Mexican train service was established for auto parts between Detroit and Mexico in conjunction with the Union Pacific. This train is routed via the Salem, IL interchange with UP. The business moving in this

service, estimated to reach over 20,000 units annually, formerly moved via highway between Detroit and the UP terminal in Dolton, IL.

A second Mexico initiative established service in conjunction with the KCS and TFM. This service, between Mexico and the CSX Intermodal network, is routed over the New Orleans and East St. Louis gateways to the KCS.

CSXI also took several initiatives to improve service and balance volume on the four trains which serve the I-95 corridor between Florida and the Northeast. Two of the trains have been designated premium service trains, serving a limited number of terminals and improving service reliability for small package and LTL customers. The second pair of trains works most of the intermediate terminals providing improved service schedules for those markets. In addition, the northbound service was improved with a direct train service from Kearny, NJ to Worcester, MA, reducing the transit time to New England by one day. This new service has also attracted container business from Northern New Jersey ports that formerly moved by highway to New England. A similar service improvement southbound is planned for the Third Quarter 2001. With these changes, direct service is now available between the intermediate terminals of Savannah and Charleston and the Northeast terminals of Baltimore, Philadelphia, Kearny and Worcester. Another initiative affecting the I-95 lane is a new shuttle train between Kingsport, TN and Savannah, GA which enables connection of the Kingsport traffic into the I-95 trains at Savannah.

CSXI made a number of service changes in and around Atlanta, referred to as the "Atlanta redesign." These changes were designed to improve service

reliability and reduce cost. In the I-75 service lane between Cincinnati and Florida, the connecting service at Atlanta was eliminated to improve service for the long haul markets between the Ohio Valley and Florida. This change improved service reliability and enabled an earlier connection to the Florida East Coast Railway for South Florida traffic. With this improved service, CSX Intermodal has now introduced an expanded door-to-door service product in this lane. Another service change as part of the Atlanta redesign involved the discontinuance of the Atlanta Northeast service. These two changes, along with the consolidation of trains in the Atlanta/Chicago lane, helped improve service reliability for the remaining business moving through the Atlanta hub. Transcontinental service between Charlotte and the New Orleans gateway has improved. Service for the international container business between the ports of Savannah and Charleston and the interior markets of Nashville and Memphis also has improved. A new transcontinental gateway for business moving between the southeast and northern California was created at Memphis in conjunction with UP. This gateway improved service for the traffic moving from and to Charlotte, Savannah, Charleston and Florida that connects through Atlanta.

A new service was established from East St. Louis to Baltimore operating as a combined intermodal and automotive train. This train also handles connecting traffic from Memphis (CN) and Kansas City (KCS). Another service improvement at St. Louis comes from the joint terminal operation that was established with the CN and KCS at CSXI's East St. Louis terminal. CSXI provides the terminal

services enabling interchange of traffic moving between CN, KCS and CSXI within the terminal in lieu of switching it between separate terminals.

Service was expanded by providing between Cleveland and Evansville, Nashville and Florida points utilizing connecting service over Chicago. Transcontinental service to Cleveland was also improved with connecting service with western carriers over the 59th Street facility.

Particularly exciting is a new range of services between CN and CSXI offering highly-competitive intermodal service for traffic moving between Vancouver, BC and New York, as well as in other key lanes such as Toronto-Florida (four-day service) and Toronto-New York (two-day service). The arrangements between CN and CSXI go beyond mere interline service. Under the marketing agreement announced on May 28, 2001, each partner will have the ability to price originating traffic destined to points the other's network. The marketing agreement covers intermodal service between:

- Western Canada and the U.S. Northeast;
- Western Canada and the U.S. Southeast, Florida, and Mid-South; and
- Eastern Canada and markets along the I-95 corridor of the U.S. Eastern Seaboard.

With the traffic volumes anticipated, CSX and CN will use "steel wheel" interchange at Chicago and Buffalo, avoiding unnecessary handling and intracity and border road congestion, thus speeding the traffic on to destination.

2. Infrastructure Improvements

The new Philadelphia intermodal terminal at Greenwich Yard was completed and the Snyder Avenue terminal was closed in November 2000. This enabled all traffic to be consolidated at the new terminal providing improved operating efficiency and customer service.

The terminal expansion at the Kearny, NJ terminal was completed in August 2000. This expansion provided a 6,500 foot loading track and 400 additional parking spaces.

The entrance to the new terminal at Cleveland was widened, creating an additional turning lane, a truck deceleration lane and an entrance traffic signal. This project relieved entrance congestion and improved traffic safety.

At the Seagirt terminal in Baltimore, a new 3,500 foot loading track was completed in September 2000. This track provided badly needed track capacity.

In Jacksonville, a new project has been started to increase the track capacity of Duval Yard, the serving yard for the Jacksonville Intermodal terminal. Construction will begin in the Third Quarter 2001. This project will provide about 25,000 feet of support track. This will facilitate consolidation of trains in Jacksonville, CSXI's Florida hub for service to the Northeast and Midwest.

VIII. RELATIONSHIPS WITH AMTRAK AND COMMUTER AUTHORITIES

In Decision No. 1 in this General Oversight Proceeding, the Board explained that it would monitor "transaction-related impacts on Amtrak passenger operations and regional rail passenger operations" during the five-year oversight period.

In our First Submission (at 56), we reported that "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." In particular, we reported generally positive relationships with MBTA, Metro North, NJT, SEPTA and Virginia Railway Express ("VRE"). However, we also reported service difficulties on Amtrak's routes in the South "distant from the Conrail lines added to the CSXT system through the Conrail Transaction" (*id.* at 57), and on MARC's Camden Line and Brunswick Line.

During the period June 1, 2000 through May 31, 2001, CSXT has maintained its generally positive relationships with MBTA, Metro North, NJT, SEPTA and VRE. CSXT continues to believe, as it did last year, that the Conrail Transaction has had no significant adverse effect on these commuter services, and indeed, that commitments made by CSXT in connection with Finance Docket No. 33388 have provide^d benefits to a number of these passenger agencies. With respect to Amtrak, CSXT has maintained good on-time performance on the Conrail lines now being operated by CSXT, but CSXT has not yet achieved satisfactory on-time performance over certain lines in the South. With respect to MARC, CSXT is pleased to report significant progress since the First Submission. MARC on-time performance has improved significantly, and CSXT and MARC entered into a new agreement that was approved by Maryland's Board of Public Works on December 20, 2000.

1. 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. During the past year, reports were submitted on August 21, 2000, November 9, 2000, March 1, 2001, and May 25, 2001.

In the March 1, 2001 report, Amtrak reported that "on ex-Conrail lines now operated by CSX, the on-time performance of most Amtrak trains (which averaged 90.9%) continued to exceed performance during the one-year 'base period' immediately prior to the Conrail acquisition (which averaged 84.7%)." With respect to Amtrak trains operating over CSX's pre-Conrail system, Amtrak reported improvement in the performance of most trains in the past year. However, Amtrak reported that delays persisted on the Sunset Limited between New Orleans and Jacksonville through December 31, 2000, although the completion of maintenance work since then had produced some improvement in this train's performance.

In the May 25, 2001 report, Amtrak reported even better performance on former Conrail lines for the first quarter of 2001 (92.7%). However, Amtrak noted that on-time performance on certain routes on CSX's pre-Conrail system, while improved from 2000, remained below levels prior to the Conrail Transaction's implementation.

CSXT concurs with Amtrak's assessments. As reported, Amtrak's performance in the north has continued to be very good. The Sunset Limited's on-time performance improved substantially from last year's 39% to 85% during

the first quarter of 2001. However, CSXT has not been satisfied with service between Washington, DC and Florida (Amtrak's Silver Service and Auto-Train). CSXT is actively working with Amtrak to improve performance on this route.

As we reported last year, CSXT management continues to focus attention 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. CSXT and Amtrak continue to participate in the "Partners in Performance" program which brings local CSXT and Amtrak management together to address problems on the local level.

2. Chicago Metra

CSXT continues to comply with its agreement with Metra dated February 19, 1998. The operations protocols for the movement of Metra trains through the 75th Street (Forest Hill) interlocking (controlled by CSXT), Belt Junction interlocking (controlled by the IHB), and Chicago Ridge interlocking (controlled by the BRC) are working as designed.

3. MARC

MARC on-time performance averaged an excellent 95% during the period January 1 through April 30, 2001, a significant improvement over the performance we reported in the First Submission. In addition, CSXT and MARC entered into a new agreement, effective through June 30, 2003, that was approved by Maryland's Board of Public Works on December 20, 2000. The agreement provides for \$30 million in capital investment by MARC and \$6 million in capital

investment by CSXT to enhance capacity, especially on the Camden Line. A penalty/incentive provision further provides that penalties paid by CSXT when it fails to achieve the agreed level of on-time performance and incentive payments paid by MARC when CSXT exceeds the agreed level of on-time performance shall be deposited into a fund to finance further capital improvements. The agreement also provided for schedule changes to reduce conflicts between MARC trains that took effect on April 30, 2001.

Progress was made on a number of capital improvements during the past year. CSXT's construction of facilities for the new Frederick service is on schedule for the targeted start-up date of January 2002. CSXT also continues to participate in planning and preliminary engineering/environmental assessments for the Penn Line Connection (to the Camden Line). Finally, federal funding has been earmarked for a project to modernize signaling and add higher-speed crossovers between Weaverton, MD and Martinsburg, WV and CSXT is presently designing the improvements.

4. MBTA

MBTA's on-time performance on the Boston Main Line (controlled by CSXT) has continued to be 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). We reported in the First Submission that CSXT agreed to extend, as of May 8, 2000, six existing MBTA train schedules on the Boston Main Line from Framingham to Worcester (equivalent to three round

trips). This year, CSXT agreed to add three additional round-trip schedules between Framingham and Worcester commencing April 30, 2001.

As provided in the October 31, 1997 agreement, CSXT continues to cooperate regarding MBTA's proposed extension of commuter service to Fall River and New Bedford. Construction of four replacement bridges is underway and property acquisition and operational agreements are being negotiated. MBTA's goal is to introduce service to Fall River and New Bedford in 2005. In addition, although not required to do so by the 1997 agreement, CSXT is negotiating with MBTA regarding the extension of MBTA's Old Colony Service Line to Greenbush.

5. 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. In our First Submission (at 61), we reported "some operating problems [on the Metro North Line south of Poughkeepsie] 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)." During the past year, CSXT operations over Metro North south of Poughkeepsie have improved but are still not at a quality level acceptable to CSXT. Tightened mechanical inspections have significantly reduced the number of third rail "hits" (cars activating the third rail detector). However, other mechanical problems are still occurring. Since the

majority of freight train operations (both CSXT and CP) are at night, these operating problems have not generally affected Metro North commuter operations. CSXT will continue its efforts to address these mechanical problems until they are satisfactorily resolved.

Since the First Submission, CSXT has commenced to participate in the "East Side of the Hudson Users" task force that has been formed to plan for growth in train operations by both freight and passenger users between Albany and New York. The other participants include Amtrak, Canadian Pacific, Metro North and the New York State Department of Transportation.

6. 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. CSXT participates in regular coordinating meetings with NJT.

Construction of NJT's Townley Station on the NK to Aldene line segment of the Lehigh Line (controlled by CSAO) is under construction by a contractor with no reported railroad problems.

We reported last year that the former Conrail Bordentown Secondary was sold to NJT for construction of a light rail line between Trenton and Camden. This year, Conrail filed with the STB a petition for abandonment of that segment of the former Conrail River Line south of the Weehawken Tunnel at North Bergen, NJ,

to accommodate NJT's new Hudson Bergen light rail service.¹⁵ If the Board grants the abandonment petition, CSXT will shift its freight traffic from the River Line to the parallel "Northern Branch" once the Northern Branch is doubletracked and two highway grade separations are completed.

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 point where any final decision can be made. Two studies are at the mid-point of a two year process: (1) restoration of commuter rail service (which ceased operation in 1982) on the former Reading line between West Trenton and Bound Brook, and (2) restoration of commuter rail service (which ceased operation 40 years ago) on the former New York Central "River Line" on the west side of the Hudson between Ridgefield, NJ and West Nyack, NY with possible extension to West Haverstraw. Several other studies related to the establishment of new passenger service on freight rights-of-way are being conducted.

¹⁵ See *Conrail-Abandonment of the Weehawken Branch-in Hudson County, NJ*, STB Docket No. AB-167 (Sub-No. 766N); *Conrail-Abandonment of the River Line-in Hudson County, NJ*, STB Docket No. AB-167 (Sub-No. 1067N).

7. 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, including with respect to SEPTA's R3 and R8 passenger services which operate over portions of the CSXT Trenton Line.

8. VRE

On-time performance averaged 92% during calendar year 2000 and increased to an excellent 97% during the period January-April 2001. VRE ridership has also continued to increase over the past year. This record is particularly good in light of the fact that only 5 miles of the 54-mile third main track VRE has committed to build is presently in place.

During the past year, CSXT increased track speed through the Virginia Avenue Tunnel from 10 mph to 25 mph by modernizing the cab signal system and renewing all tracks. These improvements allow CSXT trains to move more quickly west of the tunnel where they share the line with VRE trains. CSXT also completed rehabilitation of the Neabsco Bridge, located just south of VRE's Rippon Station, which increased the track speed across the bridge from 40 mph to 70 mph. In addition, construction is underway on a new interlocking junction with NS in Alexandria that will double both operating speeds and capacity when it is completed (scheduled for late 2001). Moreover, CSXT, VRE and Virginia's

Department of Rail and Public Transportation completed during the past year a number of capacity studies and have selected several additional capital projects as priority construction projects.

VRE's agreement with CSXT was extended through May 31, 2001.

Negotiations are underway on a new agreement.

IX. CHICAGO OPERATIONS/IHB

The Board expressed interest in this topic by specifically calling for oversight as to the impact of the Transaction within the Chicago Switching District (sometimes called the "Chicago Terminal"), including the effect of the change of ownership of IHB.¹⁶

In response to that, CSX in last year's submission (CSX-1 at 63-71) provided a lengthy description of the importance of Chicago as the largest freight rail hub in the United States and indeed, on the North American continent, and its role as a rail gateway between East and West and between the United States and Canada. A discussion of the three major switching railroads, the issues discussed by the parties in the Conrail case, and the first-year operations in Chicago

¹⁶ 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).

following the June 1, 1999, split of Conrail, was presented. We will not repeat that discussion here.

CSXT's experience over the past twelve months has been that Chicago Terminal operations are, with an exception noted below, working very well. The completion of important infrastructure projects and the cooperative efforts of the carriers in the Terminal have allowed the Terminal to accomplish an unprecedented level of fluidity. While by no means perfect, the progress that has been made is noteworthy and promises more success in the future.

All this is borne out by key measurements provided weekly to the Board. For the four weeks of April, CSXT reported terminal dwell times at Barr Yard as 21.6 hours in 2001, compared to 24.3 hours in 2000. Blue Island Yard reported 22.5 hours dwell in 2001 compared to 25.75 hours in 2000. Dwell times currently are at historic lows in the Chicago area. Also provided to the Board are reports of CSXT interchanges to foreign roads in the Chicago area. The latest report (May 16, 2001) shows 76.1 per cent of deliveries in the early-to-two-hours-late category; compared to 55.6 percent in that category a year ago. Similarly, the deliveries more-than-six-hours-late decreased from 16.9 per cent last year to 10.7 per cent for the last three weeks prior to May 16.

While many capital expenditures have been made by CSXT and other carriers, the most direct benefits have grown from track and signaling improvements on the Barr and Blue Island Subdivisions, including improvements in the Barr Yard vicinity made possible by the successful resolution of the Cook County Forest Preserve issues. These upgrades have greatly facilitated the flow

of traffic to and from Barr Yard, IHB's Blue Island Yard, 59th Street Intermodal Facility, and interchanges with BRC, BN, UP, CN and WC.

CSXT is particularly pleased with the level of cooperation among carriers on bilateral and multilateral bases. Working one on one with Western roads, CSX has found new opportunities for trains to operate "overhead" through the Terminal. With one Western carrier, traffic has been shifted from the Belt Railway of Chicago (BRC) where it had been classified to direct interchange at the IHB's Blue Island Yard. The Western road has agreed to preblock this traffic into three blocks, all for CSXT forwarding. One block of multilevel cars moves directly to Toledo where the traffic is merged into CSXT's automotive train network, avoiding further switching at Willard or Cumberland. Traffic in the other blocks move far into CSXT service territory before classification is necessary. Transit times are improved for all cars, but the multilevel traffic in particular has saved two to three days of total transit time.

In reciprocation, CSXT has agreed to work closely with that carrier's car management team to route its empty freight cars back to it in blocks destined for key yards, thus saving that Western road handling and delays in Chicago. Indeed, having identified categories of that road's empty freight cars that were ultimately returning to one State, CSXT has implemented a new arrangement to direct those cars via an alternative interchange, thus bypassing Chicago, saving hundreds of miles of empty movement and helping its Western partner get the empty cars to shippers days earlier than would otherwise be possible.

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Daily phone calls between CSXT's and a second Western road's operations staffs have enabled that carrier to save time and handling on cars passing through Chicago for forwarding to CSXT. Four to five times a week, through consultation between operating departments, that Western road will operate a train of interchange traffic with CSXT destined for points at or beyond Nashville or Birmingham. When volumes justify, this action enables an entire train of Western cars to be handed off and almost immediately depart for those intermediate locations in the CSXT network. Thus, classification in Chicago is avoided and significant improvements in transit time are made possible.

These, of course, are just some notable examples. Similar examples could be cited as to cooperative efforts involving every other major carrier having a presence in the Chicago Terminal.

Multilateral cooperation has also proven to be excellent. The Chicago Rail Carriers Association has demonstrated the value of dedicating time and resources to coordination among roads operating in the Terminal. For example, by agreement among the members, each carrier was required to develop a winter plan that could be implemented when inclement weather caused congestion within the Terminal. This past Winter, when severe weather led the BRC to declare a snow emergency, each carrier implemented a prearranged plan to divert traffic. CSXT's plan called for interchange traffic with Burlington Northern to be rerouted. With predesigned alternative blocking plans available for immediate entry into each carrier's train operating systems, the changeover to implement the contingency plans was immediate and flawless.

Twice-daily conference calls of operations managers in the Terminal enable each to keep aware of the others' situations. One particularly successful effort has been the commitment to coordinate curfews for track maintenance. Obviously, curfews within the terminal itself will force the holding of trains or the rerouting of traffic between yards. But equally important for Chicago, with the 600-plus trains that operate there every day, is the rate of flow of traffic in and out of the Terminal. By ensuring that all carriers are aware of curfews outside the Terminal that could lead to surges of trains into the Terminal, all can plan accordingly and avoid sudden congestion that can create difficult to remedy situations.

CSXT can report that it has received no complaints regarding the fairness of IHB's dispatching in the period reported on.

While there have been a few minor changes to Chicago interchange arrangements with the merged CN-IC, CSXT has not identified any impact on its operations as a consequence. CSXT has, however, had a continuing problem with respect to a portion of a GTW-controlled line known as Track No. 239, which is located just north of CSXT's new 59th Street intermodal facility in Chicago on right-of-way leased by CN from NYC. CSXT control of Track No. 239, which has not been used in revenue service by CN/GTW for several years, would facilitate the entry and exit of trains using the 59th Street intermodal terminal and enhance the proper functioning and efficiency of that multimillion dollar terminal, as envisioned in CSXT's application for control of the Conrail assets. In addition, CSXT control of Track No. 239 would avoid current blockages of the adjacent B&OCT mainline, thereby reducing congestion in a busy Chicago mainline

corridor, eliminating costs associated with terminal and mainline delays, and enhancing the fluidity of Chicago area operations generally. CSXT's efforts to exercise its right to cancel the property lease with CN and acquire control of the track have met with resistance from CN/GTW, thereby prompting CSXT to file an adverse abandonment (or, in the alternative, discontinuance) application now pending before the Board in Docket AB-31 (Sub-No. 38), *CSX Corporation and CSX Transportation Inc. — Adverse Abandonment — Canadian National Railway Company and Grand Trunk Western Railroad, Inc.*

X. IMPLEMENTATION OF GENERAL CONDITIONS

Here we present CSX's report on the general (*i.e.*, non-environmental) conditions which are found in Decision No. 89 starting at page 173, and which are not elsewhere discussed herein.¹⁷

¹⁷ Environmental conditions are discussed in Part XI of this submission.

1. NITL Conditions, As Modified by Board (Cond. 20)¹⁸

A. Conrail Transaction Council

The Conrail Transaction Council was created as part of the CSX/NS settlement with the National Industrial Transportation League (NITL). 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. A detailed discussion of its history prior to the Split Date and in the first 12 months thereafter was presented in last year's submission. CSX-1 at 73-76.

As service by CSXT and NS improved, the need for frequent meetings of the Transaction Council waned. By late summer of 2000, a consensus began to build among members that, should the carriers perform well through the "Fall Peak," further meetings of the council might well not be needed. With successful performance through the Fall Peak, at the December 2000 meeting, the council

¹⁸ The NITL Settlement is discussed in Decision No. 89 at 53-58.

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

We have also omitted discussion of the following conditions which were discussed in last year's submission and were completely fulfilled without continuing obligations on CSXT's part at that time: Conditions 10, 20 (partial) (shared asset area manuals, preparation for implementation, Board oversight); 25; 34; 41; 42; 56; and 64.

unanimously agreed that further meetings would be only on an as-needed basis. The Transaction Council has not met since, but is subject to recall for further meetings should events so require.

The Conrail Transaction Council proved to be a highly valuable forum for CSXT and, CSXT believes, for the shipper members as well. While CSXT conducted its own, extensive and effective customer communications effort, the Transaction Council provided a forum for give and take with national representatives of customers. Particularly important to CSXT was the success in communicating through trade association participants the critical need for customers to be prepared on Split Date with the information systems changes necessary to properly route traffic over the divided Conrail routes. Above all, the Transaction Council trade association members brought to the table their unique perspectives on the integration process and, through dissemination of information to their membership, contributed a great deal to the process. At the STB's direction, the Council 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. "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 continued to comply with this condition.

C. 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 § 2.2(c) 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. There have been no arbitrations involving CSXT under, and as far as CSXT's management knows, no disputes concerning, this provision.

D. 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).

E. Gateways

CSXT has continued to comply with this condition.

F. 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. Thus, CSXT has fully complied with this condition.

G. Facilities within the SAAs

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

2. **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)¹⁹**

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

3. **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.

4. **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 VIII, 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 solely concerns NS.

¹⁹ We thus quote the texts of the Board's conditions henceforth in this Part.

D. City of Indianapolis

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

E. UTU

This settlement has been complied with.

- 5. 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 with and will continue to comply with this condition. It has submitted four quarterly reports covering, *in toto*, the period from March 1, 2000 through February 28, 2001, in addition to the five earlier reports mentioned in last year's submission. CSX-1 at 80. Further, consistent with its prior commitment and the Board's expectation in Decision No. 5 in this proceeding (at page 32, n.55), CSXT is regularly supplying a copy of each quarterly report to the designated representative of the NYCEDC.

6. **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)**

An extensive report on the status of this condition and on IP&L's attempts to enlarge it, current through May 31, 2000, was furnished in last year's submission by CSX (CSX-1 at 80-86), and NS also discussed this condition in its submission of June 1, 2000. NS-1 at 37-38. CSX believes that it has complied fully with the terms of the condition and that there has been no demonstration whatsoever that the condition is inadequate to perform the role which was intended for it by the Board. As discussed by CSX in prior filings with the Board, IP&L's Stout Plant now has more options with respect to obtaining coal than it had before the Split of Conrail.

IP&L, subsequent to June 1, 2000, has pursued two different forensic paths, both leading to a United States Court of Appeals, in its effort to have ISRR given direct access to the Stout Plant, which historically had been directly served only by INRD (a partially owned subsidiary of CSX).²⁰

First, IP&L continued to prosecute its Petition for Review in the United States Court of Appeals for the Second Circuit concerning the Board's decision

²⁰ NS was granted both (i) direct access through trackage rights and (ii) access through switching as a consequence of the condition in question imposed by the Board. IP&L's build-out option was also recognized and protected. Decision No. 89 at 117 and n.180, 177.

served May 20, 1999. That decision declined to reverse the Board's Decision No. 89 and grant ISRR direct access to Stout, in advance of any experience under the split operations and the condition following the "Split" of Conrail. Following oral argument before a panel of the Second Circuit on February 5, 2001, the Court unanimously upheld the Board's Decision on April 25, 2001.

Second, following the filing of CSX's and NS's submissions on June 1, 2000, IP&L filed comments and evidence seeking, once again, authorization for ISRR to provide direct service to the Stout Plant. IP&L also asserted that the trackage rights fee of 35 cents per car mile, negotiated between INRD and NS for the movement of approximately three miles over the INRD segment necessary to enter the Stout Plant, made it economically burdensome to NS to use the direct access option provided it under the condition. CSX and NS filed comments and evidence in rebuttal to the assertions made by IP&L. CSX-2 at 13-27 and Hoback VS; NS-2 at 26-32 and Clark VS. All of IP&L's contentions were rejected on the facts, law, and policy, by the Board in Decision No. 3, served November 30, 2000.

IP&L on January 4, 2001, filed a Petition for Review of the Board's November 30, 2000, decision in the United States Court of Appeals for the District of Columbia Circuit. On February 6, 2001, IP&L moved the D.C. Circuit for an order holding IP&L's own case in that Court in abeyance until a decision was rendered before the Second Circuit with respect to the Board decision of May 20, 1999. IP&L's motion was granted by the D.C. Circuit on April 12, 2001. Following the April 25, 2001, decision of the Second Circuit, the D.C. Circuit, CSX and NS each moved for summary affirmance of the Board's decisions of

November 30, 2000, by the Court, and the Board supported these motions. IP&L opposed the motions and the motions are under consideration by the Court. If the motions are not granted, it is expected that the Court will establish a schedule for briefing and oral argument of the case.

CSX understands that the long-term INRD-IP&L contract, entered into as of July 2, 1996, and which commenced in 1997, under which substantially all of the Stout Plant's coal requirements were to be furnished by INRD became open for renegotiation or replacement this year. In the winter of 2000-2001, IP&L solicited bids from CSX, and CSX responded, among other bids, with bids for coal originating at certain CSX-served mines for delivery to Stout by INRD following the CSX movement. On March 27, 2001, AES Corporation completed its acquisition of IP&L. AES operates a number of coal-burning electric utilities in various locations in the United States, some of which are served by CSX. CSX understands that substantial management personnel changes have been effected at IP&L insofar as the procurement of coal is concerned. CSX also understands that INRD is engaged in negotiations with IP&L for a replacement contract at Stout. CSX is, of course, not privy to any negotiations between NS and IP&L with respect to the delivery of coal from origins on the lines of NS, ISRR or other carriers to Stout in whole or in partial replacement of the 1996 contract between IP&L and INRD.²¹

²¹ The contract is Highly Confidential and so its exact terms are not quoted here. Some provisions of the contract may be found in the Highly Confidential version of CSX/NS-178, Volume 3D, starting at page 396, in the main Docket.

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

As reported in last year's filing (at 86-87), CSXT has complied with this condition.

8. **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 complaints concerning NSR's handling in the MGA.

9. **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)**

CSX's submission of June 1, 2000, gave the history of the negotiations, Board litigation, and other matters leading up to the institution by CP of trackage-rights service under this Condition in July 1999, and the performance of that service through the date of the report (CSX-1 at 88-94), and we will not repeat that here.

Since June 2000, CSX and CP have each continued to operate trains over the Hudson Line through Harlem River Yard to Oak Point Yard in the Bronx, and to interchange with NY&A at Fresh Pond Jct. in Queens for further service west to

Brooklyn or east to Long Island, under the terms of a trackage rights arrangement entered into as a consequence of the rights granted to CP by the Board.

At the present time, CSXT operates two trains northbound from Oak Point to Selkirk Monday through Friday, and a regular train south from Selkirk to Oak Point seven days per week. An additional single train is operated north on Saturday and Sunday, and once a week an extra southbound train is run from Selkirk south to move empty cars used for the transport of solid waste down to Oak Point. Plans are in place for the operation of additional trains to serve a new customer commencing on July 1, 2001. CSX plans to commence intermodal service on the line between Selkirk and Oak Point during the present year, assuming an adequate customer base is established and other conditions on commencement of service are met. In addition to the foregoing, CSX operates three local trains on the line Mondays through Fridays.

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. CSXT remains committed to fair treatment of its tenant, CP, under the arrangements prescribed by the Board and its contractual arrangements with CP. CSXT believes it has fully complied with the Board's condition.

Each of CSXT and CP has sought to expand its operations and service offerings in the "East of the Hudson" New York City area market through both cooperation and competition.

CSXT and CP have cooperated in:

- Negotiating appropriate fees with Metro North, long-term lessee of the line between Poughkeepsie and the Oak Point Link, to obtain rights to move the new generation of heavy lading cars (286,000 pounds) over the line. CSXT has also obtained permission from the Department of Transportation ("NYSDOT"), owner of the Oak Point Link, for similar permission for both carriers to move cars of that weight over this segment to Oak Point Yard. These arrangements will permit both CP and CSXT to take advantage of the greater economies associated with this equipment as each attempts to attract more rail freight business.
- Upon negotiating similar agreements with Amtrak for rights over the Hell Gate bridge to the Fremont Secondary, and upon NY&A obtaining similar rights agreement with the LIRR over selected portions of its tracks, the use of these cars will be further expanded throughout the east of the Hudson rail freight market.

CSXT and CP have also cooperated with each other, and with the operator of the Harlem River Yard, to design additional tracks needed to accommodate simultaneous intermodal service to that facility by both railroads (standard TOFC for CSXT, and ExpressWay, an intermodal service involving a slightly higher

clearance, for CP). Introduction of competitive intermodal service may begin as soon as:

- A vertical clearance obstruction at Yonkers is removed by NYSDOT/Metro North (scheduled for Autumn of 2001);
- High car detectors are installed at both the north and south ends of the route;
- The additional tracks are funded and installed at Harlem River yard; and
- Satisfactory rates and service packages are negotiated independently by CSXT and CP with the Yard operator and with prospective customers.

In competitive terms, both carriers have sought to maintain and expand transload (transfer of bulk materials from rail to truck) facilities in the area.

- CP has established a proprietary transloading facility at Harlem River Yard.
- CSXT has reached agreement on a short-term renewal of its lease at Hunts Point Market where it has such a facility.
- CSXT sought, unsuccessfully, to obtain a sub-permit for a new transloading facility at the 65th Street Terminal in Brooklyn, but the site was awarded instead to the CP by the New York City Economic Development Corporation ("NYCEDC") in connection with its award to CP of the position of operator of the restored rail float bridges at that terminal.

- CSXT has negotiated agreements with the NY&A to market transload services at two other smaller locations at Maspeth and Farmingdale in Queens.

Rail freight traffic to and from East of the Hudson points has continued to increase since operations over the combined CSXT/Conrail system began to stabilize in the Spring of 2000. The number of merchandise cars moving south on CSXT trains over the Hudson line into the New York Market has doubled in the past 18 months from approximately 30 - 40 per day to 80 - 100 per day. The number of carloads moving north on CSX trains out of the area has also increased, from about 15 - 20 per day to about 30 - 40.

Most of the inbound CSXT traffic can be attributed to the success of the CSXT's ExpressLane Service involving the expedited movement of agricultural products from California to the Hunts Point Market that has been developed by CSXT and UP. This new service has meant faster and more reliable transit times, and has led customers at the Hunts Point market to be more willing to try rail service. Additional inbound traffic is also associated with successful joint marketing efforts between CSXT and the NY&A for service to customers in Brooklyn, Queens and eastward on Long Island.

Most of the additional outbound CSXT traffic consists of increases in the shipment of municipal solid waste that is transferred from truck to rail at two locations in the Bronx. As one of the two shippers has put additional equipment into service, and has developed the experience necessary to coordinate its operations with the multicarrier rail supply chain extending to the landfill in

Virginia, the amount of municipal solid waste that can be regularly transported on a daily basis has increased. It is expected to continue to grow if shipper proposals to construct additional storage tracks, and to develop a new barge to rail transfer station in this area are, implemented.

In addition to prospective growth of transload business already referred to, CSXT is in the process of introducing another new specialized service, involving the movement of aggregates in alternate day 60-car unit trains to a rail siding in the Bronx. If successfully implemented, this will have the effect of replacing a significant number of truck trips over the George Washington Bridge through the Bronx.

- 10. 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)**

As reported in CSX's June 1, 2000, filing (CSX-1 at 95), 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 11, below.

11. **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)**

In terms of consultation and cooperation with NY City and State officials regarding rail planning and coordination, there have been a series of regular, increasingly productive meetings between CSX and a number of parties.

East of the Hudson Task Force

Chaired by Representative Nadler, and funded by the several freight railroads, the State of New York, and the FRA, this group meets on a bimonthly basis to identify barriers and opportunities with respect to ways to increase rail freight east of the Hudson, and to attempt to facilitate actions to promote such rail service.

Among the participants are: CSXT, NS, CP, NY&A, P&W, Cross Harbor RR, Metro North, LIRR, Amtrak, NYSDOT, NYCEDC, the Port Authority of NY/NJ, and Rep. Shays of Connecticut.

The Task Force has served as a useful sounding board for expression of the various parties' interests, and has helped to foster mutual understanding and a spirit of cooperation in addressing several critical needs, including the following:

- Removal of vertical obstructions along the Hudson, Bay Ridge and LIRR rail lines to permit single stack CSXT TOFC and CP ExpressRail intermodal service;
- Negotiation of fees by the freight railroads for the use of passenger agency-controlled tracks to pay for increased maintenance costs

associated with the movement of the new generation of heavier freight cars;

- Development of additional yard track and associated infrastructure at existing facilities at Harlem River, Oak Point, and Fresh Pond to accommodate short-term growth in rail traffic for CSX, CP and NY&A;
- Acquisition and development of new rail yards and associated infrastructure to accommodate future long-term growth in rail freight traffic. Candidate sites include the former Pilgrim State Hospital Site on Long Island, the Phelps Dodge brownfield site in Queens, plus NYCEDC- and Port Authority-controlled sites in Brooklyn and Staten Island.

NYSDOT Hudson Line Users Group

Convened by NYSDOT, this group of private and public rail operators (CSXT, CP, NY&A, Metro North, Amtrak, and LIRR) has been meeting on a bimonthly basis to work out the technical details of several of the issues noted above, including scheduling and funding of:

- Clearance studies and improvements;
- Track and switch layouts;
- Computer simulations of alternative demand scenarios necessary to develop coordinated capital and operating plans for possible future shared use of passenger and freight tracks east of the Hudson.

New York Metropolitan Transportation Council
Freight Transportation Working Group

This NYC metropolitan planning organization is undertaking a number of initiatives designed to improve the movement of goods throughout the Greater New York City region. It meets on a monthly basis to gather and disseminate information from various parties, including public agencies, private companies such as the railroads, and members of citizen groups and the general public.

CSXT has been an active participant in the following initiatives:

- Discussion of rail freight investments, operations, plans and issues in the New York City region;
- Preparing an updated inventory of all rail freight facilities in the region;
- Preparing and reviewing a comprehensive scope of work related to a comprehensive Goods Movement Plan now under development by a consultant team; and
- Discussion of specific issues with respect to local community and environmental concerns regarding truck and rail operations in the Bronx.

NYSDOT Study of Redevelopment of former Pilgrim State Hospital

- CSX participated as a member of the Advisory Committee in identifying, reviewing, and reacting to proposals for the development of a major new intermodal facility to be considered at this site in Islip on Long Island, near the LIRR tracks used by NY&A for freight service. This included both the types of rail freight business that might be conducted through the

location, and the issues and challenges associated with such a development.

NYCEDC Major Investment Study

- CSX has participated as a member of the advisory committee of NYCEDC Major Investment Study of Cross Harbor Freight Movement, which was conducted over the past two years, concluding with a final first phase report in the fall of 2000. The first phase report expresses the view that a rail tunnel between Brooklyn and Jersey City or Staten Island would be feasible. It assumes that the landside costs at each end (yards, track, signals) would be paid by public funds, and the cost of the tunnel itself (estimated at \$1 billion for a single-track tunnel) would be borne by the freight railroads. CSX has numerous concerns and reservations concerning the tunnel, but nonetheless, it expects to continue to offer its cooperation and insights as to how a rail float or tunnel might relate to its network, as the City prepares to go forward with the next phase of its feasibility study — a Draft Environmental Impact Analysis, which is scheduled to begin later this year.

Other Activities

- CSX has also participated in a regional forum of public and private interests conducted by the Port Authority of NY/NJ regarding ways to promote enhanced rail float service across the New York Harbor.
- In response to an RFP by NYCEDC, CSX considered participating with the NY&A and CP in a bid to operate a rail float at 65th Street in

Brooklyn. However, it concluded that the economics did not support an investment on CSXT's part for such an undertaking at this time.

Subsequently, as noted in paragraph 9, above, the City took action to award the contract to CP.

- CSXT is continuing to discuss with the Port Authority of NY/NJ, and with both New York State and City interests, other possible investments in rail infrastructure that would enhance our ability to handle increased volumes of Port related and cross harbor rail freight business — including an enhanced rail float operation and/or tunnel to Jersey City and/or Staten Island.

12. **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. There have been discussions as to possible new CSXT-P&W arrangements, but no mutually agreeable projects have been reached. CSXT will continue to evaluate mutually beneficial proposals for such cooperation with P&W.

13. **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. A dispute with a shipper, OxyChem, as to CSXT's compliance was raised in the *Buffalo Rate Study* proceeding (Docket No. 33388 (Sub-No. 90)), and was resolved in favor of CSXT

by the Board in its Decision No. 6 in that matter, served February 2, 2001, at 19-21.²²

14. 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)

CSX's June 1, 2000, Report discussed the formation and activities of this group, which in the first year of the integration of Conrail met in various locations throughout the Greater Buffalo area, generally on a monthly basis. Those meetings were useful in exchanging views as to the needs of the area for rail services and CSX's ability to deal with these needs. CSX believes that the contacts made and the communications channels established during the active period of the Committee created relationships which have been, and will continue to be, useful in establishing continuing cooperation between CSX and government and civic leaders and shippers throughout the region. In particular, the contacts have been useful in connection with interaction with groups represented in the Committee concerning developmental projects such as the improved TRANSFLO and intermodal facilities discussed in Part II above. CSXT has also continued to work individually to address local community issues with the communities involved.

CSXT remains dedicated to working with local organizations in the Greater Buffalo area in a variety of ways and particularly in furthering the economic redevelopment of the area. As noted in Part II above, Gerry Edwards, CSXT's

²² OxyChem also claimed that the condition in ordering paragraph 37 was being violated by CSXT. The Board found that no condition was being violated by CSXT.

Director of Industrial Development for Western New York, is a member of three major economic development groups focused on the Greater Buffalo area and/or the State of New York, and attends meetings of, or otherwise works with, a dozen other civic groups in the Greater Buffalo area. As developed in Part II, this accords with CSXT's emphasis on the improvement of customer service facilities in the region that will increase the share of transportation movements performed by rail and contribute to the economic development of the area.

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

CSX believes that it has adhered to all representations it made concerning investments in new connections and upgraded facilities in the Buffalo Area. The submission it made last year indicated that CSXT had made capital expenditures of about \$2.3 million in the Greater Buffalo area for intermodal ramp expansion, rail relay in yards and on the main line, improvements to the CSX Trans-Flo facility and to the mechanical shop. A further discussion of Buffalo infrastructure was provided in the joint report filed in September 2000 by CSX and NS in the *Buffalo Area Infrastructure* matter, Finance Docket No. 33388 (Sub-No. 93). A continuation of the report made in that case appears in Part II of this report, above. CSX also reported last year that CSXT had 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. In terms of CSX's properties in the Greater Buffalo area, as reported in more detail in Part II above,

CSXT believes that, at the present time, capital improvements should be aimed at direct customer service, since it believes that the capacity of its existing infrastructure in terms of rail operations is presently adequate.

- 16. 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.

- 17. 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.²³

- 18. 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 in that rate study, submitting data and commentary as requested. CSXT has made all required filings to date. The rate study is being handled by the Board in Sub-No. 90 and not in the present proceeding. The first annual round of the three-year study was completed by the Board's Decision No. 6, served February 2, 2001, in that proceeding, which found that CSX (and NS) had used appropriate

²³ See the discussion of Cond. 32, above.

methodology in their reports and that, on average, rail rates for Buffalo had declined as compared to comparable movements prior to the Split of Conrail.

Id. at 14.

19. **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. CSXT will not treat the Conrail Transaction as expanding the reach of such a provision.

20. **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 continued to comply with this condition.

21. **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. CSXT continues to provide unit train run-through service for National Lime & Stone from Spore, OH, to Wooster, OH, via trackage rights over Norfolk Southern between Crestline, OH, and Wooster, OH. CSXT also has the ability to provide unit train run-through service for Wyandot Dolomite from Carey, OH, to Alliance, OH, via trackage rights over Norfolk Southern from Crestline, OH, to Alliance, OH. No shipments have taken place over this route for some time. CSXT understands that the reason for the suspension of shipments is that the receiver prefers to receive the product from an alternative source. CSXT has not received any request for additional single-line service under the terms of the condition, nor are we aware of any complaints regarding the current level of service.

National Lime and Wyandot challenged the adequacy of this condition in court before the United States Court of Appeals for the Second Circuit. Those court challenges were rejected by that Court in a decision rendered April 25, 2001.

- 22. 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.

23. 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) have been reported on by NS. 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, its 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.²⁴

²⁴ Condition Nos. NS-77 through 80 are discussed in Part IV above, dealing with Labor. The environmental conditions, ordered in Condition No. 17 and found in Appendix Q of Decision No. 89, are discussed in Part XI, which follows.

XI. IMPLEMENTATION OF ENVIRONMENTAL CONDITIONS

a. Conditions Applicable to CSXT

CSXT is very close to completing its implementation of the Environmental Conditions imposed by the Board in Appendix Q of Decision No. 89. In CSXT's First Submission filed with the Board on June 1, 2000, CSXT documented its substantial progress in implementing the Environmental Conditions as of that date.

The Board concluded as follows in Decision No. 5 (at 28-29):

The pleadings submitted in the first annual round of the Conrail general oversight proceeding (including the quarterly environmental status reports) establish that CSX and NS are making good faith efforts to comply with the extensive environmental mitigating conditions we imposed when we approved the Conrail transaction. *See Conrail Dec. No. 89*, slip op. at 382-423 (Appendix Q) (setting out the 51 environmental conditions). The overall record does not support the argument of some parties that the railroads have failed to comply with the terms of the existing Negotiated Agreements or to implement our environmental conditions, even though implementation, at times, has taken longer than some communities would like. In addition, the pleadings show that both CSX and NS are committed to working with the affected communities to reach negotiated solutions to the remaining environmental issues related to the Conrail transaction. CSX and NS each continue to enter into voluntary agreements with communities to address localized environmental concerns.

The Board then stated its expectation that complete compliance would be achieved "in due course." Dec. No. 5 at 29.

The Board's positive prediction has been borne out by further progress toward complete compliance made in the past year.

CSXT reported in the First Submission that it had fully implemented many of the Environmental Conditions by June 1, 2000.²⁵ CSXT reports below on the status of those Environmental Conditions that were not fully implemented as of June 1, 2000. In addition to its annual June 1 submissions in this Oversight Proceeding, CSXT has provided regular status reports to the Section of Environmental Analysis on the implementation of the environmental conditions, and, pursuant to the Board's order in Decision No. 5 in this General Oversight Proceeding, slip op. at 33, has also provided quarterly community status reports to the Board regarding CSXT's consultations with local governments and state agencies.

Environmental Condition 9

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

Construction of the grade separation at Randolph Street and the CSXT rail line in Garrett, Indiana was completed in 2000.

²⁵ For a full description of the environmental conditions, *see* Decision No. 89, Appendix Q, at 382-423, as amended in Decision No. 96. In its submission of last year, CSX-1 at 113-29, CSX discussed all of the environmental conditions applicable to CSXT. In this year's filing, CSX has dropped discussion of those conditions applicable to CSXT that were reported to be fully completed in last year's filing or which are matters which require continuous compliance and where the method of CSXT's compliance was fully described last year.

Environmental Condition 10
[Transportation: Highway/Rail At-grade Crossing Delay]

In our First Submission (at 63-71, 117-18), we reported that CSXT was in the process of implementing numerous capital improvement projects to improve freight traffic flows throughout Chicago, including in the vicinity of the Dixie Highway and Broadway - 135th Street at-grade crossings of the CSXT Blue Island Subdivision (Rail line segment C-010). During the past year, CSXT commenced operating over the new Third Main track in the Barr Yard vicinity and completed installation of TCS operation between Blue Island Junction and 75th Street (Forest Hill). With the completion of these projects, as well as the projects that had been completed as of June 1, 2000, CSXT has materially improved the fluidity of train operations on the Blue Island Subdivision.

CSXT is addressing 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) through a planned speed increase from 20 mph to 35 mph facilitated by capital and operational improvements in the area. The speed increase will be implemented in the near future.²⁶

²⁶ We reported in our First Submission that CSXT addressed traffic delay at the W. Noel Avenue at-grade crossing of the CSXT rail line in Madisonville, Kentucky (Rail line segment C-021) by increasing train speeds through Madisonville from 20 mph to 25 mph as of May 2000.

Environmental Condition 11 [Noise]

CSXT entered into 11 additional Negotiated Agreements with responsible local governments pursuant to Environmental Condition 11 since the First Submission, for a total of 31 Negotiated Agreements under Environmental Condition 11. Twenty-nine of those Agreements have been approved by the Board and two are pending. The complete list is 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, approved Decision No. 158
(served June 12, 2000)
18. Village of Grafton, OH, approved Decision No. 159
(served June 12, 2000)
19. Village of Wellington, OH, approved Decision No. 162
(served July 27, 2000)

20. Township of Forward, PA, approved Decision No. 163
(served August 3, 2000)
21. Borough of Fayette City, PA, approved Decision No. 165
(served August 22, 2000)
22. Borough of Lincoln, PA, approved Decision No. 169
(served September 5, 2000)
23. Borough of Newell, PA, approved Decision No. 170
(served October 3, 2000)
24. Borough of Glassport, PA, approved Decision No. 171
(served October 3, 2000)
25. City of Perrysburg, OH, approved Decision No. 172
(served October 13, 2000)
26. Village of Rochester, OH, approved Decision No. 174
(served November 7, 2000)
27. Lorain County, OH, approved Decision No. 176
(served November 28, 2000)
28. Village of Milton Center, OH, approved Decision No. 181
(served March 2, 2001)
29. City of McKeesport, OH, approved Decision No. 182
(served March 2, 2001)
30. City of Weston, Ohio, submitted April 30, 2001
31. Perrysburg Township, submitted May 10, 2001

CSXT has thus fully complied with Environmental Condition 11 in Indiana and Ohio. At the direction of the responsible local governments, CSXT is presently communicating with individual property owners in Elizabeth Township, PA, and Rostraver Township, PA, to complete the implementation of Environmental Condition 11.

Environmental Condition 21 [Four City Consortium, IN]

CSXT entered into a Settlement Agreement with the Four City Consortium on October 26, 1998, which was approved by the Board in Decision No. 114 (served February 5, 1999). CSXT and the Four City Consortium resolved some additional outstanding issues on January 31, 2001.

In our First Submission (at 121-24), we reported on the ongoing program of capital improvements in the Chicago area. In addition to the projects completed as of June 1, 2000, CSXT in the past year commenced operating over the Third Main track in the Barr Yard vicinity and completed the upgrade of the signal system on the Barr Subdivision, as well as other projects in the Chicago area noted in Part II above.

CSXT has regularly consulted with representatives of the Four Cities, as well as with representatives of the IHB and NS, as required by Environmental Condition 21 and the October 26, 1998 Agreement.

Environmental Condition 26 [Greater Cleveland Area, OH]

Pursuant to Environmental Condition 26(C), High-Wide Indicators were installed at Wickliffe and Olmsted Falls in August 2000, and a Wheel Impact

Load Detector was installed at Grafton in December 2000. These installations completed CSXT's implementation of Environmental Condition 26.

Environmental Conditions 31(A) [Fostoria]

Pursuant to Environmental Condition 31(A), CSXT installed a real-time train monitoring system in December 2000. This installation completed CSXT's implementation of Environmental Condition 31.

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

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

Environmental Condition 51 [Negotiated Agreements]

CSXT is in compliance with the terms of its Negotiated Agreements.

In our First Submission, we noted that CSXT had not yet provided the City of Cleveland with the study provided for in paragraph 11 of the June 4, 1998 Agreement relating to the feasibility of operating two additional trains over the Lakeshore Line. CSXT provided that study to Cleveland on March 5, 2001. A number of matters addressed in the June 4, 1998 Agreement involve ongoing consultation between CSXT and Cleveland, such as the construction of noise walls, expenditure of funds for fencing and landscaping, and marketing of surplus properties. During the course of these consultations, some disagreements have arisen between the parties. CSXT and Cleveland are continuing to work together in good faith to resolve these issues as they arise.

**b. Conditions Applicable to the Conrail
Shared Assets Operator ("CSAO")²⁷**

2. Environmental Condition 11 [Noise]

CSAO entered into a Negotiated Agreement with Huron Township, MI, which agreement was approved by the Board in Decision No. 184 (served April 12, 2001). As we reported in the First Submission, CSAO also entered into a Negotiated Agreement with Brownstown Township, MI, approved by the Board in Decision No. 152 (served April 18, 2000). At the direction of the responsible local governments, CSAO is presently communicating with individual property owners in Allen Park, MI, Ash Township, MI, and Lincoln Park, MI to complete the implementation of Environmental Condition 11.

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

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

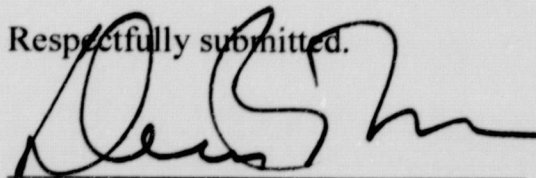
²⁷ CSX's report last year (CSX-1 at 129-32) contained a report on all environmental conditions applicable to CSAO. This year's report drops reference to those CSAO conditions that were reported to be fully completed in last year's filing or which are matters which require continuous compliance and where the method of CSAO's compliance was fully described last year.

XII. CONCLUSION

CSX is beginning to enjoy the benefits of the Conrail transaction, and its performance metrics and financial performance have improved significantly over last year. CSX views this as a platform for further improvements in service and performance to its various constituencies.

The Board's conditions have generally continued to work 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" as far as CSX is concerned.

Respectfully submitted.



Of Counsel:

Mark G. Aron

Peter J. Shudtz

CSX CORPORATION

One James Center

901 East Cary Street

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Nicholas S. Yovanovic

CSX TRANSPORTATION, INC.

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STEPTOE & JOHNSON LLP

1330 Connecticut Avenue, N.W.

Washington, D.C. 20036-1795

Counsel for Applicants

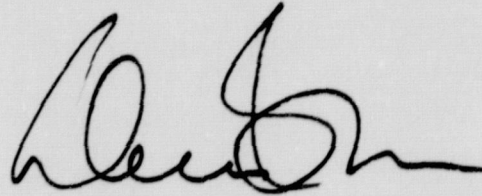
CSX Corporation and

CSX Transportation, Inc.

Dated: June 1, 2001

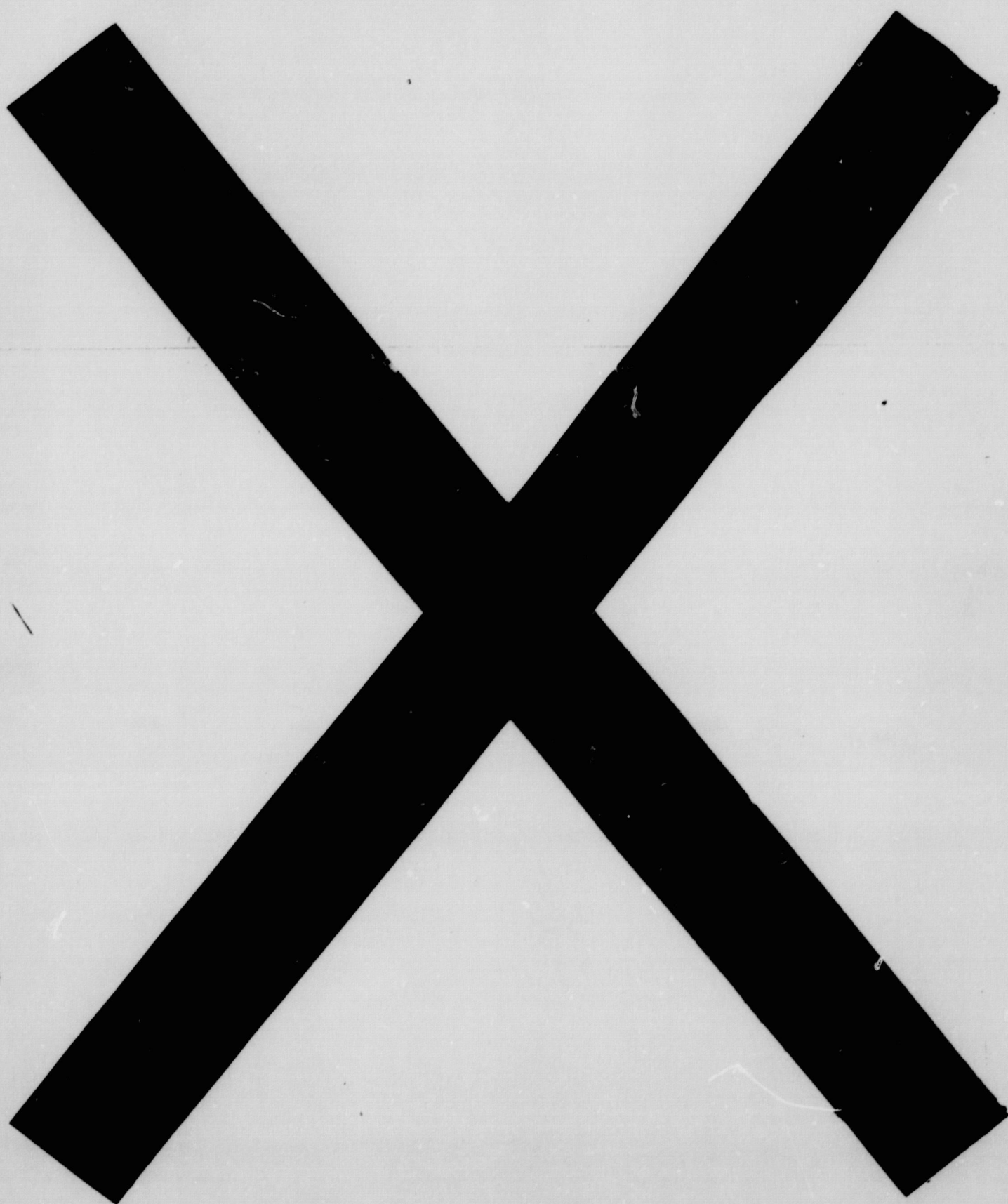
CERTIFICATE OF SERVICE

The undersigned counsel for CSX Corporation and CSX Transportation, Inc. hereby certifies that on this 1st day of June, 2001, a copy of the foregoing "Second 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.



Dennis G. Lyons
ARNOLD & PORTER
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202
(202) 942-5858

*Attorney for CSX Corporation and
CSX Transportation, Inc.*



STB FD-33388 (SUB 91) 7-26-00 D 199385

199385

MCLEOD, WATKINSON & MILLER

MICHAEL R. MCLEOD
WAYNE R. WATKINSON
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RICHARD PASCO

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

ROBERT RANDALL GREEN
LAURA L. PHELPS
GOVERNMENT RELATIONS

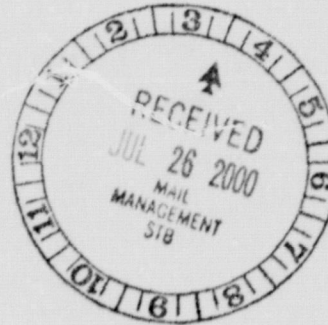
STEPHEN FRERICHIS
ECONOMIST

ENTERED
Office of the Secretary

JUL 27 2000

Part of
Public Record

July 26, 2000



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

Re: Finance Docket No. 33388 - SUB 91

Dear Sir:

I am enclosing for filing the original and twenty-five (25) copies of the following documents:

- (1) A Certificate of Service showing service of the letter of Hon. John D. Porcari, Secretary of Transportation of the State of Maryland, which presents the State's Comments on the progress reports filed by the applicants in this proceeding (copies of this document were originally served on counsel for applicants on July 14, 2000); and
- (2) A Notice of Change of Address for Counsel in this proceeding.

I am also enclosing a 3.5 inch diskette with these two documents. In addition, I am enclosing one additional copy of each which I ask that you date stamp and return to our messenger.

Sincerely,

Charles A. Spitulnik

cc Julia Farr, Esquire
All parties of record in F. D. No. 33388

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C.

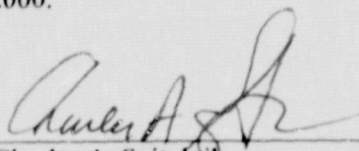
Finance Docket No. 33388 (sub-No. 91)

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

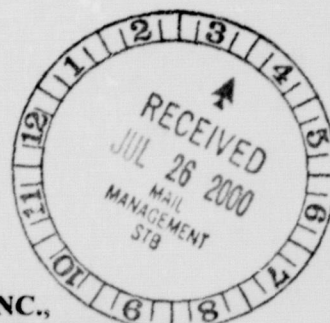
(GENERAL OVERSIGHT)

CERTIFICATE OF SERVICE

I hereby certify that I have this 26TH day of July, 2000, caused to be served a copy of the letter of Hon. John D. Porcari, Secretary of Transportation of the State of Maryland, which presents the State's Comments on the progress reports filed by the applicants in this proceeding by first class mail on all parties of record herein. Copies of this letter were filed with this Board and served on counsel for applicants on July 14, 2000.



Charles A. Spitulnik
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001
(202) 842-2345



Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C.



Finance Docket No. 33388

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

Finance Docket No. 33388 (Sub-No. 69)

**RESPONSIVE APPLICATION –
STATE OF NEW YORK, BY AND THROUGH ITS DEPARTMENT OF
TRANSPORTATION
AND
THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

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 CHANGE OF ADDRESS

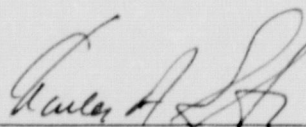
This is to notify this Board and all parties of record in the above-referenced proceedings of the change of address of undersigned counsel, who is counsel for the State of Maryland, the New York City Economic Development Corporation, and the Philadelphia Belt Line Railroad Company.

Please address all further correspondence, pleadings, notices and decisions in these proceedings to counsel at this address.

In addition, please address all correspondence, pleadings, decisions and notices for the City of Cleveland, Ohio 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

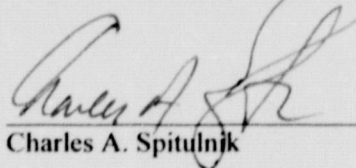
Dated: July 26, 2000

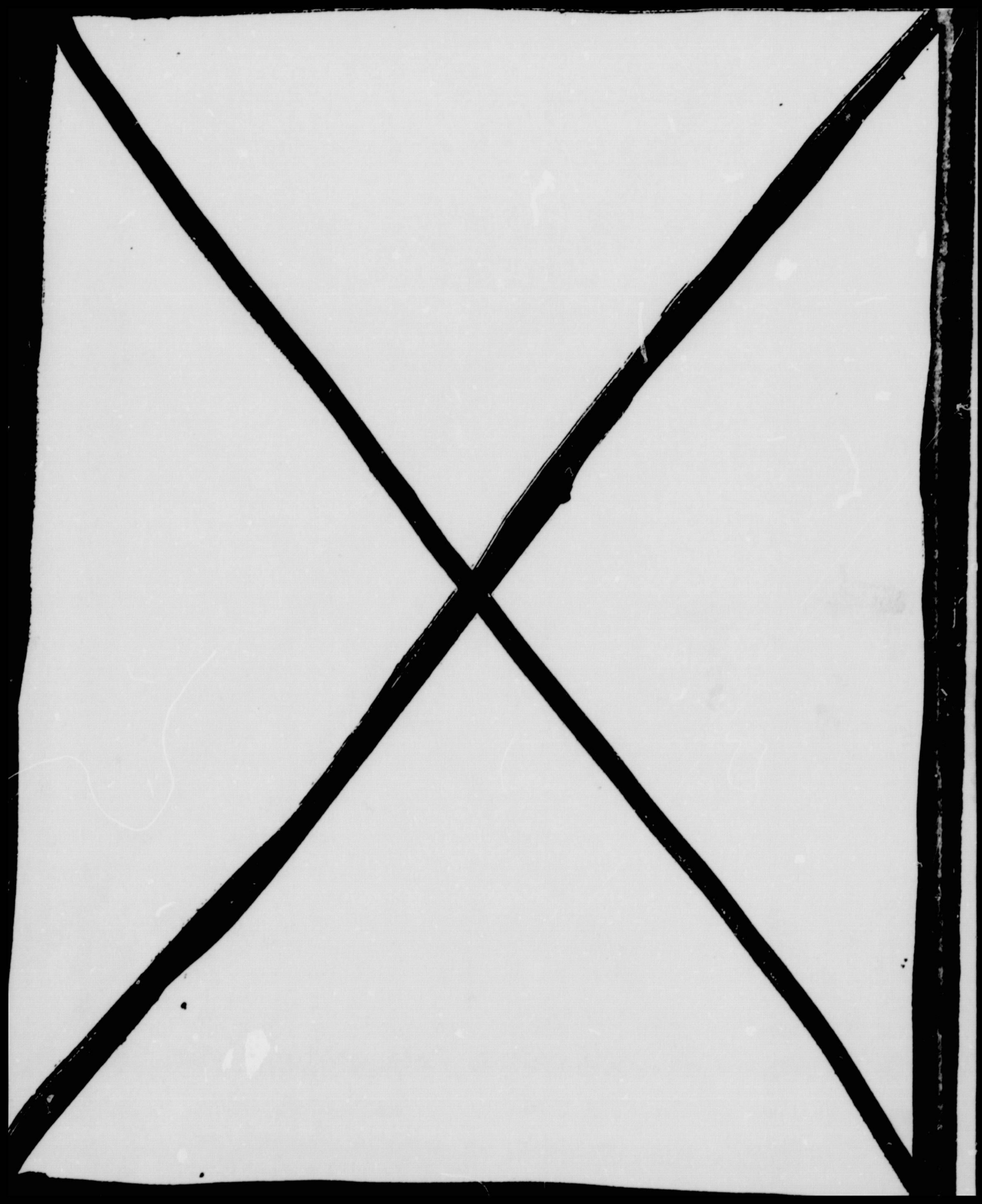


Charles A. Spitulnik
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001
(202) 842-2345

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of July, 2000, caused to be served a copy of the foregoing Notice of Change of Address by first class mail on all parties of record in these proceedings.


Charles A. Spitulnik



STB

FD-33388 (SUB 91)

7-24-00

D

199350

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Attorney at Law

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Pittsburgh, PA 15219

(412) 471-1800

(412) 471-4477 FAX

July 21, 2000

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:

On July 13, 2000, the undersigned filed Comments on behalf of Growth Resources of Wellsboro Foundation, Inc. to the First General Oversight Report submitted by Norfolk Southern Corporation and CSX Corporation. It has been brought to my attention that the July 7, 2000 letter to Senator Madigan from Mr. Thomas Conway which was referenced in the Verified Statement of Mary Worthington was erroneously omitted.

Attached are copies of the July 7th letter. Copies of this letter and the attachment have also been sent via facsimile and regular mail to counsel for Norfolk Southern and CSX Corporation.

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson

ENTERED
Office of the Secretary
JUL 24 2000
Part of
Public Record

RRW/klh

Enclosures

xc: All Parties of Record

Growth Resources of Wellsboro Foundation, Inc.

Glass Technologies


**OSRAM
SYLVANIA**

July 7, 2000

Office of Senator Madigan
Room 286 Main Capital Building
Harrisburg, PA 17120
Attention: Mr. Craig Shuey
Legislative Assistant

Dear Mr. Shuey:

This letter pertains to the problems that OSRAM Sylvania, which is located in Wellsboro, PA, has encountered with the railroad. The major problem is the lack of service from the Norfolk Southern Railroad (NS). We work closely with the Wellsboro & Corning Railroad (WCOR) which provides us with commendable service. However, WCOR has experienced many problems with the NS as well. We would appreciate any assistance which your office can provide with respect to resolving at least the major problems with the NS.

I will provide you with a little background concerning our business. Our facility produces glass bulbs and ornaments for the lighting and ornament markets. It is important for you to understand that we are in a very competitive market and we must perform at the highest levels in order to satisfy our customers. If we are successful we can provide a stable work environment for our 200-plus employees. Service is a key indicator of performance and timely transportation is a critical element of service. The railroad has caused extremely serious problems for us due to very poor, unreliable service for inbound and outbound shipments.

I will review some of the major issues we have encountered:

- On May 8, 2000 we shipped a boxcar from our plant to a customer in Sparks, NV. This car arrived in the Gang Mills yard near Corning, NY shortly thereafter. We were to monitor the transit time of this car closely as our customer had expressed dissatisfaction with rail leadtimes. Nothing went right with this shipment. It was delayed in Gang Mills for weeks. The NS failed to stage the car for the CP Railroad and finally during the last week of May we requested that the car be returned to Wellsboro. Our customer viewed this as just another example of non-performance on OSRAM Sylvania Inc's (OSI) part and they cancelled an order due to the poor service. After we requested that the car be returned it began to move west. We made numerous requests for the railroad to be returned and it kept moving toward the original destination. It arrived in Sparks, NV on June 14, 2000. By this time we were concerned about the quality of the ornament glass as it weathers and spoils. As a result, on June 8th we had the NS commit to absorbing the cost for damaged glass from this shipment. We spoke to our customer and they were willing to accept the shipment and evaluate it. However, the shipment was then turned around and sent back to Wellsboro. It arrived on June 30, 2000.



Glass Technologies

**OSRAM
SYLVANIA**

Page 2

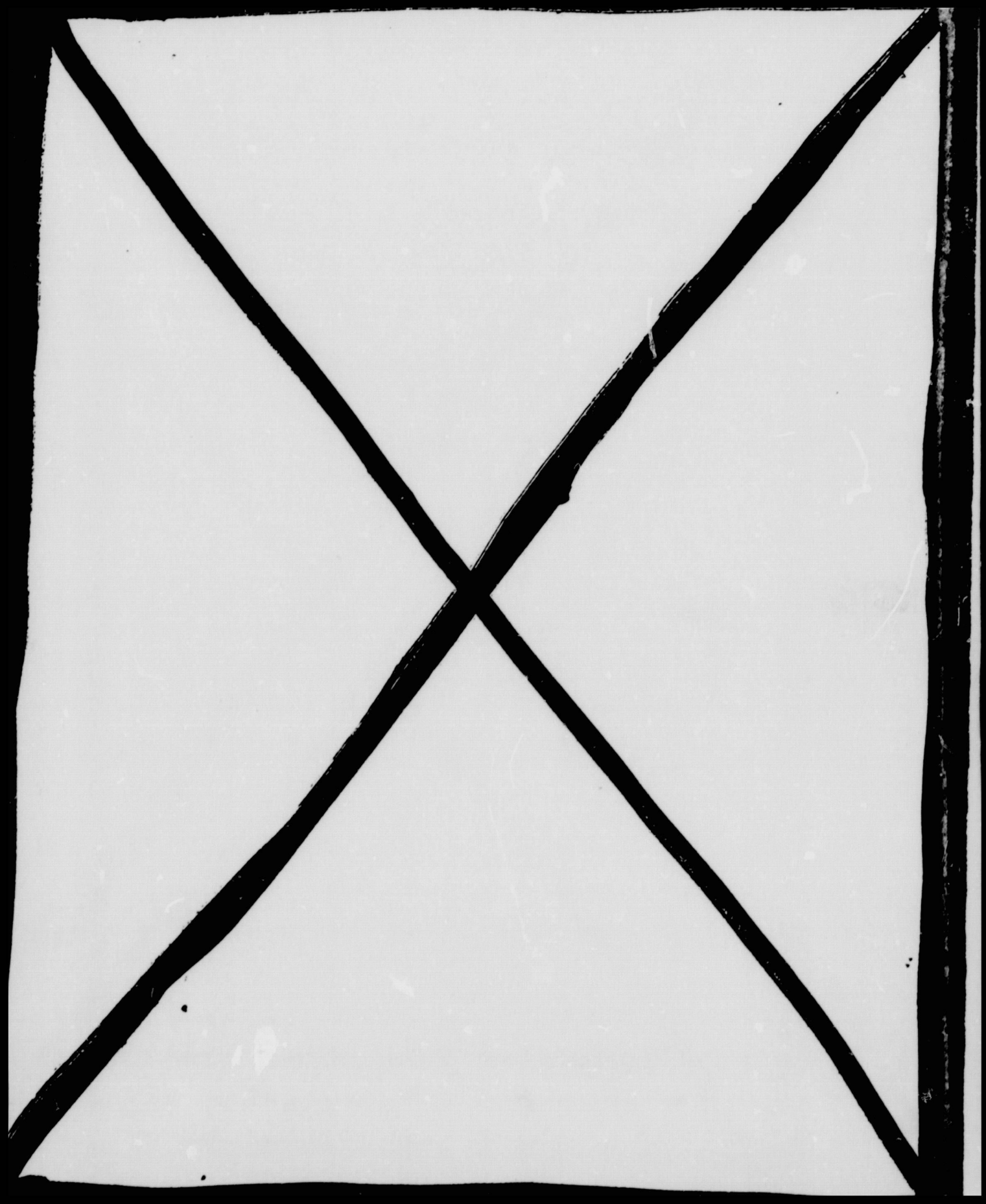
- On February 17, 2000 we submitted a claim to recover costs incurred by OSI due to significant service failures by NS. The amount of the claim is \$39,339.49. We checked status on the claim in May and we were asked to resend the claim paperwork. We complied with the request and have been calling for status on a regular basis. The latest response from the NS is that the audit department will complete its review by July 31, 2000. We need your assistance with this claim because it covers the added costs OSI incurred for using trucks versus rail for raw material deliveries and shipments to our customers which resulted from the inability of the railroad to provide acceptable service.
- In the past three months the railroad service to our facility has been either feast or famine. The cars arrive in batches rather than in manageable groups of two or three per delivery day. A significant issue here is that it takes Gang Mills one week plus to switch-out the cars from the yard. This interrupts the flow of raw materials to our plant so we must scramble and schedule truck deliveries to ensure that we have materials to operate our facility. The problems at Gang Mills have reached the point that the future of traffic growth, or retention of existing traffic is looking dimmer and dimmer according to the WCOR.

I could cite other examples of service problems, but I think the message is clear. These ongoing problems affect our bottom line. We spend an extraordinary amount of administrative time scheduling and tracking railcars. You need to know that we are involved in serious negotiations with trucking firms to meet rail costs and to provide reliable service. The railroad is a cost effective mode of transportation, but we cannot jeopardize the loss of business which results from unreliable service.

Again, we would appreciate any assistance which your office can provide. Please respond with your thoughts and plans for resolving these issues.

Sincerely,

Thomas J. Conway
Materials Manager
OSRAM Sylvania, Inc.
Email: tom.conway@osram-sylvania.com
Telephone: (570) 724-8211



STB FD-33388 (SUB 91) 7-20-00 D 199329

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LAW OFFICES
REA, CROSS & AUCHINCLOSS
SUITE 570

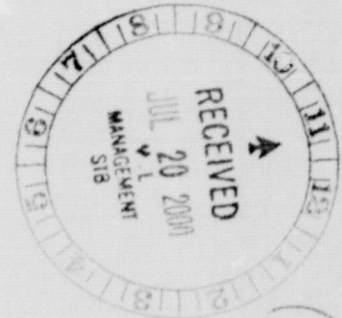
1707 L STREET, N.W.
WASHINGTON, D. C. 20036
(202) 785-3700
FACSIMILE: (202) 659-4934

THOMAS M. AUCHINCLOSS, JR.
LEO C. FRANEY
JOHN D. HEFFNER
KEITH G. O'BRIEN
BRYCE REA, JR.
BRIAN L. TROIANO

DONALD E. CROSS (1923-1986)

July 17, 2000

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



Re: STB Finance Docket No. 33388 (Sub-No. ⁹¹~~991~~)
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)

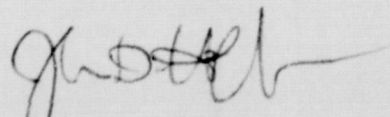
Verified Statement of W. Robert Bentley
NYCH-1

Dear Secretary Williams:

With reference to the above-captioned, at the time of the filing the original verification page and attachments were unavailable. I did not receive these items until this morning, therefore, I am asking you to please attach the enclosed items to the original, which was filed on July 14, 2000.

If there are any questions, please call me at the phone number listed above.

Sincerely,


John D. Heffner
Counsel for:
New York Regional Rail
Corporation

ENTERED
Office of the Secretary
JUL 20 2000
Part of
Public Record

VERIFICATION

STATE OF NY)
COUNTY OF Richmond) SS:

ROBERT BENTLEY, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.

Robert Bentley

Subscribed and sworn to before me this 14 day of

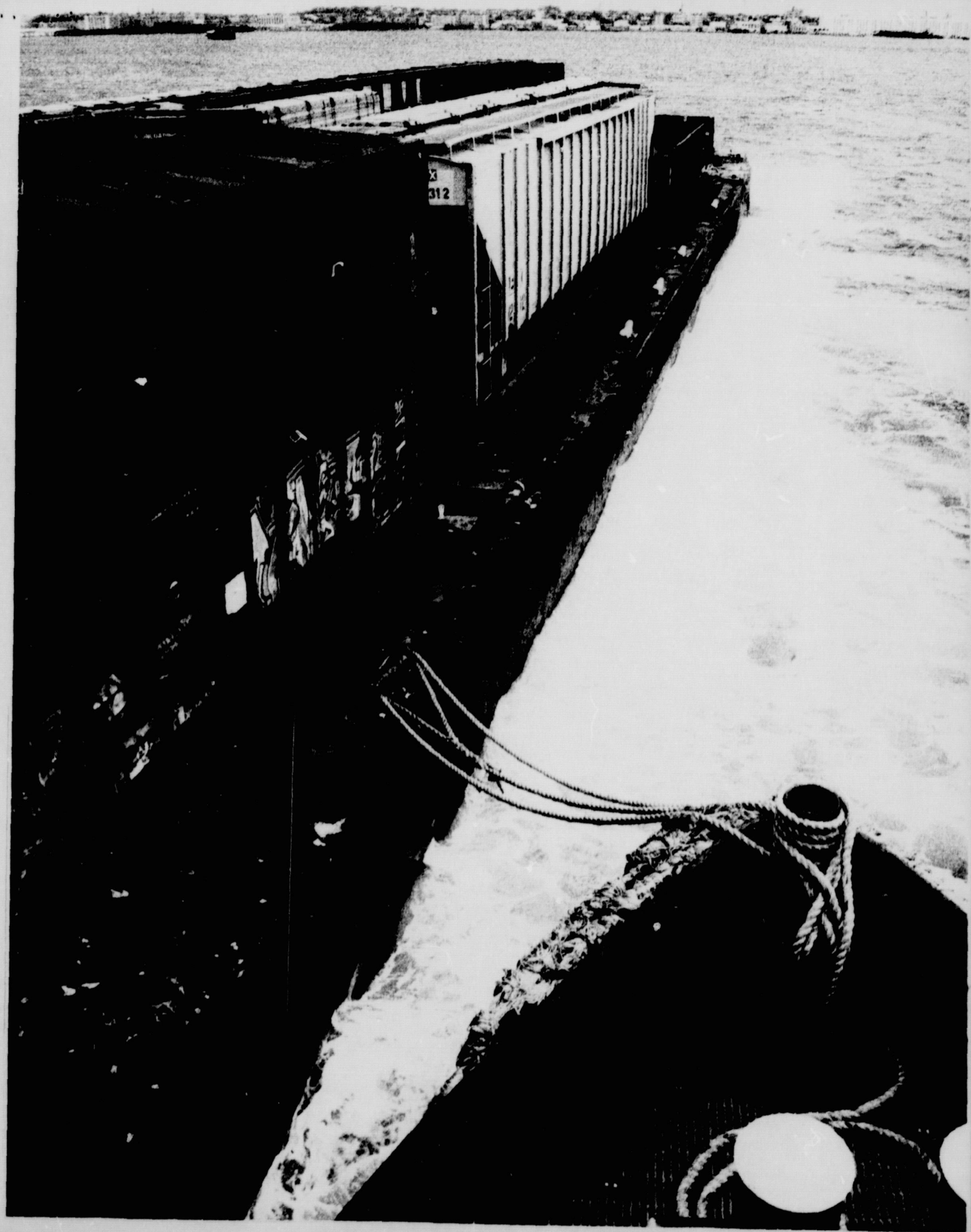
July, 2000.

Notary Public of Richmond County

Christine Fasier

My Commission expires:

CHRISTINE FASIER
Notary Public, State of New York
No. 24-01FA4525764
Qualified in Richmond County
Certificate filed in New York County
Commission Expires, Nov. 30, 2000



New York Cross Harbor

A remarkable odyssey continues after 17 years

THERE'S A BIT OF CHOP out in the middle of Upper New York Bay, and as we watch from the bridge of the tug *Houma*, the blunt bow of the carfloat kicks up crescents of spray. The tugboat captain, a former merchant marine, is telling me how life at sea has changed. "Nowadays it's all about business," he says. In an era characterized by bottom-line corporate concerns, it's not surprising the rough-and-tumble lifestyle that had been the sailor's legacy is a thing of the past.

"The railroad industry is heading in a similar direction," I respond. But fortunately, there's still a lot of colorful railroading left, and for proof one need look no farther than the action just outside our window. The New York Cross Harbor Railroad's story is as full of twists and turns as the most serpentine of dockside railroads. In many respects, it embodies the best of the New York spirit—hanging tough, keeping the faith, and rolling with the punches. Born in 1983 of the combined assets of the New York Dock and the Brooklyn Eastern District Terminal railways, NYCH is the last remaining rail-marine operation in the Northeast. "It has survived on sheer gumption," says transportation consultant George Haikalis. But now, after 17 years of choppy waters, there are strong indications that smother sailing lies ahead.

To appreciate Cross Harbor's strategic potential, just draw a straight line between the Conrail Shared Assets' Oak Island Yard in Newark (the metropolitan area's only major classification yard) and the closest point on Long Island. It would go through Greenville Yard in Jersey City, set a 2.9-mile course across the world's most famous harbor, and make landfall near Bush Terminal in Brooklyn—exactly the route we're sailing.

Playing in traffic

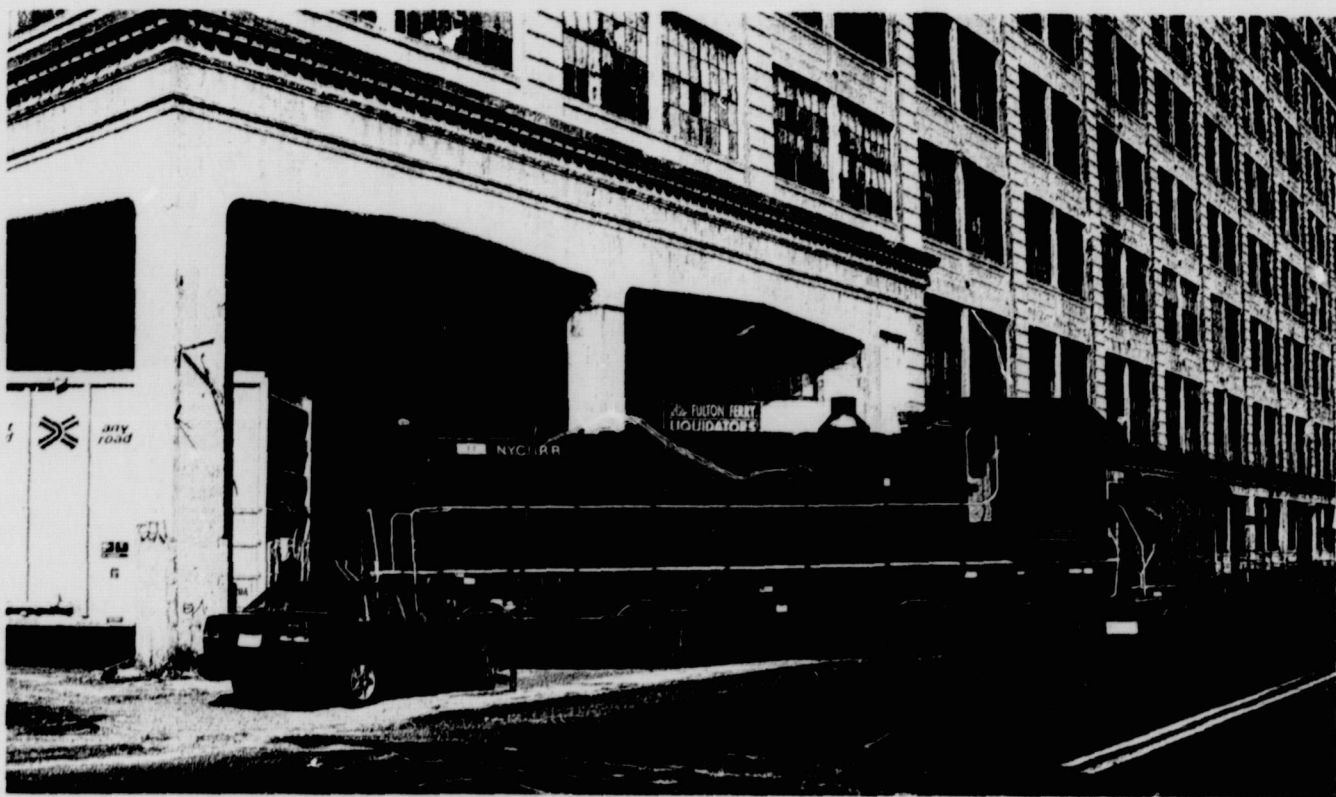
While the tugboat and carfloat ply the waters of the Upper Bay, Charlie McClelland is cooling his heels at a traffic light on Second Avenue in Brooklyn. His vehicle is a 1951 Alco S4, and it's bringing a couple of empty boxcars from Bush Terminal Yard to the Cocoa Port at 39th Street. McClelland is Cross Harbor's senior engineer and a 28-year veteran of local waterfront railroading. Approaching each intersection, he yanks at the cord of the Nathan horn, producing a rousing three-part harmony that echoes through the old factories and warehouses of Sunset Park. Trains on the street have a 5-mph speed limit and must stop at all red lights. This often creates a comical mismatch of transportation modes as cars, bicycles, and even baby carriages pass in front of the chortling Alco. The light turns green, and with an indignant huff of smoke, the S4 and its entourage bop on down the boulevard.

On the New York side of the bay, the Cross Harbor interchanges with the New York & Atlantic, operator of the Long Island Rail Road's freight franchise [May 1999 TRAINS] and the South Brooklyn Railway, a mile-long supply arm for the city subway system. One interchange is north of Bush Terminal, the other south, and both require half-mile street runs.

To accommodate the tight turn between 41st Street and Second Avenue, Cross Harbor's right-of-way passes through the corner of a factory building. McClelland is glad to see that his route is unobstructed. Earlier in the week, operations manager Rick Abramson was forced to deal with a Department of Public Works crew that had heedlessly set up road repair equipment within the gauge. "Move it, or lose it," declared the

While the *Houma* navigates the "Upper Bay" (left), Alco 11 turns the corner from 41st Street to First Avenue. Brakeman trainee Jose Torres is riding the front step.





normally mild-mannered Abramson, "We have a railroad to run here!"

The cocoa that will be loaded into these boxcars is an important component in the Cross Harbor's business equation. Almost 70 percent of the nation's supply enters the country through the Brooklyn docks. Here it's transloaded to rail, and then carfloated across the bay to Greenville, ultimately to be delivered to such chocolate-makers as Hershey, M&M Mars, Blommer, and others. To serve the cocoa pier at Red Hook, which has no rail access, an ingenious plan has been hatched. A tug brings over a carfloat containing nine empty 50-foot boxcars that have been precisely spotted three abreast on the three-track float. Ramps placed between the doors of adjoining cars allow a forklift to gain access to each. When all nine have been loaded with the 160-pound bags of cocoa beans, the tug returns to haul the float back across the bay.

Before and after Conrail

Carfloating in New York harbor originated before the turn of the 20th century and reached its zenith during the '50's and '60's. Back then, the 40-minute voyage between Greenville and Brooklyn was a conduit for Pennsylvania and New Haven Railroad tonnage, as those two carriers battled rival New York Central for city, Long Island, and New England traffic.

Some 650,000 freight cars crossed the bay in 1965, and it seemed that boom times would last forever, but a confluence of circumstances would alter that perception dramatically. With visions of white-collar sugar plums dancing in their heads, the city fathers allowed New York's industrial base to slip away. Ocean shipping, which today contributes \$20 billion a year to the economy of the Port District, sailed across the bay to New Jersey. Containerization of car-

The sharp curve from 41st Street to Second Avenue in Brooklyn's Sunset Park section requires the track pass through the corner of a building.

go and the rapid-fire expansion of the regional highway system did much to encourage the shift from rail to truck. All the while, more and more of the city's warehousing and distribution centers were relocating west of the Hudson. In the bargain, 13 area railroads fell victim to changing times before Conrail was created in 1976 to stop the hemorrhaging.

Let us credit Conrail for its remarkable resurrection of regional rail freight in the wake of the Penn Central debacle. That said, it's also true that many a struggling Northeastern short line, the Cross Harbor included, felt that "Big Blue" was less than totally responsive to its needs. Remember that Conrail, which was the Cross Harbor's sole connection to the national rail network, was marketing its own service into New York City. This created a diabolical Catch 22 in which

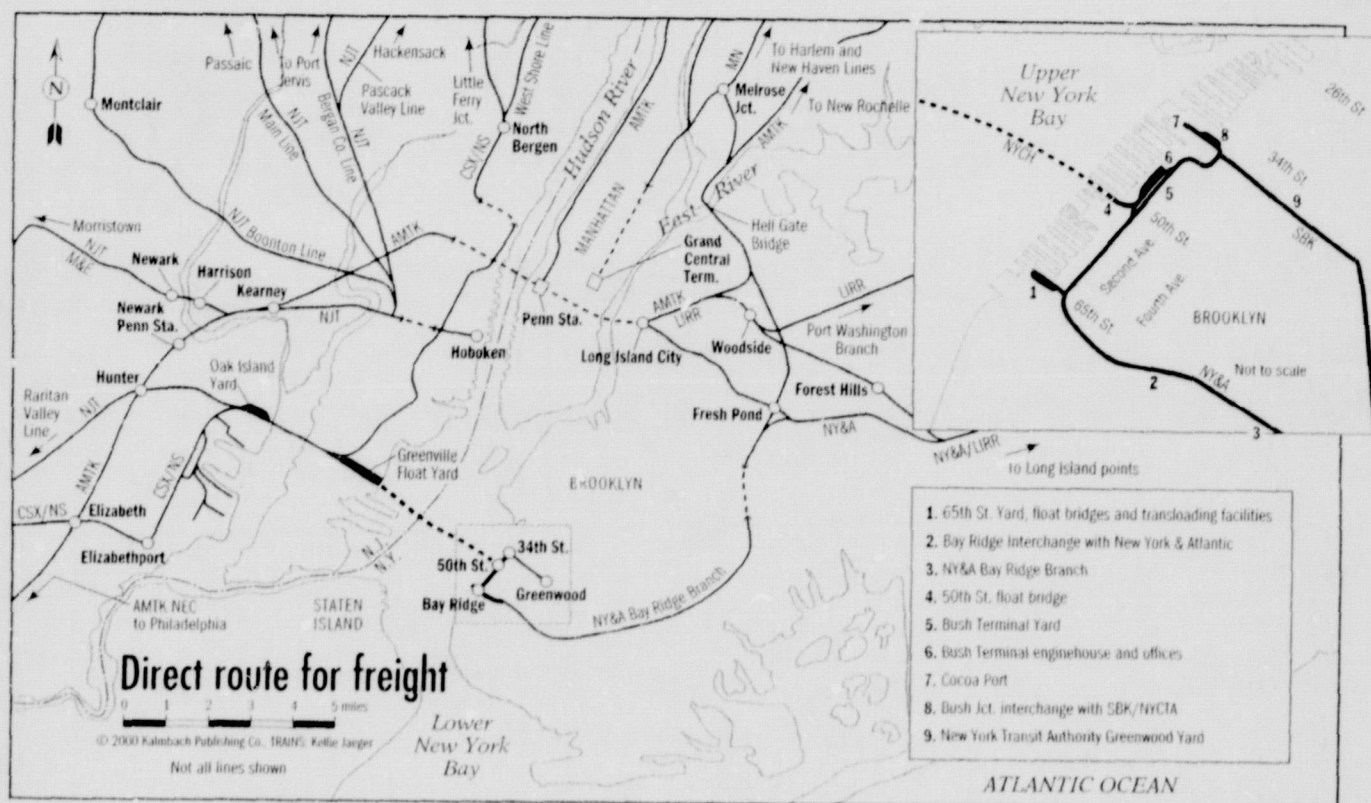
the 12,000-mile Class I and the 12-mile short line were simultaneously collaborators and competitors—not an ideal situation for the little guy. In fact, it became so untenable that in June 1997, Cross Harbor filed a complaint against Conrail with the U.S. District Court, alleging restraint of trade and violations of the Sherman Antitrust Act. But even as this drastic step was taken, Conrail's future was itself being determined in the high-stakes corporate chess match between CSX and Norfolk Southern.

"Christmas came on June 1," exclaims Greg Kisloff, NYCH's former director of government and public relations, now working with consultants Howard/Stein-Hudson Associates. He is referring to the day last year when Conrail's federally mandated monopoly ended and competitive freight railroading returned to the Northeast. Cross Harbor and its parent company, New



"She's a good hauler" (speaking of his 1951 Alco S4)

Charlie McClelland
Senior Engineer



York Regional Rail, were ecstatic. Finally they had been given a level playing field.

Caring for a special cargo

At his office next to the Bush Terminal enginehouse, Abramson is phoning his counterpart at New York & Atlantic. There's a special shipment coming across the bay today—two brand-new Kawasaki bilevel coaches for the Long Island Rail Road that had arrived by ship at Port Elizabeth. Cross Harbor will be picking them up at "A" Yard in Jersey City and bringing them over for interchange with NY&A at Bay Ridge. Priced at more than \$1.5 million a pop, this is definitely premium cargo, and Abramson doesn't want to take unwarranted chances or have the cars on NYCH property any longer than necessary. He's checking to make sure NY&A will have a crew at Bay Ridge to pick them up.

Abramson is a devotee of the old New York, New Haven & Hartford, and his office is a shrine with paintings, models, photos, coffee mugs, you name it. At age 18 he'd worked for the New Haven during its final year, as a tower operator at Devon, Conn. "We were poor, but we were proud," he says of the legendary road whose loss in 1969 is still lamented by many New Englanders. In 1987, Abramson entered engine service for Amtrak. He later went with short line Connecticut Central, and he signed on with Cross Harbor in 1998. Along with other operational duties, he's been responsible for getting engine crews NORAC-certified [rules]. NYCH workers are also members of the Seafarers Union.

Making landfall at Jersey City

The 1750 h.p. tugboat *Houma* ("Hoe-ma") is owned by K-Sea Transportation Corp., which was Cross Harbor's towing contractor until a

recent switch to McCallister Towing. With the massive superstructure of the Greenville float bridges dead ahead, *Houma's* captain cuts back on the power. Water depths out in the bay are 50 feet or more, but here in the Greenville Channel we're navigating a dredged passageway between shallow mud flats. Armed with a radio, a deckhand walks to the bow of the carfloat, while the captain carefully observes the harbor buoys that mark the shipping lane. Occasionally he steals a glance at his computer screen, reconfirming channel profiles he already knows by heart. All the while, the deckhand radios back his cryptic messages. "Fifty feet ahead ... thirty feet from the south bulkhead." The twin rudders and screws of the tug allow for minute course adjustments, until landfall is made and the tracks on the barge are aligned with those on the float bridge. Then a 200 h.p. gantry crane lowers the float bridge to the proper height, the bow and stern lines are made fast, and four heavy holding pins are pushed into place.



"In Europe, a waterway is seen as an asset, not as an obstacle."

W. Robert Bentley
President

During Pennsy days, Greenville Yard had a 2200-car capacity, but now it's less than one-tenth that size. In these gritty surroundings, the two silver-and-blue Kawasaki coaches glisten like some space-age vision. Soon Cross Harbor's leased, Canadian-built SW1200RS 1337 is pulling the empties. (Since returned to the lessor, it spent most of its time at Greenville.) Eight cars, including the bilevels, are going to Brooklyn. Conductor Manny Parker monitors the loading, making certain that the weight of the cars is evenly distributed on the 290-by-40-foot float.

Meanwhile, in Manhattan ...

At that very same moment, 3 miles north in the canyons of Manhattan's financial district, Cross Harbor President W. Robert Bentley is making his pitch to members of the Transportation Research Forum. In his relaxed and



disarming style, he points out that the Hudson River has always been a significant barrier to rail freight. Even today, most of the area's railheads are in New Jersey. Those few cars that CSX brings directly into the city must first pass through Selkirk Yard near Albany—140 miles to the north. This explains New York's 97-percent reliance on trucks (as compared with 60 to 70 percent in most American cities), and the resulting price paid by New Yorkers in terms of traffic congestion, poor air quality, damage to highway infrastructure, and higher consumer costs.

CSX's all-land, single-carrier routing adds at least three extra days for cars coming from points south, says Bentley, while Cross Harbor can deliver those same cars within 12 hours, interline switching included. What's more, city-bound traffic out of Selkirk faces severely restricted physical clearances on the Hudson Line—no double-stacks or Plate F cars allowed. By contrast, Cross Harbor regularly handles huge dimensional loads such as heavy industrial equipment or structural steel. Bentley ends by stressing his railroad's ideal positioning and the meaningful role it can play in any comprehensive regional freight transportation plan.

Then, with a hint of trepidation, he opens the floor to questions. It's not that he's insecure about his message, but New York audiences can be tough, and Cross Harbor's rocky past is a somewhat touchy issue. (In speaking about those earlier times, Rick Abramson spuriously cracks, "The only difference between us and the *Titanic* was they had a band.") One audience member—a stockholder—is curious to know when NYCH will make a full financial disclosure. Bentley explains that the railroad is now in the midst of a three-year audit that will subsequently be made public. Next a question is raised concerning Cross Harbor's future if a

Charlie McClelland pulls two new LIRR bilevel cars into Bush Terminal Yard while senior supervisor Jimmy Lada carefully monitors the progress.

proposed rail tunnel to Brooklyn gets built. "Even if that happens, it would be many years down the road. We can provide important interim service," answers Bentley.

A few sparks fly when another guest claims that Cross Harbor is applying 19th-century solutions to 21st-century problems. Bentley responds emphatically, "In Europe and elsewhere, a waterway is seen as an asset. Here it's an obstacle." Touché. He also reiterates that the trans-bay routing is both cost-effective and environmentally friendly, adding that an infusion of government funds for capital improvements would make a world of difference.

Bentley came to the Cross Harbor in January 1998 after a successful 15-year stint at short line Massachusetts Central. Upon his arrival, Cross Harbor was largely a garbage hauler—treated sludge, solid waste, scrap metal, and recyclables. Although the railroad still handles outbound commercial waste, a shift has been implemented toward merchandise freight and transbulk. This is reflected in the quality of rolling stock showing up at Bush Terminal these days. Down-at-the-heels, low-revenue cars are being augmented by covered hoppers, lumber racks, cushioned boxcars, even reefers.

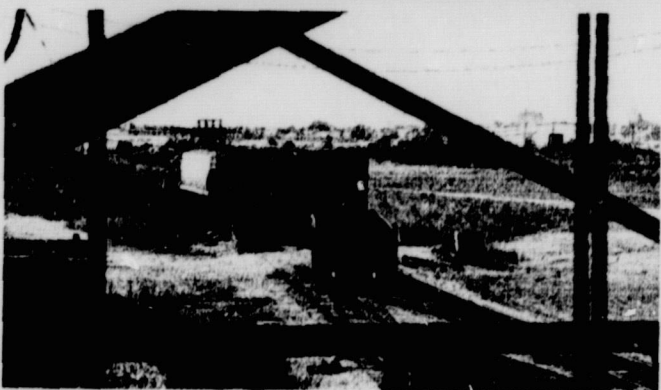
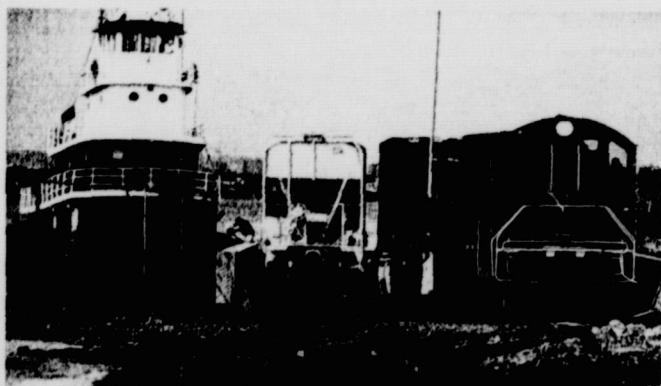


"People think running a short line is easy ... but we have none of the resources of a Class 1."

Rick Abramson
Operations Manager

For Houma, mission accomplished

As the *Houma* approaches the Brooklyn shoreline, Charlie McClelland brings Alco No. 11 down to meet her. The Bush Terminal float bridge is of the pontoon variety, meaning that the far end floats in the water. Mid-tide is best for loading or unloading, but since this is an ebb tide, the weight of the locomotive is used to lower the level of the bridge slightly until the



Having delivered to Bush, tug *Maryland* (top) is ready to cast off. Framed by a gantry float, 1337 switches the ex-Pennsy Greenville yard in 1998.

four pins connecting it to the carfloat are in place. Once the float has been secured, McClelland starts pulling the cars, leaving the two bilevel coaches for last. The short trip from here to the yard involves an ascending grade with a tight curve near the top. For the Kawasaki coaches, with their long wheelbase, this stretch requires special attention. McClelland eases them through at 3 mph, while senior supervisor Jimmy Lada carefully examines their progress. After the NY&A-bound "mixed consist" has been assembled in the yard, we head out the 50th Street gate and onto the avenue. Along the way to the Bay Ridge interchange, we pass the city-owned 65th Street Yard, where two new float bridges and a transload facility are being built. This has become one hotly contested property as NYCH and NY&A each vie for some of the action.

Minutes later, we're handing over the cars at the interchange and receiving a string of empties to be floated to Greenville in the morning. The sun is descending over the harbor as No. 11 chortles back to Bush. Pulling only empties, the Alco has extra spring to its step—like a horse that knows its day's work is done and is heading back to a warm and cozy barn. "She's a good hauler," says Charlie McClelland.

Chief Mechanical Officer Doug Crawford, who's responsible for the care and well-being of No. 11 and her venerable companions, agrees. "Despite their age, these engines are dependable, simple to maintain, and very fuel-efficient."

A time to reap?

The Alco has been bedded down and the enginehouse locked for the night. After setting up the crew call times for next morning, Rick Abramson is ready to go home. "People think running a short line is easy," he sighs, "but there's always something that needs to be dealt with, and we don't have any of the resources of a Class 1." Indeed, short lines are

Cross Harbor locomotives and carfloats

| No. | Builder, model | H.P. | Date | Status, heritage |
|------|----------------|------|-------|--|
| 11 | Alco S4 | 1000 | 10/51 | Active; ex-Massena Terminal |
| 21 | Alco S1 | 660 | 8/47 | Retired 1991; stored for possible conversion to slug; ex-Brooklyn East District Terminal, nee Union Railroad |
| 22 | Alco S1 | 660 | 10/47 | Retired 1993; stored for possible conversion to slug; ex-BEDT, nee New Orleans & Lower Coast |
| 25 | Alco S1 | 660 | 10/46 | Active; ex-BEDT, nee Erie |
| 58 | EMD NW2 | 1000 | 6/47 | Retired 1987; stored for possible conversion to slug; ex-New York Dock, nee Southern Railway |
| 59 | EMD NW2 | 1000 | 9/46 | Active; ex-New York Dock, nee Southern Railway |
| 1337 | GM SW1200RS | 1200 | 12/58 | Was leased, then returned to lessor; ex-Ohio Central, nee Canadian National |

CARFLOATS

16 and 17: 290 x 40 feet, built 1958, ex-New York Dock

29 and 30: 360 x 42 feet, built 1953 (29 refurbished 1999); ex-New Haven

Roster accurate as of February 2000; source: New York Cross Harbor—Joe Greenstein

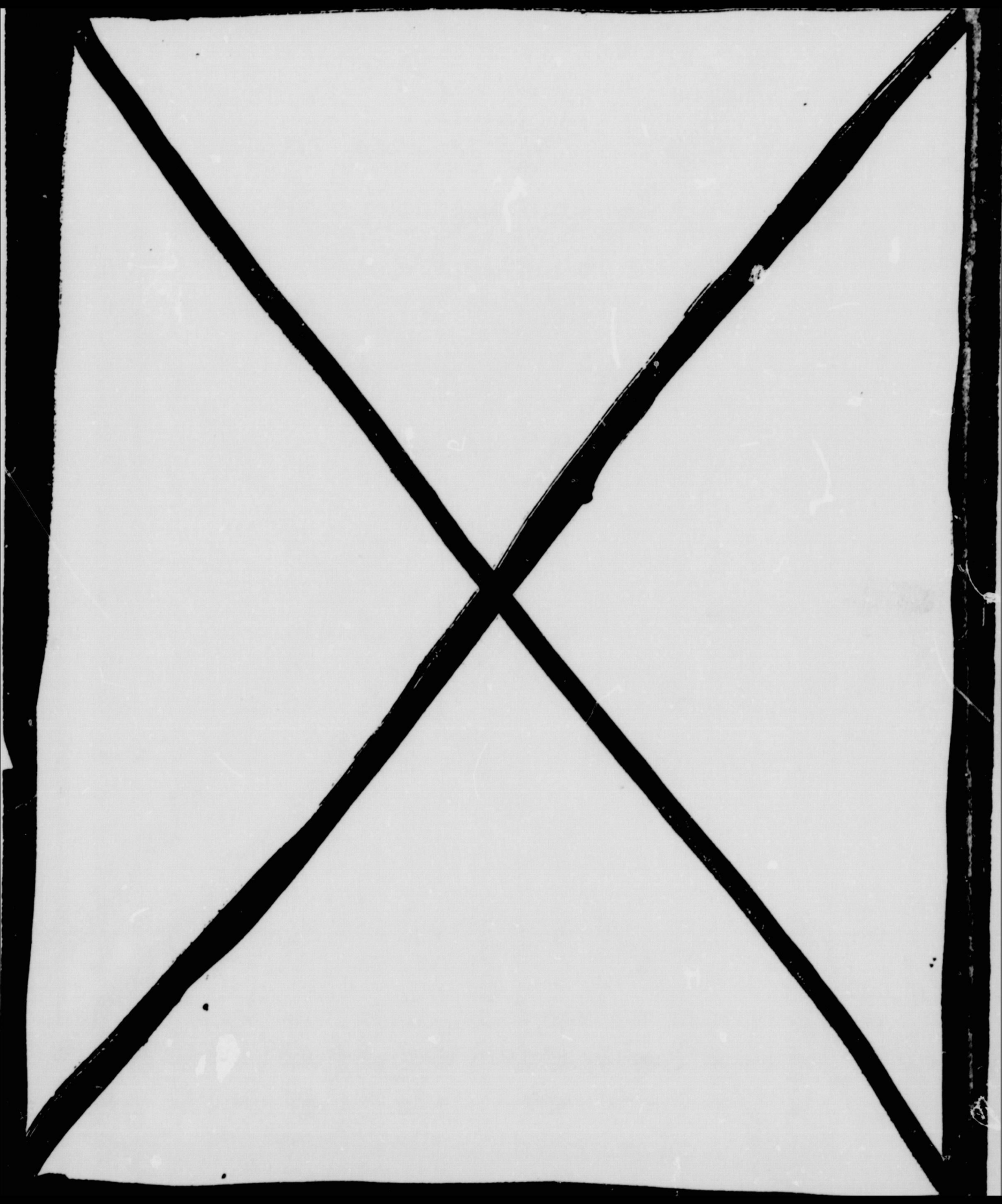
object lessons in mutability and inventiveness—and in doing the chore at hand, even if it isn't in your job description.

Having returned from Manhattan, President Bentley is soon the only one remaining in the Bush Terminal office. He glances at the daily operations log, then turns his attention to a funding proposal that will be delivered in the morning. For years, Cross Harbor's carfloating message had fallen on deaf ears, but now it appears the tide is turning. Of course, this doesn't mean the final battle has been won. New York is a town where political entrenchment and public apathy can hog-tie the most promising of endeavors. What's more, NYCH has a history of cash flow problems. And since Day One of the post-Conrail era, it's been painfully clear that CSX and NS have wood of their own to chop. But if NYCH still faces obstacles, few doubt that the potential rewards are substantial.

During Conrail's tenure, rarely more than a trickle of traffic crossed the bay. In the first five months after the Conrail breakup, Cross Harbor announced revenue increases of better than 250 percent. Norfolk Southern would seem to be Cross Harbor's closest ally, since carfloating offers NS its most direct access to New York City and Long Island markets. However, CSX and Canadian Pacific are also anticipating major growth in city-bound shipments, and other factors, such as port redevelopment or export of municipal solid waste, could have significant impact as well.

Meantime, Cross Harbor's future is cause for endless and often impassioned speculation. Will New York's last carfloat operation finally have its day in the sun? Let's hope success never diminishes the line's unique and endearing qualities, but after walking such a fine line for so long, it would be nice dealing with prosperity problems for a change. **I**

JOE GREENSTEIN, a free-lance photographer and writer, lives in Brooklyn with his wife, Dawn, an architect. He's had numerous photos and news reports in TRAINS, and this is his third byline. He wrote about NY&A's freight operations in May 1999.



STB FD-33388 (SUB 91) 7-19-00 D 199321

199321

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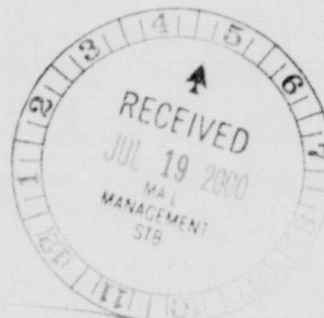
STEPHEN FRERICHS
ECONOMIST

ENTERED
Office of the Secretary

JUL 20 2000

Part of
Public Record

July 19, 2000



Hon. Vernon Williams
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 Comments of New York City Economic Development Corporation 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.

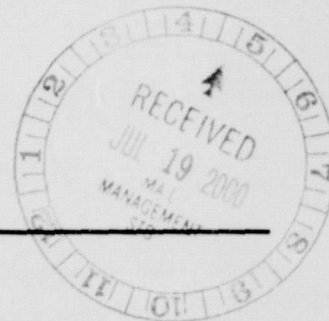
Sincerely,

Charles A. Spitulnik

cc. Julia Farr, Esquire
Richard A. Allen, Esquire (By Hand Delivery)
Dennis G. Lyons, Esquire (By Hand Delivery)
All parties of record in F. D. No. 33388

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Office of the Secretary
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Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C.



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
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

The New York City Economic Development Corporation ("NYCEDC") hereby submits its comments on the progress reports filed in this Oversight Proceeding by CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") (CSX and NS are collectively referred to in these Comments as "Applicants").¹

For New York City, this transaction and its implementation have been a roller coaster ride of great excitement and frustrated expectations. When Applicants worked out their proposed joint arrangement after several months of sparring over which of them would win the prize of acquiring Conrail, New York City quickly realized from its review of the transaction

¹ According to the Board's Notice dated February 9, 2000, that established this proceeding, these Comments were initially due to be filed on July 14, 2000. On July 13, NYCEDC filed a Motion for Extension of the Time for such filing. Counsel for CSX and NS have each stated that they will not oppose the extension as long as NYCEDC provides them with service of these Comments by hand delivery, which is occurring today. As a result, NYCEDC is filing these Comments today in anticipation of a favorable ruling on its Motion.

documents and plans that the City itself and shippers on the east side of the Hudson River would be harmed by the proposed arrangement. The City also recognized that the transaction as proposed had the potential for bringing substantial increases in truck traffic to the already congested George Washington Bridge due to predicted increases in use of the intermodal facilities in the proposed northern New Jersey Shared Assets area. As a result, NYCEDC sought jointly with New York State the imposition of a condition requiring Applicants to grant access to the east-of-the-Hudson rail line to a third carrier to offset that competitively harmful situation, and hopefully to limit the increased truck traffic across the bridge. *See F. D. No. 33388 (Sub-No. 69), Responsive Application - - State of New York, By and Through Its Department of Transportation and the New York City Economic Development Corporation.*

This Board recognized the plight of the commercial community that would not have direct access to two carriers as would their competitors on the west side of New York Harbor and the Hudson River. To ameliorate that adverse and anti-competitive impact, Condition No. 28 required CSX to negotiate a trackage rights and switching agreement with Canadian Pacific Railroad Company ("CP"). *See Decision No. 89 at 177.*² Exhilaration returned. Then the sparring resumed, this time between CSX and CP. The terms and conditions for CP's exercise of those rights were finalized only after continuous disagreements led the parties to ask this Board to resolve their differences. This finally occurred on May 20, 1999, but only after the parties had disagreed with the Board's initial determination of trackage rights and switching fees, as well as

² "Decision No. 89" refers to the Board's decision approving the proposed transaction and related conditions that was served on July 23, 1998 in F. D. No. 33388, *CSX Corporation And CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - - Control and Operating Leases/Agreements - - Conrail, Inc. and Consolidated Rail Corporation*

issues related to access to tracks, facilities and shippers within New York City and along the east-of-Hudson line. *See* Decision No. 123, service date May 20, 1999.

Once again, great expectations for creative solutions to some of the City's rail transportation problems appeared appropriate. Reality for New York has not been as harsh as for shippers and carriers at some locations since June 1, 1999, but those great expectations have also not come to fruition. Now, even though CSX and NS appear to recognize the shortcomings in their initial implementation of the transaction, NYCEDC has seen issues continue to arise, causing it to continue to have serious questions about whether the transaction as approved by the STB, even with the east-of-the-Hudson condition, is one that is consistent with the public interest. Problems with respect to three important matters continue to plague the City and its shipping community:

- (1) CSX continues to balk at providing rail service to all customers within the Hunts Point Food Distribution Center;
- (2) Service to Waste Management Inc. in the Harlem River Yard is unreliable, creating potentially serious problems for the City's Sanitation Department and its overall solid waste management policy; and
- (3) Applicants reports about intermodal traffic to and from the northern New Jersey Shared Assets area are seriously inadequate and do not provide the level of useful information to the City that is required to address the air quality and highway and bridge congestion issues that were raised by NYCEDC and New York State during the review of the transaction.

1. Service to the Hunts Point Food Distribution Center

The Hunts Point Food Distribution Center in the Bronx was created in 1962 through a joint City-State effort to consolidate New York City's food-related businesses in a single location with access to the highway and rail networks. During the 1970's, facilities were built to accommodate various vegetable, fruit, and meat distribution industries. By the late 1980's, Hunts Point had grown to be the largest such market in the world, serving over 15 million consumers in the New York metropolitan region. Hunts Point businesses directly provide more than 11,000 jobs and are responsible for as many as 20,000 jobs indirectly. These businesses account for gross sales of more than \$7 billion annually. Approximately 80 percent of the City's produce and 40 percent of the City's meat are distributed through Hunts Point. It is a 329-acre facility that contains a network of tracks to permit the food industry-based companies located there to receive deliveries directly by rail. It also includes a network of roads that intersect the tracks at various locations. All of the streets are entirely within the confines of this warehouse complex and none of them are public roads. Hunts Point is under NYCEDC jurisdiction on behalf of the City of New York. NYCEDC administers all leases and handles other matters, including capital improvements, on behalf of the City of New York.

Prior to the implementation of this transaction, Conrail safely and successfully served the facilities there when requested. The Great Atlantic & Pacific Tea Company ("A&P") has a distribution center at Hunts Point, located at 155 Food Center Drive, and wants to receive rail service as it did from Conrail. This facility consists of a 45,000 square foot building on 14.8 acres. The facility is operated and managed by A&P, which uses the facility for the manufacture, processing, storage and distribution of food and food-related products to A&P, Food Emporium and Freshtown supermarkets and food chain stores.

CSX refuses to provide the service A&P requests, stating that a gated crossing is required where the tracks cross Food Center Drive, one of the private roadways within this industrial warehouse complex. New York State officials have confirmed that its rules require no such protection at this crossing because it is a private, not a public, roadway. As a result, contractual arrangements between the owner of the private road and the serving rail carrier govern. CSX, exercising the monopoly power that it largely has within the confines of New York City³, will not provide service except on the terms it demands, which include construction of a gated crossing over Food Center Drive by NYCEDC at NYCEDC's sole expense. CSX has refused to accept other safety measures proposed by NYCEDC and A&P for the crossing. The safety measures proposed by NYCEDC and A&P were more comprehensive than those utilized previously without incident by Conrail, and included installation of cross-bucks and use of safety vehicles with flashing lights at the crossing any time a train is moving through it. NYCEDC and/or A&P were willing to incur the entire cost of these safety measures.

CP's ability to quote rates to or from this facility is no help here because it cannot physically serve the plant - - it must rely on a reciprocal switch from CSX. Conrail successfully served the plant until the changeover date, albeit using a three-person crew on the trains. CSX does not even give the shippers at Hunts Point the option to pay some portion of that additional crew cost, rather, it simply refuses to provide the service. Is there a compromise? NYCEDC would like to think so, but none is available when CSX is literally telling this shipper at Hunts

³ CP did not receive rights to physically serve shippers in the Bronx or Queens, only to gain access to Oak Point Yard, "from which it may serve New York area shippers through reciprocal switching at an initial fee of \$128.10 per car." Decision No. 123 at 14.

Point that "it's my way or the highway", and the shipper has have no competitive leverage because CSX has no intramodal competition at this location.

The safety measures NYCEDC and its tenant A&P have proposed are reasonable, and would be implemented at no cost to CSX. CSX's refusal to provide this service is not reasonable. The Board should require CSX to fulfill its common carrier obligation to provide service to A&P, a shipper whose service has deteriorated, rather than improved, since the implementation of the transaction.

The primary recipient of rail shipments at the Hunts Point Food Distribution Center, the New York Terminal Produce Cooperative Association, also has made numerous complaints to NYCEDC about the timing and reliability of CSX's service compared to that previously provided by Conrail. While CSX has stated on numerous occasions that it is committed to facilitating current and additional rail shipments to Hunts Point, its actions tell a much different story and are causing potential rail users to turn to alternative modes.

2. Solid Waste

One of the serious issues that NYCEDC raised in its application that led the Board to approve trackage rights for CP on the east-of-the-Hudson line is concern for transportation of solid waste out of the City, especially when the City's only landfill located on Staten Island closes in 2001. Waste Management, Inc. ("WMI"), the City's contractor for exporting municipal solid waste generated in the Bronx, has a transfer facility in the Harlem River Yard and needs to rely on CSX to efficiently move waste from there.⁴ This facility is permitted by the New York

⁴ Because WMI is transferring waste to disposal sites in Virginia, CP is not a logical or a viable competitor for this traffic. CSX can handle this traffic in a single line move, one of the highly touted benefits of the transaction when it was presented to this Board. Once again, unfortunate

State Department of Environmental Conservation to handle up to 3,000 tons of solid waste per day. The current volume is 1,000 to 1,200 tons per day.

For the past six months, CSX's service has been unreliable at best, with WMI experiencing frequent delays in the pick-up of loaded cars and the return of empties to its facility. While service has recently improved, the July 4th weekend saw service interrupted once again, apparently due to maintenance elsewhere on the CSX system. CSX's sporadic service failures have created serious problems for businesses that must depend on regular, reliable rail service to satisfy their obligations to the City, as well as on the City's own ability to make realistic plans and arrangements for the export and disposal of municipal solid waste. Community groups in the Bronx are expressing concern over plans to use rail for waste export because of CSX's lack of reliability, recognizing the specter of substantial accumulations of waste while WMI awaits the return of the equipment needed to move the waste away from the City.

3. Monitoring of Intermodal Traffic Movements

NYCEDC and New York State expressed concern in the control-transaction proceedings about the volume of truck traffic that would be moving over the already-congested Hudson River crossings, but especially the George Washington Bridge, following implementation. This concern was grounded in two of the main thrusts of the Applicants' presentation:

- (a) one of the major public benefits of the transactions would be enhanced competitiveness with trucks, so that multitudes of truckloads of traffic would be diverted to long distance rail moves; and

reality has eclipsed the optimistic projections presented to this Board in the application and supporting documents.

(b) the most competitive rates for that traffic would be found in the Shared Assets area because that is where CSX and NS would be competing with each other for the traffic.

While CP's trackage rights over the east-of-Hudson line represents a partial solution to the increased traffic over the George Washington Bridge, it is not a competitive alternative for all of that traffic. As a result, Decision No. 89 included in Ordering Paragraph No. 22 (at 177) a requirement that CSX and NS report on a quarterly basis the origin and destination of intermodal trailers and containers that move through the yards in northern New Jersey. NS states in its First Oversight Report that it has filed five reports for the Croxton intermodal terminal covering the period January 1, 1999 through March 31, 2000 (NS First Oversight Report, NS-1, at 37). CSX similarly states that it has filed five reports for the period covering January 1, 1999 through February 29, 2000. (CSX First Submission, CSX-1, at 80). It is not clear whether the reports that have been filed cover all of the terminals in the Shared Assets Area and in Massachusetts as the Board's order requires. In various meetings, at various times, NYCEDC staff and consultants have asked the railroads' representatives for those reports. The response has been that they are filed with the government and that they can be obtained from the agency staff.

When NYCEDC attempted to follow up with the STB to secure copies of these reports, the results were disappointing. Not only were the reports difficult to obtain, but as of March 2000, the STB staff could only locate two: the CSX report for the period June/July/August 1999 and the NS report for the pre-acquisition months of March/April/May 1999. The reports apparently are not posted on the Internet. Moreover, the reports that NYCEDC has seen do not provide a great deal of useful information. The samples are limited and show no trends, at least from the limited data NYCEDC has seen.

This is disheartening. The Board did not order this reporting to provide busy work for NS and CSX staff; the information is important, especially since NYCEDC has been overseeing the Cross Harbor Freight Movement Major Investment Study to develop alternatives for improving the freight transportation network in the New York metropolitan region. Increased stress on the bridges and highways, and emissions from trucks moving to and from the intermodal facilities in New Jersey present an ongoing problem for New York City and State. The City argued for this information at the Board, and the Board acknowledged the validity of the concern and provided for a way to monitor developments. Now, with only one report from each carrier in its hands, and both of those from early in the process of implementation of the Conrail transaction, NYCEDC can only wonder what is happening. Without this information NYCEDC remains frustrated in its attempt to fulfill its role of helping to shape the City's future freight network. In view of the difficulty of obtaining the required information from the Applicants or from this Board, this Board should require Applicants first to file useful monthly reports that document trend conditions at all of the CSX, NS, and Shared Assets intermodal yards in northern New Jersey and second, to serve a copy of all past and future reports on NYCEDC.

CONCLUSION

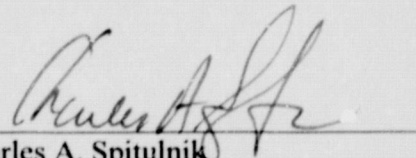
So far, the transition from Conrail to CSX, NS and Shared Use appears to be a mixed bag for the City of New York. CP's arrival brings a new carrier into the City along the line down the east side of the Hudson River. This is good, because it bears the potential for providing a meaningful competitive alternative to CSX, which otherwise has a monopoly. CSX has done some work in identifying new service opportunities in the New York market, but many questions remain unanswered about its working relationship with CP, and about its commitment to offer

quality service at those locations where there is no meaningful threat of competition from another rail carrier. CSX's behavior at Hunts Point raises grave concern about its incentives and its willingness to pursue traffic where it is not forced to do so by the presence of competitive direct rail service alternatives. This Board must continue monitoring CSX's actions, and should keep in mind the possibility of expanding CP's rights in the Bronx and Queens to permit it to have direct access to facilities when CSX refuses to provide service on its own or cannot because of delays or congestion elsewhere on its system.

For NYCEDC, continuing the monitoring and requiring CSX and NS to provide the public with more and better information is an essential outcome of this first phase of the Oversight proceeding. Requiring CSX to fulfill its common carrier obligation to A&P at Hunts Point would be another important outcome. Perhaps with heightened scrutiny of the ongoing operations, CSX will be encouraged, as its conduct is brought to light, to fully honor its commitment to improving rail service to the New York City market.

Dated: July 19, 2000

Respectfully submitted,



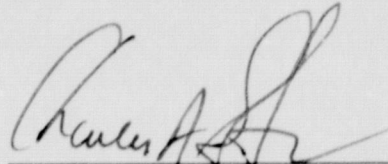
Charles A. Spitulnik
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20006
(202) 842-2345

Counsel for the New York City
Economic Development Corporation

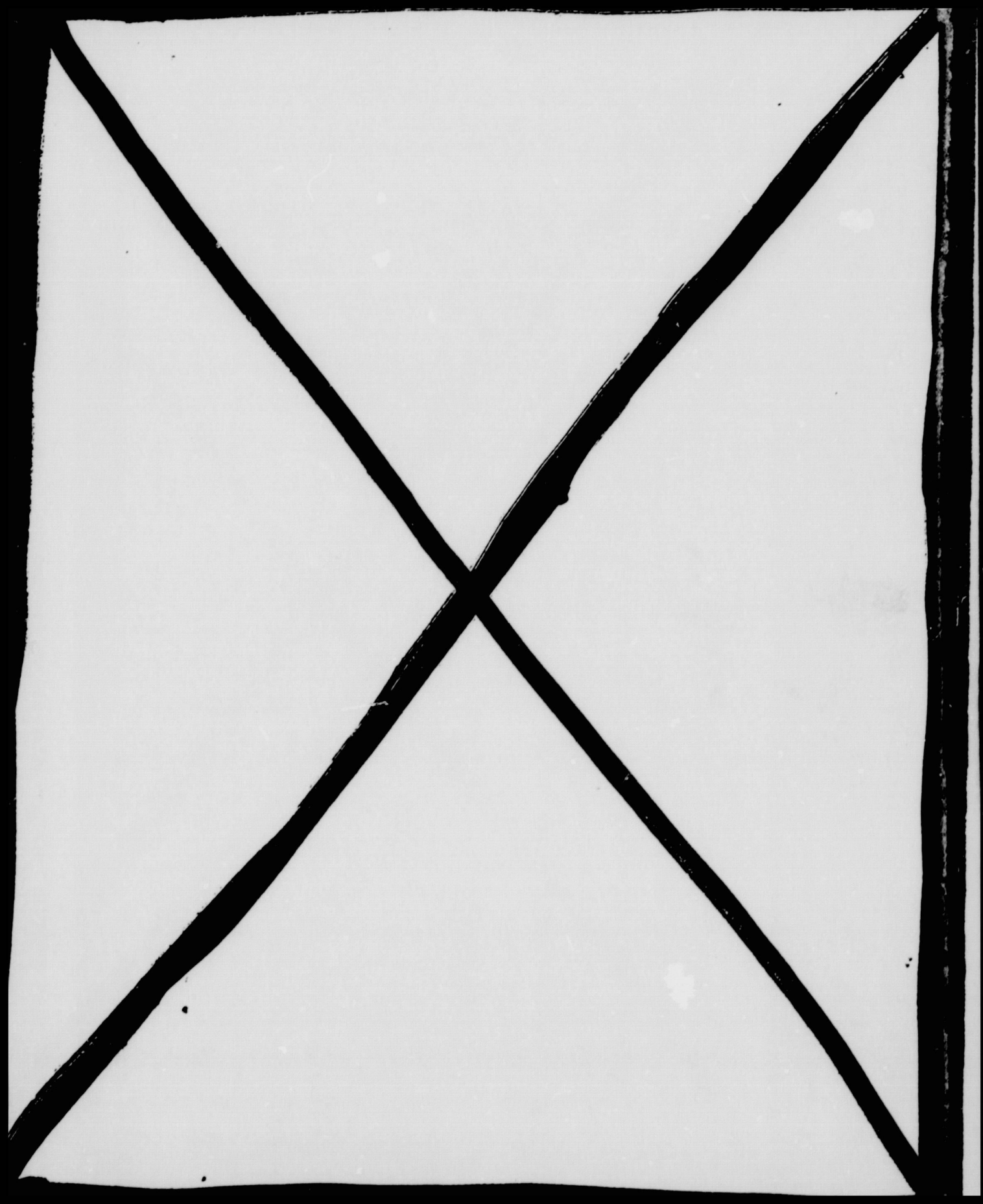
CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing Comments of the New York City Economic Development Corporation 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, and by first class mail upon all other parties of record on the service list in Finance Docket No. 33388.

Dated this 19th day of July, 2000.



Charles A. Spitulnik



STB FD-33388 (SUB 91) 7-17-00 D 199312

199312



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Office of the Secretary

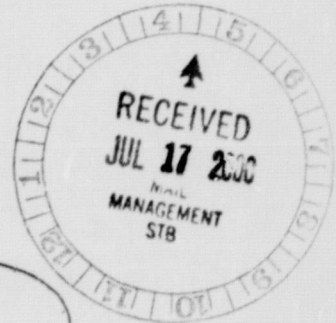
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Public Record July 17, 2000

Direct Dial: (202) 906-3987

Fax: (202) 906-2821

Mr. Vernon A. Williams
Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001



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

Dear Mr. Williams:

Please find enclosed Amtrak's Comments for filing in the above-captioned docket, and a Supplemental Certificate of Service.

Amtrak respectfully requests that these Comments be accepted even though, due to production problems, they are being filed one business day later than the due date established by the Board. No party will be prejudiced by this delay because, as indicated in the Certificate of Service appended to the Comments, Amtrak made timely service of them upon counsel for Applicants, the only parties permitted to file a reply.

Very truly yours,

Richard G. Slattery

Counsel for the National
Railroad Passenger Corp. (Amtrak)

Attachments

cc: All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

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



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

(GENERAL OVERSIGHT)

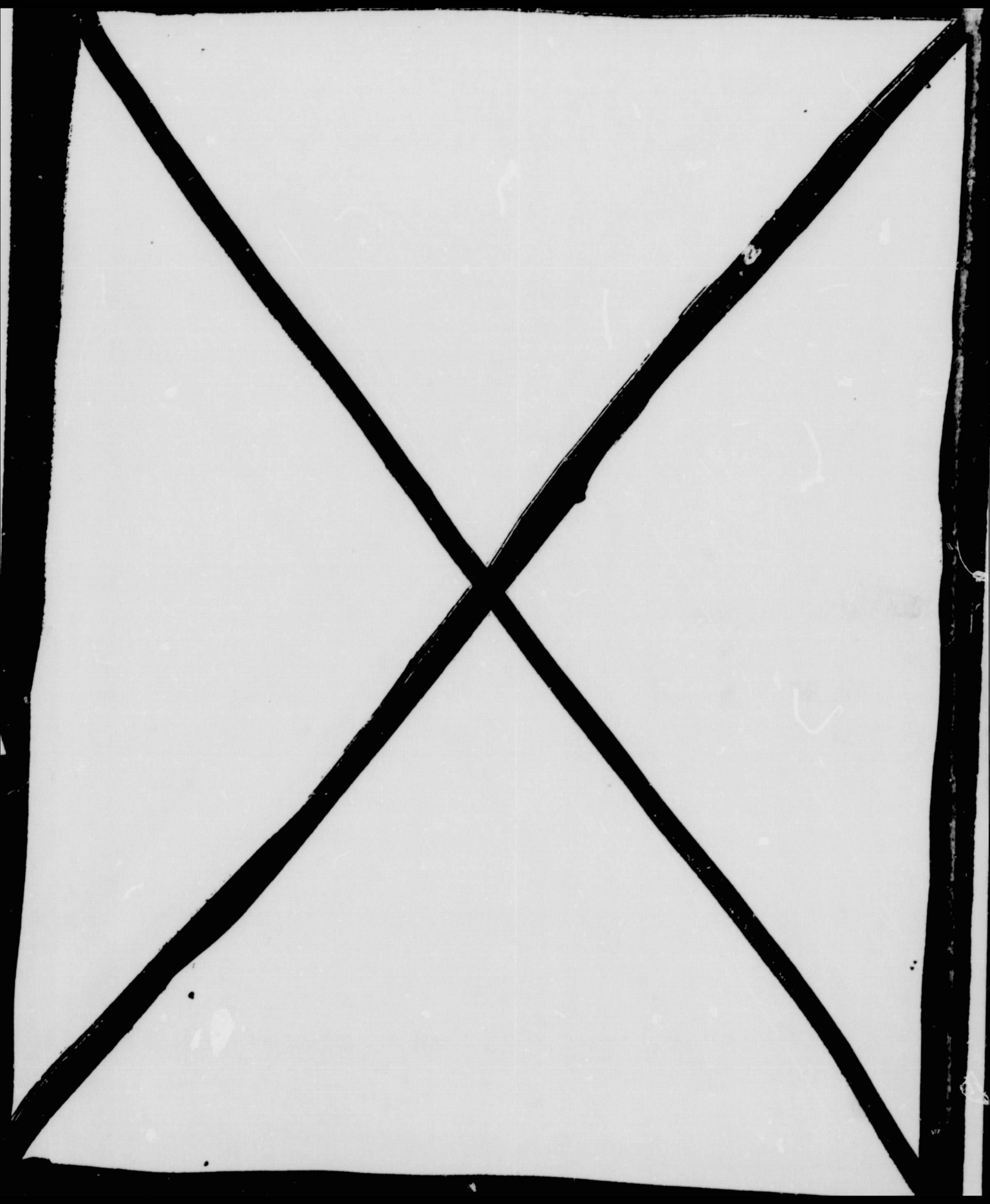
**AMTRAK'S SUPPLEMENTAL
CERTIFICATE OF SERVICE**

I hereby certify that, on this 17th day of July, 2000, I caused to be served
Amtrak's Comments by first class mail, postage prepaid, upon all parties of record in
this proceeding.

A handwritten signature in dark ink, appearing to read "R. G. Slattery".

Richard G. Slattery
NATIONAL RAILROAD PASSENGER
CORPORATION
60 Massachusetts Ave., N.E.
Washington, D.C. 20002
(202) 906-3987

Attorney for National Railroad
Passenger Corporation (Amtrak)



STB FD-33388 (SUB 91) 7-17-00 D 199311

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JUL 18 2000

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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



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

(GENERAL OVERSIGHT)

AMTRAK'S COMMENTS

The National Railroad Passenger Corporation ("Amtrak") submits the following comments on the first general oversight reports of NS and CSX.

Pursuant to monitoring conditions imposed by the Board in Decision No. 89, Amtrak, NS and CSX have been filing joint quarterly reports with the Board's Office of Compliance and Enforcement regarding the on-time performance of Amtrak's trains on NS and CSX lines since the implementation of the Conrail acquisition. Data are currently being compiled for the quarterly report covering the period through June 30, 2000, which will be filed with the Board later this month. In light of the regular filing of these reports, Amtrak sees no need to submit additional data or information on on-time performance in this proceeding.

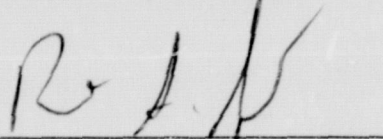
As indicated in NS's report (at 19), Amtrak has worked cooperatively with NS (and CSX) during the past year to accommodate the changes in and disruptions to their

operations on the Amtrak-owned Northeast Corridor between New York and Washington, D.C. that have occurred over the past 13 months. Amtrak will continue to do so.

Amtrak generally agrees with the statements NS's and CSX's oversight reports regarding Amtrak-related issues. Amtrak does, however, wish to provide clarification with respect to the statement in CSX's report (at 57) that the Amtrak on-time performance data for CSX lines submitted in the parties' joint reports showed "a positive trend in on-time performance during the period June 1, 1999 through March 31, 2000." The data to which CSX's statement refers pertain only to Amtrak's operations on CSX-operated lines acquired from Conrail. As indicated in the Amtrak-provided narrative portions of the February 14, 2000 and May 16, 2000 reports, on-time performance of Amtrak trains operating over lines that CSX owned prior to the Conrail acquisition

declined significantly during the referenced period when compared to the 12-month period preceding the acquisition, and many Amtrak trains operating over CSX experienced major delays.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'R. G. Slattery', written over a horizontal line.

Richard G. Slattery
NATIONAL RAILROAD PASSENGER
CORPORATION
60 Massachusetts Ave., N.E.
Washington, D.C. 20002
(202) 906-3987

Attorney for National Railroad
Passenger Corporation (Amtrak)

Dated: July 14, 2000

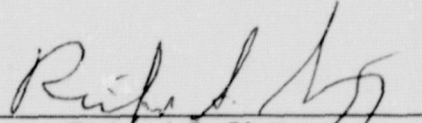
CERTIFICATE OF SERVICE

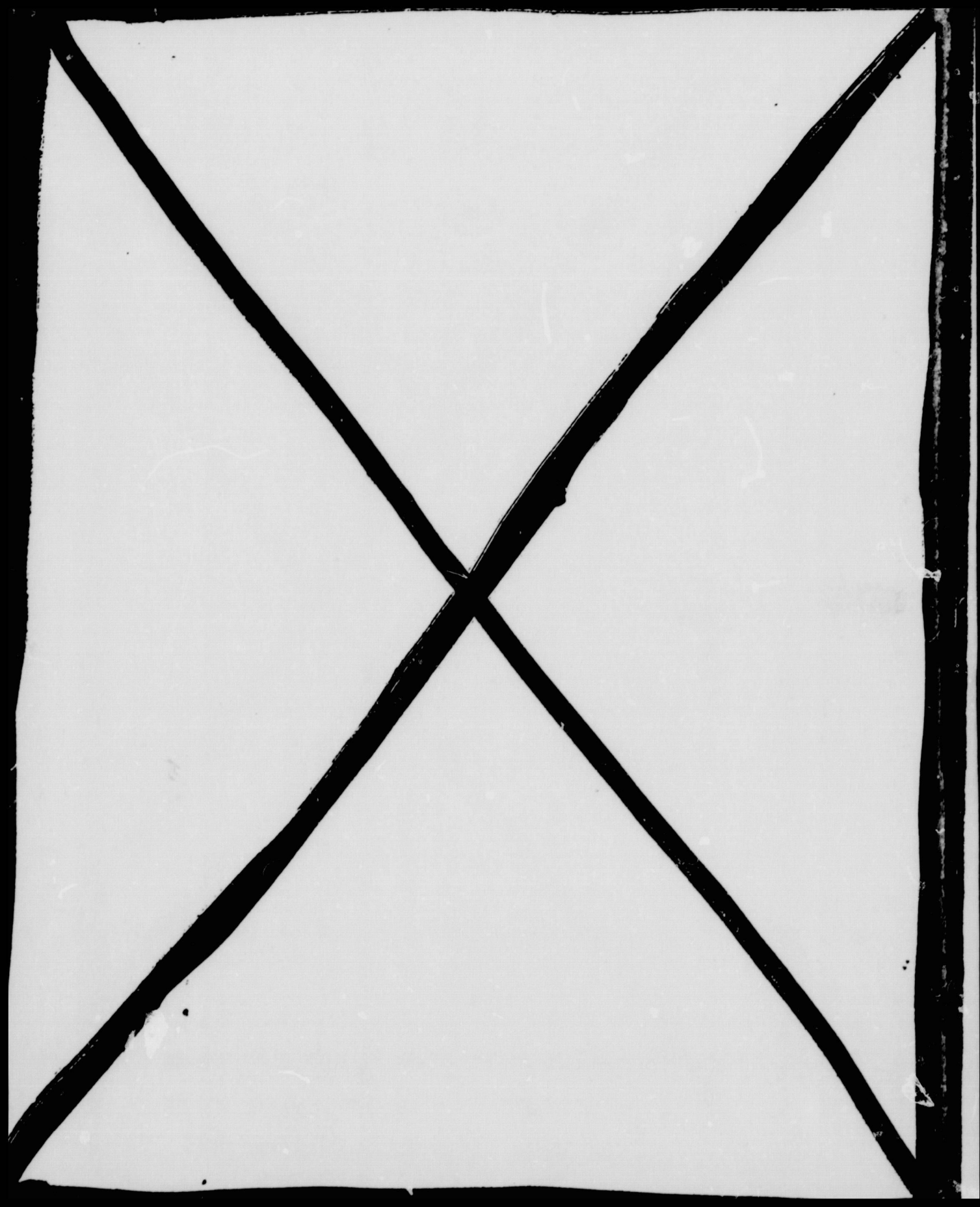
I certify that I have, this 14th day of July 2000, served copies of the foregoing

Amtrak's Comments by first class mail, postage prepaid, upon:

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

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


Richard G. Slattery



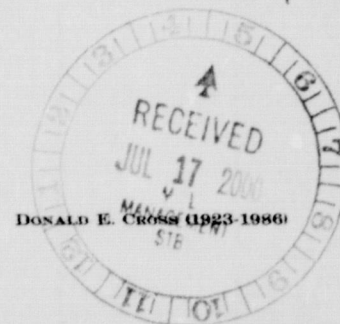
STB FD-33388 (SUB 91) 7-17-00 D 199310

199310

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July 17, 2000

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

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Office of the Secretary

JUL 18 2000

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Re: STB Finance Docket No. 33388 (Sub-No. 891)
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)

Verified Statement of James E. Seney

ERRATA

Dear Secretary Williams:

It has been discovered inadvertently that two errors appear, one on page 2 and the other on page 4 of the Verified Statement of James E. Seney in connection with the above-captioned matter.

The first sentence in the paragraph under the sub-heading **Community Concerns** on page 2 should read as follows:

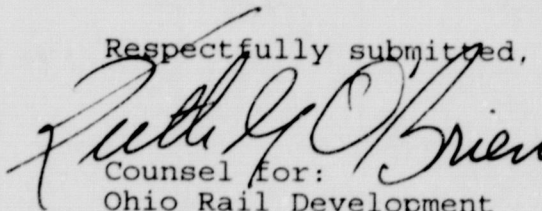
"Ohio acknowledges the unprecedented level of environmental mitigation that the STB ordered in Decision No. 89."

Honorable Vernon A. Williams
July 17, 2000
Page Two

The second sentence in paragraph 4 on page 4 should read as follows:

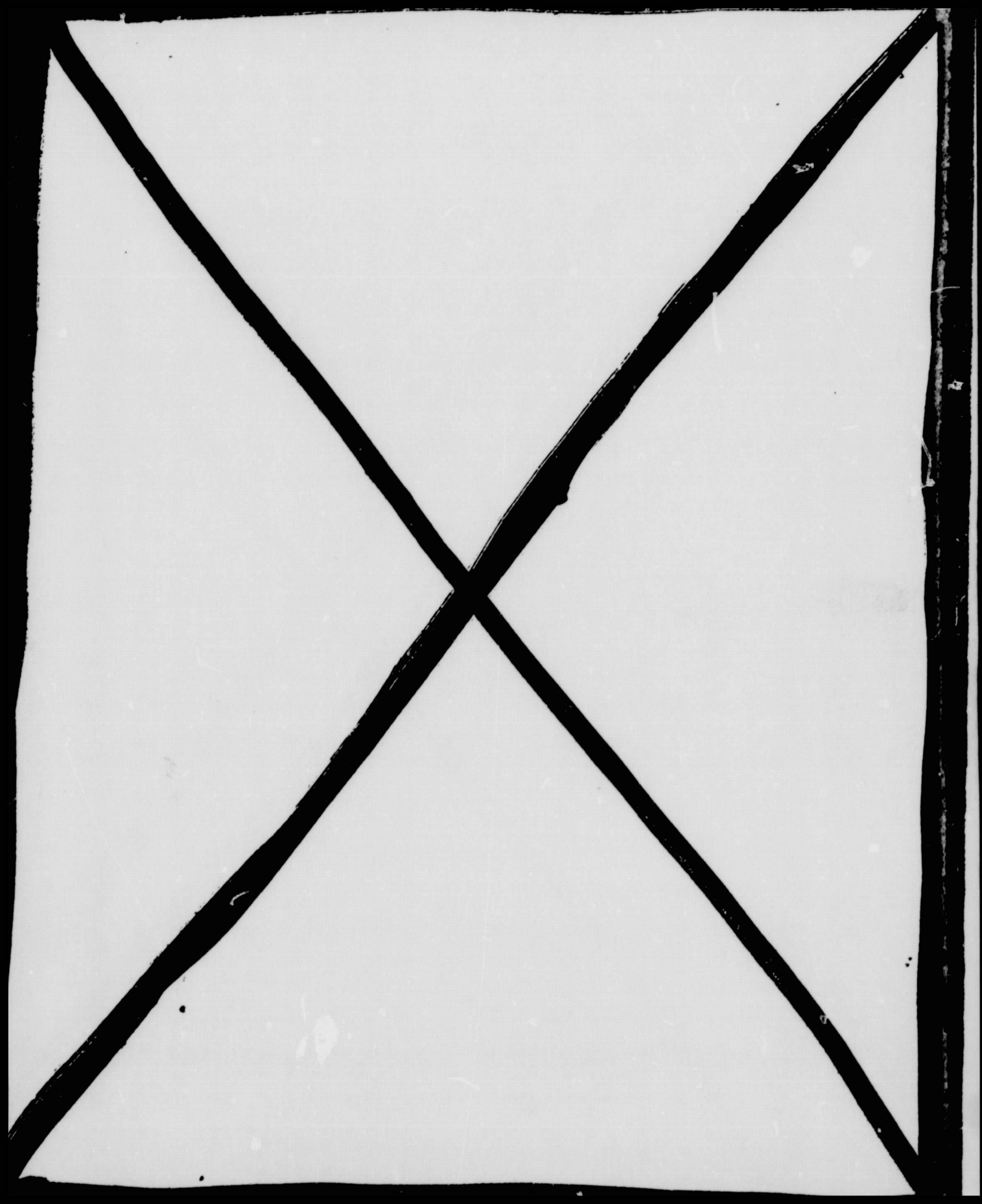
"Wellington acknowledges that CSXT has discussed noise mitigation with them, but the blocked grade crossing issues remain unsolved."

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ruth G. O'Brien", is written over the typed name and title.

Counsel for:
Ohio Rail Development
Commission
Attorney General for the
State of Ohio
Public Utilities
Commission of Ohio
Ohio Emergency Management
Agency

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



STB

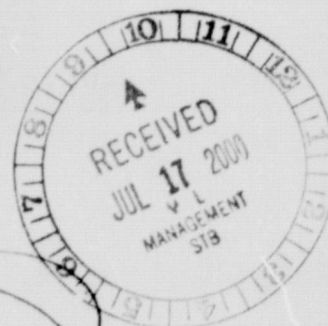
FD-33388 (SUB 91)

7-17-00

D

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July 13, 2000

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

ENTERED
Office of the Secretary

JUL 17 2000

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Dear Sir or Madame:

Pursuant to the above referenced docket, enclosed please find comments on the Conrail Transaction by the Transit Riders League of Metropolitan Baltimore.

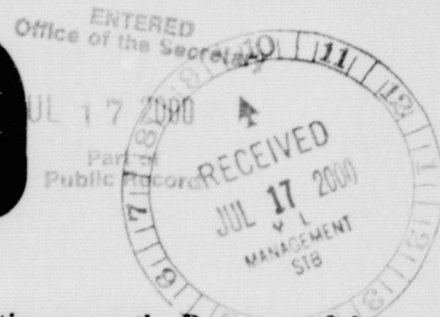
Yours truly,

Charles Thomas
Steering Committee Member

cc: Dennis Lyons, Esq., Arnold and Porter (representing CSX)
Richard A. Allen, Esq., Zuckert, Scoutt, and Rasenberger (representing NS)
John Porcari, Secretary, Maryland Department of Transportation
Ron Freeland, Administrator, Maryland Mass Transit Administration
Kathy Waters, Administrator, MARC
Charles A. Spitulnik, McLeod, Watkinson and Miller (representing MDOT)

Maryland Congressional Delegation

199300



Comments of the Transit Riders League of Metropolitan Baltimore on the Progress of the Conrail Transaction; Re: STB Finance Docket No. 33388 (Sub-No. 91)

July 12, 2000

The Transit Riders League of Metropolitan Baltimore represents more than 600 users of bus, light rail, subway, and MARC service in the Baltimore region. The League was formed in 1999 to improve public transit through informed citizen action. We demand equity and justice in transportation policy and funding; we demand a public transportation system; and, we demand full access to and involvement in decisions affecting users of public transportation.

We write to ask for the support of the Surface Transportation Board in resolving service delays along the MARC Camden and Brunswick lines caused, at least in part, by additional freight traffic and equipment failures on CSXT lines. Our members have lived long enough with the frustrations of MARC service along the Camden and Brunswick lines caused by problems of CSXT. Witness the following:

- Rosemary Jordan of Pikesville, Maryland, has faced increased child care costs and a decrease in annual salary from work. She must pay an additional \$10 per child for every 15 minutes that she is late in pick up her two children. The answer for her, in addition to running the trains on time, is for compensation to be made available to riders affected by the poor performance of MARC.
- Sue Ellis of Laurel, Maryland, has been late to work more times than is allowed by her company policy. While she has not yet been fired, she fears for her job security and the many latenesses have strained relationships with her staff, supervisors, and peers. She no longer is able to rely on the MARC train for her commute.
- Angie Reaves of Laurel, Maryland, has given up taking the MARC train. She has had to greatly adjust her work schedule to a commuter bus that is far less flexible than the MARC schedules.
- In 1999, three days before Christmas, Pat Valentino, also of Laurel, Maryland, it took more than 90 minutes for a train departing Laurel to reach the Muirkirk station just a few miles away. Passengers were told that the problem was caused by a faulty switch on the second track. Once the train arrived at Muirkirk, a freight train was permitted to proceed ahead of the MARC train, causing a delay of an additional thirty minutes.

- Just last week, Bert Rude of Ellicott City, Maryland sat on a northbound train with about 150 other passengers for more than 90 minutes waiting for a switch to be fixed both manually by the operator, automatically by a dispatcher, and finally by repair personnel. In the previous month, he waited on a southbound train for nearly the same amount of time. The problem was attributed again to "signal difficulties."

The stories of Rosemary Jordan, Bert Rude, Angie Reaves, Pat Valentino, and Sue Ellis are played out day after day along MARC's Camden and Brunswick lines by thousands of passengers victimized by the poor on-time performance of MARC. They are tired of excuses and apologies. They just want better service.

We can no longer accept CSXT's continued apologies and excuses for poor performance. In a letter to MARC Riders, CSXT Vice President Paul Reistrup noted many causes for the delays including signal and communications problems, bad weather, and commercial power outages.¹ Nowhere in his letter did Mr. Reistrup mention the most obvious cause of many of the delays: additional freight on the Camden lines that have blocked commuter trains. This is not the first time that CSXT has had to make a public statement regarding their poor performance...and pledging to do better. On September 18, 1998, CSXT released a letter to MARC customers pledging "a first-rate transportation system that meets the needs of Maryland's...rail commuters."² Nearly four years later, we are no closer to, and perhaps much farther away from such a first-class system.

Nor can we accept the response received from the Surface Transportation Board. In a letter to the Transit Riders League of Metropolitan Baltimore, STB Chairwoman Linda Morgan shirked much of the Board's responsibility in holding CSXT accountable for the poor performance in commuter service. We can not accept Chairman Morgan's statement that "the operations of MARC over CSXT's lines predate the Conrail acquisition and are therefore not directly related to that transaction for purposes of oversight."³ The delays caused by CSXT's poor management of the integration of Conrail into its existing freight operations has *directly* (though perhaps not solely) caused many of the late trains experienced by MARC customers. Therefore, the Surface Transportation Board must take a more firm stance against CSXT's continued failure to provide commuter service "without adverse impact on commuter service,"⁴ as they promised to do when the merger was approved.

¹ Letter from Paul Reistrup, CSXT Vice President for Passenger Integration, to MARC Riders, *Commuter Weekly*, July 10, 2000.

² CSXT Press Release, "MARC Message" September 18, 1996.

³ Letter from Linda J. Morgan, Chairwoman, Surface Transportation Board to Charles Thomas, Steering Committee Member, Transit Riders League of Metropolitan Baltimore, July 10, 2000.

⁴ Statement by CSXT in its Railroad Control Application, Volume 3A of 8, Page 176, in STB Finance Docket No. 33388, June 1997.

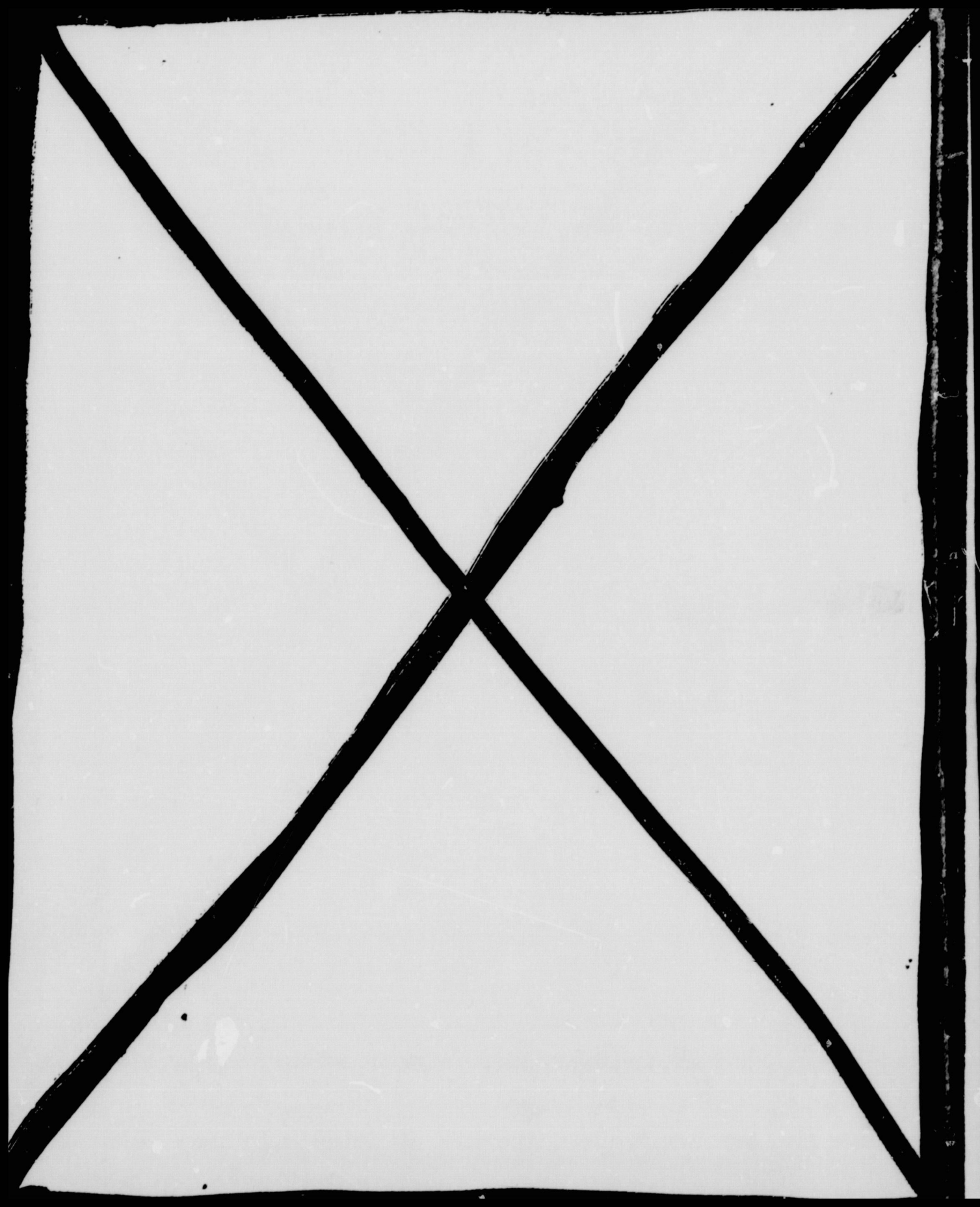
All we ask is that the MARC trains be regularly on-time. As such, MARC service should be given priority along CSXT lines such that customers will no longer be delayed by freight traffic. The STB should require that such a policy be immediately adopted and remain in effect until such time as CSXT and its partner agencies and state and local governments construct a necessary third track along the Camden line.

As CSXT has had such difficulty in providing the highest quality service and to guard against further delays in the short-term, we also urge the Surface Transportation Board to require that CSXT:

- establish a back-up operations center so that freight and commuter traffic is not delayed when the Jacksonville operations center is unable to operate.
- make payment of \$50,000 to the Maryland Department of Transportation such that the Department may establish a restitution fund for riders who incur additional costs for child-care, commuting, lost wages or leave time, etc. as a result of late trains operated by CSX.
- establish a supervisor on-site at MARC headquarters to assist in dealing with commuter traffic delays, customer complaints, and other operational issues.

Finally, we request that the Surface Transportation Board hold field hearings along the Camden and Brunswick lines, and in other parts of the country where commuter service has been affected by the CSX's acquisition of Conrail. This will allow the STB and its staff to hear directly from commuters who have been let down by CSXT and the promises made during the acquisition proceedings.

For further information or follow-up, please direct all correspondence to Charles Thomas, Steering Committee Member, Transit Riders League of Metropolitan Baltimore, at 218 W. Saratoga St., 5th Floor, Baltimore, MD 21201. Phone calls may be directed to Cathy Schap or Jamie Kendrick, Staff Coordinators for the Transit Riders League, at (410)539-1369.



STB FD-33388 (SUB 91) 7-14-00 D 199299 1 of 3

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JUL 17 2000

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199299

ORDC - 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)

VERIFIED STATEMENT OF JAMES E. SENEY

Keith G. O'Brien
1707 L Street, N.W.
Suite 570
Washington, DC 20036
(202) 785-3700

Attorney for:
Ohio Rail Development
Commission
Attorney General for the
State of Ohio
Public Utilities
Commission of Ohio
Ohio Emergency Management
Agency

Of Counsel:
Rea, Cross & Auchincloss
1707 L Street, N.W.
Suite 570
Washington, DC 20036

Dated: July 14, 2000

ORIGINAL

VERIFIED STATEMENT OF

JAMES E. SENEY

OHIO RAIL DEVELOPMENT COMMISSION

JULY 13, 2000

My name is James E. Seney. I am the Executive Director of the Ohio Rail Development Commission (ORDC). ORDC is the lead agency in coordinating the filings of the State of Ohio in Finance Docket 33388, the CSX Transportation (CSXT)/Norfolk Southern (NS) Control of Conrail. In that capacity, ORDC is also the lead agency in submitting comments during the Surface Transportation Board's (STB) oversight of the CSXT/NS (a.k.a. Applicants) acquisition and control of Conrail.

My comments will look at issues that involve both CSXT and NS collectively and issues that are mutually exclusive to one railroad or the other and will address the following items:

1. Urge the STB to have its Section of Environmental Analysis staff reassess their conditions ordered to mitigate the environmental impacts of the transaction and determine if these conditions sufficiently address the public safety and congestion impacts that are being experienced by Ohio communities. Ohio supports the separate filing of the City of Cleveland in this matter, especially as those comments are related to blocked crossing and other safety issues. Ohio also asks that the Board pay particular consideration to the community letters submitted to the Ohio Rail Development Commission by the City of Fostoria, Village of Oak Harbor, the City of North Ridgeville, and the Village of Wellington.
2. Support the filing of the City of Sandusky in seeking relief to the Norfolk Southern operational issues that are affecting public safety matters in the City of Sandusky. Ohio urges the STB to order sufficient mitigation that will alleviate the concerns outlined in their filing.
3. Urge the STB to review its stance on reciprocal switching as it relates to the prevention of circuitous and unnecessary movement of hazardous materials. Ohio is presenting the case of ASHTA Chemicals as an example of the kinds of moves that would merit a reciprocal switching agreement.
4. Assess whether the issue of the Acquisition Premium has been sufficiently answered by the Applicants and determine if Ohio rail users have been unfairly compelled to cover the cost of this Acquisition.

5. Support the filings of Wyandot Dolomite and National Lime & Stone in seeking relief above what was ordered in Decision No. 89 from the harms these companies have experienced due to the loss of single line service.
6. Support the filing of the Wheeling & Lake Erie (W&LE) to receive further definition of the relief the STB ordered in Decision No. 89 regarding their trackage rights between Bellevue and Toledo and the scope of the Huron Ore Dock lease arrangements, and to address the problems the W&LE has suffered as a result of the congestion in Bellevue.
7. Urge the STB to review the competitive access status at the Port of Toledo to determine if access rights should be granted to a shortline railroad.
8. Support the fair and equitable treatment of Rail Labor that have been adversely impacted by the Transaction.

Community Concerns: Ohio acknowledges the unprecedented level of environmental mitigation that the STB ordered in Decision No. 89. We are well aware that the STB is understaffed and overburdened in the scope of issues that need to be examined in these kinds of matters. Nevertheless, while the STB ordered a number of conditions to address the public safety, noise, and traffic congestion problems, these conditions have fallen short of correcting the problems we have faced from the implementation of the acquisition plan, particularly in the area of grade separations.

Ohio testified to the urgent requests from many communities for grade separations to be constructed to deflect the public safety and transportation problems that were anticipated. When the STB did not order any grade separation structures in Ohio, we did not wait for any other entity to help us solve these problems. Ohio may well lead the nation in state expenditures to ameliorate the impacts of a major railroad consolidation. Ohio has already spent nearly \$13 million on 192 active warning device projects in 10 corridors where rail traffic is increasing due to the Conrail Sale to help reduce the danger of crashes, deaths and injuries on at-grade crossings.

In addition, Governor Bob Taft recently announced a new \$200 million Rail Grade Separation Program to help counter the safety and quality of life problems which have resulted from the changing train traffic patterns and increased train traffic of the Conrail acquisition. Eighty percent (80%) of these funds will come from state and local resources. However, this investment will only accommodate approximately 40 projects from the more than 260 requests for grade separations. It may develop that some of these requests can be sufficiently addressed with alternative measures. Nevertheless, it is likely that the scope of grade separation needs will surpass the limits of our new state program.

Ohio recommends to the STB that its Section of Environmental Analysis meet with Ohio

to reassess the conditions ordered and determine appropriate measures, including grade separations, to be implemented to solve these problems. Attached as Exhibit "A" is the State of Ohio's report to the Ohio General Assembly entitled *Amended Substitute House Bill 163: Report to the Ohio General Assembly*, which addresses the reasons for the creation of a grade separation program and advises the General Assembly on steps to take to correct the problems faced by local communities.

Ohio maintained throughout the Conrail Sale process, and maintains today, that NS and CSXT have a responsibility to pay their fair share for safety improvements which have become necessary because of the transaction. To date, CSXT and NS have contributed nearly \$6 million toward the 192 flasher and gate projects described above. Both railroads have also indicated that they would contribute up to \$20 million (\$10 million each) toward the Governor's new Rail Grade Separation Program.

The Applicants have reported to the STB that they either have complied or are in the process of complying with the conditions that the Board ordered to mitigate the environmental concerns. I am attaching as Exhibit "B" a copy of the letters I have received from a number of communities that, in essence, verifies this account. However, in conversations that have occurred between the communities and the State, what the Applicants' reports do not reflect is the sense of frustration and wariness that the communities possess concerning the relative adequacy of these conditions to meet serious problems resulting from the transaction. The City of Cleveland has stated its concerns about the impacts to its community from stopped and idling trains, blocked crossings, pollution, horn noise and train vibrations, inadequate property maintenance, and its lack of confidence in the method employed to identify receptors. Ohio is particularly supportive of Cleveland's efforts in seeking relief to the remaining concerns of blocked grade crossings and the negative effects on the City's ability to provide adequate safety services to its residents.

In some instances, the communities are satisfied, and even pleased, with some of the mitigation that has been ordered, particularly in the area of hazardous materials response training, software programs, and response plan coordination. However, the heart of the issue is that many communities are convinced that the only way to remove the risk of train/vehicle collisions, hazardous materials spills resulting from train/vehicle collisions, loss of life and/or property from safety service response delays, and just the every-day problems of getting to school or work on time is to construct a grade separation. Some of the communities are also concerned that the STB may not be aware of some of the particular issues that have arisen during their individual negotiations with the railroads.

The Village of Oak Harbor is concerned about Norfolk Southern's report to the STB regarding the pursuit of a real-time train location monitoring system. Oak Harbor and Norfolk Southern have been working on a mutually beneficial proposal between the village and the railroad which will improve an existing underpass. Oak Harbor has

appreciated NS's cooperation in arriving at this preferred solution and asks that the Board approve this substitution, once the final signature has been obtained on the agreement.

Huron County (which includes the Village of New London and the Village of Greenwich) is concerned about adequate safety service access in the northern half of the Village of New London and believes that a grade separation is the only solution that will adequately address this problem. Huron County also questions the lack of noise mitigation ordered for the Village of Greenwich, which has experienced a substantial increase in train traffic.

The City of Fostoria has also experienced a tremendous increase in train traffic through its community. Ohio had testified to the STB regarding the sections of the city that are virtually isolated from safety service access due to the level of rail traffic that travels through the community. The traffic increases have exacerbated an already serious problem. The City notes that due to the increased train traffic, they are virtually inaccessible 19 hours out of each day. The City has little or no confidence in two of the conditions (31(C) and 31(D)) that were designed to remedy the safety service and other transportation access problems. Condition 31(C) involves the installation of a direct voice hotline between Fostoria's Emergency Response Dispatch Center and the CSXT operator controlling train movements in Tower F. Fostoria has a low confidence level in this system, resulting from weekly tests conducted by the City to see how quickly CSXT responds to the call. Condition 31(D) states that the Applicants will hold trains in areas to minimize blocked grade crossings. Fostoria does appreciate the intent behind this condition, but they maintain that this does not solve the problem, it only moves the problem around.

The City of North Ridgeville has notified Ohio that they are not satisfied with the results of negotiations between the City and NS. North Ridgeville has stated that no solutions were offered to alleviate their safety service access issues and believes that a grade separation offers the best solution to their problems.

The Village of Wellington has notified Ohio that negotiations between the Village and CSXT have not yet resolved the blocked grade crossing and safety service access problems associated with the rail congestion on the Greenwich - Berea line segment. Wellington acknowledges that CSXT has discussed noise mitigation with them, but the blocked grade crossing issues remain unsolved. Wellington is currently reviewing a series of options that would address their concerns in both the short term and the long term. Wellington emphasizes the importance of CSXT continuing to work with them on the selection, implementation, and funding of these solutions to meet their safety needs.

City of Sandusky: Relocation of Norfolk Southern's Triple Crown Services RoadRailer facility to the City of Sandusky has caused problems with blocked crossings and slow moving trains in the City of Sandusky. Track configuration, level of train traffic and

slower than expected train speeds are causing greater than anticipated problems for the City. Blocked crossings obstruct the delivery of safety services and interfere with schoolchildren bus transport and pedestrian activity. We note with concern that Sandusky has documented a long list of incidents in which its streets have been blocked by NS as a result of crossing protection malfunctions, train breakdown or derailments. Such incidents have resulted in numerous delays inhibiting emergency service providers to the substantial detriment of public health and safety. (See comments submitted by City of Sandusky). Ohio supports Sandusky's request that the STB reassess the situation at Sandusky and order adequate measures to remedy the serious problems which have arisen.

Safety: Ohio applauds both NS and CSXT for their safety records since the Start Date. NS winning top honors among Class I railroads in the Harriman Safety Awards and CSXT taking third place honors is reflective of the emphasis both railroads have historically placed on safety issues, as well as on the adequacy of their Conrail Safety Integration Plans. As we also noted above, it is the primary dedication that both CSXT and NS have for safety that encouraged their partnership with Ohio on the grade crossing corridor programs and in their agreement to participate in our state rail grade separation program.

In addition to reassessing the environmental conditions in terms of grade separations, Ohio encourages the STB to review the implementation of reciprocal switching agreements to remedy circuitous movement of hazardous materials on rail. Ohio has heard from a chemical company, ASHTA Chemicals, which had participated in the underlying proceeding, about changes in CSXT's operations that have resulted in a circuitous movement of hazardous material.

The Board ordered its condition relating to ASHTA Chemical based on the assumption that shipments originating from Ashtabula would be transported to destinations south and west via the Willard, Ohio yard. This operation was changed shortly after the Start Date, resulting in all shipments originating in Ashtabula being routed east to Buffalo first before being transported to their western destinations. ASHTA Chemicals believes that this is an unnecessary and circuitous movement of their product, which is classified as hazardous material. ASHTA Chemicals has informed Ohio that communication between ASHTA and CSXT occurs regularly, but ASHTA believes that more investigation into alternative routing options needs to be done. Ohio requests that the Board review this operational issue to determine if reciprocal switching agreements should be implemented.

Acquisition Premium: CSXT and NS use nearly seven pages to offer the same explanation as to why they cannot address the issue of the Acquisition Premium at this time. The State of Ohio believes that NS and CSXT can answer this question but have chosen not to. Ohio believes that the best way to determine whether or not an Acquisition Premium is being paid, to the detriment of Ohio rail users, is to examine the

rates paid by various "captive" rail users (e.g., receivers of bulk commodities with no economical truck or water options) since Start Date. The increase (or decrease) in rates for captive rail users should be compared to the relative increase (or decrease) of rates paid by rail users with rail or other viable competitive options. Ohio believes a rate-based analysis is the only way to address the Acquisition Premium issue, not the confusing and obtuse legal and accounting information which CSXT and NS presented.

Based on regular conversations my staff has had with rail customers since the Start Date, there has been a significant amount of concern expressed about the railroads increasing rates and other charges. Ohio chemical companies have mentioned extraordinary demurrage charge increases, despite providing substandard service, which also cost these companies additional costs to mode shift. Ohio's aggregate shippers have reported substantial rate increases. (See also the filings submitted by National Lime & Stone and Wyandot Dolomite.) For example, National Lime & Stone reports an unprecedented 5.7% rate increase, compared to a normal 2% - 3% increase.

Aggregate Shippers: NS and CSXT gloss over the issue of loss of single line service previously available to Wyandot Dolomite and National Lime & Stone with a terse statement that neither shipper has requested to develop new moves. Ohio is very much concerned that Wyandot is reporting that it is no longer able to competitively participate in marketing its products in the Upper Sandusky - Crestline - Alliance corridor and that it lost a significant amount of business soon after the split of Conrail lines, despite the lauded conditions which were supposed to protect these shippers for five years. (See Wyandot Dolomite submission).

We are also concerned by reports from National Lime & Stone that it is experiencing significant delay in service and diminished quality of rail service to the detriment of its business. Ohio urges the STB to revisit the problems faced by aggregate shippers and provide effective relief for these rail dependent shippers.

Wheeling & Lake Erie (W&LE): In the underlying proceeding, Ohio emphasized that W&LE is an essential component of the rail transportation system in Ohio. The State agreed with serious concerns raised by W&LE and fully supported W&LE in its effort to secure adequate relief designed to assure that it could remain independent and viable after consummation of the Transaction.

We were encouraged that the Board recognized the need for a remedy to preserve W&LE's essential services and continued its approval of the Conrail Transaction on several conditions, the implementation of which was to be worked out among the respective parties. However, we are very much concerned that several months after consummation almost none of the relief ordered by the Board has been mutually agreed upon among the parties.

Specifically, Ohio is concerned by NS' position which would require W&LE to incur

significant capital improvement costs, in addition to paying trackage rights fees, as a precondition to using trackage rights between Bellevue and Toledo for more than one train a day. Ohio believes that this requirement violates both the letter and the spirit of the conditions imposed by the Board. Such a stricture would clearly hamstring W&LE in its efforts to build compensatory traffic through its interchanges with Ann Arbor Railroad and Canadian National Railroad in Toledo.

Ohio recognizes that the Bellevue to Toledo line is congested. However, it is difficult to fathom how a few W&LE trains could be determined a cause of the problem. NS needs to assume the financial obligations for expansion to meet its own capacity requirements and not use congestion as an excuse to limit W&LE's best resource for recovering traffic losses directly resulting the sale of Conrail. Ohio suggests that STB should establish a reasonable minimum number of trains which W&LE should be allowed to run before it could be assessed capital costs. Ohio suggests that the minimum number should be at least eight trains a day, the threshold the STB uses to define significant traffic increases.

Ohio is also concerned that NS has yet to agree with W&LE on a mutually acceptable extension of W&LE's lease of the Huron Docks. Extension of that lease is important to assure that W&LE can continue to provide a competitive alternative to NS and CSXT for non-ore traffic moving between Lake Erie and to W&LE service territory.

Ohio notes that W&LE and NS have committed to continue in their efforts to achieve mutually satisfactory resolution of their differences. Ohio will support STB resolution of these important issues, if the parties are unable to reach agreement.

Port of Toledo: The State of Ohio is committed to the viability of our ports and their importance in the fabric of our transportation system. For this reason, we are very much concerned in hearing that the Port of Toledo no longer has competitive rail service options as a result of the failure of NS to exercise access rights it acquired in the Conrail proceeding. We note that the Toledo-Lucas County Port Authority (TLCPA) refrained from pursuing its concerns on the understanding that NS would actively supplant service previously available from Conrail. See attached Exhibit "D." Ohio agrees with TLCPA in its assessment that the Port would have been better served, had it requested the Board to require access to the Port for W&LE or Ann Arbor Railroad to assure continuation of competitive service options. We believe that the adverse ramifications of NS failure to exercise its rights should be a matter that is carefully reviewed by the Board, with a view toward remedial action.

Rail Labor: As we did throughout the Conrail Sale process, Ohio supports the fair and equitable treatment of Rail Labor adversely impacted by the transaction. Ohio reminds the STB that it is the common laborer who feels the most pain from merger transactions, either through the loss of a job, or through the uprooting of the home and family to move where their new job will be.

In addition, Ohio is concerned that, within the Hours of Service regulations, NS and CSXT are working Rail Labor more and harder than ever to keep up with new demands to move more rail traffic faster. Ohio asks the STB to encourage CSXT and NS to closely examine the efforts recently undertaken by the Union Pacific regarding adequate rest for locomotive engineers to see how NS and CSXT might apply the lessons learned to their own operations.

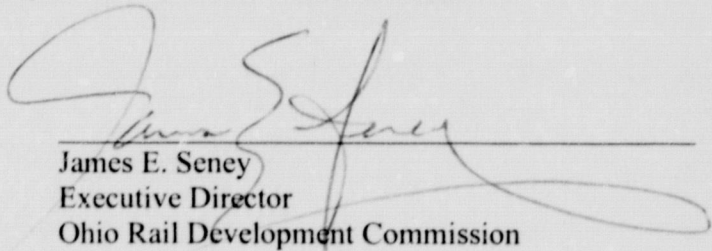
Conclusion: The division of Conrail lines has resulted in dramatic changes which are affecting Ohio and its constituents. Many of these changes were anticipated; some were not, especially in terms of their magnitude and effect. Ohio urges the Board to undertake a careful reassessment of the specific issues raised in these comments with a view to requiring appropriate remedial action.

VERIFICATION

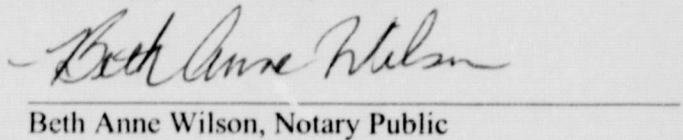
COUNTY OF FRANKLIN)
)
STATE OF OHIO)

SS:

James E. Seney, being duly sworn, deposes and states that he has read the foregoing statement, knows the facts asserted therein, and that the same are true as stated.


James E. Seney
Executive Director
Ohio Rail Development Commission

Sworn to and subscribed before me on this 13TH day of July, 2000.


Beth Anne Wilson, Notary Public

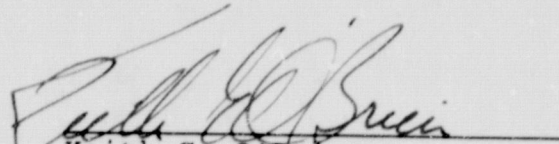
My Commission Expires: August 31, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have, this 14th day of July, 2000, served copies of the foregoing by first class mail, postage prepaid, upon the following:

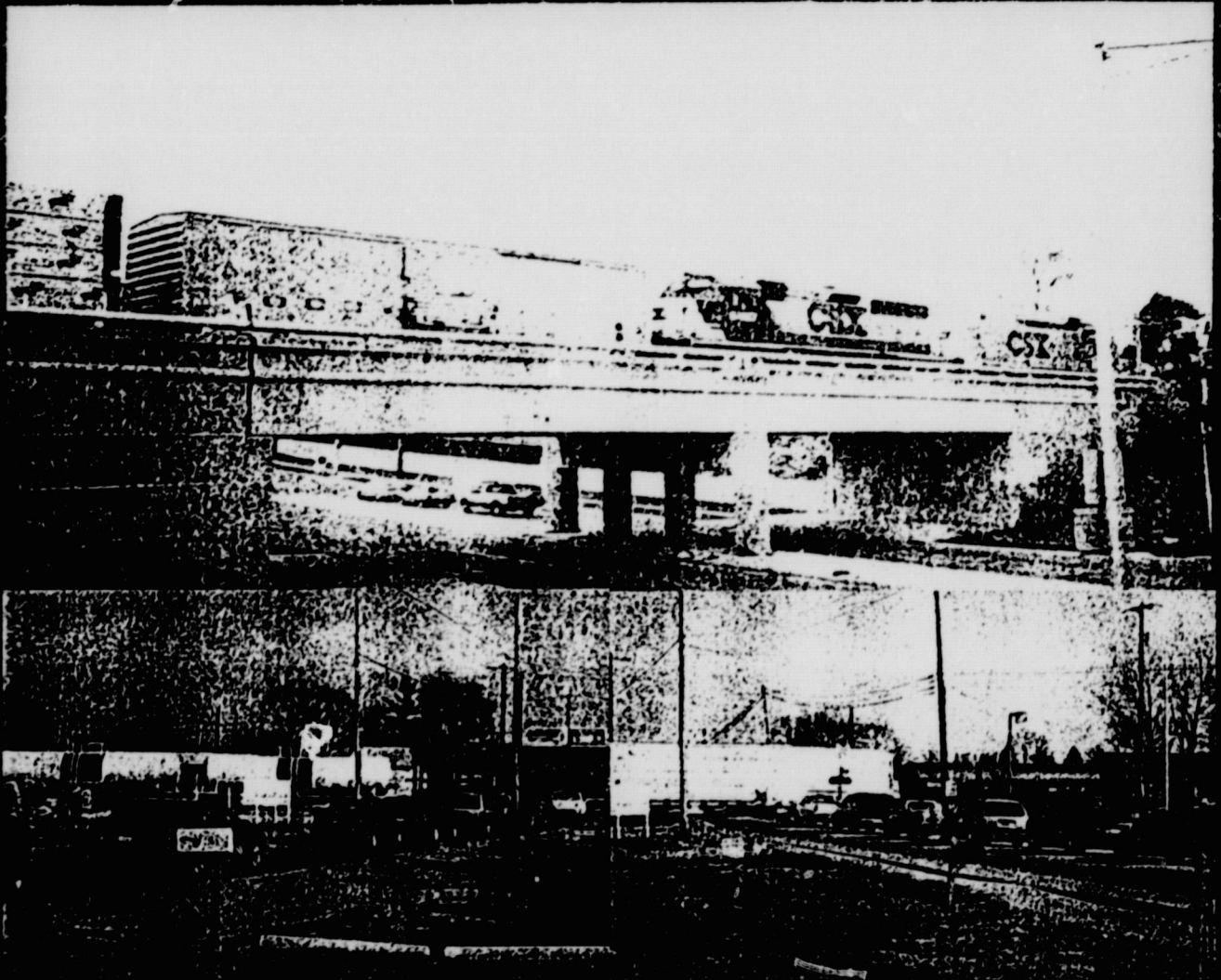
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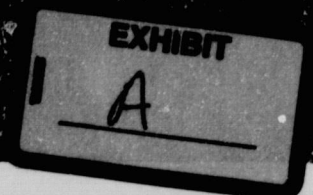

Keith G. O'Brien

DATED: July 14, 2000

Amended Substitute House Bill 163 Report to the Ohio General Assembly



Public Utilities Commission of Ohio
Ohio Rail Development Commission
Ohio Emergency Management Agency



AMENDED SUBSTITUTE HOUSE BILL 163:
REPORT TO THE OHIO GENERAL ASSEMBLY
REGARDING:

**PART I: THE NEED FOR MORE RAILROAD - HIGHWAY
GRADE SEPARATIONS**

**PART II: STATUTORY AND REGULATORY CHANGES
NEEDED TO ADDRESS THE INCREASED
TRANSPORT OF HAZARDOUS MATERIALS
BY RAIL**

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**EXECUTIVE
SUMMARY**

**EXECUTIVE SUMMARY:
AMENDED SUBSTITUTE HOUSE BILL 163:
REPORT TO THE OHIO GENERAL ASSEMBLY**

Background: On March 31, 1999, Amended House Bill 163 was signed into law by Governor Bob Taft. Through this law, the General Assembly recognized problems relating to increased blockage of roads by trains, as well as those related to the increased rail transport of hazardous materials, and instructed the Ohio Rail Development Commission, the Public Utilities Commission of Ohio, and the Ohio Emergency Management Agency (the Agencies) to investigate the following:

- (A) *Grade separations and improvements needed to alleviate safety problems and congestion in the state;*
- (B) *How to develop a priority system to determine the order in which those grade separations and improvements could be made;*
- (C) *Potential funding sources for the grade separation and improvement projects;*
- (D) *Statutory and regulatory changes that may be necessary to maintain the public health and safety with regard to predicted increases in rail transportation of hazardous materials in this state.*

Interest in the issues of grade separations and the transport of hazardous materials by rail was stimulated by the recent acquisition of the Consolidated Rail Corporation (Conrail) by the Norfolk Southern Corporation (NS) and CSX Transportation (CSX). The increase in many Ohio communities in total trains per day, and in the number of rail cars carrying hazardous materials, engendered a loud and widespread outcry from local Ohio communities large and small.

The compelling issue raised by thousands of Ohio citizens in dozens of communities faced with increased train traffic was safety. Many citizens feared that they would be separated from ambulance, fire, and police protection by slow-moving or stopped trains blocking at-grade crossings. In addition, citizens and public safety officials, especially those in small communities with limited resources, described the potential disaster a hazardous material (hazmat) spill would cause in their communities.

In July 1998, the Surface Transportation Board (STB) approved the Conrail sale. The STB did not, however, order that CSX or NS build any grade separations in Ohio to permanently resolve blocked crossing issues, despite the arguments by state and local officials that grade separations were the only real solution to the problem of increased train traffic. (A grade separation is merely a bridge or a tunnel which separates the road from the rail or vice-versa.) Further, the STB did not mandate that NS and CSX provide extensive mitigation for possible hazmat issues. All the STB ordered was that CSX and NS provide better information about how to handle spills of hazardous materials, some training of emergency response personnel, and improved communication.

PART ONE: GRADE SEPARATION ISSUES

A) PRELIMINARY NEEDS ASSESSMENT

Methodology

Following the lead of the General Assembly, the Agencies decided on a simple, common sense approach to assessing statewide needs for grade separations. With more than 6,300 at-grade public crossings in Ohio, the Agencies decided to ask local governmental agencies to make assessments as to where grade separations are needed. The Agencies sent out surveys to almost every county, city, village, and township with an at-grade crossing.

Results

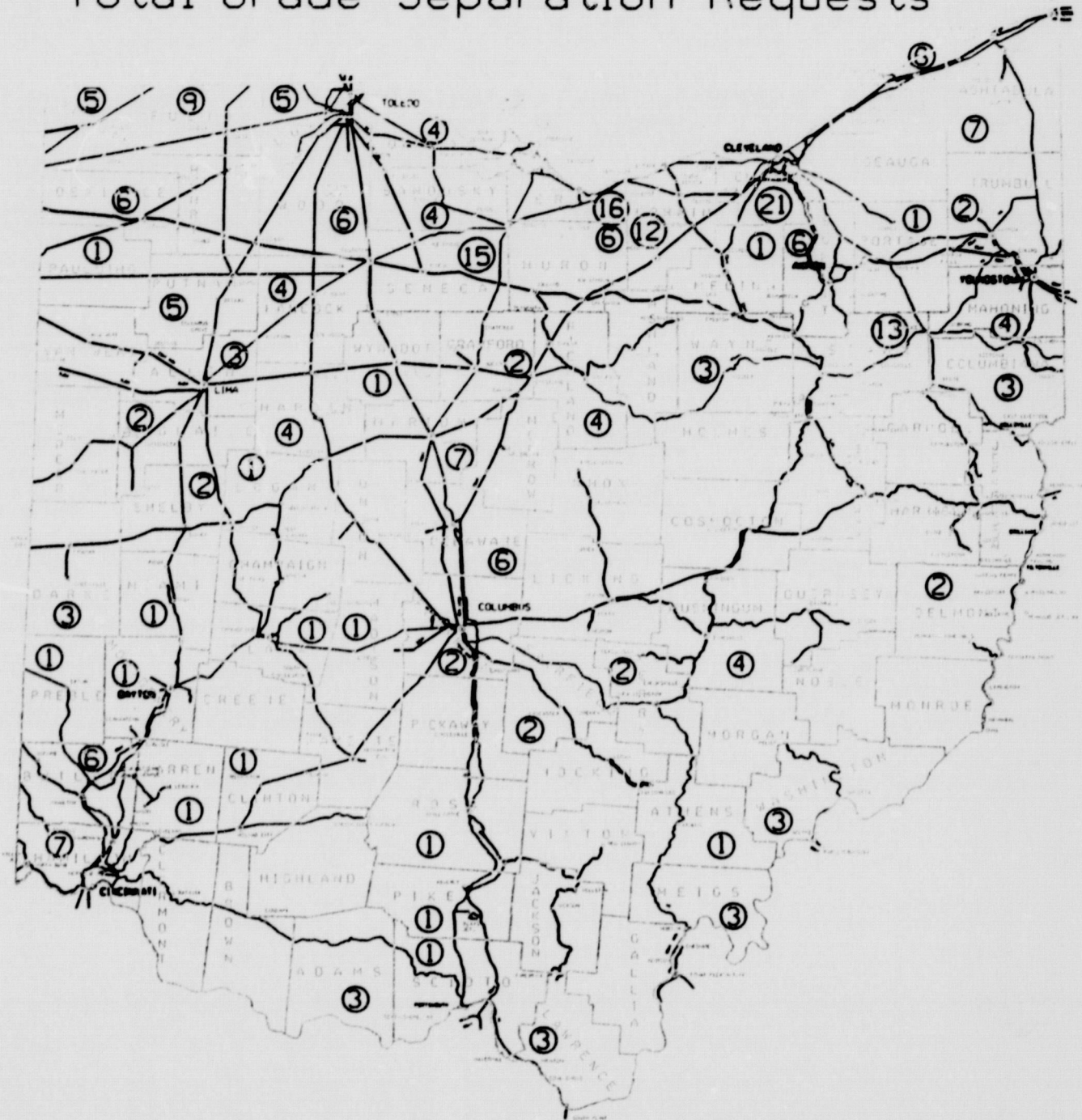
The Agencies sent out 913 surveys. 504 local agencies responded. Of the 504 respondents, 168 indicated that their communities needed 252 grade separations. Map 1 on the following page shows where officials stated that grade separations were needed. The list included as Exhibit "B" catalogs the reported needs.

Clearly, until a methodology for ranking potential projects is fully developed, the Agencies cannot determine which of the 252 grade separation requests have the most merit. Further, until detailed engineering for high priority projects is done, the costs of the projects will not be accurately known. However, in order to encourage discussion of a grade separation initiative, the Agencies decided to make some common sense assumptions and develop some order of magnitude estimates. We encourage anyone reading this report to use the following information with these disclaimers in mind.

To arrive at an order of magnitude estimation of the number of hypothetical "high priority" grade separation projects, the Agencies established an arbitrary threshold. For discussion purposes, it was assumed that grade separation requests at locations with 30 or more trains per day and with an average daily traffic (ADT) count of 1,000 or more would be high priority grade separation projects.

Of the 252 locations submitted, approximately 40 are at locations where train and traffic counts exceed these hypothetical threshold numbers. This hypothetical subset of requests includes both urban and rural settings, with the urban outnumbering the rural by about 2 to 1. Using very rough order of magnitude costs of \$3 million per rural grade separation and \$7 million per urban grade separation, the estimated cost to build these 40 hypothetical high priority grade separations would be about \$215 to \$225 million.

Total Grade Separation Requests



B) POSSIBLE PRIORITIZATION METHODOLOGY

Review of Existing Prioritization Systems

The first areas the Agencies investigated were existing Ohio highway prioritization systems. The Ohio Department of Transportation (ODOT) Transportation Review and Advisory Committee (TRAC) system, and ODOT Safety Program system of prioritization were examined, but found lacking for evaluating site specific data and the impact on public safety responses.

The Federal Railroad Administration (FRA) does, however, have a new computerized prioritization system called GradeDEC which is close to providing a reasonable cost/benefit analysis for grade-separation projects. GradeDEC offers a large amount of user flexibility in assessing the benefits from crossing improvements, such as the installation of flashers and gates, or grade crossing closures, as well as the relative cost/benefit of grade separations.

GRADEDEC BENEFIT CALCULATIONS

Safety: The benefits of reduced vehicle-train accidents.

System Reliability: The benefits from the reduction of vehicular delays at crossings.

Environmental: The benefits of reduced vehicle and train emissions.

Vehicle Operating Cost Savings: The benefits of decreased fuel and oil consumption of vehicles due to improved traffic flow.

Network Benefits: The benefits of reduced queuing at roads in the vicinity of the improvement.

Recommendation

Given the limited number of current systems to prioritize grade-separations, Ohio has two basic choices, either develop a new system to meet Ohio's particular needs, or revise the existing GradeDEC system. The GradeDEC software would be a good start toward a grade-separation prioritization system. If a grade-separation program is instituted in Ohio, the Agencies recommend that State officials work with the FRA to try to refine GradeDEC to better account for safety concerns of Ohio citizens and public officials. Furthermore, it is recommended that the ODOT be the agency which prioritizes the projects, either by way of a new program or by incorporation into existing allocation systems. Clearly, ODOT is the State agency which can best administer a large scale grade separation program if one is initiated. Therefore, it would be best if it handled project prioritization.

C) POSSIBLE FUNDING SOURCES

Short Term Vs. Long Term Program

By any measure, funding new grade separations will be expensive. For instance, the approximately 40 "hypothetical" high priority projects, described for discussion purposes only in part "A" of this report, would cost in excess of \$200 million. Or, if only one new grade separation were budgeted for each Ohio county, the costs could approach one-half billion dollars.

Given the potential magnitude of any new grade separation program, the Agencies recommend that funding be spread out over the long term rather than trying to assemble such a huge amount of funding for a one-time, short-term program. Spreading the costs out over a period of years makes sense from an administrative as well as financial point of view. A one-time infusion of funding would result in grade separation projects being bunched in one or two years, potentially causing problems in finding enough qualified engineers to design the projects, contractors to build them, and participating parties to pay for them. At minimum, the Agencies recommend a ten-year program be considered.

Potential Sources of Funds

Railroads: By federal regulation, railroads currently pay only 5% of costs for most grade separation projects. The Agencies recommend that the railroad share be increased to **at minimum** equal the share which local governments are required to provide as a match. The Federal Highway Administration determined the 5% share, based on the fact that a grade separation would eliminate the need for the railroad to maintain active warning devices (such as flashers and gates) at that crossing forever. The Agencies believe that the benefits to the railroads in terms of reduced liability for crossing accidents and improved operations overall (for example, the ability to park trains without blocking a crossing), more than warrant additional railroad participation.

Local Governments: Just as in any highway or rail program, participation by those who directly benefit is a critical indication of need. Partnership with local entities will make any state program work better.

The Agencies: OEMA has no funding that can legally be applied toward a grade separation. PUCO and ORDC have limited funds for crossing safety projects. A limited amount of this funding could be applied toward grade separations to help fill funding gaps. ORDC and/or PUCO participation can be achieved by reallocating existing resources and re-orienting program priorities.

ODOT Programs: In conversations with ODOT officials, it has been suggested that ODOT has existing budget resources to set aside some funds for grade separation projects or to raise new funds through the sale of bonds. However, any ODOT investments in a special grade separation program will be limited to existing federal and state resources.

General Assembly: The General Assembly could augment the funding of state agencies and local governments through a variety of methods. For example, providing additional funds to the State Infrastructure Bank (SIB) expressly for grade separation projects could make it much easier for local governments to meet their local share requirements. Similarly, the General Assembly could make more funds available to ODOT, PUCO, or ORDC for grade separations through the Capital Budget process. Although funding included in the Capital Budget is only for a two-year period, it is not uncommon for one General Assembly to make its will known to future General Assemblies in the budget language. Finally, the General Revenue Fund could be a source of funding for grade separation projects.

PART II: STATUTORY AND REGULATORY CHANGES FOR TRANSPORT OF HAZARDOUS MATERIALS BY RAIL

Background: Currently, Ohio is home to approximately 40 railroads of various sizes that operate on approximately 5,800 miles of main line track and through almost 6,300 public grade crossings.

Every conceivable product and commodity is shipped by rail, including a wide variety of dangerous goods and hazardous materials. As a result of the existence of a significant railroad industry, hazardous materials are transported daily on all main line tracks of Ohio's remaining two Class I railroads (CSX and NS). In addition, because of Ohio's central location, those hazardous materials which do not originate in, or are not bound for, Ohio communities pass through the state.

Generally, the regulation of the transportation of hazardous materials by rail is governed by federal law. In 1970, Congress enacted the Federal Railroad Safety Act (FRSA) that authorized the Secretary of the Department of Transportation to adopt railroad safety regulations. In the Act, Congress included broad preemption provisions excluding the states from legislating in any area of railroad safety already covered by regulations adopted by the Secretary. The United States Court of Appeals for the Sixth Circuit held that the Ohio Hazardous Materials Transportation Act enacted in 1988 was preempted by the FRSA and, hence, unenforceable against railroads operating in Ohio.

A) CURRENT CONDITIONS AND CONRAIL SALE RELATED INCREASES

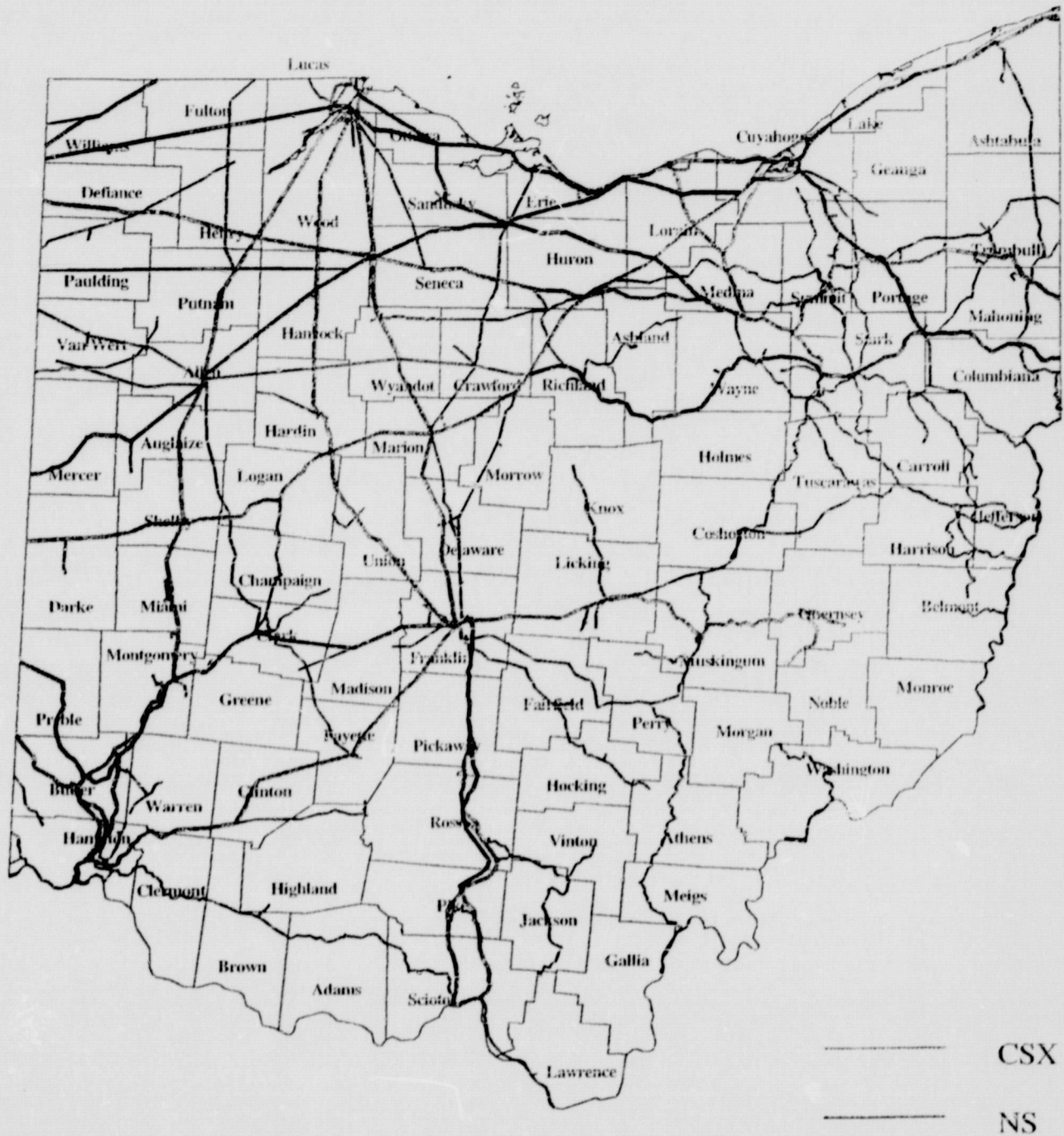
Overview of Hazardous Materials on Rail

Trains carrying regulated amounts of hazardous materials are subject to stringent operating regulations and practices imposed by federal law, in addition to those regulations and practices applicable to trains carrying general freight. These regulations apply to trains carrying high levels of hazardous materials (key trains) as well as to rail corridors that see high volumes of hazmat traffic (key routes).

Map 2 shows existing key routes in Ohio. As a result of the Conrail acquisition, CSX and NS have indicated that they would change the routing of many carloads of hazardous material. The designation of key routes would change as the railroads shift hazardous material traffic from one line to another. In addition, existing key routes would carry increased volumes of cars containing hazardous material.

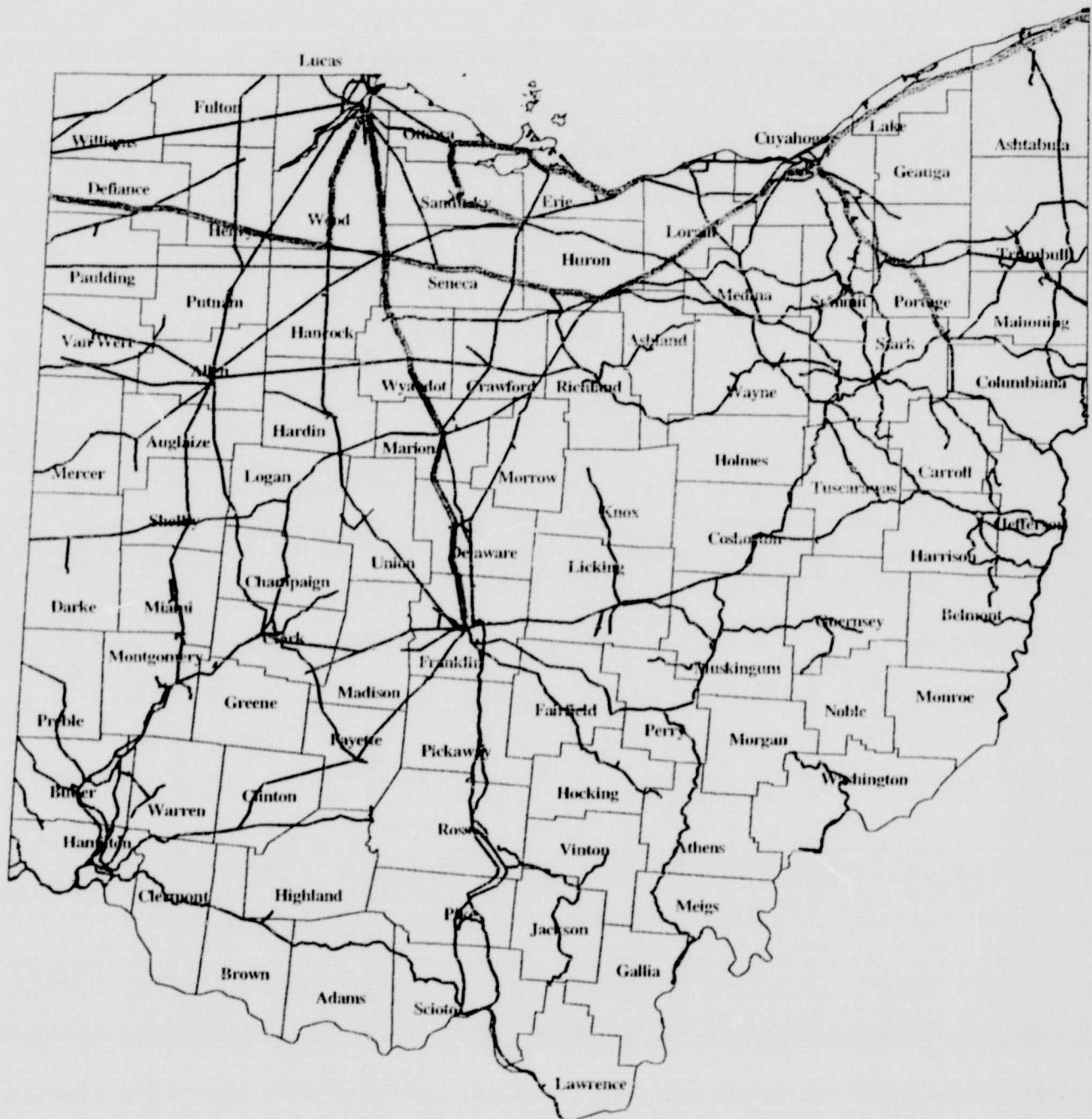
Based upon information submitted by CSX and NS in the petition to acquire Conrail, and upon its own analysis, the STB determined that 19 rail line segments in Ohio carrying increased amounts of hazardous material are of potential concern (Map 3). Fourteen of these segments would see an increase in hazardous material traffic sufficient to become Key Routes. Increases

Hazardous Material Key Routes



Hazardous Material Key Routes

Key routes which will carry increased amounts of hazardous materials as a result of the Conrail acquisition



in hazardous material traffic on the remaining five segments would elevate those segments to Major Key Routes.

B) AGENCIES' ONGOING HAZMAT SAFETY PROGRAMS

Inspection Activity

The State of Ohio, on its own and in cooperation with the Federal Railroad Administration (FRA), has been inspecting hazardous material transportation by rail for more than 25 years. Currently, the PUCO employs two federally certified rail hazardous material inspectors. During 1998, 532 rail hazardous materials inspections were conducted at rail yards and shipper facilities throughout Ohio.

Rail traffic, including hazmat, has steadily increased over the past 10 years, even without the Conrail sale. During that period of time, however, the corps of rail inspectors has declined by about 25%. Currently, the PUCO employs nine hazardous materials specialists who primarily inspect motor carriers and shipper facilities. The PUCO is in the process of adding two rail inspectors to its staff to be able to respond when the volume of hazmat rail shipments increases to those levels expected by the railroads.

The PUCO has made a policy decision to monitor and inspect every movement of spent nuclear fuel and radioactive waste in Ohio. Neither the industry nor the FRA has developed an investigatory response or plan specific to such movements.

Grade Crossing Upgrades

From the time the acquisition was first proposed, PUCO and ORDC began a proactive effort with the railroads to plan for the increase in train traffic and the changing traffic patterns the acquisition would bring to Ohio. With rail traffic, hazardous and otherwise, increasing dramatically on many Ohio rail lines, the Agencies were concerned about the safety at grade crossings. In June 1997, at the time CSX and NS filed the joint application with the STB to acquire control of Conrail, the State of Ohio was already negotiating with CSX to upgrade grade crossing safety on its impacted lines in Ohio. Subsequently, PUCO and ORDC have entered into similar agreements with CSX and NS, which will provide for the installation of lights and gates at almost 200 grade crossings on rail corridors that will see a significant increase in train traffic as a result of the Conrail sale.

C) TRAINING INITIATIVES

Since the beginning of the merger process, PUCO has initiated efforts to expand local responder awareness to the changing rail environment, develop training opportunities, and fund training activities.

Hazardous Materials Transportation Fund

Section 4905.83, Revised Code, authorizes the PUCO to assess civil forfeitures against motor carriers and shippers of hazardous materials who violate Ohio's hazardous materials transportation regulations. Under Ohio law, the first \$800,000 of civil forfeitures collected annually by the Commission is credited to the hazardous materials transportation fund. That money is used to fund emergency response planning, safety and enforcement training, as well as learning the proper techniques and procedures for management of hazardous material releases and/or incidents. Ohio law provides that 50% of the fund (\$400,000 per year) is provided to Cleveland State University for use in its hazardous materials education program.

Hazardous Material Training Grant Program

The PUCO has been providing funding for hazardous material training programs throughout Ohio for 10 years. During that time, almost \$4 million has been made available for training purposes through the program. The training fund enables applicants to apply for grant funding based upon operational needs and affords a wide range of educational and training options. Grant recipients have included a wide variety of organizations and governmental entities from The Ohio State University to local volunteer fire departments. Grants have been used to offset the planning or training costs of projects ranging from a research study of radioactive waste routing risks within Ohio to a basic awareness course for volunteer fire departments.

PUCO has initiated efforts at Cleveland State University and Findlay College to design rail specific hazardous material incident response training. Counties impacted by Conrail Sale changes have been specifically targeted to receive training grant information.

CONCLUSION AND RECOMMENDATIONS FOR PART II

The Agencies believe that the legislature should consider the recommendations set forth below:

- 1) Expand current training and capabilities of responders in the areas impacted by increased traffic by increasing the funding support for the training programs offered by Cleveland State University and the University of Findlay.
- 2) Foster a partnership among Cleveland State University, the University of Findlay and the State Fire Marshal to better utilize existing training facilities and resources in the state so as to provide convenient and effective training for local respondents.
- 3) Evaluate the appropriate level of inspection oversight and staffing levels to insure effective regulation of hazmat shipments as volumes increase in coming years.

- 4) Require railroads to provide hazmat information and hazmat flow studies to impacted Local Emergency Planning Committees and counties on a periodic basis and fund planning exercises in high risk communities.
- 5) Require railroads to provide the response material required for responding to incidents from both sides of frequently blocked crossings so as to equalize response capabilities.
- 6) Insure cooperation of 911 or other emergency centers to notify appropriate response agencies from both sides of a blocked crossing.
- 7) Require jurisdictions on both sides of rail tracks to develop mutual aid agreements.

AMENDED SUBSTITUTE HOUSE BILL 163:
REPORT TO THE OHIO GENERAL ASSEMBLY
REGARDING:

**PART I: THE NEED FOR MORE RAILROAD - HIGHWAY
GRADE SEPARATIONS**

**PART II: STATUTORY AND REGULATORY CHANGES
NEEDED TO ADDRESS THE INCREASED
TRANSPORT OF HAZARDOUS MATERIALS BY
RAIL**

**AMENDED SUBSTITUTE HOUSE BILL 163:
REPORT TO THE OHIO GENERAL ASSEMBLY
REGARDING:**

**PART I: THE NEED FOR MORE RAILROAD - HIGHWAY GRADE
SEPARATIONS**

**PART II: STATUTORY AND REGULATORY CHANGES NEEDED TO
ADDRESS THE INCREASED TRANSPORT OF HAZARDOUS
MATERIALS BY RAIL**

Background

On March 31, 1999, Amended Substitute House Bill No. 163 was signed into law by Governor Bob Taft. Section 12 of the new law states that:

The Executive Director of the Ohio Rail Development Commission, the Chairman of the Public Utilities Commission, and the Deputy Director of the Emergency Management Agency shall review and evaluate information and develop a report concerning the following topics:

- (A) Grade separations and improvements needed to alleviate safety problems and congestion in the state;*
- (B) How to develop a priority system to determine the order in which those grade separations and improvements could be made;*
- (C) Potential funding sources for the grade separation and improvement projects;*
- (D) Statutory and regulatory changes that may be necessary to maintain the public health and safety with regard to predicted increases in rail transportation of hazardous materials in this state.*

The Executive Director, Chairman, and Deputy Director shall submit the report to the General Assembly on or before December 31, 1999.

Interest in the issues of grade separations and the transport of hazardous materials by rail was stimulated by the recent acquisition of the Consolidated Rail Corporation (Conrail) by specially formed subsidiaries of the Norfolk Southern Corporation (NS) and CSX Transportation. In June 1997, CSX and NS jointly petitioned the Surface Transportation Board (STB) to acquire and divide between them the rail lines, equipment, and properties of Conrail, Ohio's largest and most important railroad at that time. In their voluminous filings to the STB, NS and CSX explained how rail traffic, including hazardous materials, would dramatically increase along some lines and

decrease along others as the result of their integration of Conrail lines into their respective systems. Absorbing Conrail will enable CSX and NS to develop new, more efficient rail routes and service corridors to more effectively compete with the trucking industry, as well as each other.

Officials from the Ohio Rail Development Commission (ORDC), the Public Utilities Commission of Ohio (PUCO), and the Ohio Emergency Management Agency (OEMA) joined members of the Ohio General Assembly and other state agencies (including Agriculture, the Attorney General's Office, and Development) in analyzing the changes the proposed Conrail Sale would bring, and in publicizing these changes in communities along impacted rail lines.

The increase in total trains per day and in the number of rail cars carrying hazardous materials through some Ohio communities engendered a loud and widespread outcry from local Ohio communities large and small. For example, the City of Cleveland protested the projected increase in train traffic through densely populated neighborhoods from 4 trains per day to 44 trains per day, with the related increase in the transport of hazardous materials rising from 0 carloads per year to 44,000 carloads per year. The Village of Greenwich objected to the projected increase from 46 trains per day to 86 trains per day, with an increase in annual carloads of hazardous materials from about 18,000 carloads to 69,000 carloads.

The compelling issue raised by thousands of Ohio citizens in dozens of communities faced with increased train traffic was safety. Many citizens feared that they would be separated from ambulance, fire, and police protection by slow-moving, or stopped trains, blocking at-grade crossings. Public safety officials described the potential catastrophic results in terms of lost lives and property damage. Anecdotal evidence of the problems caused by existing situations where crossings were often blocked was related to State officials, so that they would understand the types of problems which would be faced when train traffic increased. Among the most compelling testimony were reports of firefighters climbing through a parked train to reach a burning building and private citizens performing CPR while an ambulance waited for a train to clear a crossing.

In addition, citizens expressed their frustration with merely living day-to-day with trains at crossings blocking their access to work, shopping, and recreation. In some areas, just driving to the store to get a loaf of bread without being stopped by a train is already a small luxury. In many areas, schoolchildren are kept from starting their school day on time because school busses are detained at blocked crossings. Citizens expressed fears that the increased train traffic would further hamper their quality of life.

Citizens and public safety officials, especially those in small communities with limited resources, described the potential nightmare a hazardous material (hazmat) spill would cause in their communities. In addition to the fear that local emergency response teams would neither have the knowledge nor equipment to handle particular types of spills, local officials expressed grave concerns about being able to reach hazmat spills at all, if the spill resulted from a train derailment.

which blocked a key public crossing. Ohio has had experience with the consequences of hazmat spills. A 1987 hazmat spill in Miamisburg required that thousands of local residents be evacuated. Fortunately, no loss of life resulted.

In July 1998, the STB granted CSX and NS permission to acquire and divide Conrail. The STB decision was conditioned upon NS and CSX making modest improvements to limit the amount of time a train blocks a public grade crossing. Improvements for select communities included such things as improving track logistics, improving communication with local emergency services providers, and installing train detection equipment to better locate trains.

However, the STB did not order that CSX or NS build any grade separations in Ohio to permanently resolve blocked crossing issues, despite the arguments by state and local officials that grade separations were the only real solution to the problem of increased train traffic.

The STB also required that NS and CSX provide select local communities better information about how to handle spills of hazardous materials, some training of emergency response personnel, and improved communication.

On June 1, 1999, CSX and NS implemented their takeover of Conrail and started operations on the former Conrail tracks. Immediately, both CSX and NS experienced severe problems in moving rail traffic on their newly integrated systems. All over Ohio there were hundreds upon hundreds of reports of stopped trains blocking crossings for hours at a time.

This report is a combined effort of the Ohio Rail Development Commission (ORDC), the Public Utilities Commission of Ohio (PUCO), and the Ohio Emergency Management Agency (OEMA). It is divided into two parts. Part I addresses issues "A", "B", and "C" of Section 12 of Am. H.B. 163 relating to grade separation issues. Part II addresses issue "D" relating to hazardous materials transport.

PART I

THE NEED FOR MORE RAILROAD-HIGHWAY GRADE SEPARATIONS

A) PRELIMINARY NEEDS ASSESSMENT

B) POSSIBLE PRIORITIZATION METHODOLOGY

C) POSSIBLE FUNDING SOURCES

PART I: THE NEED FOR MORE RAILROAD -HIGHWAY GRADE SEPARATIONS

- A) PRELIMINARY NEEDS ASSESSMENT**
- B) POSSIBLE PRIORITIZATION METHODOLOGY**
- C) POSSIBLE FUNDING SOURCES**

Introduction

At more than 6,300 locations in Ohio, a public road and a railroad track cross each other at the same grade. At these "at-grade" crossings, there is a possibility that trains and vehicles can collide with each other, often producing deadly results. While Ohio has continually improved its safety record in reducing the number of vehicle - train collisions at public at-grade crossings, the problems caused by trains blocking crossings have been increasing. In many instances, there are not sufficient "grade separations" to provide an outlet for emergency vehicles, or any other vehicles, when trains block crossings.

As its name implies, a "grade separation" requires that a road be built over the railroad or tunneled under it, or that the railroad be elevated over or tunneled under a road. Because railroads generally operate on grades not exceeding 1% or 2% (a 2% grade means that the rise or fall in elevation of the track is two feet for every 100 linear feet of track), it is usually easier and more cost effective to put the road over or under the track.

To raise a railroad line up 15 or 16 feet above a street would require that the track elevation begin hundreds of feet down the rail line on either side. Besides the cost involved in raising the rail grade, the needed fill itself could cause problems. For example, any road crossings within a thousand feet or so of the crossing in question would become "humped" crossings requiring more road work. Further, the slopes on the side of the fill needed for the railroad track could extend beyond the rail right-of-way onto the property of adjacent land owners. Putting a rail line under a road is less feasible. A railroad generally needs 21 to 23 feet of clearance, so the problems of digging a cut or a trench for a railroad could be even greater than elevating a rail line.

Raising a road over a railroad track can be difficult as well. Although it is not uncommon to have roads with grades of 4% or 5% or 6 %, the 21 to 23 foot railroad clearance requirement can cause problems, especially in crowded cities. New overpasses in a city can require that businesses and homes close to the road in question be demolished to make way for the new bridge. Those near the new overpass may find the new city scape to be an unsightly blight, rather than an improvement. Grade separations accomplished by building a bridge over a rail line can cost as little as \$1 to \$3 million out in rural areas where there are few complications, but in cities they can easily cost \$5 to \$10 million each, or more.

Tunneling under existing railroads is not without problems, either. The issue of demolishing nearby property also is raised. And, as with any major excavation, a major issue is drainage and flooding. In addition, a temporary structure and rail line need to be built so that train traffic can be maintained while the permanent new rail bridge is being constructed. Not surprisingly, the costs of underpasses in an urban environment can be high. For example, three new underpasses soon to be built in Berea will cost at least \$45 million to construct.

The General Assembly has provided common sense guidance in the HB 163 legislation. It has instructed the Agencies to generate an order of magnitude needs assessment to estimate the universe of needs for grade separations in Ohio, and then to outline ways of prioritizing and funding these needs. The following three sections provide the Agencies' findings.

A) PRELIMINARY NEEDS ASSESSMENT

Methodology

Following the lead of the General Assembly, the Agencies decided on a simple, common sense approach to assessing statewide needs for grade separations. With more than 6,300 at-grade public crossings in Ohio, it made little sense for the Agencies to take the centralized approach and try to do an analysis of where we believed grade separations might be needed. While such an effort would have produced fairly uniform results, it would have easily cost millions of dollars in consulting and engineering fees and taken years to accomplish. Instead, the Agencies decided to take a de-centralized approach and let local governmental agencies make their own assessments as to where grade separations are needed.

The Agencies sent out surveys to every county, city, village, and township with an at-grade crossing and simply asked them to assess their own needs. A copy of the survey form is included herein as Exhibit "A". The Agencies well understood that a survey can be an unreliable tool. For example, certainly some local governments with significant needs did not return the survey. And certainly the people responding have a diverse understanding of where grade separations are really needed. Some responders undoubtedly responded in a very parochial manner, seeing local need where an unbiased outsider might not see any need at all.

The Agencies believe that while a survey may not be the definitive tool for pinpointing overall need, it has proved to be a demonstrative tool in helping to grasp the size of the problem. If a grade separation program is started, the tools to prioritize will be in place to determine relative need and eliminate spurious requests. And with funding available, the chances of local officials who need a grade separation failing to respond are small.

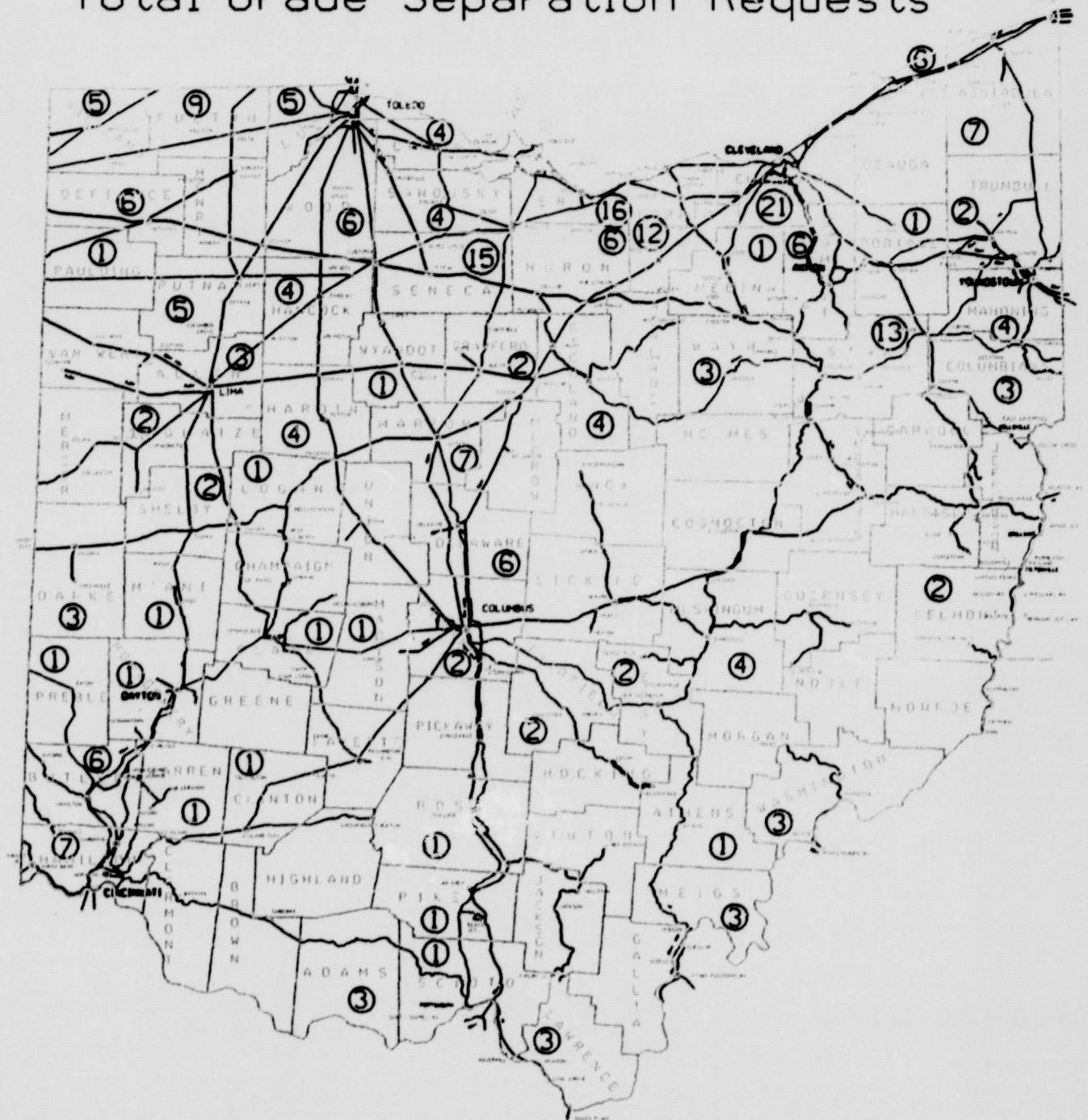
Results

The Agencies sent out 913 surveys. 504 local agencies responded. Of the 504 respondents, 168 indicated that their communities needed 252 grade separations. Map 1 on the following page shows where officials stated that grade separations were needed. The list included as Exhibit "B" further delineates the reported needs.

Clearly, until a methodology for ranking potential projects is fully developed, the Agencies cannot determine which of the 252 grade separation requests have the most merit. Further, until detailed engineering for high priority projects is done, the costs of the projects will not be accurately known. However, in order to encourage discussion of a grade separation initiative, the Agencies decided to make some common sense assumptions and develop some order of magnitude estimates. We encourage anyone reading this report to use the following information with these disclaimers in mind.

MAP 1

Total Grade Separation Requests



To arrive at an order of magnitude estimation of the number of hypothetical "high priority" grade separation projects, the Agencies established an arbitrary threshold. For discussion purposes, it was assumed that grade separation requests at locations with 30 or more trains per day and with an average daily traffic (ADT) count of 1,000 or more would be high priority grade separation projects.

Of the 252 locations submitted, approximately 40 are at locations where train and traffic counts exceed these hypothetical threshold numbers. This hypothetical subset of requests includes both urban and rural settings, with the urban outnumbering the rural by about 2 to 1. Using very rough order of magnitude costs of \$3 million per rural grade separation and \$7 million per urban grade separation, the estimated cost to build these 40 hypothetical high priority grade separations would be about \$215 to \$225 million.

OEMA Survey

In coordination with the Agencies, OEMA conducted a more detailed survey of the 88 Ohio counties and its 87 Local Emergency Planning Committees. Forty-seven counties responded. OEMA's survey addressed both crossing and hazmat issues from the perspective of emergency response units. In addition, it sought details on training needs of local emergency forces and needs to improve communications and mutual aid agreements among emergency responders and railroads.

A copy of the OEMA survey is included herein as Exhibit "C". The results are included in Exhibit "D". The information gathered by OEMA helped crystallize the recommendations in both Part I and Part II of this report.

B) POSSIBLE PRIORITIZATION METHODOLOGY

Discussion of Prioritization Methodology Principles

The goal of a good prioritization methodology is to create an "apples to apples" comparison of competing projects so that scarce dollars are spent on the most needed and important projects. Generally, prioritizations quantify the benefits of a project. Two of the most common prioritization systems used in the public sector are: 1) points systems, wherein projects are assigned points within specified ranges for a variety of categories with the point totals used as the ranking system; and 2) benefit-cost analyses, wherein the project benefits are quantified and compared to project costs, the projects with the highest benefit-cost ratios being the highest priority projects.

While it is advisable to keep prioritization methodologies as objective as possible, it is generally not possible, or advisable, to eliminate subjective judgement. The Agencies view prioritization methodologies to be decision making tools that should be used to augment common sense, not to replace it.

The charge given the Agencies by the General Assembly was a narrow one, i.e., "How to develop a priority system to determine the order in which those grade separations and improvements could be made." The Agencies believe this narrow charge is a wise path.

Review of Existing Prioritization Systems

The first area the Agencies investigated was existing Ohio highway prioritization systems. Although it seemed counter-intuitive to try to fit the particular characteristics of grade-separations into a wider highway prioritization process, the Agencies believed that it might be possible to reorganize an existing system to apply to grade separations.

The ODOT TRAC System: The Ohio Department of Transportation (ODOT) has a Transportation Review Advisory Council (TRAC), which uses a detailed point system to evaluate Major New Capacity Projects. The TRAC is responsible for prioritizing the expenditures of funds set aside for new construction. Grade separation projects are currently eligible for funding through the TRAC, either as a Major or Minor project. The TRAC system includes them with projects to build new roads and bypasses, add lanes and interchanges to interstates, develop new rail transit lines, and a variety of other high cost projects. The projects which score well at the TRAC need to show how transportation capacity is dramatically improved and how economic development is fostered. Grade-separation projects do not generally compete well against other projects in this process.

It may be possible to add or revise existing TRAC criteria to make it more responsive to grade separation project proposals. For example, the TRAC system currently allocates up to 10 points

out of 100 possible for Average Daily Traffic (ADT) for the road in question. However, the calculation only includes trucks and automobiles and does not include any weight at all for the expeditious movement of emergency vehicles. There could be bonus points added to the ADT point value for grade separation projects which facilitate the movement of emergency vehicles under or over crossings which are constantly blocked. This emergency vehicle ADT bonus would make grade separations a bit more likely to receive Major or Minor funding allocations from TRAC.

Further, the TRAC assigns up to 20 points based on a Volume to Capacity ratio. No consideration is given, however, to the fact that when a rail-highway crossing is blocked, the capacity of the road is absolutely zero. This category could be altered to reflect the grade crossing blockage scenario and improve the funding potential for grade separation projects.

In addition, the TRAC Safety criteria is limited only to accident rates. It does not address the issue of police, ambulances and fire equipment being unable to reach Ohio citizens in emergency situations due to blocked crossings. This blocked crossing aspect could be added to safety considerations.

ODOT Safety Program: ODOT also has a Safety/Hazard Elimination Program which encompasses a wide variety of projects from intersection improvements, to improving turn lanes, to eliminating safety hazards such as the abutments from "orphan" bridges which are too close to the roadway. Decisions on funding from this program are largely subjective and discretionary. Very few grade-separations have been funded through this program. As with the TRAC prioritization system, the blocked crossing issue is not addressed by the Safety/Hazard Elimination Program.

From this very brief overview of existing highway ranking methodologies, the problems of trying to restructure them to better include grade separation projects become readily apparent. To make grade separations a meaningful part of the existing prioritization system appears to require more than merely minor adjustments. It would require setting up a parallel point system to be used for the "special case" grade separation projects. Therefore, the Agencies agree with the General Assembly that grade-separation projects are unique enough to warrant a separate system to determine which ones have the greatest priority.

Review of Existing Grade Crossing Decision Model

The Agencies consulted with other non-Ohio safety officials to determine if any of them had an existing methodology which ranked various grade-separation projects against each other. Unfortunately, the Agencies could find no other state which has a system in place which Ohio could borrow and improve.

The Federal Railroad Administration (FRA) does, however, have a new computerized prioritization system called GradeDEC which is close to providing a reasonable benefit-cost analysis for grade-separation projects. The FRA is urging states to use the GradeDEC software for a variety of grade crossing project decisions. So far, Washington and Minnesota are using it to evaluate which crossings in a corridor most deserve to be upgraded. GradeDEC offers a large amount of user flexibility in assessing the benefits from crossing improvements such as the installation of flashers and gates or grade crossing closures as well as the relative cost/benefit of grade separations.

GRADEDEC BENEFIT CALCULATION

Safety: The benefits of reduced vehicle-train accidents.

System Reliability: The benefits from the reduction of vehicular delays at crossings.

Environmental: The benefits of reduced vehicle and train emissions.

Vehicle Operating Cost Savings: The benefits of decreased fuel and oil consumption of vehicles due to improved traffic flow.

Network Benefits: The benefits of reduced queuing at roads in the vicinity of the improvement.

The FRA presented a demonstration of the GradeDEC software to the Agencies. While the Agencies have not attempted to develop and refine the GradeDEC system as yet, the system could be used as is to provide the relative benefit-cost ratios of proposed grade-separation projects.

However, the GradeDEC system does not consider some of the most important issues raised by citizens and public officials during the Conrail Sale process. It does not measure the potential safety issues caused by the inability of police and emergency vehicles to access the public in a timely manner. As such, the Agencies believe that the GradeDEC software as it exists would rank proposed grade-separations in urban areas much higher than in small towns and rural areas for the simple fact that more traffic uses the urban roads; therefore, the benefits of grade crossing accidents, less queuing, less gas and oil burned, etc., would be greater in the cities.

Further, because it does not give special consideration to police and emergency vehicles being prevented from accessing citizens, GradeDEC may be inaccurate, even when comparing urban grade-separation locations. For example, for one proposed urban grade-separation there might be fire and hospital facilities on both sides of the rail line in question, so that blocked crossings may not be as important of an issue than at another location where large segments of the population are totally stranded when crossings are blocked.

Recommendation

Given the limited number of current systems to prioritize grade-separations, Ohio has two basic choices, either develop a new system to meet Ohio's particular needs, or revise the existing GradeDEC system. The GradeDEC software would be a good start toward a grade-separation prioritization system. If a grade-separation program is instituted in Ohio, the Agencies recommend that State officials work with the FRA to try to refine GradeDEC to better account for safety concerns of Ohio citizens and public officials. It may be that a GradeDEC benefit/cost calculation is used as a threshold, or as part of a larger point allocation system. For example, a certain amount of points could be assigned based on a GradeDEC benefit/cost number, while the balance of points could be assigned based on the level of local funding, the number of people who are isolated from emergency vehicles by blocked crossings, and other important factors.

Furthermore, it is recommended that the Ohio Department of Transportation (ODOT) be the agency which prioritizes the projects, either by way of a new program, or by incorporation into existing allocation systems. Clearly ODOT is the State agency which can best administer a large scale grade separation program if one is initiated. Therefore, it would be best if it handled project prioritization.

C) POSSIBLE FUNDING SOURCES

Who Pays?

There is a wide divergence of opinion as to who has the primary responsibility for paying for grade separations. At many public meetings concerning the Conrail Sale, local officials sometimes passionately and eloquently described blocked crossing issues in terms of imminent life threatening situations. But when the issue of paying for a grade separation was raised, they just as eloquently and passionately claimed that the railroad caused the problem and that little local funding was available to resolve it.

Railroad officials often have a different view. They point out that the railroad has been running trains on tracks through various locales since the Civil War, and that the highway congestion that has sprung up is the result of the decades old love affair that American civic leaders have had with the automobile and highways. Some railroaders take the "we were here first" attitude and limit any payments for grade separations to the federally mandated 5%. (Federal mandates require that the railroad pay 5% of costs only at locations where the crossing is protected by gates or flashers. If a grade separation is proposed at a location without active warning devices, there is no federal requirement for a railroad to participate at all in funding.) Railroaders generally consider grade separations a highway issue for state and local governments.

State officials are hit by both local and railroad officials with requests to fund grade separations. Some state officials express frustration with local officials. Some believe that if grade separation projects are so important to locals, the locals should use the gas tax dollars allocated to local governments to pay for them. Other state officials point to limited highway budgets and say that it is a railroad issue and that somebody should make the railroads pay.

Arguably, all of the hypothetical positions above are right; and all of them are wrong. Local officials make a good point that blocked crossing issues can be a matter of life or death. But they should not ignore the part local development has played in creating the situation. Railroads were indeed here first, with the highway system growing up around them. But just like factories in the centers of urban areas cannot toss waste over the hill or dump it in the river just because they were there first and did it that way for years, railroads cannot ignore their impact on the neighborhoods and locales they traverse. State officials are correct that local and railroad funds are needed for grade separation projects. But state officials cannot expect any appreciable number of grade separations to get built without a state program that considers grade separations outside the existing programs for new highway construction, highway maintenance, or grade crossing safety.

Funding Possibilities

The General Assembly has demonstrated an excellent understanding of the grade separation issue and wisely recognized that a state program could be needed. The Agencies did not conduct an exhaustive search of all possible funding sources, but did investigate some of the logical sources.

For example, raising the state gas tax would clearly provide ample funding for grade separation projects. However, the Agencies quickly found that pursuing new gas taxes would probably not be politically feasible.

The Agencies also investigated various taxes that might be levied on railroads to establish a stream of income for grade separations. However, this option presents tax equity issues as well as legal problems. It is highly likely that taxing the railroads to pay for grade separations would be successfully challenged by the railroads as state interference with interstate commerce.

State bonding options were reviewed and found to be a promising vehicle. Using bonds can mean that funding will be available soon, but that the depletion of the tax source for any one year can be minimized thereby eliminating the need for a new tax.

Finally, the potential of increasing funding for existing programs through the budgetary process was examined.

Short Term Vs. Long Term Program

By any measure, funding new grade separations will be expensive. For instance, the approximately 40 "hypothetical" high priority projects, described for discussion purposes only in part "A" of this report, would cost in excess of \$200 million. Or, if only one new grade separation were budgeted for each Ohio County, the costs could approach one-half billion dollars.

Given the potential magnitude of any new grade separation program, the Agencies recommend that funding be spread out over the long term rather than trying to assemble such a huge amount of funding for a one-time, short-term program. Spreading the costs out over a period of years makes sense from an administrative as well as financial point of view. A one-time infusion of funding would result in grade separation projects being bunched in one or two years, potentially causing problems in finding enough qualified engineers to design the projects, contractors to build them, and participating parties to pay for them. At minimum, the Agencies recommend a ten-year program be considered.

Potential Sources of Funds

Railroads: By federal regulation, railroads currently pay only 5% of costs for most grade

separation projects. The Agencies recommend that the railroad share be increased to match the share which local governments are paying for a project out of local funds. The Federal Highway Administration determined the 5% share based on the fact that a grade separation would eliminate the need for the railroad to maintain active warning devices (such as flashers and gates) at that crossing forever. The Agencies believe that the railroads will, in most cases, voluntarily agree to invest in grade separation projects for the following reasons:

1) The Need for Storage Tracks: The difficulties in operating the Ohio rail system in the post-Conrail Sale environment are exacerbated by the need for the railroads to have stretches of track two or three miles long in which to store trains while they wait for mainline track time. This is especially true near major classification yards, such as those located in Willard, Bellevue, Toledo, Columbus, and Cincinnati. Grade separations can help provide this storage space.

2) Liability Concerns: If a railroad chooses not to participate in a grade separation project and it does not get built, any accident at that crossing could result in large settlements against the railroad. Further, any at-grade crossing which is eliminated reduces the railroad's exposure to crossing accident liability.

3) Better Overall Operations: The fewer crossings a railroad has to operate over, the better the rail operation and the lower the operating costs.

Local Governments: Just as in any highway or rail program, participation by those who directly benefit is a critical indication of need. Partnership with local entities will make any state program work better.

The Agencies: OEMA has no funding that can legally be applied toward a grade separation. PUCO and ORDC have limited funds for crossing safety projects. A limited amount of this funding could be applied toward grade separations to help fill funding gaps. ORDC and/or PUCO participation can be achieved by reallocating existing resources and re-orienting program priorities.

While the Agencies believe that ODOT is clearly best suited to administer the proposed Grade Separation Program, the Agencies can play a valuable part in a Grade Separation Program, including the following:

1) Data Collection: PUCO maintains the database which produces Ohio's accident prediction rankings. This information will be a vital component of any system to prioritize grade separation projects. ORDC is currently in the process of surveying every public crossing in Ohio to ensure that the PUCO and ORDC databases are accurate. In addition, ORDC will obtain the Global Positioning System (GPS) coordinates for each public crossing in the state. OEMA has the information and expertise to gather needed data concerning how blocked grade crossings impact emergency response units.

2) *Railroad Coordination:* PUCO is responsible for track and operating safety inspection and for ranking the crossings that receive federal funding for flasher and gate protection. ORDC is responsible for coordinating with the railroads on economic development projects. Both agencies can provide useful assistance to local communities and ODOT in coordinating with railroads on grade separation projects.

ODOT Programs: In conversations with ODOT officials, it has been suggested that ODOT has existing budget resources to set aside some funds for grade separation projects or to raise new funds through the sale of bonds. However, any ODOT investments in a special grade separation program will be limited to existing federal and state resources.

General Assembly: The General Assembly could augment the funding of state agencies, as well as local governments, through a variety of methods. For example, providing additional funds to the State Infrastructure Bank (SIB) expressly for grade separation projects could make it much easier for local governments to meet their local share requirements. Similarly, the General Assembly could make more funds available to ODOT, PUCO, or ORDC for grade separations through the Capital Budget process. Although funding included in the Capital Budget is only for a two-year period, it is not uncommon for one General Assembly to make its will known to future General Assemblies in the budget language. Finally, the General Revenue Fund could be a source of funding for grade separation projects.

PART II

STATUTORY AND REGULATORY CHANGES NEEDED TO ADDRESS THE INCREASED TRANSPORT OF HAZARDOUS MATERIALS BY RAIL

- A) Current Conditions and Conrail Sale Related Increases**
- B) STB Response to Increased Hazmat on Lines**
- C) Agencies' Ongoing Hazmat Safety Programs**
- D) Training Initiatives**
- E) Part II Conclusions and Recommendations**

PART II: STATUTORY AND REGULATORY CHANGES NEEDED TO ADDRESS THE INCREASED TRANSPORT OF HAZARDOUS MATERIALS BY RAIL

Introduction

Several years ago, travel, tourism and business opportunity in Ohio were marketed by use of the slogan "*Ohio, the Heart of It All*". Although not specifically used in this sense, the slogan was directly on point relative to rail operations in Ohio. Ohio is a national leader in terms of railroad operations, and has been since tracks were first laid west of the Appalachians more than 150 years ago. Since that time, Ohio has been a hub of rail activity and serves as a rail connecting point for all regions of the country. Currently, Ohio is home to approximately 40 railroads of various sizes that operate on about 5,800 miles of main line track and intersect at grade public highways at 6,300 locations.

Every conceivable product and commodity is shipped by rail, including a wide variety of dangerous goods and hazardous materials (hazmat). Hazardous materials are transported daily on all main line tracks of Ohio's two primary Class I railroads (CSX and NS), as well as on many Class I Railroad branch lines, and regional (Class II) and short line (Class III) railroads. Shipments include hazardous materials that originate in Ohio or those bound for Ohio communities as well as traffic passing through the state. In addition, most spent nuclear fuel and/or radioactive waste generated in the East and Midwest and destined for the Yucca Mountain or other repositories in the West will travel through Ohio.

As a result of the Conrail sale, both CSX and NS expect rail transportation of hazardous materials from, to, and through Ohio, to increase significantly over the coming years. Because of the potential for catastrophe, there exists no greater duty relative to rail regulation and safety than the assurance of the safe transportation of hazardous materials through Ohio. Since the time that the proposed acquisition was announced, the Agencies have prepared for the rail traffic increases that the state will surely see, and stand ready to meet the challenges the Conrail sale will create.

By and large, the regulation of the transportation of hazardous materials by rail is governed by federal law. In 1970, Congress enacted the Federal Railroad Safety Act (FRSA) that authorized the Secretary of the Department of Transportation to adopt railroad safety regulations. In the Act, Congress included broad preemption provisions excluding the states from legislating in any area of railroad safety already covered by regulations adopted by the Secretary. Recent efforts of the General Assembly to enact comprehensive hazardous materials legislation have failed to survive judicial review by federal courts. In 1989, the United States Court of Appeals for the Sixth Circuit held that the Ohio Hazardous Materials Transportation Act enacted in 1988 was preempted by the FRSA and, hence, unenforceable against railroads operating in Ohio.

Federal regulations dealing with the transportation of hazardous material by rail are enforced by the Federal Railroad Administration (FRA) hazmat inspectors and PUCO inspectors who have been specially certified by the FRA to conduct hazmat inspections. Assessment and collection of any forfeiture for violation of these regulations is by the federal government through the FRA.

A) CURRENT CONDITIONS AND CONRAIL SALE RELATED INCREASES

Overview of Hazardous Materials on Rail

The transportation of hazardous materials in and through Ohio did not begin with the Conrail Sale. As set forth above, all Class I railroads operating in Ohio transport a wide variety of regulated hazardous materials every day. Although some short line and regional railroads transport a small fraction of such material, CSX and NS transport the vast majority of hazardous materials in Ohio. The transportation of hazardous materials by rail is closely regulated and monitored in Ohio, based upon operating practices adopted by the chemical and rail industry, as well as state and federal regulations.

Most of the hazardous materials traveling through Ohio by rail are shipped in bulk, primarily in gondolas, tank cars, or covered hoppers. It must also be pointed out that a wide variety of products classified as hazardous may be found on intermodal trains, but are not subject to inspection because there is no requirement to mark as hazardous small amounts of material in appropriate packaging. The PUCO has concentrated its inspection efforts on bulk loads and to manufacturers who ship in bulk. Bulk loads of hazardous materials are required to be specially marked and the rail car itself must be marked with an identification number of the particular material on board classified as hazardous.

Most hazardous materials shipments are required to be accompanied by a manifest or proper shipping papers that identify the product and its hazard class, a product identification number, packing group indication, emergency response telephone numbers, and the identity of both the shipper and the consignee. These requirements are to allow incident responders to quickly identify the product and what protective measures to take in the event of a spill or other incident. Finally, inspections are also conducted on shippers of regulated products. Hazardous material transportation regulations apply to shippers as well as transporters. Shipper inspections allow the PUCO to determine that these shippers are in compliance with applicable regulations, including packaging, loading and unloading requirements as well as the existence of hazmat training and safety policies and programs for the employees of the shippers.

General Operating Practices for Trains Transporting Hazardous Materials

Trains carrying regulated amounts of hazardous materials are subject to stringent operating regulations and practices imposed by federal law, in addition to those regulations and practices applicable to trains carrying general freight. These regulations apply to trains carrying high levels

of hazardous materials (key trains) as well as to rail corridors that see high volumes of hazmat traffic (key routes).

Trains carrying sufficient amounts of hazardous materials are designated as "key trains" and are defined as any train with 5 carloads of poison inhalation hazard (PIH) or 20 carloads of intermodal portable tank loads of a combination of PIH, flammable gas, and environmentally sensitive chemicals. Operating restrictions relative to key trains limit train speed to 50 mph and unless the siding or auxiliary track meets FRA Class 2 standards (a classification of track quality that allows 25 mph operations), a key train will hold the main track at meeting or passing points when practicable. Further, when a moving key train is stopped by any emergency brake application, or by some unknown cause, the train must be inspected for derailed or defective cars. If a defect in a key train is reported by a wayside detector, but a visual inspection fails to confirm evidence of a defect, the train will not exceed 30 mph until it has passed over the next wayside detector. If the same car again sets off the next detector, that car must be set out from the train.

High volume routes, designated as "key routes," are defined as any track with a combination of 10,000 car loads or intermodal portable tank loads of hazardous materials, or a combination of 4,000 carloads of PIH, flammable gas, Class 1.1 or 1.2 explosives, and environmentally sensitive chemicals, over a period of one year. Main track on key routes must be inspected by rail defect detection and track geometry inspection cars or any equivalent level of inspection no less than two times each year. Track sidings must be similarly inspected no less than one time each year. This type of comprehensive inspection augments the weekly inspection required of most main line tracks.

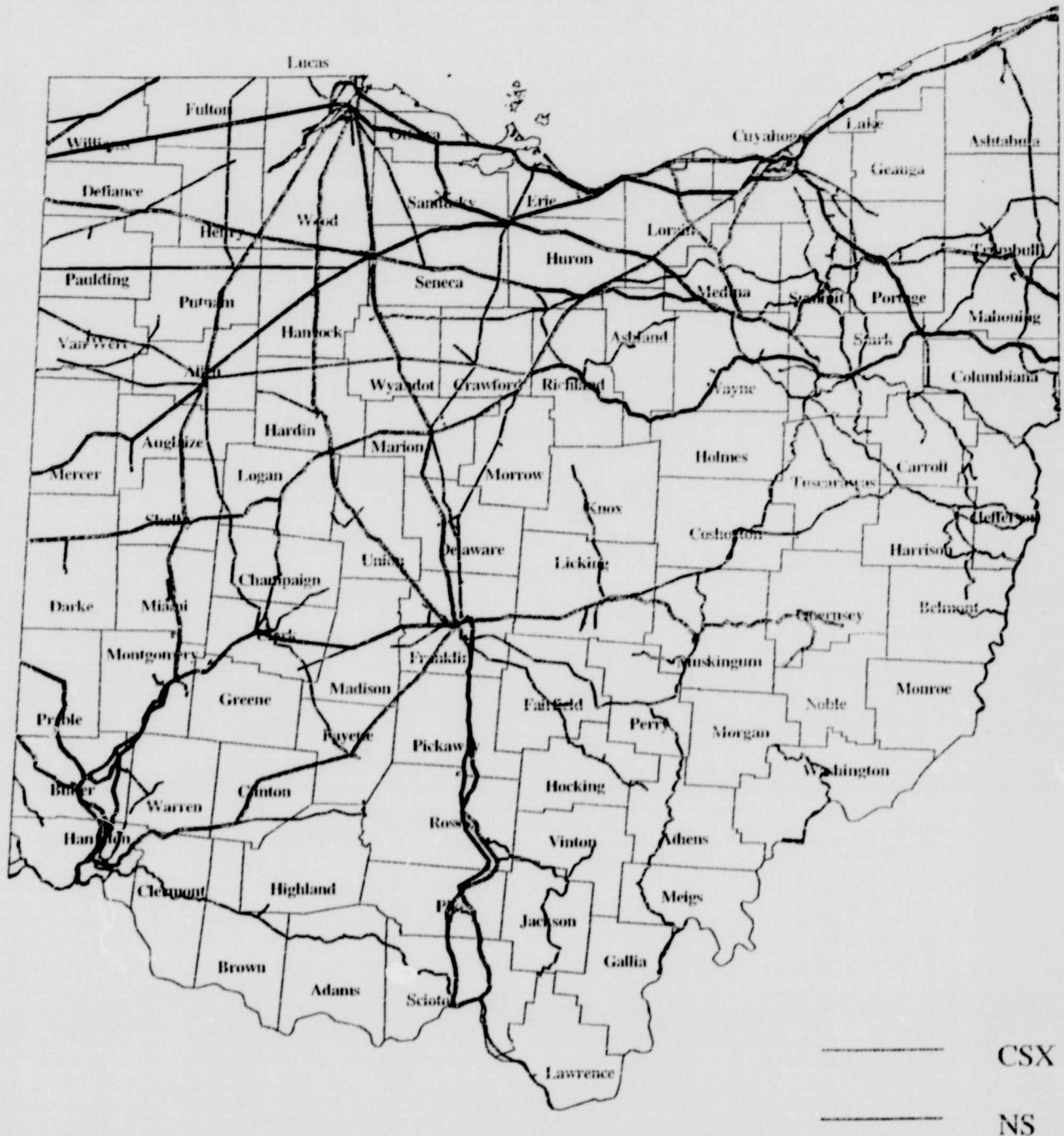
Current Conditions/Projected Increases

As Map 2 on the following page shows, all rail lines controlled by Ohio's Class 1 railroads (CSX and NS), and a few short line rail routes, are Key Routes used to carry material classified as hazardous. As a result of the Conrail acquisition, CSX and NS have indicated that they would change the routing of many carloads of hazardous material. The designation of key routes would change as the railroads shift hazardous material traffic from one line to another. In addition, existing key routes would carry increased volumes of cars containing hazardous material.

As part of its decision regarding the Conrail sale, the Surface Transportation Board (STB) applied two different criteria to determine if the effects of rerouting hazardous material carloads would be significant:

- 1) If the volume of hazardous materials transported on a rail line would be raised to 10,000 or more carloads per year because of the Conrail sale, the line would be given a "Key Route" designation.

Hazardous Material Key Routes



- 2) If the volume of hazardous material carloads doubles, and exceeds 20,000 or more carloads per year, a line would be given a "Major Key Route" designation.

Based upon information submitted by CSX and NS in the petition to acquire Conrail, and upon its own analysis, the STB determined that 19 rail line segments in Ohio carrying increased amounts of hazardous material are of potential concern. These segments are shown on Map 3 on the following page. Fourteen of these segments would see an increase in hazardous material traffic sufficient to become Key Routes. Increases in hazardous material traffic on the remaining five segments would elevate those segments to Major Key Routes.

B) STB RESPONSE TO INCREASED HAZMAT ON LINES

In developing final conditions governing the merger, the STB required the railroads to undertake a number of measures to insure safe handling of hazardous materials. The major requirements are summarized as follows:

Key Routes

Before increasing the number of rail cars carrying hazardous materials on the 14 rail line segments that will become Key Routes, the STB directed CSX and NS to comply with the industry Key Route guidelines on these segments.

Major Key Routes

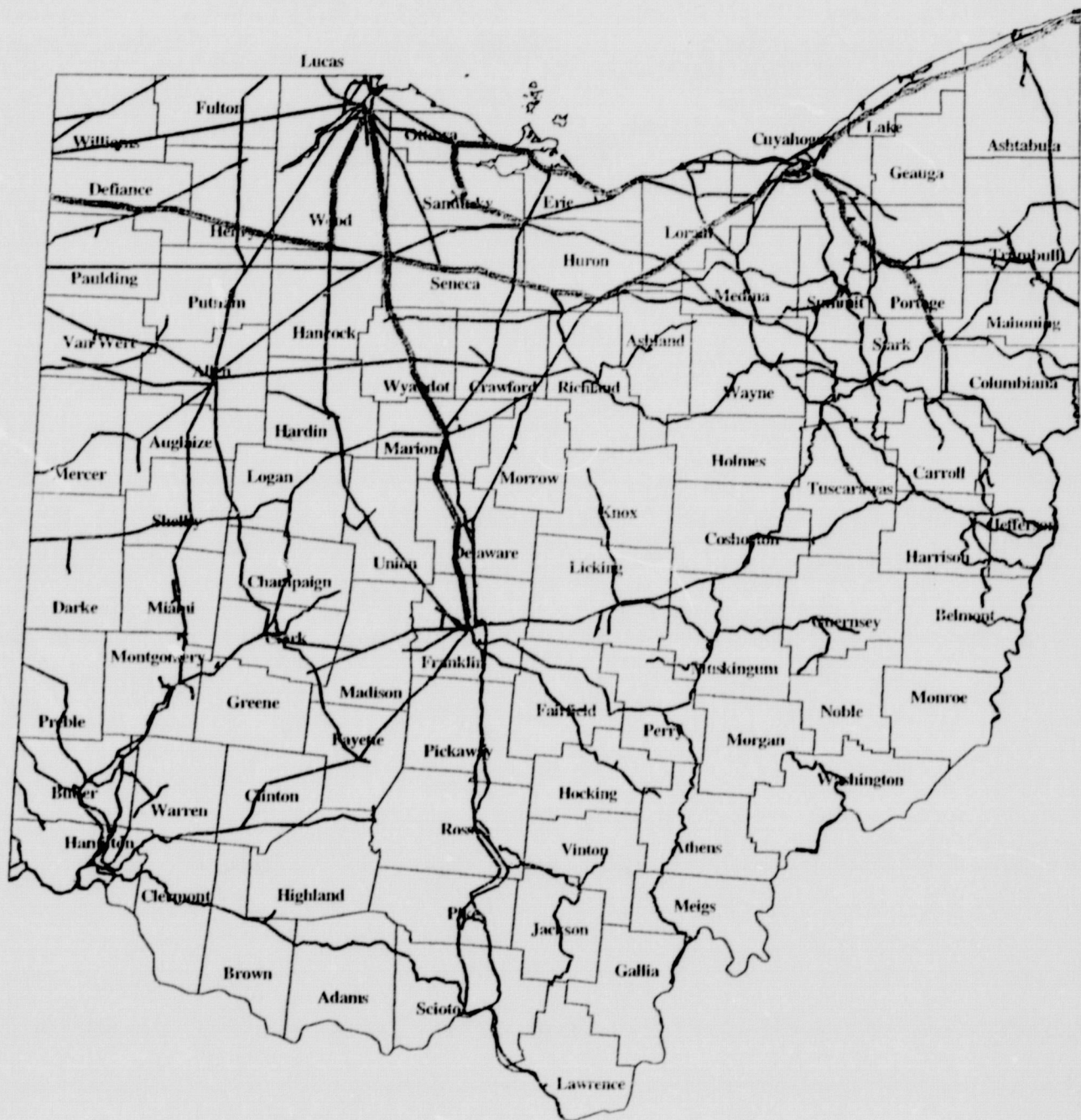
CSX and NS were directed to develop and provide a local hazardous materials emergency response plan to be implemented in coordination with the railroad's own emergency response plan. In addition, the railroads were directed to implement a real-time or desktop simulation emergency response drill with the voluntary participation of local emergency response organizations in affected communities.

Key Routes and Major Key Routes

CSX and NS were directed to distribute to each local emergency response organization in the communities on these rail line segments a copy of its current hazardous materials emergency response plan. The railroads were also directed to provide dedicated, 24-hour, toll-free telephone numbers to the local emergency response organizations. These numbers were not required to be distributed to the public.

Hazardous Material Key Routes

Rail routes which will carry increased amounts of hazardous materials as a result of the Conrail acquisition



Safety Integration Plans

STB directed CSX and NS to submit a Safety Integration Plan as part of the acquisition petition. The plan set forth the methods and procedures the railroads would follow relative to safety in their integration of Conrail assets. The plans were not hazardous material specific, but dealt with all operating issues and concerns. FRA has continued to monitor the integration of the Conrail system through regular inspections and reporting requirements.

C) AGENCIES' ONGOING HAZMAT SAFETY PROGRAMS

The STB directed compliance required of CSX and NS relative to the change and increase in the transportation of hazardous material in Ohio is clearly not very demanding. However, Ohio has been proactive in this regard and has been positioning itself for more than two years to respond to the variety of concerns occasioned by the Conrail sale. Through a combination of inspection activities, improved crossing warning deployment and local emergency response outreach and training, the state agencies have sought to address public safety concerns.

Inspection Activity

The State of Ohio, on its own and in cooperation with the FRA, has been inspecting hazardous material transportation by rail for more than 25 years. Currently, the PUCO employs two federally certified rail hazardous material inspectors. While these two inspectors may conduct inspections throughout the state, they primarily are assigned to northwest Ohio (Toledo) and southwest Ohio (Cincinnati). The PUCO inspectors augment FRA inspectors, whose assigned regional territories include northeast Ohio (greater Cleveland, Akron/Canton) and central Ohio (Columbus). During 1998, 532 rail hazardous materials inspections were conducted at rail yards and shipper facilities throughout Ohio.

Rail traffic, including hazmat, has steadily increased over the past 10 years, even without the Conrail sale. During that period of time, however, the corps of rail inspectors has been reduced by about 25%. Currently, the PUCO employs nine hazardous materials specialists who primarily inspect motor carriers and shipper facilities. The PUCO is in the process of increasing the focus on rail inspection activity through certification of an additional one to two of those specialists as rail hazardous material inspectors during this year, and base those inspectors in the northern half of the state where the major increase in rail traffic and hazardous materials will occur. Additionally, the PUCO has added two additional rail inspectors to its staff to be able to respond when the volume of hazmat rail shipments increases to those levels expected by the railroads. In addition to hazardous materials, the inspection activity will focus on track, equipment, signal and operating practices.

The PUCO has made a policy decision to monitor and inspect every movement of spent nuclear fuel and radioactive waste in Ohio to insure safety in transit. Neither the industry nor the FRA

has developed an investigatory response or plan specific to such movements. PUCO hazmat and/or equipment inspectors have inspected each of the movements to date of radioactive waste from the Fernald facility near Cincinnati, as well as isolated movements of other radioactive waste through the state.

Grade Crossing Upgrades

From the time the acquisition was first proposed, PUCO and ORDC began a proactive effort with the railroads to plan for the increase in train traffic and the changing traffic patterns the acquisition would bring to Ohio. With rail traffic, hazardous and otherwise, increasing dramatically on many Ohio rail lines, the Agencies were concerned about the safety at grade crossings. While the primary concern was preventing grade crossing accidents and deaths involving the traveling public, improved grade crossing safety also impacts the safety of hauling hazardous materials. Trucks carrying hazmat have been involved in grade crossing accidents, and the derailment of trains, in some instances caused by grade crossing accidents, can be especially disastrous.

In June 1997, at the time CSX and NS filed the joint application with the STB to acquire control of Conrail, the State of Ohio was already negotiating with CSX to upgrade grade crossing safety on its impacted lines in Ohio. Shortly thereafter, the PUCO and ORDC entered into an agreement with CSX providing for the upgrade of warning devices at 39 crossings on the railroad's B&O line through northern Ohio. Eventually, rail traffic on that line is expected to more than double to about 60 trains a day. Since that initial agreement, PUCO and ORDC have entered into similarly funded agreements with CSX and NS, which will ultimately provide for the installation of lights and gates at almost 200 grade crossings on rail corridors that will see a significant increase in train traffic as a result of the Conrail sale.

The level of crossing improvement was unique among all states involved in the Conrail merger and received special recognition by the STB in its final decision. Also unique was the partnership with the railroads in funding improvements. PUCO and ORDC believed that fairness required the railroad to join in financing light and gate projects at crossings on impacted rail corridors. As a key part of the corridor agreements, the railroad's percentage of project financing on each corridor was based upon the percentage increase in train traffic and potential safety concerns on that corridor.

D) TRAINING INITIATIVES

Since the start of the merger process, the PUCO has undertaken efforts to redirect hazardous material training funds toward rail incident response preparedness.